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The Role of the Maxims of Interpreting the Contract in achieving Sustainability of the Legal Security in the Iraqi Civil Law / An Analytical Comparative Study with Both the French and English Laws

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Abstract

This research is interested in studying the realization of the sustainability of the legal security, by interpreting the contract to remove the ambiguity, vagueness, obscurity and even the contradiction surrounding the clauses of the Contract in the civil law. Therefore, the interpretation of the contract and particularly the maxims of interpreting the contract can play a considerable role in realizing the legal security in the extent of the civil law. The Iraqi civil code No. (40) of 1951 encompasses many maxims of interpreting the contract, the same is true for the French civil code, amended by the new French code of the contract, issued by the ordinance n° 2016-131 dated February 10, 2016 as to the reforms of the law of contract, general regime and proof of obligations. The English common law has also contained the rules of the construction of the contract, aimed at removing ambiguity, vagueness or obscurity surrounding the words, phrases and terms of the contract. The problematization is also embodied by a questions concerning the ascertainment of the importance of the interpretation of the contract in achieving or realizing the sustainability of the legal security within the context of the civil law, by clarifying the obscurity if the contract contains some ambiguous stipulations. Finally the researcher suggests some relevant recommendations to the Iraqi law-maker.

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دور قواعد تفسير العقد في تحقيق استدامة الأمن القانوني في القانون المدني العراقي/ دراسة تحليلية مقارنة بالقانونين الفرنسي والإنكليزي

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الملخص

يُعنى هذا البحث بدراسة وتقصي تحقيق استدامة الأمن القانوني عن طريق تفسير العقد لإزالة الغموض أو اللبس أو الإبهام أو حتى التناقض الذي يكتنف شروط العقد في القانون المدني. لذا فإن تفسير العقد ولا سيما قواعد التفسير يمكنها أن تلعب دوراً كبيراً في تحقيق الأمن القانوني ضمن إطار القانون المدني. وقد تضمن القانون المدني العراقي رقم (40) لسنة 1951 العديد من قواعد تفسير العقد، وكذلك الحال بالنسبة إلى القانون المدني الفرنسي المعدل بقانون العقود الجديد الصادر بموجب المرسوم المرقم (131-2016) لعام 2016. والخاص بقانون العقود, والنظرية العامة للإلتزامات وإثباتها. كما تضمن القانون الأحكام العامة الإنكليزي عدداً من قواعد تفسير العقد التي ترمي إلى إزالة الغموض أو اللبس أو الإبهام الذي يكتنف صيغ وعبارات وشروط العقد. وتتجسد مشكلة البحث في تساؤل حول التحقق من أهمية تفسير العقد في تحقيق إستدامة الأمن القانوني ضمن نطاق القانون المدني، عن طريق إبانة وإزالة الغموض إذا ما تضمن العقد بنوداً مبهمة. وأخيراً فقد قدم الباحث إلى المشرع العراقي بعض التوصيات ذات الصلة بالموضوع.

الكلمات المفتاحية: التفسير، قواعد تفسير العقد، الغموض، الإبهام، الأمن القانوني، الاستدامة، الإيضاح أو الإبانة.

1. Introduction

The sustainability of the legal security can be achieved or realized by the interpretation of the contract, to eliminate the ambiguity, vagueness and obscurity of the Contract in the civil law. Therefore, the interpretation of the contract and particularly the maxims of interpreting the contract play a considerable role in realizing the legal security in the civil law. The Iraqi civil law No. (40) of 1951 encompasses maxims of interpreting the contract (155-166), the same is true or the case for the French civil code, amended by the new French law of the contract, issued by the ordinance n° 2016-131 dated February 10, 2016 concerning reforms of the law of contract, general regime and proof of obligations. The English common law has also contained the rules of the construction of the contract, aimed at removing ambiguity, vagueness or obscurity surrounding the words, phrases and terms of the agreement. The significance of this study lies in attempting to find a close relationship between the role played by the interpretation of the contract and the sustainability of the legal security within the extent of the civil law. The problematization of this study focuses on the following two questions: what is the importance or significance of the interpretation of the contract in achieving or realizing the sustainability of the legal security within the context of the civil law, by clarifying the obscurity if the contract contains some ambiguous stipulations?. And to which extent can the court of cassation apply the judicial control on distortion of the clear and precise clauses of the contract to denature them?. This research has followed up the analytical comparative methodology of the legal research, by studying the concept of the maxims of interpreting the contract and the sustainability of the legal security. And their role in ambiguity, vagueness or obscurity surrounding the words, phrases and terms of the contract. in accordance with the above-mentioned methodology, this study has been categorized into three sections as follows:

First Section: The Concept of the Maxims of Interpreting the Contract and the Sustainability of the Legal Security. Second Section: The achievement of the Sustainability of the Legal Security by Eliminating the Ambiguity, Vagueness and Obscurity of the Contract. Third Section: The achievement of the Sustainability of the Legal Security by adopting the effective meaning of the Contract and Avoiding Doubts.

2. The Concept of the Maxims of Interpreting the Contract and the Sustainability of the Legal Security

To start with, the Iraqi civil code No. (40) of 1951, as opposite to the Egyptian civil code No. (131) of 1948, and other Arab civil codes affected by the French civil code of 1804, has been highly influenced by Islamic jurisprudence, especially the journal of juristic rules of 1869 (Mejelle-i Aḥkām Adlīye "Majallah"), which is regarded as a European-style Ottoman codification of Islamic law of the hanafite school, from which it borrows most of its rules[(1)]. And the Iraqi civil code has borrowed the juristic rules from the journal of juristic rules, and codified them under the title of the "interpretation of the contract", considering them the maxims of the interpretation of the contract, in the articles (155-166). Therefore, we should dedicate this section to an in-depth study and analysis of the concept of the maxims of the interpretation of the Contract and Sustaining the Legal Security as follows:

2.1. The definition of the of the maxims of the interpretation of the contract and the Sustainability of the Legal Security

One of the Iraqi scholars[(2)] describes the interpretation in general as the elucidation of the vague or ambiguous legal rule, completion of its shortage, and removal of the contradiction between the rule concerned and other rules. Another Iraqi jurist[(3)] defines the interpretation of the contract as the removal of the vagueness and ambiguity vitiating the contents, conditions and terms of the agreement, so as to identify its extent or scope by the judge. It has also been defined[(4)] as the clarification of what is considered as vague or

ambiguous, in order to uncover the purposes and objectives of the contractual terms, by deducing or inferring the common intents of the contracting parties. One of the contemporary French jurists[5] describes the interpretation of the contract as the clarification and determination of the meaning and the importance of the contract, or one of its clauses, in the case of the ambiguity, vagueness or obscurity. Another French scholar[6] defines it as a process which consists on clarifying the obscurity, if the contract contains some ambiguous stipulations. Or the sense of a text which triggers the parties' disaccord. It has also been defined as the operation by which the interpreter clarifies the sense or meaning, in case of a gap, ambiguity or contradiction[7]. Concerning the interpretation of the contract in the English law, some English jurists[8] defines it as the ascertainment of the meaning which the document would convey to a reasonable person having all the knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

As far as the maxims of interpreting the contract are concerned, they have been defined by one of the most famous Iraqi jurists[9] as the legal rules that guide the judge in interpreting the contract. They have also been defined[10] as the legal rules which help the judge clarify the ambiguity, vagueness or obscurity of some parts of the content of the contract, including its terms, conditions and stipulations. The legal security is defined[11] as a term referring to the assurance provided or given by the law that the rights and obligations of individuals are to be clearly defined and protected, in order to achieve or realize the sustainability of the economic growth and the stability of both the bargains and transactions. It also refers to the assurance that legal norms are clear stable, accessible, stable and predictable enough, to enable individuals to understand or conceive their rights and obligations. Whereas the legal certainty is defined[12] as the capability of knowing the effect of laws and the legal system. The principle of the certainty of the contract in the English law is defined by English jurists[13] as the doctrine which assures or secure the integrity or the contract from ambiguity, vagueness, obscurity and incompleteness. It has been clearly indicated from the argument au contrario of the definition that the uncertainty of the contract can take two principal forms[14]: the ambiguity or vagueness of texts and legal rules and norms[15]. And incompleteness of the contract[16].

2.2. The Comparison Between the Interpretation and classification of the Contract

The interpretation of the contract is sometimes confused with the classification of the contract. Therefore, we should make a comparison between the interpretation and classification of the contract:

2.2.1. The Similarities Between the Interpretation and classification

It has been previously indicated that the interpretation of the contract is defined as the clarification of the vague, ambiguous or obscure terms and conditions of the contract. But the classification of the contract, known also as the characterization of the contract (la qualification du contrat), is defined[17] as the determination of the most suitable legal nomination and the category to which the contract belongs, affiliates, or under which it enters[18]. The judge only is tasked with the process of the classification of the contract. He or she shall not be obliged with the agreement of the contracting parties to a particular nomination of the contract, and shall not take this nomination into consideration. Because the classification goes under the task of the judge only. Furthermore some English jurists[19] define the classification as the allocation of the question raised by the factual situation before the court to its correct legal category. Therefore, we can deduce the following two similarities:

1- Both the interpretation and classification of the contract are similar in that both of them are considered as preliminary step, which precedes the application of the contract.
2- Both the interpretation and classification of the contract can be used to resolve a problem encountering the contract.

2.2.2. The Differences Between the Interpretation and classification

In spite of the similarities indicated in the first theme, it is still be possible to differentiate between the interpretation of the contract from the classification of the contract in conformity with the following points:

1- The problem they seek to resolve: the problem encountering the interpretation of the contract is relevant to the vagueness, ambiguity or obscurity of the contract, while the problem facing the classification will be the determination of the legal category to which the contract belongs[20].

2- The function: the interpretation of the contract is the clarification of the vague, ambiguous or obscure term and conditions of the contract, whereas the classification of the contract is the process of determining the legal system or regime which can be applied on the contract, by identifying the legal category to which the contract belongs[21].

3- The agreement of the parties: the classification is the task of the judge only, who shall not adhere to any agreement of the parties on any other classification. As opposite to the interpretation of the contract. Which can sometimes bind the judge, if the contracting parties conclude an agreement as to the interpretation of the contract (accord sur l'interprétation)[22]. In which case the interpretation of the contract is known as the conventional interpretation (Interprétation conventionnelle), which may oblige the judge, if he or she ascertain that the contracting parties followed correctly the rules or maxims of interpreting the contract[23].

4- The legal nature: the classification of the contract is always featured by its judicial characteristic. Whereas the interpretation of the contract, as said above, can sometimes be made by the agreement of the parties[24], and called as the conventional interpretation. But for the most part, the judge will assume the task of interpreting the contract by him/herself, in which case the interpretation of the contract is known as the judicial interpretation (interprétation judiciaire)[25]. It is to be noted also that the interpretation of the contract can also be categorized into wide and narrow interpretation[26].

5- The subordination to the control of the supreme court: the interpretation of the contract is also different from the classification of the contract in that the former is considered as a matter of fact, which is not subordinated to the control of the high or supreme court, and can only comes under the authority of the judge. On the contrary to the latter, that is to say, the classification of the contract, which is regarded as matter of law, which is subject to the control of the high or supreme court[27]. But as an exception to the general rule that the interpretation of the contract is not subordinated to the control of the high or supreme court, the French law determines or assigns two exceptions according to which the French court of cassation applies the judicial control on the interpretation of the contract realized by the first instance judge. These exceptions are the following: the control of the court of cassation on the distortion of the clear and precise clauses of the contract (contrôle de la dénaturation des clauses claires et précises du contrat)[28]. and the control on the interpretation of clauses of certain contracts. Such as the contract of insurance (contrat d'assurance) and collective contracts (des conventions collectives)[29] .

6- The purpose of both the interpretation and classification of the contract: the purpose of the interpretation is to determine the sense and importance of the contractual obligations. But the purpose of the classification is to combine the legal operation with a particular legal category, to deduce or infer the legal regime (e régime juridique) to which the contract is subordinated[30].

7- The chronological sequence: logically, the interpretation of the contract precedes chronologically the classification of the contract. In fact it is necessary to remove or dissipate the vagueness or ambiguity of the contract, before determining the legal regime to which is applicable to the contract[31].

3.The achievement of the Sustainability of the Legal Security by Eliminating the Ambiguity, Vagueness or Obscurity of the Contract

We shall dedicate this section for studying of the achievement of realization of the sustainability of the legal security by eliminating or ruling out the ambiguity, vagueness or obscurity of the contract, or its terms, conditions and stipulations. The sustainability of the legal security in the interpretation of the contract is made by either searching for the ostensible (apparent) will or hidden (latent) one. This can clearly be indicated and ascertained by having recourse to subjective, objective or dual approaches of the interpretation of the contract. Therefore, we shall discuss these three approaches of interpreting the contract in the Iraqi civil law, and discussing them with the situation of both the French and English laws as follows:

3.1.The Removal of Ambiguity of the Contract by Searching for the Contractual Common or Mutual Intent

When studying the removal of ambiguity of the contract by searching for the contractual common or mutual intent in the Iraqi civil law. The reference should be made to the first paragraph of the article (155) of the Iraqi civil code which states that (The essence in contracts is their purposes, aims and meanings not their words or forms) or (In contracts attention is given to intention and meaning and not words and form). This can be explained by the fact that the purpose and meaning of the contract are more important than its words, phrases and forms[32]. Or the crucial point in contracts is their goals and meanings not their words or forms. This maxim of interpretation of the contract is closely related to another maxim of Islamic jurisprudence which states that (acts are judged by the intention behind them). Or (Al-Umur be maqâsidihâ). This provision indicates clearly that the Iraqi civil code adopted the subjective approach of the interpretation of the contract[33]. And focused on the hidden or latent will, given the fact that words and forms are only an instrument to disclose the human being's intention. If we compare this situation adopted by the Iraqi legislator with the situations of both the French and English laws, it is indicated conspicuously that the French civil code, amended by the new French law of the contract, which was promulgated by the ordinance n° 2016-131 dated February 10, 2016, adopted clearly the subjective approach of the interpretation of the contract, which supported the common intention of the parties, without resorting to the literal meaning of the words, terms, condition and stipulations of the contract. According to the first paragraph of the article (1188) of this law which provides that (A contract is to be interpreted according to the common intention of the parties rather than stopping at the literal meaning of its terms). Some French jurists think that this text allows the interpretation of the contract to be subordinated to the principle of the autonomy of the will (l'autonomie de la volonté)[34] . This text also means that the judge should respect and serve the will of the parties, when interpreting and determining the content of the contract. Furthermore if it is apparent that the terms of the contract are vague, ambiguous, obscure or contradict with one another or each other, the judge is tasked with searching for the mutual or common intent of the parties in conformity with the afore-mentioned first paragraph[35]. But if the interpretation is concerned not with a single contract, but a contractual group (un ensemble contractuel) containing many contract. It should preserve the coherence of the contractual operation within the group of contracts (la cohérence de l'opération dans son ensemble)[36] , according to the second paragraph of the article (1189) which states that (Where, according to the common intention of the parties, several contracts contribute to one and the same operation, they are to be interpreted by reference to this operation).

If we take a close look on the English law, it can be pointed out that the importance of the presumed intention of the parties can be emphasized in the case of the contractual terms implied as a matter of fact. In order to realize this presumed intention of the parties, English courts have adopted a legal fiction that they imply terms into the contract as matter of fact, in order to only give effect to the unexpressed will of the parties, by making up for their omissions within the contract[37]. But gradually the English courts began to go beyond this

fiction, by implying terms into the contract irrespective of the presumed intention of the parties. This means that although the English law adopted the objective approach of interpreting the contract, but it exceptionally adopted the subjective approach, when it permits the courts to imply terms into the contract as a matter of fact, so as to make up for the omissions of the parties. One of the English scholars[38] thinks that this role played by English courts in the process of implying terms as a matter of fact, contradicts the classical theory of contract which is based on the concept of contract as a reflection of the will of the parties to freely and independently enter into the contract.

3.2.The Removal of Ambiguity of the Contract by Avoiding Literal Misinterpretation of Legal Texts

It is worth-mentioning that the Iraqi civil code adopted the dual approach of the interpretation of the contract, when it did have recourse to the subjective approach represented by the hidden or latent will of the parties, in order to search for and ascertain the mutual or common intent of the parties[39], according to the article (155/1). But it pursued the objective approach in the second paragraph of the article (155) which states that (Basically words imply the reality; but if the truth is impossible they will imply the metaphor). This paragraph indicates that the court should basically take into account the apparent or ostensible will of the parties, when interpreting the contract. The reality of words or wording is considered as a clear adoption of the apparent will and the objective approach of interpreting the contract[40]. But if the truth or reality is impossible, that is to say, the real meaning of words can not be reached. The court shall be obliged to use the metaphorical meaning of words. The metaphor according to this text refers to the hidden will of the parties, which can be paraphrased as adopting the subjective approach of interpreting the contract[41]. The amended French civil code also adopted the objective approach of the interpretation of the contract, according the second of the article (1188) of this law which provides that (Where this intention cannot be discerned, a contract is to be interpreted in the sense which a reasonable person placed in the same situation would give to it). If the court can not discover or disclose the will of the parties, the contract should be interpreted in line with the meaning inferred by the reasonable person[42]. When the common or mutual intention (l'intention commune) is absent or undetectable, the judge shall refer to the intention of the reasonable person found in the same circumstances of the parties. And can sometimes refer to the intention of the prudent father of the family (bon père de famille). The English law originally adopted the objective approach of the interpretation of the contract. given that the document embodying the parties' agreement should be interpreted objectively, the interpretation must not depend upon what one of the parties actually intended, or what the other party actually understood to have been intended[43]. But rather what a reasonable person in the position of the parties would have understood the words to mean. The meaning of words are classified into two types: the ordinary meaning and the technical meaning. The ordinary meaning is the grammatical sense of the text. It is the meaning that spontaneously comes to the mind of a competent language user upon reading the text[44]. It is to be noted that the ordinary meaning of the text is not its dictionary meaning, but it refers to the popular, non-technical meaning of word or expression. The technical meaning is the sense understood by a group of individuals engaged in a specialized activity. This meaning is very clear and present little interpretive challenge to insiders. But it is obscure and unnatural to outsiders.

4.The Achievement of the Sustainability of the Legal Security by Adopting the Effective Meaning of the Contract and Avoiding Doubts

The maxims of interpreting the contract can achieve the sustainability of the legal security, either by adopting the effective meaning of the contractual document, or by avoiding doubts. Therefore, we shall divide this section into two topics: the first will focus on the realization of the sustainability of the legal security, by adopting the effective meaning of the contract, and the second will be concerned with the

realization of the sustainability of the legal security, by avoiding doubts as follows:

4.1. The Realization of the Sustainability of the Legal Security by Adopting the Effective Meaning of the Contract

If the terms, stipulations and texts of the contractual document have more than one meaning, the judge, in the process of the interpretation of the contract, must adhere to the meaning which generates or creates a legal effect, and neglect the other meanings of the text[45]. The Iraqi civil law regulated and codified this rule within one of the maxims of interpreting the contract, namely the article (158) of the Iraqi civil code which states that (It is more appropriate to construe rather than discard words; but where this is impossible they will be disregarded). This means that so long as the words and phrases of the contract concluded by the contract can be construed into their real or metaphoric meanings they will not be disregarded. The task of the judge is to prefer the most suitable and appropriate meaning, that is to say, the meaning which generates or produces a legal effect. But if it is indicated that all the meanings of the contractual document are impossible to bring about any meaning, the words and phrases of the contractual document shall be disregarded[46]. For example if a person insures his life for the interest of his children, and it has been clearly indicated that he has children. The judge should take into account the real or literal meaning of the word "children", and give it the legal effect, In order for the children to benefit from the contract of insurance. But if it has been proved that the person insuring his life does not have "children" of his own, but has "grandchildren". The judge should take into consideration the metaphorical meaning of the word or phrase, and give it the legal effect. Therefore, giving effect to the metaphorical meaning of the word "grandchildren" is better than disregarding both the words "children" and "grandchildren" completely. But if it is indicated that the person has neither "children" nor "grandchildren" the contractual text shall be disregarded[47]. The French civil code also adopted the principle of the effective meaning of the contract, and preferred the meaning which is susceptible to generate a legal effect, when the words or phrases of the contractual term, stipulation or text are capable of bearing two meanings[48]. In accordance with the article (1191) of the French civil law, which states that (Where a contract term is capable of bearing two meanings, the one which gives it some effect is to be preferred to the one which makes it produce no effect). Strictly speaking, the judge should prefer the meaning which awards or confers a legal effect, and disregard that which does not produce any effect. But if the contractual terms or clauses are clear and unambiguous, the judge is not required to interpret the contract, otherwise the interpretation may endanger the contract, which will be subject to be distorted (dénaturation des clauses claires et précises) [49]. According to the article (1192) of the French civil law which states that (clear and unambiguous terms are not subject to interpretation as doing so risks their distortion). This means that the first instance judge shall not be authorized to interpret a clear and precise clause or term of the contract, which contains only one meaning, and without any ambiguity, vagueness or obscurity, under the pretext of searching for or investigating the mutual or common intention of the parties. The court of cassation enjoys the jurisdiction to control the interpretation of the contract. Therefore, the interpretation of the contract surrounded by a minimal level of ambiguity and doubt may lead to the distortion (dénaturation) of the contract[50]. On the contrary to this situation, the court of cassation often confirms the interpretation of the contract made by the first instance judge, if it is concerned only with clarifying the ambiguous, vague or obscure clauses, and does not lead to the distortion of the contract[51].

4.2. The Realization of the Sustainability of the Legal Security by Avoiding Doubts

The sustainability of the legal security can also be realized or achieved by avoiding doubts elicited by the words and phrases included into contractual terms. Therefore, the Iraqi civil law has adopted a maxim of interpreting the contract, which permits the judge to interpret the doubt surrounding the contractual terms for the favor and interest of the creditor rather than the debtor. According

the article (166) which states that (Doubt will be construed to the benefit of the debtor). This maxim of interpreting the contract means that if the judge can not ascertain the the mutual or common intent of the contracting parties, he or she will be committed to interpret the contract to the benefit of the creditor[52]. The same is true for the French civil code, in that the French legislator adopted a similar maxim of interpreting the contract, in conformity with the article (1190) which states that (in case of ambiguity, a negotiable or non-adhesion contract is interpreted against the creditor and in favor of the debtor, and a standard-form contract or an adhesion contract is interpreted against the person who put it forward). this means that the contract must be interpreted in favor of the party who has not written it, that is to say the debtor[53].It is to be noted here that this maxim of interpreting the contract can only be applied in case of the doubt surrounding the contract.
If we compare the situation of both the Iraqi and French civil laws with that of the English common law, it appears clearly that English law knows a maxim of interpreting the contract in general and the exemption clauses in particular, well-known as the "contra proferentem rule"[54]. This rule contains two maxims of construction: the first is that, in case of doubt, wording of the contract is to be construed against a party who seeks to depend on it. So as to minimize or exclude his fundamental obligation, or any common law duty which arises from the contract[55]. The second is that again in case of doubt, wording of the contract is to be construed against the party who suggested it for inclusion in the contract. In practice, both maxims are probably to apply to an exclusion clause, since it seeks to minimize or exclude one party's obligations. And it will usually have been incorporated in the contract for the advantage of the party seeking to depend upon it. Both rules can be applied when there is an ambiguity or vagueness in the wording of the clause in question. That is definitely true of the second maxim.

5. Conclusion

The conclusion consists of both the findings and recommendations and as follows:

First: Findings: The following outcomes have been reached:

1- The interpretation of the contract in line with the Iraqi jurisprudence is the elucidation and removal of the vagueness and ambiguity vitiating the contents, conditions and terms of the contract, in order to identify its extent or scope by the judge.
2- The interpretation of the contract in keeping with the French jurisprudence is the clarification and determination of the meaning and the importance of the contract, or one of its clauses, in the case of the ambiguity, vagueness or obscurity.
3- The interpretation of the contract in harmony with the English jurisprudence is the ascertainment of the meaning which the document would convey to a reasonable person having all the knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
4- The maxims of interpreting the contract are the legal rules that guide the judge in interpreting the contract.
5- The legal security is a term referring to the assurance provided by the law that the rights and obligations of individuals are to be clearly defined and protected, in order to achieve or realize the sustainability of the economic growth and the stability of both the bargains and transactions.
6- The principle of the certainty of the contract in the English law is the doctrine which assures or secure the integrity or the contract from ambiguity, vagueness, obscurity and incompleteness.
7- The interpretation of the contract is sometimes confused with the classification of the contract due to similarities, but it can easily be differentiated from the classification of the contract.
8- The achievement of the sustainability of the legal security by eliminating the ambiguity, vagueness and obscurity of the Contract, can be realized by either searching for the

contractual common or mutual intent of the parties, or by avoiding literal misinterpretation of legal texts.

9- The sustainability of the legal security can also be realized by adopting the effective meaning of the Contract and avoiding doubts.

Second: Recommendations: After studying these outcomes, the researcher suggests the following recommendations:

1- The author recommends that the Iraqi law-maker permit the Iraqi court of cassation to apply its jurisdiction for the judicial control on distortion of the clear and precise clauses of the. And this type of control is considered as a means of realizing the sustainability of the legal security within the extent of the civil law. Therefore the researcher suggests that the Iraqi law-maker adopt the following text: (the court of cassation shall apply its jurisdiction for the judicial control on distortion of the clear and precise clauses of the contract, if the first instance judge deviates from the limits of the interpretation and interprets a clear and precise clause, which contains only one meaning, and without any ambiguity, vagueness or obscurity, under the pretext of searching for the mutual or common intention of the parties).

2- The author recommends that the Iraqi law-maker adopt the principle of maintaining or preserving the coherence of the contractual operation, when the judge is tasked with interpreting the clauses and terms included not within a single contract, but a contractual group or a group of contracts. as a means of realizing the sustainability of the legal security within the extent of the civil law. Therefore the researcher suggests that the Iraqi legislator adopt the following text: (The judge shall maintain or preserve the coherence of the contractual operation, when interpreting the clauses and terms included not within a single contract, but a contractual group or a group of contracts).

References

1. Abdul Majeed Al Hakim. The concise of the explanation of the general theory of obligations. Part one, sources of Obligations. a comparison with Islamic Jurisprudence. Baghdad. 1963.
2. Abdul Majeed Al Hakim. The Medium Commentary (Al Wasit) on the theory of contract, with the comparison and balancing between the theories of the western jurisprudence and their equivalent theories in the Islamic Jurisprudence and the Iraqi civil law. Part one. Conclusion of the contract. Al-Ahliyyah company for printing and publishing. Baghdad. 1967.
3. Abdul Majeed Al-Hakkim, Abdul-Baki Al-Bakri, & Mohammed Taha Al-Basheer, The concise of the general theory of obligations in the Iraqi civil law. Part one, the source of Obligations, Ministry of Higher Education and Scientific research. Baghdad University, 1980.
4. Abdul Razaq Al Sanhouri. The Medium Commentary on the elucidation of the New Civil Code (Al Wasit in the Explanation of New Civil Law). part One. The theory of obligations in general. Sources of obligations. Contract-illegal act-Unjust enrichment-law. Al-Ma'arif Publishing house. Alexandria.2004.
5. Ahmed Salaman Shuhaib Al-Sa'adawi and Jawad Kadhum Jawad Sumaisem. The sources of Obligations, A comparative study with civil laws and Islamic jurisprudence. Second Edition. Zein juridique library. Beirut. 2017.
6. Alain Bénabent. Droid Civil Les Obligations. Troisième edition. Montchrestien Paris. 1991.
7. Anthony Amatrudo and Leslie William Blake**,** Law, Justice and Society: A Socio-Legal Introduction, Routledge**,** 2015**.**
8. Atiyah .P.S. and Stephen A. Smith. Atiyah's Introduction to the Law of Contract. Sixth Edition, Clarendon Press, Oxford, 2005
9. Boris starck, Henri Roland et Laurent Boyer. Obligations 2. Contrat. Quatrième edition. Litec, Libraire de la cour de cassation. Paris.1993.
10. Catherine Elliott & Frances Quinn. Contract law. Tenth Edition. Longman. Pearson Education Limited. 2015.
11. Corinne Renault-Brahinsky. Droit des Obligations. 16^{e} édition. Gualino. 2020**.**

12. Dan E. Stigall. Iraqi Civil Law: Its Sources, Substance, and Sundering. Journal of Transnational Law & Policy. Volume 16. Number 1.2006.
13. Edwin Peel and .G. H. Treitel. Treitel on The law of contract, Twelfth Edition, Sweet & Maxwell, Thomson Reuters, 2010.
14. Ewan Mckendrick. Contract Law. Eleventh Edition. Palgrave Macmillan. 2015.
15. François Terré, Philippe Simler, Yves Lequette, François Chénedé. Droit Civil. Les Obligations. 12e édition. DALLOZ. 2019.
16. Gérard Légier. Droid Civil Les Obligations. Treizième edition. Dalloz-Sirey. 1992.
17. Hasan Ali Al-Thannon and Mohammad saeed Al-Rahho.The nutshell in the general theory of the obligation. Part one, the sources of obligations, A comparative study with the Islamic and comparative Jurisprudence. First Edition. Dar Wael for printing and publishing. 2002.
18. Hasan Ali Al-Thannon, The sources of obligation, Baghdad, 1970.
19. Jack Beatson. Andrew Burrows and John Cartwright. Anson's Law of Contract. 29th Edition. Oxford University Press. 2010.
20. Jill Poole. Casebook on Contract Law. Thirteenth Edition. Oxford University Press.2016.
21. Mohammed Sulaiman Al-Ahmed, "The Clarification" Perspectives on the Interpretation of Provisions, Zeinjuridique Publishing House Beirut, 2025.
22. Muhammad Sâlih Ibn ‘Uthiymîn, Al-Qawâ'id Al-Fiqhiyyah ((Legal Maxims of Islamic Jurisprudence), Dâr-Al-Basîrah Press. Alexandria, Egypt. p.72.2002.
23. Munthir Al-Fadhil, The Medium Commentary on the elucidation of the civil law, A comparative study between Islamic Jurisprudence and Arab and foreign laws, A study reinforced by opinions of both the jurisprudence and judiciary. Aras Publishing house, Erbil, 2006.
24. Paul Richards. Law of Contract. Fourth Edition. Financial Times, Pitman Publishing. 1999.
25. Peter North and J.J Fawcett, Cheshire and North's Private International Law, Thirteenth Edition, Butterworths London 1999.
26. Philippe Malaurie et Laurent Aynès. Droit Civil. Les contrats spécieux. DEFRENOIS, Edition juridique associées. 2003.
27. Rojer Halson. Contract Law. Second Edition. Pearson Education Limited. 2013.
28. Ruth Sullivan, Statutory Interpretation, essentials of Canadian Law, Second Edition, IRWIN LAW.2007.
29. Saeed Mubarak, The sources of law, Baghdad university press, 1982.
30. Stephanie Porchy-Simon. Droit Civil. 2e anée .Les Obligations. Hypercours & Travaux dirigés. Dalloz. 2018.
31. The French civil code of 1804, amended by the ordinance n° 2016-131 dated February 10, 2016.
32. The Iraqi civil law No 40 of 1951.

Endnotes

(1) Dan E. Stigall. Iraqi Civil Law: Its Sources, Substance, and Sundering. Journal of Transnational Law & Policy. (Volume 16. Number 1.2006). P.7.
(2) Saeed Mubarak, The sources of law, Baghdad university press, 1982, P.148.
(3) Hasan Ali Al-Thannon, The sources of obligation, Baghdad, 1970, P.170.
(4) Dr. Munthir Al-Fadhil, The Medium Commentary on the elucidation of the civil law, A comparative study between Islamic Jurisprudence and Arab and foreign laws, A study reinforced by opinions of both the jurisprudence and judiciary. Aras Publishing house Erbil. 2006. p.204.
(5) Corinne Renault-Brahinsky. Droit des Obligations. 16e édition. Gualino. 2020. p.86.
(6) Stephanie Porchy-Simon, Droit Civil, 2e anée .Les Obligations, 10e edition, Hypercours & Travaux dirigés, Dalloz, 2018. p.203.
(7) Gérard Légier. Droit Civil Les Obligations. Treizième édition. DALLOZ.1992. P.52.
(8) Edwin Peel and .G. H. Treitel. Treitel on The law of contract, Twelfth Edition, Sweet & Maxwell, Thomson Reuters, 2010. P.210.
(9)Abdul Majeed Al Hakim. The concise of the explanation of the general theory of obligations. Part one, sources of Obligations. a comparison with Islamic Jurisprudence. Baghdad Al-Ahliyah company for publishing and distribution. 1963. P.332.
(10) Hasan Ali Al-Thannon, The Sources of Obligations, Baghdad, 1970. p.169.
(11) Anthony Amatrudo and Leslie William Blake**,** Law, Justice and Society: A Socio-Legal Introduction, Routledge**,** 2015. p.45.
(12) Anthony Amatrudo and Leslie William Blake, op. Cit. p.67.
(13)Rojer Halson. Contract Law. Second Edition. Pearson Education Limited. 2013. P.190. See also Jack Beatson. Andrew Burrows and John Cartwright. Anson's Law of Contract. 29th Edition. Oxford University Press. 2010. P.61. and (13) Jill Poole. Casebook on Contract Law. Thirteenth Edition. Oxford University Press.2016. P.64.
(14)Catherine Elliott & Frances Quinn. Contract law. Tenth Edition. Longman. Pearson Education Limited. 2015. P.54.
(15)Ewan Mckendrick. Contract Law. Eleventh Edition. Palgrave Macmillan. 2015. P.40.
(16)Atiyah .P.S. and Stephen A. Smith. Atiyah's Introduction to the Law of Contract. Sixth Edition, Clarendon Press, Oxford, 2005, P.43.
(17)Abdul Majeed Al-Hakkim, Abdul-Baki Al-Bakri, & Mohammed Taha Al-Basheer, The concise of the general theory of obligations in the Iraqi Civil Law. Part one, The Source of Obligations, Ministry of Higher Education and Scientific research. Baghdad University, 1980. P.126.
(18)Philippe Malaurie et Laurent Aynès. Droit Civil. Les contrats spécieux. DEFRENOIS, Edition juridique associées. 2003. p.8.
(19)Peter North and J.J Fawcett, Cheshire and North's Private International Law, Thirteenth Edition, Butterworths London 1999. p.36.
(20)François Terré, Philippe Simler, Yves Lequette, François Chénedé. Droit Civil. Les Obligations. 12e édition. DALLOZ. 2019. p.682.
(21) Corinne Renault-Brahinsky, op. Cit, p.86.
(22) Corinne Renault-Brahinsky, ibid, p.87.
(23) François Terré, Philippe Simler, Yves Lequette, François Chénedé. op. Cit. p.682.
(24) Corinne Renault-Brahinsky, op. Cit, p.87.
(25) François Terré, Philippe Simler, Yves Lequette, François Chénedé. op. Cit. p.682.
(26) François Terré, Philippe Simler, Yves Lequette, François Chénedé. ibid. p.682.
(27) Mohammed Sulaiman Al-Ahmed, "The Clarification" Perspectives on the Interpretation of Provisions, Zeinjuridique Publishing House Beirut, 2025. p.51.
(28) Stephanie Porchy-Simon. op Cit. p.204.
(29) Stephanie Porchy-Simon. ibid. p.205.
(30) François Terré, Philippe Simler, Yves Lequette, François Chénedé. op. Cit. p.682.
(31) François Terré, Philippe Simler, Yves Lequette, François Chénedé. ibid. p.682.
(32) Muhammad Sâlih Ibn 'Uthiymîn, Al-Qawâ'id Al-Fiqhiyyah ((Legal Maxims of Islamic Jurisprudence), Dâr-Al-Basîrah Press. Alexandria, Egypt. p.72.2002.
(33) Abdul Majeed Al Hakim. The Medium Commentary (Al Wasit) in the theory of contract. With the comparison and equilibrium between theories of western jurisprudence and their counterparts in Islamic Jurisprudence and the Iraqi civil law. Part one. Conclusion of the contract. Al-Ahliyyah Publishing house. Baghdad. 1967. p.132.
(34) François Terré, Philippe Simler, Yves Lequette, François Chénedé. op. Cit. p.684.
(35) François Terré, Philippe Simler, Yves Lequette, François Chénedé. ibid. p.685.
(36) Corinne Renault-Brahinsky, op. Cit, p.88.
(37) Paul Richards. Law of Contract. Fourth Edition. Financial Times, Pitman Publishing. 1999. P.110.
(38) Paul Richards. op. Cit. P.110.
(39) Abdul Razaq Al Sanhouri. The Medium Commentary on the elucidation of the New Civil Code (Al Wasit in the Explanation of New Civil Law). part One. The theory of obligations in general. Sources of obligations. Contract-illegal act-Unjust enrichment-law. Al-Ma'arif Publishing house. Alexandria.2004. p.482.
(40) Abdul Majeed Al Hakim. The Medium Commentary (Al Wasit) in the theory of contract. op. Cit. p.133.
(41) Hasan Ali Al-Thannon, op. Cit, P.170.
(42) François Terré, Philippe Simler, Yves Lequette, François Chénedé. op. Cit. p.687.
(43) Edwin Peel and .G. H. Treitel. op. Cit. P.212.
(44) Ruth Sullivan, Statutory Interpretation, essentials of Canadian Law, Second Edition, IRWIN LAW. P.49.
(45) Abdul Razaq Al Sanhouri. The Medium Commentary on the elucidation of the New Civil Code (Al Wasit in the Explanation of New Civil Law). part One. op. Cit. p.498.
(46) Abdul Majeed Al Hakim. The concise of the explanation of the general theory of obligations. Part one, op. Cit. P.332.
(47) Ahmed Salaman Shuhaib Al-Sa'adawi and Jawad Kadhum Jawad Sumaisem. The sources of Obligations, A comparative study with civil laws and Islamic jurisprudence. Second Edition. Zein juridique library Beirut. 2017. P.192.
(48) Corinne Renault-Brahinsky, op. Cit, p.88.
(49) Stephanie Porchy-Simon. op Cit. p.204.
(50) Alain Bénabent. Droid Civil Les Obligations. Troisième edition. Montchrestien Paris. 1991. p.123.
(51) Boris starck, Henri Roland et Laurent Boyer. Obligations 2. Contrat. Quatrième edition. Litec, Libraire de la cour de cassation. Paris.1993. P.69.
(52) Hasan Ali Al-Thannon and Mohammad saeed Al-Rahho.The nutshell in the general theory of the obligation. Part one, the sources of obligations, A comparative study with the Islamic and comparative Jurisprudence. First Edition. Dar Wael for printing and publishing. 2002. P.201.
(53) Corinne Renault-Brahinsky, op. Cit, p.88.
(54) Paul Richards. Law of Contract. Fourth Edition. Financial Times, Pitman Publishing, 1999. P.132.
(55) Edwin Peel and .G. H. Treitel. op. Cit. P.245**.**