

The Effect Of The Psychological Element In The Defects Of Consent - A Study In The Iraqi Civil Law

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Abstract

The defects of will in the Iraqi civil law are coercion, unfairness with deception, error and exploitation, and the defects of the will are all attracted by two elements: the psychological element and the objective element. The primacy of one of the two elements over the other may affect the general provisions of the contract tainted by a defect of will. Did the Iraqi legislator prevail over one of them over the other, and what is the effect of this primacy?

Keywords: effect, psychological, willpower defects.

Introduction

Examining the impact of the psychological component on willpower defects requires that we briefly present it with a statement of its importance and the problem it addresses, as well as an explanation of its methodology, as follows: The importance of the research: the importance of the research increases the more we know that it deals with how to protect the contractor who is a victim of coercion or injustice with change, error or exploitation, and to show the embrace of Iraqi law (the psychological element) in the defects of the will, the clear effect of raising the status of this protection.

- Research problem: The research problem revolves around an important axis, which is whether the Iraqi legislator has adopted the psychological element in explaining the provisions of the defects of the will, or did he adopt the objective element, and if he followed the first, would the second be completely excluded, and what is the effect of embracing the psychological element in the defects of the will.

Research Methodology: In our study of the effect of the psychological component on willpower defects, we will adopt the study of the Iraqi civil law, the descriptive analytical method.

Literature review

First: coercion Duress

Coercion is defined as forcing a person without right to do an act without his consent (Article 112 of the Iraqi Civil Code No. 40 of 1951). To execute him and make the contract dependent on the leave of the person or his heirs after the removal of this compulsion (Mansour: The General Theory of Obligation, 2011,p101 The coercion is material, and it is the one who completely destroys the will and not only defects it, as if the person held the hand of the compulsion and put the pen in his hand by force to sign a contract of sale. 2002, p67 The coercion may be moral, and moral, sensory or psychological coercion is the one that is in the form of a threat to harm oneself, body, honor or money, and there is no difference between material coercion and

psychological coercion in terms of impact, although psychological coercion is more common (Al-Hakim: Sources of Obligation, 1977, p131), And the compulsion element of substantive elements and element psychological element objective is the use of means of coercion threatens grave danger imminent. These means are beaten or tortured, and may be a threat of inflicting harm to self or honor or the body, a psychological coercion to sign in the same impeller that pose a serious staring himself or Mala (Mansour,op.cit,2011, p102-103-104), and the psychological element (awe that leads to contracting), because in order for coercion to be achieved, he must have instilled in the same contracting awe, and this fear is what led him to the contract (Al-Sanhouri: the mediator,1952, p200). The said Iraqi civil law in Article 113 thereof to the psychological element, which stipulates that (... to be able to impeller rhythm and Tādīdh afraid impeller breaks Tādīdh became him that he thinks predominantly an impeller that it did not do The psychological component is the essential issue of coercion, and the psychological component is at the forefront of the subconscious will of coercion, i.e. the situation in which a person becomes forced to contract while he is under this influence. to the contract, but if it was not the fear that prompted him to contract, but rather the compulsion had an interest or an end in concluding the contract, meaning that he would conclude the contract, even if the fear was absent, then we would not be under compulsion, and this fear usually arises from a threat or the like, such as killing, beating, prejudice With reputation and honor (Mark: contract and unilateral will,2019, p288In the danger that generates this dread, it is stipulated that the danger be specific and not general, for example, that (S) threaten (R) without indicating the type of threat, and also the danger must be of a degree of severity, that is, it generates fear and panic in the person and affects his inner will. The danger that generates fear must be imminent and not in the future, and it is also

required that the fear be properly generated by the compulsion, i.e. the person who made the threat, intending this threat, and intending to use coercive means) (Obaidat: Sources of Obligation in the Iraqi Civil Code,2009, p112-113), It is not required to send a dread in the same contractor and the corruption of satisfaction that is threatening to harm a special same contractor Nnevsh or his wealth or honor, but it may be another person linking him with kinship or lineage as if the (o) threatened (r) to harm the father (r) Or one of his children, or a wife, or those with a kinship and awe, in which it is stipulated that a belief be born in the other party, i.e. certain circumstances are born that depict to the compulsor that a grave and imminent danger threatens him or others, and the danger must be imminent and grave. (Sultan: Sources of Obligation in Civil Law,2010, p74), and this is the provision of Article (113) of the Iraqi Civil Code, which stipulates that “The threat to harm the parents, the husband, or a forbidden kinship, and the threat of a danger that would offend honor is considered coercion, and it may or may not be forced.” In any case, the essence of the coercion is the psychological element. This dread that prompted the compulsion may be emanating from the other party or a third party that has a relationship to the contract, but if this dread is generated without the influence of a person under the influence of factors such as high respect, we will not be in the face of compulsion, and the threat is subject to a standard, it is a latent element in the soul whose disclosure is subject to the authority of the subject court The Court of Cassation has no control over the assessment of fear, whether it is what prompted the contract or not, as it is subject to the judge in his assessment (Mansour, previous source, p145), the Iraqi legislator has adopted the personal tendency to define coercion, that is, the psychological element prevailing over the objective element (Maarouf, Personality and Objectivity in Commitment, 1999, pp. 97-98).

Second: Prejudice with deception.

Deception is when one of the contracting parties mentions to the other things that he desires to contract with him and to take actual measures that push him to contract with him. The will, but the mistake that deception raises in the mind of the contracting party and pushes him to the contract (Al-Hakim, Al-Bakri and Al-Bashir, Theory of Obligation in the Iraqi Civil Law, without a printing year, (p8As for unfairness, it is the lack of equality between what the contracting party gives and what he takes in the netting contract at the time of the contract (Al-Sanhouri,cit,op,p376 It is worth noting that gross unfairness does not prevent the contract from being concluded or invalidate it, nor does it prevent its enforcement under the provisions of the Iraqi Civil Code, unless the aggrieved party is interdicted or money owned by the state or endowment, then the contract is void (Article (124) of the Iraqi Civil Code). The Iraqi legislator stipulated four conditions for the contract to stop as a result of fraud with deception, which is the use of fraudulent methods, and this decomposes into two elements, a material element, represented by the tricks used by the contracting party. contract validity claim, 2003, p116)The moral element is (intent to deceive) to reach an illegal purpose. Fraudulent methods are not considered deception unless they are aimed at reaching an illegal purpose, for example, that a person uses fraudulent methods with the intent of shading another person to extort his money (Al-Hakim,op,cit,p88)It is stipulated that the deception be the motive for the contract, as the fraudulent methods must reach a degree of gravity so as to affect the will of the other contracting party and push him to contract. The issue here is left to the judge's discretion. It motivates the contract, i.e. the motive must be the motive for the contract, and it is in this sense of a (psychological) nature. The third condition is that the deception is issued by one of the contracting parties, or he is aware of it if it is from others, and

the fourth condition is that the deception is accompanied by gross unfairness. Between the personal and objective tendencies, it is stipulated that the unfairness be obscene and according to the criterion cited in the Civil Code of Article (177/1),Which dominates the second element in deception, so there is no deception in the Iraqi civil law without the intention of shading in order to reach the achievement of an illegal purpose (Al-Saadi, the psychological component of the contract, 2012, p82).

Third: the mistake

Mistake is defined as an illusion based in a person's mind that leads him to believe other than reality, and is the motive for contracting, for it is a false representation of reality that leads the person to conclude a legal act that he would not have concluded if the truth of the matter was revealed as a person who buys a representation and believes that it is antique, then it turns out that it is normal (Al-Hakim and Al-Bakri) and Bashir, op,cit,p80), Has stipulated that Iraqi law because of the mistake which is wrong with the will and makes the contract suspended for two conditions. First, be a mistake in essence, the mistake is essential is that amounts such that refrains the contractor to conclude the contract if the contractor was not located in the mistake or other words, be a mistake substantially if it is The main motive for contracting (Al-Hakim,op,cit,p81 The criterion of the essential error is a subjective criterion that requires that we search for the intention of the contracting party who committed the error in order to know the importance that he attaches to the matter on which the error was focused (Al-Hakim, Al-Bakri and Al-Bashir,op,cit,p80And Article (118) of the Iraqi civilian referred to the cases in which the error is fundamental, in which the psychological delusion turns into a mistake that the law takes into account and has an effect. The motive for contracting and it is also according to the circumstances and circumstances in which the contract is concluded and what should be done in

good faith. The second case is the mistake in the person of the contracting party or in his class of his qualities. The third is the error in the value of the thing, and here the contracting party is ignorant of the value of the thing, so that if the contracting party found out this value in its true nature, he would not have made the contract. As for the fifth case, the error in the law and the error in the law is not an apology due to ignorance of the law, and the error is usually in its reality from the facts that the contractor imagines contrary to the truth Truth, and a mistake in the law is not considered unless it is in his side essential in something, such as a husband who donates money to his wife on the premise that she is his wife, and after that it was found that his marriage to her was invalid (Al-Saadawi and Sumaisem, Sources of Obligation, 2015,p108). The second condition is that the error is related to the knowledge of the other contracting party. Article (119/3) Iraqi civil (The contracting party who made a mistake may not hold to it unless the other contracting party committed the same error or was aware of it unless the other contracting party had committed in The same mistake, or he was aware of it, or it was easy for him to discover its existence, then it is necessary for the possibility of holding on to the mistake to be shared between the contracting parties, or the contracting party who did not fall into the mistake was aware of it, or was in the capacity to know about it, which is a condition established by the legislator for stability Transactions and the protection of the legitimate trust of a contracting party who is surprised by a request to rescind the contract, and if the other contracting party did not know about the mistake, but he can learn about it, he is also in a position that cannot be complained about, Sources of commitment, even a year of publication, p127). The psychological element in the defect of the error appears through (the intrinsic characteristic that motivates the contract), i.e. the error in order to be relied upon must reach a degree of seriousness so that the

contracting party refrains from concluding the contract if it becomes clear to him that this essential quality driving the contract has been generated in the contracting party, i.e. it is Based on a subjective criterion, the contracting parties assess the quality of the contracted thing, so that its presence alone is sufficient to conclude the contract, and the personal tendency appears by considering the error in the person of the contracting party or in his class as one of his essential characteristics, as this error often occurs in contracts that are In which the personality of the contracting party is considered as the company contract, as this error is the reason that motivates the conclusion of the act, meaning that there is a psychological state that contradicts reality and is driven under its influence to conclude the act (Al-Saadi, op,cit,p 94)The psychological element also appears through the law's requirement that the mistake be related to the knowledge of the other contracting party, that the other contracting party knows about it or that it is easy to know about it so that it can be considered as one of the defects of the will, and then the contract is suspended, and the psychological element that motivates to Conclusion of clearly acting on the mistake of the person when the personality of the contracting party is considered. The mistake or illusion that the person had was the motive for concluding the contract. This also takes place in the field of personal status, such as marriage (Al-Mousawi, lectures on civil law, without a year of publication, p18) However, the psychological element in Iraqi law was not absolute. It was coupled with objective controls in a desire to achieve stability in dealing, and this appears in the assessment of the essential character. He was not satisfied with the structure of the contracting parties whether it was essential or not, but rather granted the judge the right to seek the assistance of objective criteria through which he could identify The reality of the error, and whether the error is in an essential quality or not through the

circumstances of the contract and the good dealings it imposes, the Iraqi legislator took personalization as a general asset coupled with objective controls (known, op,cit,p102), As well as the psychological element of the mistake of the value of the thing appears, and the emitter's motivation to contract, Valgt in the value of the thing is Glia essential when was the main element that payment to contracting an example of someone selling plate antique cheaply ignorant of it painting relics and ignorant of their value, as well as the case for the emitter is A fundamental mistake if it is the main motive for contracting, and this is on the basis of the psychological delusion that the person has generated in order to conclude the act (Al-Saadawi and Sumaisem,op,cit,p102).

Fourth: exploitation

Article (125) defines an Iraqi civilian (If one of the contracting parties exploited his need, recklessness, whims, inexperience, or poor awareness, then he suffered from his contract a gross injustice, he may, within one year from the time of the contract, request that the injustice be lifted to a reasonable extent. The disposition from which a donation was issued, which he may reverse during this period), and the exploitation is based on two elements, the objective (material) element, which is the imbalance and imbalance between the obligations of the two parties in a way that leads to gross unfairness. Assessing the gravity of the outrageous injustice suffered by one of the two parties is due to the matter judge, who estimates it according to the circumstances and what is familiar to the people (Al-Saadawi and Sumaisem, op,cit,p102)As for the psychological element, it is the exploitation of a weakness of the aggrieved contracting party, as it is not sufficient to hold on to the lack of equality or contradiction between the obligations of the contracting parties. The contract despite the non-equivalence if the contract is compensating and the lack of match if the contract is a donation (Ibrahim, sources of obligation,2010,p161 The

psychological or moral element in exploitation presupposes the availability of three things. The first matter is the presence of a certain weakness in the aggrieved contracting party, and the weaknesses in the aggrieved contracting party are considered in two cases: clear recklessness and unbridled passion, which were mentioned exclusively, and apparent recklessness means haste accompanied by lack of insight and rush to Contracting without consideration or concern for its consequences, such as a person who concludes a contract without knowing its details, and indiscretion does not require that it be a continuous condition that characterizes the person permanently, but it can be in an emergency such as a person who enters into a contract under the influence of emotion, and often Recklessness is among the youth, but it is also perceived among the elderly, and recklessness is a misjudgment or the act of doing something without caring about its results, as if a young man inherits a large fortune, then others take advantage of this recklessness and seize his money, meaning that the other contractor must take advantage of this personal and psychological need (Al-Bayati, explanation of the text, 2012,p109), and it is required that the state of recklessness be clear and evident, as is the case with the heir who needs money and falls under the victim of a person who buys money at a cheap price (Abd al-Rahman, the general theory of commitment to the contract and a unilateral will, without a year of printing, p118 The second matter is that the other contracting party exploits a situation of weakness with the intention to exploit, since the other contracting party must have the intention to exploit, to exploit the psychological and personal elements, and to achieve the intention of exploitation, it is stipulated that the contracting party knows the weakness of the other contracting party and deliberately exploits this weakness. defective (Al-Bayati, op,cit,p110).Alomr III (exploitation is to be driven to the contract), and must take what

exploiter in the knitter of the aggrieved indiscretion or hue or lack of experience or weak awareness of the availability of these Vidfh things to exploitation, and contracting under the influence of exploitation is not enough satisfaction of the aggrieved Because it may be ruled by whim or indiscretion, as the aggrieved contracting party would not have satisfied the contract in the way he consented, had it not been for recklessness or whims, and that the contract is not subject to invalidity unless the exploiting contracting party is the one who carried his victim into the contract, and that the essence of exploitation is to benefit from The psychological conditions of the other contracting party to cause him to fall into outrageous injustice, for injustice is a material condition, while exploitation is a purely psychological issue (Abd al-Rahman, op.cit,p115) From the foregoing, we note that the psychological element in extends its authority in all defects of the will according to the provisions of the Iraqi Civil Code.

Conclusion

As we reach the end of the study of the psychological component of willpower defects, we must clarify the results that resulted from it, and the most important proposals, as follows:

Results

We found through the research that the Iraqi civil law has provided protection for the contractor who is the victim of defects of will, and defects of will in the Iraqi civil law are coercion, unfairness with deception, error, and exploitation, and in all these defects we note that the Iraqi legislator has dominated the psychological element On the substantive element, and this predominance resulted in a number of effects, the most important of which was that it gave the court a wide discretionary authority to examine the potentials of the same contractor who fell victim to one of these defects without making the Court

of Cassation control over the authority of the trial court in this regard.

Suggestions

We suggest that the Iraqi legislator adopt the theory of fraud as in modern laws, instead of adopting unfairness with deception, Defects of will.

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