

Philosophy Of Contract Law

Dr. Halmat Mohammed Asaad¹, Sabah qasim khedir², Dr. Yaseen M. Aziz³, Mustafa rashid issa⁴, Hamad Kareem Hamad⁵

¹ Erbil polytechnic university / Erbil, Iraq

² Tishk international university / faculty of law / law department / Erbil, Iraq.

^{3,4,5} knowledge university college of law / law department / Erbil, Iraq

Abstract

This study develops an understanding of the effectiveness of contract law in Iraq. The contract of the law predominantly made the promise or agreement between two different people (sellers and buyers) of any tangible things or their actions. This study is going to focus on the existing contract law in the state of Iraq, for making agreement more legitimate and authentic in their approach. and also going to recognize the effectiveness of contract Law in Iraq and also different conundrums associated with contract law in this country. The objective of the studies is to, “recognize the effectiveness of Contract Law in the country Iraq”.

Keywords: Effectiveness of Law, Contract Law, Iraq

INTRODUCTION

Predominantly, contract is just like a promise between two different people. Each person or any organization who involves themselves in an agreement to do something within a contract known as, “party”. A contract can be considered a loan agreement between sellers and buyers of any tangible things such as; vehicles, electronic goods and many more. Another example of contract agreement between male and female is during the time of legal marriage. Now, there are certain laws regarding these contracts for making agreement more legitimate and authentic in their approach. This assignment is going to focus on the existing contract law of country Iraq, the aims and objectives are to be recognized in this assignment. Before proceeding this assignment, sources that are being used for this assignment mentioned in the methodology section. The contract law of Iraq is to be determined in this assignment in the context of available article and sections. This assignment is also going to recognize effectiveness of Contract Law in Iraq and also different conundrums associated with contract law in this country. The objective of the studies is to, “recognize the effectiveness of Contract Law in the country Iraq”.

PROBLEMS STATEMENT

The evidence shows that “Force Majeure” is being back in spotlight for those companies who are involved in doing business in Iraq (South) (Oil & Gas, 2020). The violent protests that had held in Barsa involved nearly of thousands people and threatened to paralyse operations for the IOCs (International Oil Companies) as well as their contractors. It has been reported that mortar shelling, torching facilities and essential curfew all had taken place (Oil & Gas, 2020).

It has been recognized that the construction companies in Iraq has been failing for several years since the year 2003 to 2011. Now, the hindrances are being coming from development entitlement, huge competition from similar construction sector mainly from the neighboring countries (Al-karawi, 2018). The evidence shows that all the mentioned have led to the occurrence of different obstacles between Government of Iraq and their contracting stakeholders regarding the terms of changing in profits rate, costs as well as not applying towards the required standard of contractors. This disturbance in the contract has led towards staggering, weaker product quality, standards missing, and delay of any kind of project as well as damage towards the economy (Al-karawi, 2018).

The above two examples are involved in projecting that Iraq is confronting different conundrums regarding the violation of contract law or disturbance regarding any agreement either with Government, stakeholders or labor force. The examples are from two different industries and is very important for Iraq that is Oil and gas industry.

RESEARCH OBJECTIVES

- To identify the concept of Contract Law
- To determine the Contract Law in the country Iraq
- To evaluate the Contract Drafting and Legal Culture of Iraq Contract Law
- To recognize different rules and regulations under Iraq Civil Code
- To analyses conundrums associated with Contract Law in Iraq.

METHODOLOGY

For conducting this assignment, secondary qualitative research method has been selected, as this assignment is based on existing information and different case studies. The sources which are being used for conducting this assignment mainly from secondary data.

Concept of Contract Law

A contract is considered to be legitimate enforceable agreement among two or more parties where each individual involved in assuming legal obligation which needs to be completed. Various aspects of regular activities of life involve contract such as; application for car loan, purchasing property, signing an agreement based on employment (Find Law, 2020). An individual also needs to concur terms and condition when acquiring goods and services like; computer software and many more.

The evidence exhibits that legitimate challenges mainly arises mostly when one party fails in performing the legitimate responsibilities which the person agreed to do. In this context, when a party is involved in breaching any contract, the other party can usually sue for any damages in term of moneys (Find Law, 2020). Furthermore, in some critical cases, such violation or breaching can be move up to court of law for justice.

It can be said that Contracts can also be considered as the source of any kind of legitimate disputes when they are written effectively. Parties who miscomprehend the agreement terms may prosecute each other based on the contract law and also have settlement of argument in court (Find Law, 2020). Furthermore, when any individual company is involved in signing a contract and later moves out of business or unable to fulfil promises. In this context, other party may proceed to further legal action based on bankruptcy or civil for obtaining relief.

Determination of Contract Law in Iraq Context (Sections, article)

The Iraq Law Alliance, Thomas Donovan, explains the way through which Iraq contract laws are being enforced. Iraq Contract Law is found in **Iraqi Civil Code (Law Number 40 of 1951, amended)**. The doctrine of Iraqi contractual law mainly based on Civil Code of Egypt which was formed by the inspiration of Civil Law of Europe (MEED, 2020).

Now, the Iraqi Civil Code is being segregated into; one short introduction and two core sections. The introduction eventually deals with generic challenges such as; applicable legitimate sources, distinction among the individuals as well as legitimate establishment (MEED, 2020). It also includes the rules and regulation of application of particular classifications as well as laws. Mr. Donovan also mentioned that; the code provides a rate of interest (4%) in the context of any of delay payment (mainly applicable in civil context).

First Section of Contract Law

The first section is involved in regulating obligations law and also contains generic provisions of contract law, tort and some certain kinds of contract. This generally includes; barter, transactions, partnership, loans, gifts, agency, insurance and leases (MEED, 2020). Now, the second section eventually involve or addresses right of property and property related challenges.

The Civil Code of Iraq fosters doctrine regarding freedom of contract based on some limitations and fundamental provisions generally implemented for enacting due to providing protection towards weaker parties (MEED, 2020). Based on this code, a contract is being formulated by both acceptance and offer, hence, the generic concept of law consideration does not required. Mr. Donovan also mentioned that any

contract does not required in reducing to provide writing, it has a place for proving that the parties intended of mutually bound (MEED, 2020). On the contrary, the contract's subject matter must be defined in precise manner rather than illegal or any biasness towards morals or public orders. He also mentioned that in Islamic countries, contract must not be contradictory to Islamic Law (Sharia).

Force Majeure

Predominantly, this code eventually mentions that a party is not responsible to make any kind of monetary payment for damages mainly for non-performance or lingering in contract performance, if the cause goes beyond the control (MEED, 2020). Therefore, law of Iraq formulates provision regarding effect of any "force majeure" event. It actually recommends that parties who are entering in any commercial contracts also need to include provisions of standard force majeure. The evidence shows that Court of Iraq seems to be very reluctant for construing clauses of force majeure for covering war or any other civil unrest in the favor of contracting a party against the Administration or Government of Iraq (MEED, 2020).

Contractual Solutions (Remedies)

The evidence shows that the Government of Iraq can give instruction or any verdict regarding certain performance like; breach or violating contract. On the contrary, in any event the responsible performance will become too enormous on that individual party and damages might be provided instead of justice (MEED, 2020). It can be said that a party to some extent may request that the contract is being cancelled and eventually demand for compensation instead of damages.

In the above-mentioned circumstances, Courts will generally put any party within the position they would have performed in the contract (MEED, 2020). Until the court finds that claim does not involve any kind of gross negligence or fraud, then the damages will be awarded and it will not also exceed amount of loss in profit context.

The Penal Code has mentioned that damages may include; loss of any gain of creditors, provided as it is a natural impact of non-performance or any lingering in obligation of performance. On the contrary, damages might not extent regarding the loss suffered, except cases like; fraud or gross negligence (MEED, 2020). Damages that are being through agreement are not due it debtor finds that creditors has possessed with any kind of loss. In this context, the court may involve in decreasing proportion of agreed upon, if it becomes grossly excessive or any principal responsibilities has been performed partly.

Limitation Period

Predominantly, in the country Iraq, the period of contract is fifteen years and on certain situations it becomes much lesser. These eventually includes; recruitment of any employee (regarding receiving of salary or rent, in which limitation period applied mainly up to five years) (MEED, 2020). The evidence shows that the court of Iraq has implemented nearly 15 years of limitation period towards the cases like; claim of recurring in which transaction made through non-verbal communication (writing) (MEED, 2020). On the other hand, claim regarding the unjust enrichment are generally involved for three years. The limitation period of one year implement towards the certain professional rights and employees to be reimbursed within their work. The court has strictly mentioned that it is not allowed to amend period of limitation in contractual way.

Contract Drafting and Legal Culture

The evidence shows that like several other jurisdiction law of Civil, the codes of Iraq eventually contains generic principles and rules which covers a very large conduct area (Altamimi & Co., 2020). For example; Code of Commerce, Civil Code, Code of Criminal Procedures and Civil Procedures. These codes are involved in rendering structure of default rules and regulation which formulates inception point of any provided legal rationale. Another significant legal culture of Iraq is that Courts are involved in acknowledging evidence towards external of contract document. Additionally, all it takes for concluding an contract which can be enforceable and intended for the formulation of agreement which is considered to be lawful agreement object and purpose of law. Keeping in this mind, the parties of Iraq, which also include Government, draft very short contracts and implement much detail for wide legitimate framework (Altamimi & Co., 2020). This does not seems to be much problem as the provided generic rules and doctrines that implements, it is rather become difficult for arguing that an agreement does not enforceable regarding lack of specification.

The evidence show that parties are involved in leaving too much unsaid within their contacts as the process of legal perceptions in the light of overall conduct. Any facts that is being admitted by a counter party or proven other or the generic theory of legal. This becomes much alarming situation for the parties who are unfamiliar with the Laws of Iraq and looking to do any kind of business in this country (Altamimi & Co., 2020). Following are different criteria that the Parties have to consider while going any kind of contract agreement. They are as follows:

- They have to make their contract much precise and simple in approach. As simple contracts becomes easy for understanding by any lawyers and need to make them as useful documents for audiences as well as decreasing cost of transaction (Altamimi & Co., 2020)
- The parties have to remember that Iraqi Contract Law eventually covers up several circumstances that they need to make provisions regarding their agreements.
- It has to be remember that the additional agreements like; side and collateral contracts can be linked later on. Therefore, they need to make simple contract agreement, they becomes very flexible and keeping various options which are opened for allowing for evolution regarding parties relationship (Altamimi & Co., 2020).

Different Components in Iraq Civil Code Law (ICC) (Contract Law)

The evidence shows that Iraq Civil Code Law eventually mentions different section and specification which is essential for ant party. They are as follows:

Freedom of Contract

ICC is involved in fostering doctrine of freedom of contract, this principle states that parties may possess with an independence of selecting contracts term which they conclude (Lex Mundi, 2003). On the contrary, freedom of contract is not possess with limits and gets restricted by fundamental provisions in the context of statues. It generally helps in protecting the weak parties who indulge them into a contract agreement.

Conclusion of Contract

Predominantly, contract is considered to be an agreement among two or more person or parties. The three important components which are necessary for formulating valid contract. This actually includes;

- Acceptance and Offer
- Defining Subject Matter of Contract
- Reason for Mutual Responsibilities

The ICC mentions there are different kinds of Contracts exist in Iraq Civil Code; they are as follows:

- **Binding Contract:** Predominantly, this contract is formed by an acceptance and offer. An offer must be sufficiently detailed for which it can be directly rejected or acknowledged.
- **Qualified Acceptance:** This contract eventually contains additions, conditions, new terms or restrictions (Lex Mundi, 2003). This contract is considered to be constituted a rejection contains mainly new offers, which can be either reject or acknowledge by original offeror
- **Purported Acceptance:** Purported acceptance is involved in modifying the offer that has been made, which further results in a refusal (Lex Mundi, 2003).
- **Implied Acceptance:** Implied Acceptance offer eventually gets identified if offeror does not need any kind of express acceptance

Capacity

For entering in a contract, each party needs to be capable of getting freely consenting based on contractual terms (Lex Mundi, 2003). However, this is not termed as a generic conundrum, there are particular specification of person which may be diminished based on law.

Invalidity

ICC mentions that a contract may be declared an invalid based on numbers of reason; they are as follows:

Undue Influence

- Duress
- Mistake
- Misinterpretation

- Illegality

Contracts Interpretation

ICC is involved in rendering contracts that needs to be interpreted regarding provisions as well as written law, followed by both commercial customs and Islamic Law. The Article 146 CC mentions that a contract is involved in making law of parties (Lex Mundi, 2003). It can be both altered and revoked by mutual agreement of parties or reason rendered by law.

Contracts Adjustment

Contract's binding nature is eventually derived from generic protection based on good credence. On the contrary, based on special situations Court may get involved in overriding the bind force of any contract for creating an equitable solution among parties (Lex Mundi, 2003).

Authorization of Third Party

The law mentions that a position of any third party holding based on an employment and or other contracts deemed of having authorization of contract on behalf of another (Lex Mundi, 2003).

Sales of Contract

In article (506-600), sales contract are usually regulated in the ICC and also in part through Commercial Code (Lex Mundi, 2003). The evidence shows that the transfer of item becomes more effective when the sale of contract is being concluded or when the sale's object is being ascertained as well as movable.

Damages

When a party does not fulfil the duties or obligations of contract, then the injured party eventually aims at claiming contract needs to be either cancelled or performed regarding right to compensation (Lex Mundi, 2003).

Events of Unforeseeable

Iraqi Civil Law eventually involved in identifying the principle of "unforeseeable events" (Lex Mundi, 2003). This actually means that the result of generic emergencies, contractual obligation's performance becomes excessively enormous, therefore, for threatening debtor with strong losses. In this context, Court may balance interests on both parties.

Prescription

The ICC eventually mentions that civil obligations are time-barred just after 15years, until the contract become a special case (Lex Mundi, 2003). In Article 434 of ICC, the claims of recurring get rises based on contracts for continuing responsibilities such as; rent, wages, loan's interest, pensions, hence, becomes statue-barred after five years.

Contracts of Construction

Contracts of Construction falls under the **Article 864** of ICC which are involved in laying down the generic rules administrating contracts of works. This article involves in defining contracts of work as contract in which one party undertakes for performing individual works and services as well (Lex Mundi, 2003).

Contracts Termination

It is the generic rule that a party may get terminated from a contract by filling claim for suitable termination along with the elements of courts (Lex Mundi, 2003). Furthermore, contracts may get terminated for any kind of good cause if contract gets specific reasons for this extrajudicial termination.

Rights of Assignment

In the Article 362-374, provisions of administrating right of assignment are provided in the mentioned article (Lex Mundi, 2003). Rights eventually gets assigned without any types of formalities until any kind of statutory regulations or any other contractual agreements which are being rendered otherwise.

CONCLUSION

This assignment is involved in evaluating the Contract Law of the Country Iraq. The assignment has been able to recognize the concept of Contract law and its importance in this relevant time. The assignment has given main focus on the country Iraq and identified that Contract Law of Iraq is mentioned under Iraq Civil Code. The assignment has identified the culture of drafting contract and legal context of Iraq. It has been evaluating that ICC (Contract Law) possess with two section. The first section regulates the responsibilities of law and possess with the description of contract law, tort of negligence and other different contracts such

as; Binding, Qualified, Purported and Implied. The second section possess with contract regarding property and challenges rises from property. The assignment has provided two examples to show that the country is facing different problems due to disturbance in contractual agreement. Furthermore, this assignment has also projected all the rules and regulation that are being presented in the ICC. The aims and objectives of this assignment has been met effectively by implementing various authentic sources from websites and journals.

References

1. Find Law (2020) *What is Contracts Law?* Retrieved on 23rd February 2020 from: <https://hirealawyer.findlaw.com/choosing-the-right-lawyer/contracts-law.html>
2. MEED (2020) *Iraq's civil code and contract law* Retrieved on 23rd February 2020 from: <https://www.meed.com/iraq-civil-code-contract-law/>
3. Altamimi & Co. (2020) *Contract Drafting Insights from Iraq* Retrieved on 23rd February 2020 from: <https://www.tamimi.com/law-update-articles/contract-drafting-insights-from-iraq/>
4. Oil & Gas (2020) *Performing contracts during unrest in Iraq* Retrieved on 23rd February 2020 from: <https://www.oilandgasmiddleeast.com/drilling-production/32878-performing-contracts-during-unrest-in-iraq>
5. Al-karawi, S. N. (2018). *Challenges Facing Construction Contracts In Iraq*. Journal of Engineering and Sustainable Development, 22(4). Retrieved on 23rd February 2020 from: http://jeasd.org/images/2018edition/issue_4/14.pdf
7. Lex Mundi (2003). *Legal Guide to Doing Business in Iraq*. Gide Loyrette Nouel A.A.R.P.I.
8. Blancero, D., & Ellram, L. (1997). *Strategic supplier partnering: A psychological contract perspective*. International Journal of Physical Distribution & Logistics Management, 27(9/10), 616-629.
9. De Dreu, C. K., & McCusker, C. (1997). *Gain-loss frames and cooperation in two-person social dilemmas: A transformational analysis*. Journal of personality and social psychology, 72(5), 1093.
10. Eddleston, K. A., Kidder, D. L., & Litzky, B. E. (2002). *Who's The Boss? Contending With Competing Expectations From Customers And Management*. The Academy of Management Executive, 16(4), 85-95.
11. Ganesan, S. (1994). *Determinants Of Long-Term Orientation In Buyer-Seller Relationships*. the Journal of Marketing, 1-19.
12. Research, & Taobao. (2007-2008). *Report of Online Shopping Development of China*.
13. McAllister, D. J. (1995). *Affect-And Cognition-Based Trust As Foundations For Interpersonal Cooperation In Organizations*. Academy of management journal, 38(1), 24-59.
14. Messick, D. M., & McClintock, C. G. (1968). *Motivational Bases Of Choice In Experimental Games*. Journal of experimental social psychology, 4(1), 1-25.