

COURT'S AUTHORITY TO REDRESS DAMAGE FOR BREACH OF THE CONTRACTUAL OBLIGATION IMPLIED IN IRAQI & ENGLISH LAW

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ABSTRACT:

This research examined, through study and comparative analysis, the court's authority to redress the damage resulting from the breach of the implied contractual obligation. The research showed that the implied obligations, although not explicitly stipulated in the contract, are an integral part of it. The study showed that the court has an essential role in revealing these obligations and proving Breach of it, and then assessing the damage and compensating it in a manner consistent with the principles of justice and protecting the interests of contractors the research also showed that the court exercises this authority within certain limits, so that it does not create new obligations, and does not exceed the principle of the authority of will, taking into account the balance of the contractual relationship and not burdening one of the parties with burdens that he did not accept. Based on this, the research concluded the need to enhance judges' understanding of the role of implicit obligations. Its impact on the stability of transactions, and the importance of directing consistent jurisprudence that enshrines the protection of rights arising implicitly in contracts.

Keywords: Implied Contractual Obligation, Breach, Court Authority, Compensation, Damage.

1. INTRODUCTION.

The court's authority to redress damage for breach of an implicit contractual obligation is one of the legal issues in which the judiciary's function is prominent in protecting the contractual balance and ensuring justice between the parties, as implicit obligations, even if they are not explicitly mentioned in the texts of contracts, arise due to the nature of the contractual relationship or in application of the principle of good faith. Accordingly, the court intervenes to uncover these obligations and assess the damages that may result from their breach. Basing this on its discretionary authority aimed at restoring rights to their proper place, without prejudice to the principle of the authority of will or creating obligations that were not agreed upon, the importance of this judicial authority is highlighted in establishing reassurance in contractual transactions and enhancing individuals' confidence in judicial justice.

2. STUDY IMPORTANCE.

The importance of this research is highlighted by its treatment of the issue of the judge's authority to estimate compensation resulting from the damage caused to the creditor as a result of the debtor's breach of the implied contractual obligation, and those obligations that are not explicitly mentioned in the contract but are implicitly understood from its nature or from the requirements of good faith. Therefore, the research gains its importance from It highlights the limits of the judge's authority to assess the existence of the implied obligation, prove the damage, and determine the means of redressing it.

3. STUDY PROBLEM.

The problem of the research is represented in the following main question: - What are the limits of the court's authority to prove the existence of the implied contractual obligation and to redress the damage resulting from its breach, without affecting the principle of the authority of will or creating obligations that were not explicitly agreed upon by the parties?

4. STUDY OBJECTIVES.

This research seeks to achieve the following goals:

1. Clarifying the judicial role in revealing implicit obligations and proving their breach.

2. Analysis of the limits and power of the court to estimate the damage resulting from a breach of an implied obligation.
3. Presenting the means of reparation available before the court.
5. STUDY METHODOLOGY.

The study followed the analytical and comparative approach, where legal texts related to implied contractual obligations were analyzed, and judicial rulings dealing with the court's authority to redress the damage caused by the breach of these obligations were extrapolated. The comparative approach was also used to compare Iraqi and English law, which contributed to providing a comprehensive and deep insight into the topic.

6. Power of the Court to Compensate for the Breach of an Implied Contractual Obligation in Iraqi Law.

In this requirement, we will outline the general rules for assessing compensation for breach of an implied contractual obligation in Iraqi law and the scope of the judge's authority to assess compensation for breach of an implied contractual obligation in two sections as follows:-

6.1. General rules for assessing compensation for breach of implied contractual obligation in Iraqi law.

The general rules require that compensation be estimated at the amount of direct damage, not more or less. There is also another principle that mitigates the principle of complete damage, which is the principle of discretionary authority of the trial court. This principle makes compensation capable of achieving its goal, which is to return the injured person to his condition before the damage occurred. This is what the Iraqi judiciary took into account, including what was stated in the decision of the Federal Court of Cassation of Iraq that (compensation must be proportional to the real damage, which is the period of treatment, and the period of absence from work. If the compensation is excessive, the Court of Cassation may reduce it). (Ibrahim Al-Desouki Abu Al-Lail, 1995)

When assessing compensation, the judge must first ensure that the elements of civil liability, such as fault, damage, causal relationship, and excuses, are met in cases where this is required. The basic idea that the judge must envisage is to return the creditor to the state in which he would have been if the creditor had carried out his obligation. The judge, while estimating compensation, must compensate the creditor for the loss he suffered and the gains he lost. The judge estimates the compensation at an amount of money. However, the compensation may be not cash in some cases (P.S. Atiyah; J. Beatson; D.R. Harris, 1983).

The judge's assessment of compensation is considered one of the objective issues in which he has discretionary authority to limit and redress the damage and choose the best method of compensation, which is confirmed by the text of Article (169) of the Iraqi Civil Code, which stipulates (If compensation is not estimated in the contract or by the text of the law, then the court estimates it.) (Malek Aid Saeed, 2017).

When estimating compensation, the judge verifies two elements: first, that the compensation includes the real loss suffered by the creditor, and second, the gains he missed, which is what is stipulated in Article (207), first paragraph of the Iraqi Civil Code. What is meant by the loss suffered by the creditor is the extent of the direct damage (Abdul Majeed Al-Hakim, Al-Baqi Al-Bakri, Muhammad Taha Al-Bashir, 1980). Which befell the creditor as a result of the debtor's breach of his commitment to the implied contractual terms. Provided that the damage is certain and certain resulting from the damage actually caused due to the complete or partial non-implementation of the implied contractual obligation or the delay in its implementation, and legal benefits may be claimed for the delay in implementing the implied contractual obligation if it is denominated in money, and the damage resulting from the breach of implementation is included in the estimate. The implied contractual obligation is the subsequent loss and lost profit not only due to the loss of the right, but also due to the delay in fulfilling it (Dhafer Habib Jabara, 2016).

Accordingly, the court must calculate the compensation due by the creditor who has breached his implicit contractual obligations in a way that does not result in any loss or enrichment for the injured person, and does not cause any fatigue to the perpetrator of the damage, so it must seek justice in this assessment (Munther Al-Fadl, 2006).

6.2. Scope of the judge's authority to estimate compensation for breach of the implied contractual obligation.

Estimating compensation is one of the matters of fact that falls within the final authority of the court, as it is entrusted with estimating compensation for the damage suffered by the creditor due to his debtor's failure to implement the implicit contractual obligation (Younis Salah al-Din Ali, 2023). However, the

trial judge must adhere to all the conditions and rules that were previously stated. Only expected direct damages are taken into account in calculating compensation, and it is envisaged that the compensation will be complete (Mona Naeem Jaaz, 2019). That is, including its two components, which are real loss and lost profit only those factors and personal circumstances of both parties that are involved in the formation of damage are taken into account. It must be taken into account that the amount that will be awarded as compensation is equivalent to the damage caused to the injured person, not less or more than it. If the injured person has the right to receive full compensation for the damage he suffered, then the perpetrator of the damage has the right to only be obligated to compensate for the damage he caused. Without any increase, in a way that enriches the creditor at the expense of the debtor (Hussein Amer & Abdel Rahim Amer, 1979).

It is left to the judge how to apply the law correctly, and this requires him to carry out two basic tasks: examining and scrutinizing the facts and evidence of the case presented before him for the purpose of verifying what was actually issued by the parties to the dispute, and the second is to explain the rule of law regarding the proven facts and issue a final ruling in the dispute. Moreover, the court's discretionary authority is limited by a set of restrictions, including the impermissibility of assessing compensation before the court. The Iraqi judiciary, led by the Federal Court of Cassation of Iraq, has settled on the impermissibility of the trial court assessing compensation and determining its amount itself because this matter is within the jurisdiction of technical experts regarding compensation (Belhaj Al-Arabi, 2016).

Then, the judge It is considered an expert, but at their discretion Experience is a type of technical assistance that is carried out by people who have competence in technical aspects that judges do not have. The judge may not seek the assistance of experts in this regard except in assessing the facts and material issues, not the legal issues. The latter are based on the trial court and have no relationship with the experts. In this regard, Article (177) of the Evidence Law No. (107) of 1979 stipulates (experience deals with practical and technical matters and other matters necessary to decide the case without legal issues). In this regard, the Federal Court of Cassation of Iraq says in its decision (the court does not reduce the compensation decision estimated by the experts. Rather, it must refer the matter to other experts if it is not convinced by them, and it is not permissible for it to amend the report Not convinced) (Muhammad Shukri Sorour, 2000).

Although estimating compensation for damage resulting from breach of implied contractual obligations is subject to the court's discretionary authority, the court often resorts to seeking the assistance of experts in order to reach the correct estimate of compensation, because the judge cannot be familiar with all areas of life and the customs and customs of society, and therefore the use of Experts make the court's decision more fair to the injured party and the person causing the damage at the same time. Because the purpose of compensation for the damage resulting from the breach of the implicit contractual obligation is essentially limited to reparation for the damage, and this requires that the compensation be proportional to it, so the injured person does not obtain more than his right because that would harm the one who caused the damage and enrich the injured person without justification (Hussein Al-Mumen, 1977).

7. Court's Power to Redress Damages in English Law.

In this requirement, we will explain the general rules for estimating compensation for breach of an implied contractual obligation in English law and the scope of the judge's authority to estimate compensation for breach of an implied contractual obligation in two sections, as follows: -

7.1. General rules for assessing compensation for breach of an implied contractual obligation in English law.

English law requires a causal relationship between breach of contract and damages, meaning that breach of implied contractual obligations is the actual cause of the loss without any breach in the chain of causation. The general rule is that damages are compensable if they are foreseeable as a reasonable result of the breach in accordance with the usual course of events, or, alternatively, instead, If they can reasonably be conceived by the parties as consequences (consequences) on the basis of their knowability at the time of concluding the contract and the usual course of events test excludes compensation for extraordinary losses, such as loss of profits in connection with a particularly profitable contract with third parties that cannot be concluded as a result of the breach, It is known that the basis of compensation is based on the well-known rule in English law, which requires the payment of compensation to the extent that compensates for the damage for which compensation must be made. In English law, this rule is called "fair or equitable compensation." (Muhammad Shukri Sorour, 2000).

Also, the general rule in English law is that compensation is based on the plaintiff's loss and not on the profit made by the defendant, as it is done to compensate for the financial damage suffered by the creditor due to the debtor's breach of his express or implied contractual obligations, and therefore the loss is

defined here as any injury to the plaintiff's person, property or a portion of his wealth as a natural consequence of the breach and is compensated regardless of its cause, whether it is caused by intent or negligence, and is the cause of liability for the breaching contractor, unless he caused it and has a reasonable excuse, exempt cause or license (Hassoun Obaid Hajj, 2014).

7.2. Judge's authority to assess compensation for breach of an implied contractual obligation.

In English law, compensation for profitable error is made by requiring the debtor to relinquish to the creditor any profits obtained by exploiting his fiduciary position, such as when the defendant is an agent for the plaintiff, and the agent breaches the duty to preserve the client's secrets in order to obtain profits resulting from the disclosure of those secrets, and compensation here is based on the rule of full recovery, i.e. recovery of the profit that the official gained in cases of profitable error (William Geldart, 2016).

English law does not recognize the rule that compensation occurs in existence or non-existence with the presence or absence of damage, which means that damage is assumed in English law. For this reason and in all cases of breach, the bona fide contractor is entitled to compensation even if it is purely nominal compensation, and compensation in this sense is not a punishment. For the person who caused the loss, it is determined to compensate for the loss itself, and there is no place for punitive compensation in the law of the contract also, contractual compensation cannot be adapted as a punitive means unless the contracting party's behavior in breach of the contract is obscene (Saadoun Al-Amiri, 1981). There is also no effect of the rule of difficulty in estimating compensation known in English law on the other contracting party's right to compensation. This does not mean that the injured party does not get anything rather, the judge rules for him, after verifying and proving the breach of the contract, an amount of money estimated by the judge according to his conviction, taking into account all the circumstances surrounding the case (Ismat Abdel Majeed, 2006).

One of the judicial applications of this is the case of "Hadley v Baxendale" (1854), as this case is considered one of the most important cases in English law related to contractual breach, in which the court decided that the defendant was responsible for compensating the plaintiff (Hadley) for profit losses, but on the condition that The loss is "expected" by both parties when signing the contract. Although the actual damage (loss of profits) was not precisely expected, the court decided to award compensation (Ibrahim Al-Desouki Abu Al-Lail, 1995).

Likewise, what was stated in the case of "Robinson v Harman" (1848): This case is considered a basic rule in English contract law, as the court ruled that the plaintiff has the right to full compensation for damages resulting from contractual breach, even in the absence of direct material damage. In this case, a contract was cancelled. A lease due to the breach of one of the parties, and the defendant was required to compensate the plaintiff for the damages that resulted from the cancellation. Even if there is no real physical damage (Muhammad Shukri Sorour, 2000).

In previous cases, we find that English law does not require direct physical damage to award damages in cases of breach of contract. Instead, the focus is on the potential or foreseeable damages that may occur as a result of the breach of contract, and compensation can be awarded based on those damages even if they are not directly physical. This contradicts the rule that compensation must be directly related to the existence of physical damage, and shows how English law can recognize intangible or foreseeable damages in cases of breach of contract, regardless of whether the breach is of an express contractual obligation or an implied contractual obligation (William Geldart, 2016).

CONCLUSION

FIRST: RESULTS:

1. The judge has discretion to interpret contracts and derive implied obligations in line with the principle of good faith and protection of the interest of the contracting parties.
2. The study showed that the judge's authority is not limited only to proving the existence of the implied obligation, but rather extends to estimating the extent of the damage and compensating it in a way that ensures the restoration of balance between the two parties to the contractual relationship, taking into account the limits of her discretionary authority and ensuring that there is no deviation from the principle of the authority of will.
3. English law does not require direct material damage as a condition for awarding compensation in cases of contractual breach; it focuses on the potential or expected damages that may result from breach of contract.
4. In English law, compensation may be awarded even if the damage is not directly material, and this is a trend that contradicts the traditional rule that links entitlement to compensation to the presence

of direct material damage, which reflects the openness of English law to recognizing intangible or expected damages, whether the breach relates to an explicit contractual obligation or implicit.

5. In Iraqi civil law, compensation is based on the amount of damage caused to the creditor as a result of the debtor's breach of his implicit contractual obligations and restoring the situation to what it was before the contract that is, compensating the injured party for the resulting damages directly. However, in English law, compensation seeks to compensate the injured party as if the breach had not occurred. By the other party, meaning returning the injured party to the position assumed when executing the contract. We find that the two cases are the same, with differences in variables from Iraqi law and English law.

SECOND: RECOMMENDATIONS:

1. The need to strengthen the texts of civil laws in a way that clarifies the legal framework for implicit contractual obligations.
2. Encouraging courts to adopt a flexible interpretive approach that ensures the protection of contractors' rights without prejudice to freedom of contract.
3. The importance of preparing training courses for judges on dealing with implied contractual obligations and methods for estimating the damage resulting from their breach.
4. The need for the contracting parties to commit themselves to show good faith and to take all necessary precautions.

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