



THE POWER OF THE JUDGE IN THE WORK OF THE EXPRESS AVOIDANCE CLAUSE - A COMPARATIVE STUDY

Haneen Mahmoud Ibrahim

Iraqi University / Faculty of Law and Political Science
haneen.m.ibrahim@students.iraqia.iq

Assis. Prof. Dr. Safana Sameer Hameed

Iraqi University / Faculty of Law and Political Science
dr.safana.sameer@gmail.com

Article history:	Abstract:
Received: June 14 th 2022 Accepted: July 14 th 2022 Published: August 28 th 2022	An express avoidance clause is a contractual advantage in the hands of the creditor in whose interest the clause was formulated, but at the same time it is a tool with which it fears the possibility of its abuse and endangerment of the interests of the debtor, and if this clause, the validity and legality of which the legislator has acknowledged, is mainly aimed at excluding the role of the judge in the avoidance of the contract, it is nevertheless subject to judicial control, where the latter remains an important role in imposing subsequent control over this clause from the point of view of verifying the conditions of its actions and determining its nature, for the purpose of achieving balance. Between the creditor's interest in ensuring the effectiveness of the clause on the one hand, and the debtor's interest in confronting the creditor's misuse of the clause and the disruption of its use.

Keywords: Authority of the judge, Revoke clause, Explicit.

INTRODUCTION

The contract is the most important means of linking the transactions of individuals, as it is the law of the contractors, it must be established correctly and fulfilling all its elements and conditions in order to achieve the desired interest in line with the principle of good faith in dealing. It may happen that this relationship does not continue as a result of one of the contractors having fulfilled its obligations, which pushes the other contractor to protect its right to dissolve from the corresponding obligation by avoidance of the contract, avoidance is a system that assumes the existence of a contract binding on both sides in which one of the contractors fails to fulfill its obligation, the other requests its avoidance, avoidance of the types of judicial and agreement, avoidance by force of law, judicial avoidance is the avoidance made by the judiciary, while avoidance by force of law means the dissolution and dissolution of the contract by force of law. If it is impossible for the debtor to perform its obligation for a foreign reason in which it has no control, but the avoidance of the agreement in the area of contracts binding on both sides means that the contracting parties have the right to agree at the conclusion of the contract that one of them may avoid the contract if the other party does not perform its obligations arising from this contract, without resorting to the judge to obtain a judicial decision to that effect, and the subject of the express avoidance clause -

avoidance of the agreement - is in particular a practical subject linked to the obligations of the contract economically, socially and freedom Contractual and has importance in regulating contractual relations and dissolving them by legal means without arbitrariness and so that the affected party guarantees adequate protection of its rights, but the matter is not without complications and questions that arise regarding it, the most important of which is what is the concept of an explicit avoidance clause? What is the extent of the judge's discretion in his or her work? In order to answer the problem posed and to take note of the various aspects of the topic, we relied on the comparative analytical approach.

In order to achieve the desired objectives of the corpse, and to reach an answer to the questions raised in the problem that requires research and treatment according to a balanced and consistent proposal, we decided to divide the study into two demands, the first of which dealt with the concept of the explicit avoidance clause, and in the second the extent of the discretion of the judge in the explicit avoidance clause.

THE FIRST REQUIREMENT

The concept of an explicit avoidance clause

First of all, the legal rules governing avoidance provisions are not of public order; therefore, the parties to the contract may agree to include in the contract the beginning of a clause that requires the contract to be



considered avoided and on its own initiative upon breach by a contractor in the performance of its obligation, and for the purpose of identifying the concept of an express avoidance clause, this requirement should be divided into the definition of the express avoidance clause in (section one), its importance and designations in (section two).

Section one: Definition of an express avoidance clause.

The express avoidance clause is defined as "the agreement of the contractors in advance not to resort to the judiciary to decide on the avoidance of the contract in the event that either of them breaches its contractual obligations and this is done by including a repudiated clause according to which the contract is automatically terminated without the need for a provision"(1).

It is also defined as "the agreement of the parties at the time of the conclusion of the contract to consider it avoided in the event that one of them breaches its obligations and thus has the same effects of judicial avoidance and constitutes a restriction on the discretion of the judge"(2).

It was also defined as "the parties' prior agreement that the contract shall be avoided on its own motion without the need for a judgment or without the judge having discretion to do so, when the obligations arising from it have not been fulfilled, and avoidance shall occur only after the debtor's excuses unless the parties expressly agree to be exempt from excuses"(3)

It is clear from these definitions that, although they came in different forms, they are in agreement in substance that an express avoidance clause is an agreement concluded at the time of the conclusion of the contract on the grounds that the contract is considered to be avoided when one of the parties breaches its obligations, and this agreement would take away the discretion of the judge.

Legislation (4) has regulated the provisions of avoidance of the Convention and considered it an exception to the general origin of judicial avoidance, .Article (178) of the Iraqi Civil Law No. (40) of 1951 stipulates that it may be agreed that the contract shall be considered terminated on its own initiative without the need for a judicial ruling when the obligations arising from it are not fulfilled, and this agreement shall not be exempt from excuses unless the contractors expressly agree that it is not necessary), and is offset by the text of article (158) of the Egyptian Civil Law No. (131) for the year (1984). As for the French Civil Law of 1804, it did not contain a general regulation of the express avoidance clause, but it laid the foundation for the principle of avoidance as a whole and gave way to Law (1224) introduced by the decree amending the French Civil law of 2016, which expanded the scope of

avoidance where avoidance occurs on the basis of this article either through the express avoidance clause, avoidance by unilateral will or judicial avoidance, as the text reads as follows (avoidance results either from the application of the avoidance clause or in the case of Failure to perform sufficiently serious about notifying the debtor creditor or of a court decision), Article (1225) came to regulate the provisions of the express avoidance clause if it states (the express avoidance clause specifies the obligations whose failure to perform the contract will cause avoidance, if it is not agreed that the excuses are achieved as soon as the non-performance is not fulfilled, the avoidance is accompanied by a void excuse, the excuses do not produce an effect unless the express avoidance clause is mentioned), we note from the previous texts and specifically the word (may) that it was considered the avoidance of the agreement As for the position of the French legislator after the amendment, he took a different position from the text of article (1184) of the French Civil Law before the amendment, known as the law (Napoleon), which considered the role of the judge - judicial annulment - essential in the rhythm of avoidance (5); however, from the observation of the text of article (1225) of the new amendment, judicial avoidance became one of the options available to the creditor without being in turn fundamental and the best testimony to this is the text of article (1227) as it states (In all cases, avoidance may be requested from the court) and therefore other options are no exceptions to judicial avoidance.

Section two: Importance and designations of the express avoidance clause.

The express avoidance clause is of practical importance as it is considered another way for the creditor other than judicial avoidance through which it can get rid of a contractual relationship that did not achieve the desired purpose of its contract but on the contrary became a threat to its interests, and it is also considered a shield against the debtor as it is considered a moral threat represented by the latter's awareness of the infliction of avoidance by mere breach and the creditor's adherence to it, it represents insurance for the effectiveness of the contract(6).

In addition, the express avoidance clause is of particular importance in the case of declaring bankruptcy of the debtor the merchant after the maturity of the debt, if the buyer has received the sale and has not paid the price despite the maturity and then the months of bankruptcy, the rule in bankruptcy is that the seller does not have to file a suit for avoidance, if the contract includes a condition of avoidance, the seller returned as the owner of the thing sold as a result of the avoidance on his own before the declaration of



bankruptcy, he may recover the sale as an owner despite a month Bankruptcy (7) .

The jurisprudence calls the express avoidance clause several designations, including (legal avoidance) (8) on the grounds that avoidance occurs by force of law and on its own motion as soon as it is not performed and without the need to resort to the judiciary, and it is also called (automatic avoidance) (9) for the same considerations, and an opinion from jurisprudence (10) on these two designations is that they are incorrect because the fact of non-performance cannot be considered a conditional fact on which avoidance of the contract is attached so that if the avoidance of the contract is achieved on its own motion for the creditor and the debtor and cannot Each of them only upholds its results, and then avoidance does not occur at the will of the creditor but is dissolved against its will; therefore, this aspect was called the express avoidance clause (avoidance by one will).

In turn, we do not support these designations because they lead to confusion between the explicit avoidance clause with other types of avoidance; perhaps the factor that led to the difference in designations is the phrase (dissolved on its own) contained in article (178) of the Iraqi Civil Law (11), and because the lesson is in the purposes and meanings and not to words and buildings with the need to clarify and differentiate and not to be satisfied with the abstract term, although we prefer what some of the jurisprudence has said (12). , naming the "express avoidance clause" in order to avoid confusion and mixing and to differentiate between it and the agreement entitled to the contract, which is known as (dismissal), and because each type of avoidance has its own provisions and advantages.

SECOND REQUIREMENT

The extent of the judge's discretion in an express avoidance clause

It may happen that the debtor resorts to the judge denying the creditor's right to avoidance, and conversely the creditor may ask the judge to confirm avoidance in connection with the debtor's dispute with him in the breach incident; Without the need for a court ruling or a search into the fact of non-performance or not, it is of a substantive nature(13), whereas an express avoidance clause occurs only if the creditor adheres to it and declares its desire to avoid the contract(14); If the judge finds that the condition is expressly avoidant, he shall verify the validity of the condition, which should meet the following conditions:

First, there must be an agreement in which the common will of the parties to avoid the contract is directed at the failure of a contractor to perform its obligations in its entirety or specific obligations whose breach entails avoidance of the contract (15), and the

non-performance of the obligation within the scope of the contract and in application of the general rules that require the performance of the contract in its entirety and in the manner that requires good faith and includes within the scope of the contract what is required of it (16). The express avoidance clause must be defined in clear terms that do not give rise to ambiguity and confusion in the future, and the creditor must invoke it by declaring its desire to avoid the contract (17), thus ruling by the French Court of Cassation that "the requirement of avoidance entails by force of law the immediate avoidance of the contract from the time the creditor expresses its will in this regard"(18), and the condition must be valid and not contrary to public order and morals(19).

The will of the contractors is to exclude judicial avoidance where it is not sufficient to provide for the clause unless it is intended to exclude judicial avoidance;

Agreement that the contract should be avoided: Jurists (20) agreed that this agreement is of no particular importance if it is nothing more than an affirmation of the general rule of judicial avoidance; the creditor should make excuses to the debtor and file an action for avoidance, and the discretion of the judge remains wide vis-à-vis this condition as he may order avoidance or not. By any of the terms of the contract, this clause is intended to confirm the general rule of avoidance for non-performance if it is difficult to say with certainty that the parties wanted avoidance and does not prevent the application of the first paragraph of article (177 civil) and does not dispense with resorting to the judiciary to obtain avoidance"(21).

(b) Agreement that the contract shall be avoided on its own: this agreement does not dispense with the filing of an action for avoidance or excuses, but the discretionary power of the judge is disputed; some jurisprudence (22) considers that this agreement takes away the judge's discretion in avoidance and cannot refuse the application for avoidance or grant the debtor a time; his judgment is revealing (23), while others of jurisprudence (24) On the contrary, he argued that this agreement does not take away the discretion of the judge and therefore his judgment is a creation of avoidance, and we favour what this view has argued; based on what the Egyptian Court of Cassation ruled in its decision that "the avoidance clause is not considered explicit in the provision of Article (158) of the Civil Law unless it benefits the termination of the contract on its own motion without the need for a judicial ruling when the obligation is not fulfilled " (25). , and it is clear from this decision that the express avoidance clause does not take away the discretion of the judge unless it explicitly provides for the exclusion of the judge's intervention.



(c) Agreement that the contract shall be avoided on its own motion without the need for a court ruling:

This agreement does not exempt the creditor from the debtor's excuses and the latter has the right to prevent avoidance before or shortly after its excuses, but it dispenses with filing a claim for avoidance unless there is a dispute concerning the fact of non-performance or the terms of the acts of the agreement, then the role of the judge is limited to verifying the fact of the breach and the terms of the acts of the agreement, if a judgment of avoidance is achieved and his judgment is then revealing (26). In this regard, the Federal Court of Cassation ruled that "it may be agreed to avoid the contract without the need for a court ruling after giving excuses for non-performance of the obligation (27).

(d) Agreement that the contract shall be avoided on its own motion without the need for a judgment and excuse: this agreement eliminates excuses and the lifting of the avoidance of

avoidance except in the event of a dispute concerning the fact of breach or the terms of the acts of the agreement, and the role of the judge in this case is limited to verifying this fact and the conditions; Express avoidance makes the contract void without the need for a court ruling"(29). Proceeding from the foregoing, although the express avoidance clause is an act of private justice that enables the creditor to avoid the contract by simply invoking it, and that the role of the judge is limited to a mere interpreter of the will of the parties to the contract, the practical reality is quite different if all that follows from the agreement is to change the nature and timing of the judge's intervention in the avoidance from a previous authority to rhythm it to a subsequent supervisory role of the rhythm of avoidance embodied in the terms of his actions and the control of external circumstances that prevent his actions (30), since such control is indispensable in protecting the debtor, who is often the weak party to the automaticity of the clause, and also protecting the creditor from unfair manoeuvres by the debtor, "no one can do himself justice"(31)

Conclusion

At the conclusion of this study, which dealt with the subject of (the authority of the judge in the work of the express avoidance clause), it can be said that the express avoidance clause plays an important role in the scope of contracts binding on both sides, it is a common and recognized condition in this type of contract because of the advantages it provides to contractors and the benefits it achieves at the level of legal relations and economic exchange. It avoids entering into litigation proceedings and the effort, time and cost they require, and at the same time the express and avoidant clause is flexible, as the parties form it

according to their will and operate it in the manner they consent to in their contractual relations.

However, although the explicit avoidance clause is aimed at excluding the interference of the judiciary and its exercise of its discretion over the penalty of avoidance, the acts of this condition do not always and inevitably remain immune from judicial oversight, as the judge can often disrupt its effect and thus restore his discretion.

Through subsequent control of the express avoidance clause, the judge can also strike a balance between the obligatory avoidance clause, as an expression of the will of the contractors and contractual freedom, on the one hand, and the non-abuse of the contract as a means of expeditiously disposing of the contract in the event of non-performance on the other, in the sense of balancing the creditor's interest in the performance of the avoidance clause and the disposal of the contract, and the debtor's interest in disrupting the effect of that clause.

Finally, the regulation given by our legislator of the explicit and repudiative clause is simple, logical and corresponds to modern trends in contemporary law;

MARGINS:

1. Quoting: Dr. Omar Ali Al-Shamsi, Termination of the Contract, 1st Edition, National Center for Legal Publications, Egypt, 2010, p. 61.
2. Quoting: Dr. Fawaz Saleh, Civil Law, Voluntary Sources of Commitment, Damascus University Press, Syria, 2021, p. 485.
3. Quoting: Dr. Mohamed Hussein Ahmed Mansour, The Explicit Null and Void Clause, New University House for Publishing and Distribution, Egypt, Alexandria, 2003, p. 16.
4. See: Article (245) of the Jordanian Civil Law No. (43) of 1976 in **force**, as for the position of the Vienna Convention on the International Sale of Goods, which prohibited the avoidance of the Convention, narrowed the judicial avoidance and expanded other penalties such as reducing the price and the right of the buyer to refuse the goods.
5. Article (1184) stipulates that "the cancelled clause shall always be assumed in mutual contracts, in the event that one of the parties refrains from performing its undertaking, in which case the contract is not cancelled by judgment, but it is up to the party in respect of which the undertaking has not been executed to choose either to force the other party to implement the agreement when the implementation of the agreement is possible, or to request its cancellation with compensation for malfunction and damage, and the



cancellation must be requested from the judiciary, and the defendant may be granted a period of time depending on the Citing Dallowes, French Civil Law in Arabic, Saint Joseph University, Lebanon, Beirut, 2009, p. 1179

6. See: Dr. Mohammed Hussein Ahmed Mansour, *The Explicit Repudiation Clause*, op. cit., p. 53. As well as Dr. Mohamed Hassan Qassem, *Civil Law of Obligations (Contract)*, Volume II, Al-Halabi Human Rights Publications, Lebanon, Beirut, 2018, p. 353.
7. See: Dr. Ismail Ghanem, *In the General Theory of Obligation, Sources of Commitment*, Abdullah Wahba Library, Egypt, 1966, p. 330. As well as the text of Article (150) of the Law on the Organization of Restructuring, Protective Reconciliation and Bankruptcy of Egypt No. (11) of 2018 as amended on April 28, 2021, which stipulates that "If the buyer goes bankrupt before paying the price and after the goods enter his warehouses or the warehouses of his agent in charge of selling them, the seller may not request the termination of the sale or the recovery of the goods." However, Article (148) of the same law stipulates (If, however, the contract of sale is avoided by virtue of or under a clause in the contract before the judgement is rendered in the month of the buyer's bankruptcy, the seller may recover all or part of the goods in bankruptcy provided that they exist in kind). It should be noted that the Iraqi Civil Law has been unique from both the Egyptian and French Civil Law in giving the contractor or bankruptcy agent the possibility of requesting the avoidance of the contract if he publicizes the bankruptcy of the employer, as stipulated in article (890) thereof (If the bankruptcy of the employer is famous, the contractor or the bankruptcy agent may terminate the contract without either of them having the right to claim compensation for the termination), and this case differs from the case of bankruptcy of the contractor contained in article (65/1/a, b, c) of the General Conditions. For civil engineering works contracting issued by the Ministry of Planning for the year 1975 for contracts (government contracting), if the employer is authorized to withdraw the work once the contractor goes bankrupt or is declared bankrupt or when submitting a bankruptcy application, the withdrawal of the work is different from the termination as it is considered an administrative penalty expected by the administration without resorting to the judiciary and is a penalty related to public order and benefits the in-kind execution of the work. Dr. Mohammed Al-Mamouri, *Administrative Contracts*, Syrian Virtual University Publications, Syria, 2018, pp. 97 ff. In this regard, the Federal Court of Cassation ruled in a decision that "the withdrawal in all cases shall not be considered a termination of the contract or an exemption for the contractor from his contractual obligations, but shall be considered as an execution in kind of the contract", Decision No. (1790/Appellate Body Transferred) issued on 4/9/2014 (unpublished).
8. Quoting: Dr. Abdel Fattah Abdel Baqi, *The Theory of Contract and Individual Will, An In-depth and Comparative Study of Islamic Jurisprudence*, vol. 2, Don Publishing House, Egypt, 1984, p. 630.
9. Quoting: Dr. Suleiman Marks, *Al-Wafi in the Commentary on Civil Law, in Obligations, The Theory of Contract and the Individual Will*, 5th Edition, Human Rights Publications, Al-Sadr Library, Lebanon, Beirut, 2019, p. 381.
10. See: Dr. Abdel Hay Hijazi, *The Extent of the Creditor's Choice Between Execution and Avoidance*, *Journal of Legal and Economic Sciences*, Volume 2, Issue 1, Ain Shams University, Faculty of Law, 1960, pp. 116 ff.
11. Article (178) of the Iraqi Civil Law stipulates that "it may be agreed that the contract shall be deemed to be terminated on its own initiative without the need for a judicial ruling upon non-fulfilment of the obligations arising therefrom, and this agreement shall not exempt from excuses unless the two contractors expressly agree that it is not necessary", corresponding to the text of Article (158) of the Egyptian Civil Law.
12. See: Dr. Mohamed Hassan Qassem, *Civil Law Obligations (Contract)*, op. cit., p. 452.
13. See: Dr. Abdel Majid Al-Hakim, Abdel Baqir Al-Bakri and Mohamed Taha Al-Bashir, *Civil Law and Provisions of Obligation*, vol. 2, Al-Atek Book Industry, Cairo, without a year of publication, p. 162. As well as Dr. Mohammed Hussein Ahmed Mansour, *The Explicit Repudiation Clause*, op. cit., pp. 16-19.
14. See: Dr. Abdel Hay Hijazi, *The Extent of the Creditor's Choice Between Execution and Avoidance*, *Journal of Legal and Economic Sciences*, Volume 1, Issue 2, Ain Shams University, Faculty of Law, 1959, p. 70. As well as Dr. Fawaz Saleh, *Civil Law*, op. cit., p. 485.
15. In this regard, the Egyptian Court of Cassation ruled that "limiting the avoidance of the



agreement to certain obligations does not make it extend to other obligations contained in the contract, and if, first of all, the existence of the express avoidance clause in a contract as such a contract is automatically avoided upon breach of the obligations arising from it does not serve its work in the event of a breach by the debtor of the obligations arising from another contract, even if it is related to the former, unless the intention of the intending parties when the contract is written on acts thereafter The Clause on this Contract and the Obligations Arising from it", Appeal No. (13815 for the year 82 judicial) issued on 26/6/2013, published in the Novelty of the Principles Approved by the Rental Departments, Technical Office, 2013, Egypt, p. 16. It should be noted that the French legislator required the contractors to specify the obligations that would result from the breach of the contract and if this was not done, we would not be faced with an explicit avoidance clause Malaurie (P.) Aynes (L.), *Droit des obligations*. 8 editions. L G D J. A Jour au 1 aout 2016. N 886. P 481.

16. See: Article (150) Iraqi civilian, corresponding to Article (147) Egyptian civilian, and Article (1193) French civilian, as amended.
17. See: Dr. Mohammed Hussein Ahmed Mansour, *The Explicit Avoidance Clause*, op. cit., p. 42. As well as Dr. Abdul Majeed Al-Hakim, *Summary in the Commentary on Civil Law, Sources of Commitment with Comparison with Islamic Jurisprudence*, vol. 1, vol. 2, Al-Ahlia Publishing Company, Iraq, Baghdad, 1963, p. 374.
18. Cassation No. (October 27, 1953) quoting Dr. Abdelhay Hijazi, *The Extent of the Creditor's Choice Between Execution and Avoidance*, *Journal of Legal and Economic Sciences*, Vol. 2, No. 1, *Ibid.*, p. 119.
19. See: Dr. Mohamed Sabri Said, *Clearly Explained Civil Law, General Theory of Obligations, Sources of Obligation (Contract - Single Will)*, Dar El Hoda, Algeria, without year of publication, p. 297.
20. See: Dr. Abdel Razzaq Al-Sanhouri, *Mediator in the Commentary on Civil Law*, vol. 1, Arab Heritage Revival House, Lebanon, Beirut, without a year of publication, p. 716. As well as Dr. Samir Abdel Salam Tanago, *Sources of Commitment*, vol. 1, Al-Wafa Legal Library, Egypt, Alexandria, 2009, p. 194. and d. Said Saad Abdel Salam, *Sources of Civil Commitment*, 1st Edition, Arab Renaissance House, Egypt, Cairo, 2003, p. 289. Dr. Nabil Ibrahim Saad, *The General Theory of*

Obligations Sources of Commitment with the Novelty in the 2016 Amendments to the French Civil Law, New University House, Egypt, Alexandria, 2020, p. 314. Affection. Hamid Mohammed Shabib Al-Jubouri, *The Importance of Commitment to Contracts and their Guarantees of Contractual Rights in accordance with Arab Civil Laws*, 1st Edition, Academics House for Publishing and Distribution, Amman, Jordan, 2015, p. 188.

21. Resolution No. (842/ Appellate Body Transferred) issued on 10/8/2009, (unpublished).
22. See: Dr. Mohammed Hussein Ahmed Mansour, *The Explicit Avoidance Clause*, op. cit., p. 33. This is Dr. Mohamed Hassan Qassem, *Civil Law of Obligations (Contract)*, op. cit., p. 462. Dr. Said Saad Abdel Salam, *Sources of Civil Obligation*, op. cit., p. 289.
23. A declarative or revealing judgment is meant to determine a pre-existing status or legal status without including the obligation of one of the adversaries to perform a certain performance; it aims to demystify the rights and duties that arise as a result of the dispute over their existence or content; these centers exist and list all their consequences before the judgment and the judgment is limited to their affirmation. See: Dr. Abbas Al-Abboudi, *Civil Procedure Law, Civil Procedure Law*, 1st Edition, Dar Al-Sanhouri, Lebanon, Beirut, 2016, p. 252. - The judgement established is "the determination, establishment, amendment or termination of an objective legal status", an example of the establishment of a status legal status (declaration of bankruptcy), the modification of a legal status such as the provision to modify the obligation in the event of (emergency circumstances), and the termination of a legal status such as the judgment (avoidance of the contract). Whether the judgment is declarative or detective, it is effective in the direction of all. See: Dr. Wajdi Ragheb, *The General Theory of Judicial Work in the Law of Procedure*, Knowledge Establishment, Egypt, Alexandria, 1974, p. 282.
24. See: Dr. Abdel Razzaq Al-Sanhouri, *Mediator in the Commentary on Civil Law*, op. cit., p. 717. As well as Dr. Hassan Ali Al-Thanon, *The General Theory of Obligations, Sources of Obligation, Provisions of Obligation, Proof of Commitment*, Freedom House Printing, Iraq, Baghdad, 1976, p. 194. Dr. Ismail Ghanem, *In the General Theory of Obligation*, op. cit., p. 329.



25. Appeal No. (7691 for the year 90 judicial), issued on 27/2/2021, published on the website of the Egyptian Court of Cassation, <https://www.cc.gov.eg> the date of the visit (27/2/2022 at 7:34 pm).
26. See: Dr. Abdul Razzaq Al-Sanhouri, Mediator in the Commentary on Civil Law, op. cit., p. 718. As well as Dr. Mohammed Hussein Ahmed Mansour, The Explicit Repudiation Clause, op. cit., p. 39.
27. Decision No. (602/Third Civil), issued on 15/9/1973, published in the Judicial Bulletin issued by the Technical Office of the Court of Cassation of Iraq, Issue III, Fourth Year, 1973, pp. 109-113.
28. See: Dr. Abdul Razzaq Al-Sanhouri, Mediator in the Commentary on Civil Law, op. cit., p. 719. As well as Dr. Daraa Hammad, The General Theory of Obligation, Section I, Sources of Commitment, Dar Al-Sanhouri, Lebanon, Beirut, 2016, p. 287.
29. Decision No. (834/ Civil Appeals Authority Transferred), issued on 16/5/2011, quoting: Lawyer Duraid Dawood Salman and Jassim Muhammad Ali, Miscellaneous Discriminatory Decisions, Part 1, Sabah Sadiq Haider Al-Anbari Library, Iraq, Baghdad, 2013, pp. 43 et seq.
30. The Egyptian Court of Cassation ruled that "if the agreement that the contract of sale shall be terminated on its own motion without notice or warning when the buyer fails to pay any of the installments of the rest of the price on time would take away all discretion in respect of avoidance, but this is entrusted to the court verifying the availability of the conditions of the termination of the agreement and the need to implement it, since the judge has full control to verify the applicability of the condition to the phrase of the contract and has the power to Verification of the fact that it has monitored the external circumstances that prevent its performance if it finds that the creditor has forfeited its right to seek avoidance by accepting performance in a manner contrary to the will to avoid the contract, or it was the creditor who caused its fault in the debtor's failure to perform its obligation, or the debtor's failure to perform was lawful based on the plea of non-performance in the event that its conditions were met, it must override the condition of avoidance of the agreement and the creditor is left with nothing but to invoke judicial avoidance in accordance with the article 157 Civil", Appeal No. (10335 of 89 judicial year), issued on 7/2/2020, date of visit (23/2/2022 at 3:24 am)
31. Boura (D.A.), Boura (D. A), le jug du contrat et la clause resolutoire.these de doctorat. Universite De Nantes.en droit prive. Le Frace. 2017.p4.