Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

Interpretation of the contract in Jordanian Law

Daniela Adnan Quran

Jadara University

Part Time Doctor

Daniella.qu@jadara.edu.jo

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

Interpretation of the contract in Jordanianl Law.

Abstract

Interpretation, in its definition, is "a scientific rational process of revealing the interest protected by the legislative will to judge factual cases." To clarify this, the interpretation is "defining the meaning contained in the legal rule and defining its scope, in order to be inferred on what the rule includes and so that it can be matched to the real circumstances in which this rule is raised".

Additional justifications arise with the contract interpretation process that carries a degree of privacy compared to the interpretation of written legal rules. This particularity related to the nature of the contract and the principles governing it and the possibility of its originators is that which is reflected in the nature of the judge's role in dealing with and interpreting it and gives this role a degree of importance and privacy associated with it. This study deals with the issue of contract interpretation in Jordanian law, by drawing on the jurisprudential opinions related to the subject and the provisions of the Jordanian Court of Cassation related to the interpretation of the contract, since despite the great importance that the role of interpretation plays in determining the obligations of the contracting parties to lift the ambiguity and ambiguity of the contract, and to determine the content of the contract in its entirety, And enabling the judge to determine the content of the contract and to identify the obligations that it generates in order to be able to implement it, but this topic did not obtain its right to study because it was not studied separately, in detail and in an expanded manner by researchers, and in order to achieve the goal of the study, it was divided into two topics, the first of which was addressed. The doctrinal role in interpreting the contract, while the second topic deals with the judicial role in interpreting the contract, in order to reach the conclusion a What is desired from this study, which confirms that the expansion of the judge's role in interpreting the contract is preceded and detailed in its more general role in interpreting the law. For this purpose, this study recommended several recommendations, the most important of which were those related to the need to amend the text of Article (241) of the Jordanian Civil Code to become "the contract is the Shari'a of contractors. If the

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

contract is binding, then one of the contracting parties may not revoke it, amend it, or copy it except by mutual consent and litigation, or according to the law.

Keywords: Law , Jordan , contraces .

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

Introduction:

Interpretation was defined as: “Clarifying what was formed of the terms of legislation, supplementing what was shortened from its texts, producing what was missing from its provisions, and reconciling its contradictory parts” (Ahmad, 1981, p. 5) The term “interpretation of the rules of law” takes in terms of the subject matter and scope of interpretation more than one direction The interpretation may focus on the legal text. Mostly, the interpretation is intended to stand on the meaning of the legal rule so that it applies to reality and the state of written law, especially legislation. Nevertheless, the interpretation is envisaged in relation to all legal rules such as custom, natural law, principles of justice and international agreements, and at a time when the belief is that the field of interpretation of law is only the written law, and in particular the rules that derive their source from legislation. Its ranks (Al-Surami, 1995, p. 15) and considering that contracts are like "private legal centers" and one of the most important applications of general legal rules and one of the most saturated and pluralistic sources of the right, for this they need to be defined, clarified and explained.

The basic principle is that the parties to the contract, upon concluding it, lay down an organization for all the issues to be regulated by it and define its intended purpose by stating the obligations of the parties and the effects that result from the implementation of those obligations, but they may neglect to regulate some of the detailed issues, which may be due to the fact that these issues did not come to their minds. Or due to its lack of expectation when concluding the contract, especially with the speed in completing transactions and concluding contracts. The interpretation referred to as the mental process carried out by the interpreter is intended due to the ambiguity of the contract to determine the true common will of the two contracting parties, based on this on the core of the contract, and the elements The one outside it and associated with it (Fouda, 1985, p. 17) The interpretation aims to define the content of the contract, that is, to define the rights and obligations of the parties to the contract, and this is not limited to the texts written in the contract, but rather to what was not declared in the contract, but the will of the parties to the contract is directed to it and in the civil law It can be shown that the Jordanian contract means the provisions

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

that it contains, and then it falls to each of the parties. The Jordanian legislator has expanded in defining the scope of the contract, not only restricting it to the clauses mentioned in it, but also including what are considered requirements of the contract according to law, custom and justice. There is no doubt that this is a welcome trend from the Jordanian legislator, as he took the latest findings of legal thought in this regard, and Article 202 of the Civil Code expresses this by saying: 1- The contract must be executed in accordance with what it included and in a manner consistent with what is required by good faith. 2- The contract is not limited to obligating the contractor with what is stated in it, but also deals with what is of his obligations according to the law, custom and the nature of the disposition. It is clear from the text that defining the scope of the contract is not limited to the clauses mentioned in it, but in addition to that with the requirements of the contract and in accordance with the law, custom and the nature of the disposition.

Thus, the provisions covered by the contract refer to the following:

.1What is stated in the same contract explicitly or implicitly, such as the provisions explicitly covered in the lease contract that give the lessor some rights and bear some obligations, and this corresponds to what the tenant has in terms of rights and obligations as well, and what the will has tended to implicitly.

.2What the law imposes in this regard in terms of legal rules that apply to the contract. For example, the rules mentioned by the legislator regarding the sale contract apply to the contract if it is a sale, and the rules of the lease contract if it is a lease, and these rules may be peremptory and individuals cannot violate them, and they may be complementary. They can violate it to others.

.3What is considered from the requirements of the contract is included in its content even if it is not explicitly mentioned in the contract, and the Court of Cassation said that: (The rule in implementing contracts is that the obligation of the contractor is not limited to what is stated in the contract only, but also deals with what is included in the contract. According to the requirements of law and custom and the nature of the disposition in accordance with the provisions of Article 202 of the Civil Code) (Decision of the Jordanian Court of Cassation in its legal capacity No. 214/1985 (five-year commission) dated 5/22/1985)

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

Accordingly, the legislator granted the civil judge the authority to interpret the completion of the requirements of the contract according to the legislative provisions present in all laws, for example Article (148) of the Egyptian Civil Law, Article (150) of the Iraqi Civil Law and Article (202) of the Jordanian Civil Law, and accordingly and to determine the scope of interpretation The contract, it is necessary to study the factors that guide the judge to interpret the contract instead of leaving the whole matter to the discretion of the judge, who depends in determining it on the law, his spirit, custom, what he appreciates, the nature of the behavior and the purpose of it.

The first topic the doctrinal role in interpreting the contract

The contract is the best way through which individuals' needs can be satisfied through reconciling the conflicting interests, as each party seeks to achieve the largest possible profit, given that the parties to the contract are the most knowledgeable of the people of their interests as long as they are equal before the law, which makes them make justice themselves, this deficiency What relates to abstract parity is summarized by the famous saying, “The contract is justice (Obeid, 2016, p. 2).” The contract is one of the important legal actions in life. A contract is what is in which commitment depends on the meeting of two wills, and among the jurists who defined the contract as a link between two words that results in a judgment It is legal, and the interpreters differentiate between the agreement and the contract, describing the agreement as being more important than the contract. ”(Al-Jubouri, 2011, p. 36) People need contracts in all matters of their lives, so selling is a contract and people need to buy and sell to fulfill their needs and satisfy their desires, and leasing is a contract and people are in need. For rent, agency is a contract and people need agency, as well as company, marriage and all other named and unnamed contracts, and because of the importance of contracts in the lives of people, God has commanded us to them, and contracts are divided in terms of necessity and lack thereof into necessary contracts, that is, it is not permissible for one of the parties to be independent It is like selling and renting, and unnecessary contracts, meaning that one of the parties may be independent by dissolving them, such as the company and the agency (Al-Hadithi, 2012, p. 136). And if the contract was made in accordance with the rules of the law

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

that it was agreed upon to conclude it between two valid wills in conjunction with the acceptance of an affirmative that still exists, and if mutual consent is It is based on a final contract, it is not just a promise of the contract, nor is it a contract suspended on a suspended condition, and the right to change is not explicitly or implicitly stipulated in it, and in this case the contract is binding on the contracting parties as a final binding on the terms agreed upon as long as it is carried out within the limits discussed by the law, In terms of not violating the public order or public morals, and the judge applies the contract as if it were legally enforceable, and just as it is not permissible for one of the contracting parties unilaterally by his own will to terminate the contract or terminate it or amend it, it is not permissible for the judge to do anything of that, and this is what expresses From him by saying that the contract is the Shari'a of the contractors, because the contract has the importance of the law in regulating the contractual relationship between the contracting parties (Najida, 2002, p.204). If the rule stipulates that the contract is the law of the contracting parties, it is not permissible to revoke it or amend it except with the agreement of the parties or for the reasons determined by the law, then it does not apply except to the necessary contracts, and as for the unnecessary contracts, whether by the text of the law or by the agreement of the parties, it is permissible to terminate the contract and dissolve from its binding force by will However, the contractor’s authority to dissolve from unnecessary contracts does not give him the power to amend the contract except by agreement with the other party to the contract (Hassan, 2004, p.33)

The first requirement

Interpretation based on the clarity of the contract phrase and the external circumstances not derived from its phrases

The rule of the contract means the essential content of the contract, since each of the contracts has a special substance and character that distinguishes it from other contracts (Al-Sanhouri, 1959, p. 28). The jurisprudence and judiciary in many countries have been concerned with determining the importance of the clear expression of the contract in its interpretation to identify the common intent of the contractors, The jurisprudential trends in this field varied, some focus on the clarity of

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

the term contract, while another focus on the external circumstances that are not derived from his phrases (Abd al-Rahman, 2009, p.11). Interpretation has a clear importance in the field of contracts, and it has its importance but it did not receive attention. This may be due to the feeling that it is related to the philosophy of law and the sciences of logic and linguistic reasoning more than it is related to the positive law. If the dispute relates to the nullity of the contract (Fouda, 2002, p.6), the interpretation is generally limited to clarifying the vague texts to eliminate their ambiguity, and denies that the interpretation has a role in the fields of the texts. Clear, which means adopting the narrow sense of interpretation and adopting the so-called doctrine of the unclear text (Ahmad, 1981, p. 5)

This omission of some issues may not affect the validity of the contract, which makes the contract concluded as soon as the essential elements are available to it, and here the principle of the authority of the will appears clear so that it follows that the content of the contract is limited to those rights and obligations that the will of the contracting parties directed towards, when interpreting the contract in a narrow sense and that Accordingly, it is not permissible to extend the scope of the contract to include other rights and obligations to which the will of the contracting parties did not reach. However, this may be difficult for two reasons (Obaid, 2002, p. 2)

One of them is that there are subordinate obligations that the will of the contracting parties have not acted upon, and yet it binds them because without them the purpose of the contract is not fulfilled or one or both parties cannot implement his commitment.

The consequential obligation means that it is every non-original obligation and it aims to achieve the practical purpose intended by the contracting parties or required by the nature of the contract, meaning that these obligations aim to provide the beneficial effects of the contract and make it appropriate to the circumstances.

And the other is that the contract and in many cases does not include a regulation of all aspects of the contractual relationship, and here the contracting parties may neglect to organize matters either intentionally or by mistake if their effects in the pre-contracting stage may delay or prevent the conclusion of the contract or because the work has not been carried out in response to the impossibility

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

of anticipating the result. That arises from the new circumstances and the unpredictability of how the events will proceed.

A dispute arose in jurisprudence regarding the source of the obligations that the judge adds to the content of the contract when he completes its scope. And he believed that they stem from the objective criteria that the legislator referred the judge to in the event of failure of the contract to regulate matters that are among his requirements (Al-Zuhaili, 1989, p. 80)

The second requirement

Interpretation based on the will of the contractors

When the parties to the contract enter into a contract, they use speech, writing or reference to express their common will, and accordingly, all contracts require the presence of two basic elements:

.1The will of the contractors as it performs what the soul entails.

.2The disclosure of this will, which is the outward appearance of expressing it in a way that enables its perception.

These two elements are imperative for one of them from the other, since each of them complements the other, because the intention without disclosing it does not produce any legal effect and there is no expression without an intention, and the will must be matched to what was issued in expressing it, and this is only if a dispute arises between parties The contract claims that one of the parties to the contract does not match what he wanted to what was expressed in the contract, which necessitates submitting this dispute to the judge in order for him to interpret the contract to show the true common will of the parties to the contract.

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

Some commentators have gone on to say (Hegazy, 2002, 131) that the basis of interpretation is the ambiguity of the terminology of the contractors, so it is subject to consideration, because the basis of the interpretation is the will of the contractors, and the ambiguity is only a justification for the interpretation and the motive for carrying it out, as for the saying (Fouda, 2009, p.13 (That the basis for completion is the lack of organization of the contract, it is also unacceptable, because the deficiency is a justification for the completion of the contract and not a basis for it, so the lack of an explicit will means the tendency to search for the implicit will that is the basis of the complementary interpretation, and it is inferred to support his opinion in the memorandum of the preliminary draft article) 95) An Egyptian civilian, which relates to an agreement on fundamental issues without detailing, where it says (In this way, the scope of the judge's mission is expanded, so it is not limited to explaining the will of the contractors, but rather to complete what is missing from it or whatever it is, it must be noted that these provisions are only merely An explanation of the will of the contractors.)

It is hereby believed that this opinion is correct for the following reasons:

(1)It was stated in the explanatory memorandum of the Jordanian Civil Law regarding the subject of Article (100) thereof. (This article deals with the case of acceptance by the person to whom the affirmation is directed to the essential issues therein, and in this case the judge shall take the decision to decide on the detailed issues on which the agreement has been postponed unless the two parties agree on them. In this way, the scope of the judge's mission is expanded, and he is not limited to interpreting the will of the two parties, but rather completes what is missing from it, and adds the notes .. These provisions are nothing more than an explanation of the will of the contracting parties) .

(2)As stated in the explanatory memorandum for the Jordanian Civil Law in explaining Article 202 thereof, which states the following:

a. The contract must be executed in accordance with what is included in it and in a manner consistent with what directs good faith.

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

B. The contract is not limited to obligating the contractor with what is stated in it, but also deals with what is required of him in accordance with the law, custom and the nature of the disposition.

Article 3 of the Jordanian Civil Law stipulated that "the understanding, interpretation, interpretation and connotation of the text is due to the rules of the fundamentals of Islamic jurisprudence." The Jordanian legislator addressed ten rules of Islamic jurisprudence in articles (213-238) of the civil law, then added them with articles (239 and 240). All of these materials come under the heading of Interpretation of the Contract. These articles, including those that deal with the basic rules of interpretation, and some that are limited to reviewing the factors that guide the judge in interpreting the contract (Sultan, 2000, p. 221).

The basic rules of interpretation, as extracted from Articles (239 and 240), a Jordanian civilian is exposed to cases of clarity of the term of the contract, ambiguity of the term of the contract, and the place of doubt in identifying the common will of the contractors.

Concerning the clear term of the contract, the question arises about its importance in its interpretation, then the definition of the meaning derived from the clear condition, and finally the conditions for applying the clear and specific meaning of the term of the contract.

Jurisprudence and the judiciary in Egypt and France have been concerned with determining the importance of the clear statement of the contract in its interpretation to identify the common intention of the contracting parties, and some of the jurisprudence has tended to point out that the clear phrase of the contract does not always mean the clarity of the will itself, as the external circumstances play alongside the contract a role in disclosing the intent of the contractors In common, the judge may change the meaning derived from the clear phrase of the contract, based on external circumstances that contain a contradictory meaning (Qalada, 1995, p. 319)

Another jurisprudential trend has argued that there is no room for implementing the rule that it is impermissible to prove what contradicts writing except in writing, so that it is permissible to prove the common intention of the contracting parties in all ways, just as the term of the contract is clear or vague (Faraj, 1965, p.16)

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

As for the Egyptian judiciary, he stressed the need to express the will derived from the clear expression of the contract, and it is not permissible to refuse to implement it or to waste its ruling, as this includes a deviation from the apparent meaning of the agreement, which leads to its dissolution (Abdel-Baqi, 1965, p. 49)

As for the legislation, we find that the rules for reserve contracts are based on the implicit will of the two parties to the contract, and the majority of jurisprudence goes to the need for explicit texts excluding these sources, such as that the two parties regulate matters dealt with by law or custom in a manner contrary to its provisions (Abd al-Rahman, 1978, p.18)

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

The second topic

The judicial role in interpreting the contract

The old trend in interpreting the law appeared influenced by the school of explanation on the texts in the sanctification of legislative texts and adherence to them, so the judge's work was limited to the framework of the texts and what was stated in them, and adherence to their limits. Thus, his effort was limited to revealing the will of the legislator at the time of setting the legal rule, as some said that the search for civil law is only in civil codification, and with this trend the role of the judge has been likened to the machine in which the facts of the case are placed and come out to us with a ruling. The restricted application is a logical and automatic application. , But not an application or a mental (Fouda, 2009, p. 12). However, legal thought rebelled against this stagnation in interpretation, because the premise of consistency on which the school of perfection of legislation and commitment to its professionalism was based was disturbed by the change factors that imposed modern trends that believe in developing legal rules and deepening the role of the judge in the application and interpretation of law. The jurist Sally led a new approach that believes in development and that life renews and law changes, as he says that evolution is sufficient for history or sociology, while law lives between development on the one hand and stability on the other hand, and development is what the nature of life dictates, and stability is what it indicates It has the status of jus cogens. And between development and constancy, solutions should come in the matter of interpretation, and for this he called for the interpretation not to always be according to the will of the legislator, as it is often claimed or not specified, but the interpretation must be in accordance with the social imperatives imposed by the time in which the interpretation takes place. In this way, the judiciary bears the task of reconciling between the stability of the law and its development. If the purpose of the interpretation is to extract the judgment from the scope of the applicable legal rules, then the interpretation should not come in the narrow framework that the owners of the school of adherence to the text wanted, but rather the interpreter should look at the legal rule in the spirit of the times when Applied. In this way, he brings the legal rule back to its original nature, which is that

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

it is an evolving living rule, and it is not permissible with it to fear that the judiciary will rule when it is empowered with such authority in interpretation, as experience has shown on application that the judge is not fond of extravagance in innovation or innovation, but rather is limited only To lay down the legal rule in the living field to implement it and to be convinced of finding a just and appropriate solution (Tanago, 1974, p.57). Therefore, if the purpose of the interpretation is to extract the judgment from the scope of the applicable legal rules, then the judge must take into account the circumstances surrounding the legal rule when applying it, not at the time of its preparation, and if the purpose of the interpretation is to create a judgment to close the branch in the legal rule: then the judge must follow a free scientific research method that is guided by the ideal. Prevailing in the group as it responds to the intellectual and natural reality that fights for the law. Thus, the judge's role in applying the law is linked with the need to interpret it, and his interpretation of the law in accordance with modern trends is linked with the premise of developing it and completing the necessary deficiency or inherent in it.

The legislator has identified the legal text as an important source for determining and completing the requirements of the contract, as the word law came as an absolute source, considering that the law means a set of legal rules that the legislative authority describes to regulate a specific matter (Al-Sadah, 1992, p.13)

The legislator did not specify whether what was meant by the interpretative or peremptory legal texts. Whereas the two parties do not have the ability to discuss the application or non-application of the peremptory rules, as they are binding, and it is not permissible in any way to agree to the contrary, so the meaning of the text is the interpreted provisions, in addition to the fact that most of the rules of the named contracts are interpreted rules, but that is not It is forbidden to complete the requirements of the contract with what is included in the commanding text, and at the same time, the practical benefit from completing the requirements of the contract is non-existent, as the contracting parties are inevitably obligated to apply the commanding text, whether they agree on it or not, it is added to the contract or not. The result is the same, which is that they are bound by the text There is no need to complete the requirements of the contract or add it by the judge or by them, and if the

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

provisions of the law have changed or amended according to a subsequent law, the provisions of this law do not apply to contracts concluded under the old law (Badrawi, 1975, p. 392)

Complementary legal rules shall be applied unless the contracting parties stipulate otherwise, for example the text of Article (484) of the Jordanian Civil Law (: "If the price is deferred or in installments, then the period starts from the date of delivery of the sold item.") That set the term, and the judge completes the contract with what is stated in This article states that the term is from the date of delivery of the thing sold, as well as the matter in Article (462) of the Egyptian Civil Code that deals with the expenses and expenses of the sale contract that are on the buyer unless there is an agreement to the contrary.

A jurisprudential trend has gone to say that the legal rule is based on the implicit will of the contracting parties, and that it is obligated to end, not to begin, since if it is stipulated in the contract then it becomes binding, while another trend went to say that it is binding in the beginning and ending unless there is an agreement to the contrary, but upon completion The contract, so the matter differs, that the two parties did not include the detailed issues, so the supplementary legal text at the time would be applicable because they did not put the text on these issues, but rather work to delay a decision on it until a time (Abu Al-Saud, 1981, p. 254). Accordingly, this study will deal with the role of the Jordanian Court of Cassation. In interpreting the contract and the judge's role in implementing and interpreting the law due to emergency circumstances

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

The first requirement

The role of the Jordanian Court of Cassation in interpreting the contract

Some believe that the position of the Court of Cassation was confused and unclear (Interview, 2004, p. 129) in the context of some decisions of the Court of Cassation (Decision No. 021/88, Bar Association Magazine, Issue No. 5 of 1989, p. 2418). In fact, it is said that this is a case that has its own circumstances, causes, and justifications. On which the judgment was based, and what is observed through the decisions issued by the Court of Cassation in this regard, this court has relied on the text of Article (239) of the Jordanian Civil Code as a basic rule for interpreting the contract according to the following data:

(1)The conscience of the apparent will and the clear and explicit terms of the contract and not deviating from it to the contrary, unless it clearly states why it changed from the outward appearance to the opposite. The judgment of the Court of Cassation confirms this approach, saying: "The jurisprudence and judiciary have established that the subject court has full authority to interpret contracts, conditions and restrictions that are in dispute, and it has this authority to deviate from the apparent meaning to its disagreement, on the condition that it states in its judgment why it has deviated from the apparent one to another. And how did that wording benefit from the meaning in which it was convinced and preferred that it was the meaning of the contract, so that it becomes clear in this statement that it took into account its interpretation with reasonable considerations that it extracted from it "(Resolution No. 1515/1999 of 9/30/1999)

(2)Adherence to the inner will if it represents the common intention of the contracting parties, and in this the Court of Cassation says, "We find that the Court of Appeal dismissed the correctness in interpreting the term sale as a literal interpretation without taking into account the nature of the dealings in the private agencies related to the lawsuit to eliminate the commonness and this phrase was considered nonetheless clear. It is permissible to deviate from it and the error in that is that the first period of Article (239) approved by the court not to deviate from the clear phrase is not absolute, the second paragraph of this article came and it was permitted if there was a

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

place to interpret the contract to search for the common intention of the contracting parties without stopping at the literal meaning of the words With reference to the nature of the dealings and the trustworthiness and trust required between the contracting parties ”(Resolution No. 1381 of 1994 dated May 19 1994 Adalah)

(3)Exploring the common intention of the contracting parties by adopting the terms of the contract as a single unit and blaming the court of the matter with the corruption of evidence and causation, and in this the Court of Cassation says: “The Court of Appeal, for its interpretation of the contract, may not deviate from its terms and deviate from the apparent and clear meaning and that it must take what the contract terms benefit Its clauses are as a single unit. If the lease agreement includes clear terms that make it clear that the lease is held for a year, that the rent is paid in honor at the beginning of each month, and that in the event that a premium is due and it has not been paid on time, then all subsequent installments will be due. The fee is to be paid at the beginning of the month, which cannot complete the sixth condition related to the entitlement of all installments if a premium is due and it is not paid on its date in contravention of the law, because the Court of Appeal did not comply with the rules of interpretation stipulated in Article (239) of the Civil Code, which tainted its ruling with corruption in the reasoning and causation. (Resolution No. 647 of 1999 published in the Bar Association Magazine No. 9, page 3413)

(4)Adaptation of the contract and determining its legal description, because clarifying the nature of the contract is one of the issues of law in which the trial judge is not independent. In this, the Court of Cassation says, "The conditioning and interpretation of contracts is one of the powers of the trial court that is unique to it without being punished by the court of cassation as long as this adjustment The interpretation was based on sound and firm foundations in the lawsuit (Decision No. 400/1999 of September 23, 1999, published on page 296 of the Judicial Magazine No. 9, dated 1/1/1999)

The Court of Cassation does not constitute a third degree of litigation, as it is, as a general rule, not a subject court, but rather a court of law. Appeals against judgments before it are based only on a mistake in the law, and it is not permissible to build on a mistake or reasons related to reality, and hence the dispute is not raised in the essence

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

Rather, its task is limited to monitoring the contested legal ruling in terms of soundness of legal application only, that is, it scrutinizes the judgment in terms of its violation of a law, without examining the facts of the case issued on its occasion, and this is due to the nature of the task entrusted to the Court of Cassation, which is overseeing Correct application of the courts to their difference in the law and the integrity of its interpretation and interpretation, which leads to raising the dispute over the application of the law and its interpretation and unification of the judges' understanding of it and thus the unity of judicial rulings, and this is not based on this. The Court of Cassation, which is in the process of monitoring the legality of the ruling, simplifies its control over the reality of what has been decided In it, as this does not mean that it re-examines or proves the reality, but rather it acknowledges it as proven by the appealed ruling, and as it was received from the trial court and its discussion is limited to the question of whether the court revealed the true rule of law on the facts, or if it distorted it Or it was created on it that a mind does not produce (Al-Zoubi, 2003, p. 136).

The examination of the Court of Cassation's oversight of the interpretation of the contract requires specifying the means of this monitoring, as follows:

Monitoring the judge’s application of the rules of interpretation mentioned in Articles (239 and 240) A Jordanian civilian. This censorship represents the veto of a judgment that deviated from the clear and explicit phrase and did not explain the reasons for its deviation from the apparent meaning to its disagreement. In this, the Court of Cassation says: “The jurisprudence of jurisprudence and the judiciary has stabilized that the court of the matter has full authority. In interpreting disputed contracts, conditions and restrictions, and with this authority, it has the authority to deviate from the apparent meaning to its disagreement, on the condition that it states in its judgment why it changed its apparent meaning to its disagreement and how that formula reported the meaning that it was convinced of and suggested that the intended meaning of the contract is so that it becomes clear in this statement that it took into account its interpretation with considerations. Reasonably, it is rational and correct what I have deduced from it ”(Resolution No. 1515/99, Bar Association Magazine, No. 806 of 2000, No. 2600)

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

(2)Monitor contract conditioning and determine its legal description:

In this, the Court of Cassation says, “Although the interpretation of the contracts belongs to the court of the matter, but the aforementioned court arrives at an unpalatable result and that the evidence does not lead to it amounts to a violation of the law because in this case the conclusion is not based on evidence leading to it, which made the right of the court of cassation simpler Accordingly, the Court of Appeal made a mistake in adapting the relationship between the two parties to this lawsuit as it is a contracting contract, not a work contract (Decision No. 1681/2003 of 11/18/2003 Adalah)

Likewise, the Court of Cassation says, “... the matter court has the authority to interpret contracts, but according to the principles and when jurisprudence and jurisprudence have settled on it, the Court of Cassation has the right to intervene if the trial court erred in its interpretation and interpretation of contracts, and accordingly and since the trial court made a mistake in interpreting the meaning of What was published in the advertisements issued by the Arab Jordanian Company for the Development of Special Education (Distinguished) when it came to the conclusion that what was mentioned in those announcements is considered positive from the distinction and is not a call to negotiation according to the text of Article (94/2) of the Civil Code, and therefore its decision is tainted by deficiencies in reasoning (Decision No. 1153/1993 (General Assembly) dated December 5, 1914 Adalah)

The second requirement

The judge’s role in implementing and interpreting the law due to emergency circumstances

The "element of stability and factor of change" constitutes two descriptions related to the legal rule. The first is interrelated with its formulation, a product of the stability of transactions within its framework, and the second is pressuring it from outside it and a drive to preserve its survival, effectiveness, stability and effectiveness. Stability and

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

stability are two titles for the rigid base and change, the character of the raw material on which the compressor is based, to change it or to develop its interpretation.

The element of consistency in the legal base and its permanence - one of its most important characteristics - was the stability of the facts and events that produced it, and this is what contributed to the production of jurisprudential theories - in the philosophy of law - on which jurisprudence was based to determine the role of the judge in its application, and the process of reconciling between the element of stability and the factors of change surrounding the legal rule was always a field Dynamic and a serious preoccupation pressuring the legislator, jurisprudence and the judiciary, he translated in many stations some exceptional theories that caused change and development within the limits of the judge's role in interpreting the law (Mansour, 1987, p. 12)

This description of reality by its nature does not remain constant and always, as it is inevitably variable and with the passage of time and with the factors of change the gap widens between the new facts and the legal rules that have already arisen, and accordingly the dynamism in the phenomena has generated the need for a new way of dealing with the legal rule:

Either the quick legislative response and the dynamism of accompaniment, or the passage to the spirit of the legal rule and its social function through the interpretation of the disagreement when it is applied (Al-Wakeel, 2011, p. 261), and the judge, with this interpretation attached to the application, does not remain a mere tool and a tool for law enforcement, but becomes a flexible mind adapted in his dealings with Texts to get them out of stalemate and create additional provisions for them.

It is clear that the interpretation of the law is the core of the work of judges, and it is complementary, revealing the legislative will applied to it. The function of judges is usually limited to applying the law and it is not possible to apply the law before its interpretation. Just as the application of the law is mixed with its interpretation, and this is often the interpretation of the law may be mixed with the essence of the law. If it is permissible for the judge to complete the legislative will and act on its behalf, then it is a fortiori that he can complete the will of the contract in a manner that constitutes an extension of the interpretation of the contract. Based on this, the judge's

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

work in contractual disputes is focused on two matters: the first: giving the contract an accurate description and adapting it to the true will of its parties, so the contract is a form of agreement between two or more parties - or even by unilateral will - expressed by declaring it or issuing it through a written document - usually customary - or in a form. Oral - and this agreement - in its form - is the product of voluntary action in its idea and formulation, meaning that the element of knowledge in it and the element of drafting is an industry that is often carried out by its parties without competence and professionalism (Faraj and Al-Adawi, 2006, p. 290)

In this way - with the exception of formal contracts - consensual (or separate) contracts are completed and their abstract effects are produced by the parties' agreement on them, and it follows that sooner disputes arise over one of its clauses, and if the legal text issued by the legislator is likely to be wrong and defects, then it is better and more expected and hesitant That the construction of the contract comes laden with defects, and this requires the intervention of the judges to clarify the nature of the contract and make the adjustment and accurate description of its clauses, in order to indicate the true will of the parties. Giving an accurate and true description is an essential primary task faced by the dispute judge, and it shows the first aspect of his job in interpreting contracts.

As for the second, it is based on examining the extent to which the terms of the contract are compatible and in conformity with the provisions of the law, and work to complement its content and define its scope, as it is known that the judge in his interpretation of the legal rule in particular issued by the legislator is not concerned with looking at the extent of its constitutionality or suitability to the law higher than it is in order (Al-Gustany, 2009, p. 561). The principle is that the judge deals with a non-flawed and unsuspecting rule because it was issued by a valid, competent authority that seeks interest and justice and is keen on clarity of the wording and is - in principle - in a position of competence and competence, otherwise the judge in his interpretation of contracts faces contract agreements and formulas fraught with ambiguity and suspicion of incompatibility with The provisions of the law. The legislation, despite its continued acceptance of the principle of the authority of the will, but broadens the scope of peremptory rules that place restrictions on the

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

principle. These restrictions that must be observed by the parties to the contract are an element of the judge's role, that is, the procedure for matching the "contract law" and the jus cogens applied to it to determine The extent of appropriateness, and then determining the legality or lack thereof, in addition to that, the will of the parties may omit or neglect to refer to important provisions governing the contract, which calls for complementary or established rules to fill the deficiency, as these rules complement the issues that the contracting parties have missed to regulate about the issues that may arise in their regard. A dispute after the conclusion of the contract, so they are established rules because they determine the ruling to be applied in the absence of agreement between the contracting parties on the ruling of the issue in dispute (Al-Wakeel, 2011, p.92)

With this dual task that the conflict performs - in addition to the description - the final legal formulation of voluntary agreements takes shape, their legitimacy is taken, their identity is defined, and with them the contract law takes its precise extent and scope, and in this way the elements of the normal and traditional role of the judge in interpreting the contract and the limits of his intervention in it are completed, these drawn limits Under normal circumstances, exceptional circumstances and factors will impose an amendment and override them towards a new aspect of the judge's role in interpretation.

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

Conclusion

In spite of the great importance that the role of interpretation plays in determining the obligations of the contracting parties to lift the ambiguity and confusion about the contract, determine the content of the contract in its entirety, and enable the judge to define the content of the contract and to determine the obligations that it generates so that it can be implemented, but this important issue that is generated by the emergency circumstances that constitute A feature of this age that has not been studied adequately by researchers as it is the prominent scene, and its focus is preoccupation with the problems and complications generated by the application of this theory before the judiciary, which require and the right to stop to re-formulate it in the hope of more stability for it and in order to achieve the goal of the study has been divided To two studies, in the first one dealt with the jurisprudential role in interpreting the contract, while the second study dealt with the judicial role in interpreting the contract to reach the desired result of this study, which confirms that the expansion of the judge's role in interpreting the contract is preceded and detailed in its broader role in interpreting the law. This study reached several results (first), following which recommendations were made to solve the problems associated with it (second)

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

First: Results- :

-1It is clear that the "expansion of the judge's role in interpreting" the contract is preceded and misleading in its general and most important role in interpreting the law.

-2The judge can use the legal text that is suitable as a source to complete the contract requirements through various judicial applications, as this was shown in the rulings of the Jordanian Court of Cassation in many of its jurisprudence.

-3Urf is one of the sub-sources for deriving rulings and devising them within broad or narrow conditions according to the difference of scholars, and some western countries have taken it as a basic source in rationing, and they introduced it to religion, considering that custom is the oldest of the two in their perception, which is a false perception

-4The judge must adhere to the legal text, so he does not resort to the application of justice except where the text indicates to him to do so, so there is no room for jurisprudence in the field of the text

-5We find that the legislator has imposed conditions in order to allow the judge to complete the requirements of the contract, which are represented by three conditions, the first of which is the agreement on the essential issues, the second: preserving the detailed issues for later agreement, and the third: not suspending the conclusion of the contract on the agreement on the detailed issues

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

-6The provisions governing the interpretation of the contract in the Jordanian civil law were identical with the Arab civil legislation, but this does not prevent the amendment of the basic rule of interpretation that Article (239) came to make to become more precise.

- 7The role given to the judge by virtue of the theory of contingent circumstances, meaning "the power to amend the contract," despite its specificity and exclusivity, did not come immediately and is irrelevant to what had preceded the changes that touched many aspects of the commitment theory and allowed more power and authority for the dispute judge in interpreting contracts, such as the theory of unfairness and exploitation. And force majeure, as well as in the case of delaying the fulfillment, installment of debt and fulfillment of the facilitator.

-8Despite the fairness of the theory of emergency conditions and the urgent need for it, especially in this time full of sudden changes, some Arab and foreign legislations are still suspicious of adopting them not only out of concern for the principle of the authority of the will, but due to reservations and fears of misapplication resulting from the difficulty of controlling and defining.

-9In isolation from the legislator's keenness to present an elaborate and accurate formulation of the theory, as it constitutes a narrow exception to well-established principles, each of its conditions appeared to be the subject of adaptations and multiple interpretations before the judiciary, which did not achieve the legislator's goal - in many cases - of securing the stability of the

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

theory and stability Transactions as a result of her supplication, on the contrary, it revealed a real problem whose elements were gathered from the total of the jurists 'comments on them, or on the occasion of their review of the judiciary rulings.

-10The only text in which Arab legislation introduces the theory of emergency conditions (Article 205 Jordanian civilians and Article 147 Egyptian civilians) was not and is no longer idealistic and prevented ambiguity and turmoil. And it has become in need of reconsideration of its formulation in order to better adapt it to the changing factors and its agreement with the group and the outcome of opinions and positions arising from its application and its effectiveness.

Second: Recommendations- :

In light of the results obtained, this study recommends the following:

-1Amending the text of the first paragraph of Article (239) B.M. Jordanian to read "If the term of the contract is clear in revealing the true will of the contractors, then it is not permissible to deviate from it by interpreting it in order to identify a different will." The aim of this amendment is to confirm access to The real will of the contractors, and nothing else.

- 2The necessity for the Jordanian legislator to transfer the provisions of Articles (100) and (101) of the Jordanian Civil Code from the first section in the first chapter announcing the conclusion of the contract to the second section related to the effects of the contract.

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

- 3Amending the text of Article (241) a Jordanian B.C. to become "the contract is the Shari'a of the contracting parties. If the contract is valid and binding, then one of the two parties may not revoke it, amend it, or cancel it except by mutual consent, litigation, or according to a provision in the law." And the required amendment was mentioned in adding the phrase contract Sharia contracting parties, firstly to be in harmony with the rest of Arab civil legislation, and secondly for the sufficiency of interpreters and researchers to determine which articles of the Jordanian civil law approved the binding force of the contract (see Articles 241, 213, 199).

-4Standardization of legal terminology, between Articles 100/2 and 202/2 Jordanian civilians, as the legislator used the term “nature of transaction” in Article 100/2, while the term “nature of disposition” was used in Article 202/2.

-5Unifying the hierarchy of standards adopted by the Jordanian legislator in Articles 100/2 and 202/2, as they differed between them even though their goal is the same in addition to proposing to use the term (nature of contract) and the term nature of disposition or (nature of commitment) instead of the term nature of transaction, which is better according to The point of view of the legislator.

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

resources and references–:

Books– :

Abu Al–Saud, Ramadan (1981) Mediator in Explaining Civil Law, Cairo, Arab Renaissance House.

Abu Al–Saud, Ramadan (1981) The Mediator in Explaining Civil Law, 2nd Edition, without a publishing house.

Ahmed, Muhammad Sharif (1981) The Theory of Civil Research Interpretation, Baghdad, National Library.

Badrawi, Abdel Moneim (1975) The General Theory of Obligations in Egyptian Law: Sources of Commitment, Sayed Wahba Library, Cairo.

Al–Bustani, Saeed Yusuf (2009) Al–Jameh in Private International Law, Al–Halabi Legal Publications, Beirut.

Tanago, Samir Abd El–Sayed (1968) The General Theory of Law, The Knowledge Institute, Alexandria.

Al–Jubouri, Yassin (2011) Al–Wajeez in Explaining Civil Law, Part One: Sources of Personal Rights, Sources of Obligations, a Comparative Study, Amman, House of Culture.

Hegazy, Abdel Fattah Bayoumi, (2002), The Legal System for the Protection of Arab Electronic Commerce to Explain the Tunisian Electronic Exchanges and Trade Law, Dar Al Fikr Al Jami'ya, Alexandria, pp. 131, 132.

Al–Hadithi, Khaled (2012) Complementing the Decade, a Comparative Study, Beirut, Dar Al–Halabi Lawyer.

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

Hassan, Suzan (2004) Al-Wajeez in Civil Law, The General Theory of Law, The General Theory of Right, The General Theory of Obligation, Alexandria, Knowledge Foundation.

Al-Zuhaili, Wahba (1989). Islamic jurisprudence and its evidence, 3rd Edition, Damascus, Dar Al-Fikr.

Al-Zoubi, Awad Ahmad (2003) The Fundamentals of Civil Trials, Part One - Judicial Organization - Specialization, Amman, Wael Publishing House.

Sultan, Anwar (2000) Sources of Compliance, Oman, The Legal Office.

Al-Sanhouri, Abdul Razzaq (1959). Sources of Truth in Islamic Jurisprudence, A Comparative Study of Modern Western Jurisprudence, League of Arab States / Institute for International Arab Studies.

Al-Sadah, Abdel Moneim (1992) Sources of Commitment, Dar Al-Nahda Al-Arabiya, Cairo.

Abdel-Baqi, Abdel-Fattah (1965), Theory of Law, Cairo, University Press, p. 49.

Abdel-Rahman, Ahmed (2009) Interpretation of the contract and the content of the contract's commitment according to the rules of evidence, Alexandria, Al-Maarif facility.

Abdel-Rahman, Hamdi (1978) Principles of Law, Cairo, Egyptian Universities Publishing House Press, p. 16.

Farag, Tawfiq and El-Adawy, Jalal (2006) The General Theory of Commitment, Cairo, Dar Al-Nahda Al-Arabiya.

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

Farag, Tawfiq (1965) The General Theory of Commitment in Sources of Commitment, A Comparison of Arab Laws, Cairo, Dar Al-Nahda Al-Arabiya, p. 16.

Fouda, Abdel Hakim (2002) Interpretation of the Contract in the Egyptian and Comparative Civil Law, Alexandria, Ma'arif Foundation.

Qalaa, William (1955) treatise on the expression of the will in civil law, a comparative study, Cairo, Arab Renaissance House.

Explanatory Notes to the Jordanian Civil Law, Technical Office of the Bar Association, Part 1, year 2000.

Mansour, Sami Badi '(1987) The Element of Constancy and the Factor of Change in the Civil Contract, Lebanese Thought House, Beirut.

Najida, Ali (2002) The General Theory of Commitment, Book One, Sources of Commitment, Cairo, Dar Al Thaqafa.

Al-Wakeel, Shams El-Din (2011) Principles of Law Al-Ma'arif facility, Alexandria.

University Theses- :

Al-Surami, Yahya Rizk (1995) The Judge's Authority in Interpretation in Egyptian and Yemeni Law with Comparison to the Provisions of Islamic Law, Doctoral Thesis, unpublished, Ain Shams University.

Obeid, Najat (2016) Judge's authority to amend contract in Algerian civil law, unpublished master's thesis, Abu Bakr Belkaid University, Algeria.

Fouda, Abdel Hakam Abdel-Basir (1985) The General Theory of Interpretation of Contracts in Comparative Egyptian Civil Law, a PhD thesis (published) submitted to Alexandria University in the year (1983), the Knowledge Institute in Alexandria.

Multi-Knowledge Electronic Comprehensive Journal For Education And Science Publications (MECSJ)
Issue (40),2021
ISSN: 2616-9185
www.mecsj.com/

Interview, Alaeddin Muhammad Ali (2004) Interpretation of the contract in Jordanian civil law between the apparent will and the inner will, MA Thesis, Aal al–Bayt University.