Magazine of Legal and Political Studies

Volume: 11 N°:01- Javier 2025 | **pp230-243**

Contracts Theory: study in Algerian civil code and French civil code

Samia Lagreb *
Faculty of law
Amar Telidji University-Laghouat.
s.lagreb@lagh-univ.dz

Date of submission: 29/06/2024 - Date of acceptance: 31/12/2024 - Date of publication: 05/01/2025

ABSTRACT:

This studwork aims to accentuate the crucial points related to contract theory in civil law in Algerian and Napoleonic code after the reform because of the factors that have affected the last concept of contract in addition to laws reform necessity due to trade and economy extension around the whole world via technology, and giving ultimately some results coupled with the most serious recommendations to Algerian and French legislators.

Key Words: civil law, contracts theory, reform, Algerian code, French code.

Introduction:

Islamic legislation is that religion that came by prophet MOHAMMED, Arabic countries have adopted it as one of civil law legislation sources which is related to conducts, therefore jurists have separated between worships and behaviors because the behaviors are the flexible and acceptable part to progress and giving perspectives. Moreover, Arabic laws have avowed *Islamic legislation principles* and not Islamic legislation due to their generality and accuracy, and they contain public issues according to the huge differences among the jurists' opinions; Imam MALIK, ABOU HANIFA, ACHAFIEE and IBN HANBEL. Each country tends to one of them... Algeria as an independent Arabic country admits the Islamic legislation principles as the second source of legislation whilst it depends on French Napoleonic code as the first source with some modifications.

The French legislator has depended on Napoleonic code for more two centuries then has decided to make some changes for several raisons with concentrating on contract theory, obligation and proof in civil law. Thus he has aimed to clarify it for making it understandable and favorable. *My aim* is looking for origins of contracts and obligations theory in Algerian

* - Author Correspondent:

and French civil laws, and accentuating the most crucial points which they have treated, by extrapolating and analyzing the related texts and researches to find scientific and practical results coupled with some recommendations accordingly.

THE FIRST TOPIC: Sources of contract theory in civil law

In this topic I will convey a brief history of contract and obligation in *first requirement* then I will focus a little on the formation of contract with some practices in *second requirement.*

First Requirement: Brief history of contract and obligation

Islamic law system was been a source of the law in Algeria generally and specifically source of the civil law[1] until the beginning of century 19th whereas French law has supplanted. Excepting the matter of organizing and solving familial conflicts' affairs that France abandoned them to Algerians, and after independence Algerian (1962) the legislator enacted many laws combine between Islamic and Latin systems, Islamic system principles are the second source[2] after legislation in article 01/02 of Algerian civil code as I have mentioned whereas the judge is forced to depend on it in case insufficient texts of legislation. Legal relationships in the civil law combine *financial status* and *personal status* because Algerian legislator has separated between them in solo codes with specific rules.[3] Several Latin legislations in the past have beneficiated to Islamic legislation via west Andalucía country, eastern Ottoman Empire, and south Mediterranean countries.[4] Romanist jurists precisely drafted an obligation theory that Justinian encyclopedias has contributed to boost it (it dominated in classical eras), it has developed in Latin laws such as "Napoleonic code" then it has developed again on the level of spirit and formulation, however the formulation is the fewest emergence.[5] In worldwide are much laws and codifications that set conducts and status of citizens, the institutions of society, and their relationships as: legal system, civil law, common law, religion law, canon law, halakha . . . each country depends on one of them according to its private background, pre-reference, its history and individuals transformations. The science that studies laws separately called "comparative law".

Civil law is widespread due to its influence power, in addition to public legal system that many countries use compare with any law else[6] therefore I will mention some impacted countries to Napoleonic code such as: France, Italy, Spain, Mexico, Portugal, Luxembourg,

[1] Khalil Ghosn, the impact of Islamic jurisprudence on occidental laws, lectures at Abu Bakr al-Siddiq center, Algeria, 2007, p 02.

[2] Art. 1 of Algerian civil Code No. 05-10 in June 20, 2005- official gazette No. 44, p 18 modifies and complements ordinance No. 75-58 in 26 September 1975- official gazette No. 78, Algerian national constitution by presidential order No. 96-438 in December 7th 1996- official gazette No. 76 in December 8th 1996 modified by law No.02-03 in April 10th2002- official gazette No. 25 in April 14th 2002, law No. 08-19 in November 15th 2008- official gazette No. 63 in November 16th 2008, law No. 16-01 in Mars 6th 2016- official gazette No. 14 in Mars 7th 2016, it declared that Islam is the religion of the state and prevents institutions to do an incompatible attitude with Islamic principles (Art. 2).

-The constitutional declaration issued by the supreme council of the armed forces in Egypt in 2011 (Art. 2).

[3] Law No. 84-11 in June 9, 1984 includes Algerian code of family modified and complemented by law No. 05-10.

[4] Abbas Hosni Mohammed, contract in Islamic jurisprudence, 1st edition, Aloka, 1993, p 04.

[5] Tharwat Anis Al-Assiouty, lectures of obligation theory, Oran University, 1977-1978, p 10, mentioned in Belhaj Arabi's book, the general theory of commitment in Algerian civil law, (legal conduct/ contract and unilateral undertaking), 3rd edition, University publications office, Ibn Aknoun, Algeria, 2004, p 27.

[6] Wikipedia, civil law and legal system, 2022, available at www.en.wikipedia.org/w/index.php?title:civil.law.(legal.system) (last accessed 11/01/2022)

Romania, the Netherlands, Brazil, Chile, Belgium, other CPLP countries, Macau, Malta, former Portuguese territories in India (Goa, daman, diu, dadra and nagar haveli), Former colonies include Quebec (Canada) and Louisiana (U.S) and the most Arab countries (e.g. Algeria, Egypt, Tunisia, Lebanon, etc...) when Islamic law was not used in. This transformation and development was and still happen due to ethical, political, sociable and economic factors in society . . . beside philosophical and religious doctrines impact.[1] The obligation theory is extremely crucial because it is the backbone of law whereas it contains the general rules that organize legal relations of public and private laws (commercial, administrative, public international laws. . .) and it contains total principles, thus, it is the main field of legal logic concentrating on *obligation* itself despite its particular subject nature; from generality and abstract to permit the mind to find its opportunity without environmental factors or duration restrictions [2] nevertheless it maybe not constant and conjoint in all countries but it stays distinctive because no legal rules else have like this constancy.[3] *Contract* is one of obligation sources and the most crucial in, therefore I point out it includes three stages: negotiation pre-contract, formation and execution, the article 54 of Algerian civil code stipulates: "contract is an agreement whereby one or more other persons commit themselves to one or more other persons to give, do, or not do something".[4]

Second Requirement: Contract formation with some practices

Algerian civil code involves four books; the 1st book nominated "general provisions", the 2nd "obligations and contracts" and it contains eleven rubrics; the 1st rubric nominated "obligation sources" contains five independent chapters; the 1st chapter nominated "the law", the 2nd is "contract". . . the contract includes three bases: *consent* (offer and acceptance), *object* and *cause* in addition to *formality* in some contracts which require official writing, and the *delivery* base in financial contracts. Any disruption of these bases draws the voidance.[5] The *consent* requires getting rid of defects to get valid: mistake, adulteration, coercion, and opportunism besides, in addition to the capacity. Thence, the principal of *liberty of contract* which is ensured provided that it should be conformed for *public order* and *morals*.[6] As for *the object of contract* we find a conflict among jurists who have separated between "the object of obligation" and "the object of contract"; the first one is the debtor that commits to do, or not do, or give something wherefore the object is the base of obligation not contract whereas the object of contract is this legal operation that contractors agree with achieving it, e.g.: sales contract, lease, donation, loan.. Consequently it has to get particular, existent (in the future), and licit. *Cause* is the purpose that contractor strives to perform, legists have differed about "cause theory"; classical ideology have proclaimed "the direct cause" in the face of modern ones that have depended on "the motive" which motivates to contract, this opinion that Algerian legislator has been accrediting in the articles 97 and 98 of CC.[7]

[1] Belhaj Arabi, Op-Cit, p 27.
[2] Planiol & Ripert, treaty of French civil code, T 6, by Esmein, Paris, 1952, No. 2, mentioned in Belhaj Arabi's book, Ibid, p 25.
[3] (!) (R) Savatier, courses of civil code, T.2, Paris, 1944, p 2, Ibdem.
[4] Art 1101 of French civil code: "The contract is an agreement . . . to give, to do or not to do something".
[5] Contract: definition, bases, types and effects, Arab legal library, 2022, available at https://www.bibliotdroit.com/2019/01/blog-post_25.html (last accessed 18/01/2022)
[6] Abdul Razzaq Al-Sanhouri, the mediator in explaining the new civil law: commitment theory in general-commitment sources, volume 1, 3rd edition, Al-Halabi legal publications, Beirut, 2000, p 149.
[7] See Arts 97 and 98.

In addition to *good faith principle*[1] as one of main principles of law generally, and of contracts especially, starting to the formation phase to define the domain of contract and its explanation, accessing to execution phase (such as contract of labor . .), this principle aims to respect both parties' consent (in multilateral contracts) because nonexistence destabilization of dealings between persons. Good faith and *the principle of ethics* are correspond[2], it is an overly an obscure idea, furthermore some researchers tend to consider it such a justified ignorance about particular incident, the legislator has regulated its legal impact such as ignorance of defect as purchasing an undetermined land in return to the other researchers tend to consider it such a different issue, it has not a relation with either the ignorance or the mistake! . . . Article 107 of C.C has stipulated the necessity of good faith when performing the contract whereas the judge must oblige contractors to execute their lawful undertaking in comparison with French legislator (by Napoleonic code) that obliges the judge to enforce the debtor to pay a compensation as a result of any damage he causes in case he commits a cheat or a blunder in frame of contractual responsibility.[3] in addition to the issue of *the respect of mandatory force of contract* which is such a practice of *the agreement principle,* it is related to the continuation of circumstances at the same position when formatting the contract, but if the economic circumstances change and the implementation becomes unfair or harmful, here, the affected part will abolish the contract or adjust his duties ***(****Exceptional circumstances theory).*

Hence, the other contractor cannot hang on to the implementation because it is unfair and causes an exaggerated pressure...The origin of this theory returns to Islamic jurisprudence "MALIK imam" that Algerian legislator avowed it in article 107/03 of civil code;[4] judge is allowed to intervene to adjust the contract by decreasing the expensively obligation. Islamic jurists have added the possibility of rescission of agreement (If the debtor has needed a prolongation of period or the chance of paying by installments. The jurists of MALIK doctrine has added: *excusability theory* in framework of rescission the contract of tenancy (lease), *pandemics theory* in framework of transplanting and fruitions selling, *theory of exigency and distribution the burdens of losses between the parties* in case shifting the price. And here I shall mention some conditions of this theory; the contract has to be temporary such as lease, contracting and supplying provided that to be available during formation and implementation period, the circumstance has to be general over both contract parties (debtor and creditor) provided that to be inexpectable and impossible to prevent it, or it is expectable but impossible to prevent, and this circumstance makes the obligation expensive, not only impossible to fulfill. The contract does not confine on *private law persons' dealings*! Owing to mutual justice and equality that based on diverse relations; wherefore the contract has get over to *public law persons'* dealings as helped tool because of advantages of this technique to actualize common interests that serve the society,[5] and it must point out that *private contracts*

[1] Nathan Lehiany, legal definition of good faith, Paris, 2022, available at https://www.definition-juridique.fr/bonne-foi/#:~:text=La%20bonne%20foi%20est%20synonyme,obligation%20par%20l'autre%20partie (last accessed 17/01/2022)

[2] Antoine Dolisi, public order, good manners and contract, University of Strasbourg, 2017, Dalloz edition, available at https://www.lepetitjuriste.fr/lordre-public-bonnes-moeurs-contrat/ (last accessed 16/01/2022)

[3] Gerard Picovschi, contractual liability: error in executing the contract, Paris, 2022, available at https://www.avocats-picovschi.com/responsabilite-contractuelle-la-faute-dans-l-execution-du-contrat_article_623.html (last accessed 17/01/2022)

[4] See article 107/03 of Algerian civil code.

[5] General life, what is the contract ?, France, 2020, available at https://www.vie-publique.fr/fiches/276037-quest-ce-quun-

do not confine on private law whereas in public law exists *named contracts,* in particular some administrative contracts such as prerogative contracts, employment contracts . . .[1]

Actually, *the economic development* per se has impacted on contracts whereas it has caused contractual unbalanced, in addition to the *unplanned economy (free)* that has contributed to collapse the liberty of contract which caused a dictation of terms over a weakest contractor by the strongest one such as commodities monopoly, domination on prices, illicit competition, making exemplary contracts . . . etc. further *the principle of relative effect of contract* which just concerns the contractors, not others except who are declared by the law or contractors' will.[2] With reference to *imbalance of rights and duties* of contract parties, the legislator issued some decrees such as Executive decree No. 11-108 in 06th March 2011 determines the maximal price of consumption, maximal profit margins of production and importation, distribution of white sugar and refined alimentary oil by wholesale and the retailed, Whiles labor law No. 90-11 contained the essential and imperative private rules to set the contractual connections, to establish the equilibrium of the parties' will and guiding it toward the public interest.[3] Then I shall refer to *The concept of abuse of the right* that completely have changed because we have become talking about majority's abuse and minority's abuse not only a person abuses his power in the face of another one! . . . Resultantly, it is connected with duty to inform as an obligation to materialize the contractual balance in addition to the good faith issue and forming administrative committees to monitor arbitrary conditions. . etc. And as we know, the other types of contract that have emerged called *electronic contracts* that characterize in particularity, some searchers tend to use the general rules of contract in civil law because it is just a contract between two absents, but the fact is e-contract is such a special contract (the particularity). And as a result of it, e-commerce have emerged then Algerian legislator issued the law No. 18-05[4] and it is avowed by different legislations who have enacted it as databases (messages) as a mean of expressing will as a contract between two present people in the time.[5] In addition to *Electronic Agent* (automated broker) as an implementing program for contracting between a human and device or between two devices without human intervention[6] while protecting e-consumer's will from the supplier.[7]

contrat#:~:text=Le%20contrat%20est%20un%20engagement,ou%20encore%20contrat%20de%20mariage.r (last accessed 17/01/2022)

[1] Gilles J. Guglielmi, public contracts law, Panteon- Assas University, Paris 2, 2022, available at https://www.guglielmi.fr/spip.php?article54&lang=fr (last accessed 17/01/2022)

[2] See decree No. 03-03 relating to competition law modified and complemented, official gazette 2003 No. 43, and law No. 04-02 relating to rules applicable to business practices modified and complemented, official gazette 2004 No. 41, and law No. 09-03 relating to consumer protection and fraud suppression, modified and complemented, official gazette 2009 No. 15.

[3] Executive decree No. 11-108, in March 06, 2011, 2nd Rabie 1432, official gazette 2011 No. 15.

- Law N° 90-11 dated 21 April 1990 relating to labor relations, official gazette "C.C" No. 17 in April 25, 1990.

[4] Law No. 18-05 in May 10th 2018, 24 Shaaban 1439 relating to e-commerce, official gazette 2018 No. 28.

[5] Cert Europe, everything related to electronic contract, Paris, 2022, available at https://www.certeurope.fr/blog/tout-savoir-au-sujet-du-contrat-electronique/ (last accessed 18/01/2022)

[6] Etienne Wery, how to write an e- commerce contract practically?, DA/OR No. 52, 154th edition, bruylant, Bruxelles academy, 2000, p 17, available at https://www.droit-technologie.org/dossiers/comment-rediger-en-pratique-un-contrat-de-commerce-electronique/ (last accessed 17/01/2022)

[7] Gregory Bressolles, François Durrieu, the effect of electronic service quality on satisfaction and loyalty intentions, the difference between customer and visitors, BEM-Bordeaux management school, pp 02-23, available at https://www.afm-marketing.org/git-prix-et-valeur-liste-des-publications.html (last accessed 17/01/2022)

Hence, most laws have intervened to enforce the *commitment to report* on supplier by submitting full information to introduce the product then send it in accordance with the consumer's request and grant him the chance to think before purchasing, stipulating some limitations to avoid defective products and imposing compensation for damages. But the new jurisprudence and French legislator have separated between ordinary consumer and careered consumer; the first one should be compensated anyway as for the second one should be only compensated for personal damage and not for financial damage, whilst provisions of the European directive in 1985 did not take this exception. Algerian legislator enacted the law No. 04-02 of business practices which is connected with article 140 bis of Algerian civil code.[1] Finally, I refer to *sales contract for designs* (Leasing contract) which is characterized by legal characteristics derived from real estate sale contract amended by general rules, starting with the necessity of writing it in a specific form stipulated in Decree No. 13-431 that contained "imposed guarantees" and "imposed insurances" but while these advantages of Leasing contract it still struggles from obscurity of legal's nature *is it a pending contract and the delay is related to paying installments if they are not unpaid or they are paid but the structure is not achieved yet be permissible to rescind the contract?*[2]

THE SECOND TOPIC: French legislator's attempt to fix contract theory

In this topic we will know the steps that French legislator has followed to take decision of reforming the contract and obligations and proof law in **First requirement** then knowing the basis of philosophy of statutory reforms in **Second requirement** and finally turning to bases (pillars) of philosophy of statutory reforms **Third requirement.**

First Requirement: Steps the Decision of reform

French civil law has dominated in the several countries for 200 year whereas it was been a historic reference of *Latin system* and it was known by "Napoleonic code 1804" as I mentioned above, then its numerous rules has become old and cannot get along with the new reality where rules of law owing to economy, technology, trade, the protection of consumer, industry proceedings . . . which have enforced it to review particularly in contract field, obligation theory, and proof provisions.[3] French judiciary has noticed these changes and its exigencies beforehand therefore it has devoted in its sequent rulings the principal of *legal safety* as a pillar of each modern legal system to solve many problems for achieving the following principles: justice and honesty, equilibrium in range of obligation and contractual

[1] Law No. 04-02, Op-Cit.

- Rupert Savy, consumer protection in France, international journal of comparative law, Limoges, A° 1974, pp 591-625, available at https://www.persee.fr/doc/ridc_0035-3337_1974_num_26_3_15568 (last accessed 19/01/2022)
- Article 140 bis of Algerian civil law.
- LRFP (Federal law relating to product liability), what is product liability?, France, 2010, available at https://www.bfu.ch/fr/services/aspects-juridiques/responsabilite-du-fait-des-produits#:~:text=La%20loi%20f%C3%A9d%C3%A9rale%20sur%20la,n'a%20commis%20aucune%20faute (last accessed 18/01/2022)
- LEGIFRANCE, consumption code, available at www.legifrance.gouv.fr (last accessed 18/01/2022)

[2] Executive decree No. 13-431 in December 18th 2013, 15 Safar 1435 defines two exemplars: "the contract relating to the preservation of rights" and "sales contract based on designs for real estate properties", additionally limits on payment of the property subject to the sales contract based on the designs, the amount of the late penalty, its deadlines, and how to pay it.

[3] Guillaume Meunier, overview of reforming contract law, public regime, proof and obligations, 2016, available at https://www.actu-juridique.fr/civil/presentation-generale-de-la-reforme-du-droit-des-contrats-du-regime-general-et-de-la-preuve-des-obligations/ (last accessed 18/01/2022)

relationship generally, thereby it has paved the way to the legislator to decide making a statutory reform that has laid *a report* includes about 332 articles and it has kept at the same time on public context accordingly. French *government* has transferred a reform project of civil law to French senate in November 27th 2013 that has phrased in *urgency style*, nevertheless the senate took about 15 month to advertise law No. 177-2015[1] in February 16th 2015, the article 08th allowed redacting the civil law in only one year by decree with determining the target which is "modernization, simplification, amelioration and affirmation the possibility of reaching to the law for guarantee the execution of the legal safety by some rules".[2]

And because of the mechanism of enacting, the *national assembly* has objected to the *senate's* opinion and it has preferred the decree mechanism but the senate's argument has been the unconstitutionality due to *urgency* case nonexistent! thus, the right mechanism is the ordinary legislation (by parliament), however the national assembly supported the enacting by decree way due to the urgency is existent therefore it has conveyed the issue to *constitutional council* that enacted his decision No. 710 in February 12th 2015 affirming the existence of urgency case (15/710).[3] In February 10th 2016 the legislator enacted the decree N° 2016-131 which is advertised on official gazette in February 11th 2016 (the next day) included new amendments considered as codification of judiciary's verdicts in connection with series of practical solutions in obligation and contract range generally, hence, it is unfair to attribute the *decree advantages* to *French legislator* who did not create it whereas he only devoted the solutions that *the court* created due to the lack of previous provisions particularly in negotiation (pre-contract) and formation phases, in addition to validity of the contract coupled with the terms further in case dispute in performance. Beside the *jurists* who made a great effort more than 10 years ago (professors of law) to introduce various initiatives, projects and proposals, perhaps the most emergent were the project of "Mr. TERRE" in its revised version, and "Mr. CATALA" in his project of the year 2005, despite their different formulate but they are featured in daring and resolution such as repeal the cause concept as a base of contract, rescission the contract by unilateral undertaking, and upgrading proof rulings.[4]

[1] Law No. 177-2015 in February 16th 2015 relating to modernizing and simplifying the law and procedures in the field of justice and internal issues, JORF No. 0040 in February 17th 2015, available at www.legifrance.gouv.fr (last accessed 18/01/2022)

- Marc Mignot, decree of February 10, 2016 includes reforming the contracts law: public regime, proof and obligations, (XII), comment article by article, Strasbourg University, 2016, https://www.actu-juridique.fr/civil/commentaire-article-par-article-de-lordonnance-du-10-fevrier-2016-portant-reforme-du-droit-des-contrats-du-regime-general-et-de-la-preuve-des-obligations-xii/ (last accessed 24/01/2022)

[2] Law No. 2015-177, Op-Cit.

[3] P. CATALA (dir.), pre-project to reform the law of obligations and the law of prescription, available at https://www.justice.gouv.fr/sites/default/files/migrations/portail/art_pix/RAPPORTCATALASEPTEMBRE2005.pdf (last accessed 21/01/2022)

[4] Ibdem

- the project is divided into three books: F. Terre (dir.) to reform contract law, DALLOZ in 2009 to reform the law of civil liability, F. Terre (dir.), DALLOZ in 2001 to reform the general regime of obligations, F. Terre (dir.), DALLOZ in 2013.

- Law No. 2015-177, Op-Cit.
- Art. 3 and 16, I, 3°, ibid.
- C François, introduction: reforming contract law, l'IEJ of Paris 1, available at https://iej.univ-paris1.fr/openacces/reforme-contracts/introduction/con (last accessed 18/01/2022)
- François Terre, Reforming the law of obligations: professor François Terre's point of view, 2016, available at https://actu.dalloz-etudiant.fr/focus-sur/article/reforme-du-droit-des-obligations-le-point-de-

Second Requirement: Basis of philosophy of statutory reforms

A combination of considerations have drawn French legislator to reform which are: retreating French civil law owing to its ancient rulings in the face of several countries that take it as a source of their laws who got over it by making substantial repairs during three-lasted decades as Portugal, the Netherlands, Spain, and Germany . . .[1] in addition to non accompaniment the exigencies of international trade and attracting the foreign investments, thus discouraging investors to subject their contracts to its rulings,[2] and in last two decades the projects of unification the contracts principles on global and European levels increased I mention: *rules of unification the principles of international commerce contracts* that UNIDROIT enacted (international institute of unification the private law principles) in 1994 and completed in 2004, *principles of European contracts law* "PDEC" that LANDO enacted (board of European contracts law) from 1995 to 2003, the *Project of European contracts law* "GANDOLFI" which was published in 2000 included the principles of private law "DSFR" that was introduced officially to European parliament since January 21th 2008. In February 2008 the association of comparative legislation and association of the French jurist Henri Capitant of French law minded friends published their activities to reformulate *the public principles of contracts* "PCC".

French legislator has reregulated the 3rd book of civil law whereas he has repaired the third, fourth and fourth bis rubrics to get more obvious and logic; contractual and mandatory conventions generally, accidental pledges, the responsibility on defective products, then *after reforming they have become:* 3rd rubric: sources of obligation (Arts 1100 - 1303/4), 4th rubric: provisions of obligation (Arts 1304 -1352/09), 4th bis rubric: proof the obligations (Arts 1353 -1386). That relates to the form whereas the object is characterizes; e*mbodiment the principles of the liberty of contract (*Art 1102 ---- everyone has the liberty to contract or not contract), contractual safety and solidarity and brotherhood (---- the good faith is main in entire contract phases),[3] *approximation between French and European laws* (repealing both ideas of subject and cause and replace them by "the content of contract" in Art 1128, and adoption the theory of exceptional circumstances in Art 1195).

Supporting the authority of the judge (his authority has increased in the contract starting to the negotiation stage which has conducted some jurists to consider him fairly has become a part in the contract![4] The judge has to look into good faith of both contractors, controlling the performance of commitment to report pre-contract, supervision any mistake in the law and the abuse of subordination exploitation, the gross terms that spoil the equilibrium of contract, checking for contract's terms when emerging new circumstances at the execution phase, the

vue-du-professeur-francois-terre/h/735bd7c88d4ce52ac16eb9e24f9b2be8.html (last accessed 20/01/2022)

[1] Gabrielle Olivier reforming contract law: why reform? and why by ordinance?, fiche No. 2, 2015, available at https://www.kpratique.fr/Reforme-du-droit-des-contrats-Pourquoi-une-reforme-et-pourquoi-par-ordonnance-fiche-n-2_a365.html (last accessed 20/01/2022)

[2] Ibid

[3] Berenice de Bertier- Lestrade, good faith in French reforming of contract, Toulouse University presses 1, available at https://books.openedition.org/putc/7357?lang=fr (last accessed 21/01/2022)

- Claude Wits, judge and review the contract: a vision in French law, judge and balance the contract, 2018, available at https://www.actu-juridique.fr/civil/le-juge-et-la-revision-du-contrat-vision-du-droit-francais/ (last accessed 28/01/2022)

[4] Cecile Rebiffe, Anne Renard, facing the judge for the contract after reforming the law of obligations, CMS Francis Lefebvre, 2017, available at https://www.lexplicite.fr/juge-contrat-reforme-droit-obligations/ (last accessed 21/01/2022)

determined price in unilateral undertaking in modal contracts). *Conventional invalidity* that eases the invalidity process without need a verdict (Art 1178), r*escission the contract via unilateral undertaking* (creditor has this right provided that notify the debtor and give him a reasonable delay to perform). (Art 1226).

Third requirement: Bases (pillars) of philosophy of statutory reforms

Devoting the legal safety principle that leans on two matters: clarity the legal rule ease to know the included burdens, and the necessity of respect the rules of law by individuals and the state with its authorities . . .[1] and due to rapid evolutions, the legislature has strived to fulfill the following purposes via rephrasing the law to attain flexibility and removal stalemates and disorder the legal safety by:

Confirmation the public principles of contract of: good faith, liberty of contract, consenesceny in contract, determination the rules of e-contracting, arrangement the rules of negotiation phase, rules of offer and acceptance, rules of promise to contract and prefer,[2] s*implification the rules of the validity of contract*: agreement, capacity, representation, and content of contract . . . By detailing the rulings of diverse issues such as the commitment to report, arbitrary condition. . . By enacting some sanctions to punish exploitative part, determination the rules of contract's effects when emerging new circumstances at the execution phase, and issuing rules to regulate the duration of the contract. Additionally, *boosting the mandatory force of contract* (as setting the conventional invalidity, rescission of contract by unilateral undertaking, in addition to e*mphasis the contractual justice* by considering the good faith a general obligation, invalidation the contract owing to economic compulsion and fight arbitrary conditions in compliance contracts.

With reference to the idea of *contract content*[3] as an element in it, it is connected with the conditions that parts have agreed.[4] French legislator has derived it from English legal system and others. The jurists have confused due to giving up on subject and cause! And even the countries that were impacting to previous French law for years; I will mention the most crucial points that are related: *Contractual item* is an agreement about all secondary and substantial issues of contract, and it has to get formulated in intelligible expressions by both parties, it becomes kind of a constitution of this contract beside prospective contracts. *Conditions* are the main element of contractual items that determine the content of the contract, and are considered the substantial parts' obligation in the present or in the future. *English legal system* separates between the confirmation that has drawn the contractor to contract (a motive) and the items of contract;[5] thus, the role of plaintiff is the striving to convince judge that the defendant has breached his duty owing to the agreement was a condition! Wherefore the defendant is forced to fulfill or compensate him, whereas if the

[1] report of the president of the republic regarding to ordinance No. 2016-131 in February 10, 2016 contains a reform of contract law, public regime, obligations and proof, available at https://www.legifrance.gouv.fr/eli/rapport/2016/2/11/JUSC1522466P/jo/texteORF (last accessed 21/01/2022)

[2] Alexandre Rigolet, liberty of contract– Pass the reform, principal rest, Liege University of law journal, volume 2, Bruxelles, 2018, pp 324-330.

[3] See Art.1162, and Arts 1163- 1171.

[4] Alain Lagadec, from interpreting contract terms to contract qualification, thesis for the degree of doctor of law, Toulon University, 2017, pp 127-134.

[5] São Paulo University, representations and terms, Parasail, available at https://edisciplinas.usp.br/pluginfile.php/1887610/mod_resource/content/1/ch-09_representations_and_terms.pdf (last accessed 22/01/2022)

expressions are just a motive, good-intentioned part[1] will litigated upon exploitation his ignorance or inexperience, the judge here must reveal the truth by take into consideration parts' intentions, experience, the importance of expressions, and time.[2]

And here I have to ask a question: *is the idea of cause quite cancelled or only implicit?!* French legislator has talked about "licit contractual item" and "purpose of contract" because there is no relationship between legitimacy and motive to contract, because the last one is a subjective affair linked to individual's intention (inner will), whereas the legitimacy is an objective affair linked to contract effect. *The content* represents both parts interests that they have already concurred to formulate in the form of contractual items in the frame public order, in another meaning; the interests must become licit whence goal and conditions even if the other part does not know this illegitimacy. French legislator did not decide the invalidity as a punishment in case indetermination the quality of requisite performance from the other part but he has offered a guarantee which is determination this performance returning to contract and looking for an index while if it is undefined it will determine according to other indexes, thus we conclude that he makes "quality degree" a secondary item accordingly. In English legal system the contract will void if the financial alternate were trivial or illusionable concurrently French legislator allows abolishing the contract if one contractor abides without reciprocation or it was trivial or illusionable.[3] The French law does not consider the disequilibrium of performances breach the concept of contractual justice but it has give some *exceptions* that consider the contractor who absolves himself of some contractual obligations breacher.

Conclusion:

Ultimately, and after my handling the most main statutory issues of obligation and contract theory in many international legal systems, concentrating on Algeria and France, with reference to some crucial points of English legal system. And after this briefly studwork I conclude by following results:

Most Arabic states depend on Islamic law kind of a major source of their laws including Algeria, and man-made laws besides. Several foreign legislations based on the idea of gathering between financial status and personal status in civil law, whereas Algerian legislator has separated among them and particularized each one of them a specific law. Dominance of Napoleonic code 1804 on several Arabic and occidental laws but because of emergency alterations in many levels; economically, politically, technologically . . . many countries have become forced to upgrade their statutes, furthermore French law who has been late to make a decision of adjusting, then he enacted it under the decree No. 131/2016 in February 10th 2016 after many phases and procedures. French legislator trying to upgrade contract and obligation theories by that decree which has been pretty appropriate but concurrently he has go wrong in many necessary issues as the obscurity, and consequently the necessity of reformulation, in

[1] Steve Allen, towards social value convergence, a comparative study of the basic principles of contract law in the EU and China, Oxford University comparative law forum 5, 2017, available at https://ouclf.law.ox.ac.uk/towards-a-social-value-convergence-a-comparative-study-of-fundamental-principles-of-contract-law-in-the-eu-and-china/#g (last accessed 22/01/2022)

[2] Alain Lagadec, Op-Cit, pp 157-195.

[3] Hossein Abdullah Abdul Redha Al-Kalabi, contract content, legal study between the English legal system & legislative decree of the French civil code, No. 131 in February 10, 2016, academic journal of legal research, volume 17, No. 01, Bagdad, 2018, p 684.

addition to the issues that he has not adjust yet despite the urgency alerting! He has attempted but he has contravened the main studies of (TERRE 2005, CHANCELLERIE 2008, and CATALA 2013), and judiciary's verdicts, furthermore several Arabic nations trying to adjust their laws such as Algeria, Egypt, and Lebanon . . .). And here I **recommend** *the following points:*

striving to unification the laws on a level worldwide by linking between their statutes, and initiative the Arabic judiciary to establish legal principals via its judgments beside the jurists, in addition to striving to institute an overall institution consists of competent and eligible specialists from all Arabic countries to research and form conjoint favorable rulings, particularly in obligations and contracts fields. My purpose of this motion is my realization of the scope of proportionality with entire circumstances, novelties and the time, because the experience may create flexible rulings acceptable to upgrade in any time. Setting seminars and trainings for legists (judges and jurists) to prepare judiciary crew enjoy awareness of information to get along with novelties which e-commerce testifies . . . Furthermore, diving into good faith principle in all contract phases (not only in implementation one) as: the commitment of reporting, enquiry, matching, grant time for reflection, right of retraction to contract . . . by enacting in general rules and embodiment them in objective provisions e.g.: in consumption contracts; good faith principle plays double role: Protection the consumer' satisfaction in the face of careered supplier, discouraging abusive consumer (reckless and negligent) in the face of supplier. (This proposal is directed to the Algerian legislator).

Lastly, I exhort *French legislator* to revisit the principle of respect for fundamental rights and freedoms which are different on draft law, additionally he has omitted good faith principal in avoidance and termination of contract phase! . . . Censorship the new powers of judge by cassation court nevertheless the days will prove that French law modifications will succeed or not, later or sooner accordingly.

List of sources and references:

- Legal texts:

1. The constitutional declaration issued by the supreme council of the armed forces in Egypt in 2011.
2. Law No. 2015-177.
3. Law No. 84-11 in June 9, 1984 includes Algerian code of family modified and complemented by law No. 05-10.
4. Law N° 90-11 dated 21 April 1990 relating to labor relations, official gazette "C.C" No. 17 in April 25th 1990.
5. Algerian civil Code No. 05-10 in June 20, 2005- official gazette No. 44, p 18 modifies and complements ordinance No. 75-58 in 26 September 1975- official gazette No. 78.
6. Law No. 04-02 relating to rules applicable to business practices modified and complemented, official gazette No. 41, 2004.
7. Decree No. 03-03 relating to competition law modified and complemented, official gazette 2003 No. 43.
8. Executive decree No. 11-108 in March 06th 2011, 2nd Rabie 1432, official gazette 2011 No. 15.
9. Law No. 09-03 relating to consumer protection and fraud suppression, modified and complemented, official gazette 2009 No. 15.

10. Law No. 18-05 in May 10th 2018, 24 Shaaban 1439 relating to e-commerce, official gazette 2018 No. 28.
11. Algerian national constitution No. 96-438 in December 7th 1996- official gazette No. 76 in December 8th 1996 modified by law No.02-03 in April 10th2002- official gazette No. 25 in April 14th 2002, law No. 08-19 in November 15th 2008- official gazette No. 63 in November 16th 2008, law No. 16-01 in Mars 6th 2016- official gazette No. 14 in Mars 7th 2016.
12. Executive decree No. 13-431 in December 18th 2013, 15 Safar 1435.

- **Books :**

1. (!) (R) Savatier, courses of civil code, T.2, Paris, 1944.
2. Abbas Hosni Mohammed, contract in Islamic jurisprudence, 1st edition, Aloka, 1993.
3. Abdul Razzaq Al-Sanhouri, the mediator in explaining the new civil law: commitment theory in general- commitment sources, volume 1, 3rd edition, Al-Halabi legal publications, Beirut, 2000.
4. Khalil Ghosn, the impact of Islamic jurisprudence on occidental laws, lectures at Abu Bakr al-Siddiq center, Algeria, 2007.
5. Planiol & Ripert, treaty of French civil code, T 6, by Esmein, Paris, 1952, No. 2, mentioned in Belhaj Arabi's book, the general theory of commitment in Algerian civil law, (legal conduct/ contract and unilateral undertaking), 3rd edition, university publications office, Ibn Aknoun, Algeria, 2004.
6. Tharwat Anis Al-Assiouty, lectures of obligation theory, Oran University, 1977-1978, p 10, mentioned in Belhaj Arabi's book.

- **Journal article :**

1. Alexandre Rigolet, liberty of contract– Pass the reform, principal rest, Liege university of law journal, volume 2, Bruxelles, 2018.
2. Hossein Abdullah Abdul Redha Al-Kalabi, contract content, legal study between the English legal system & legislative decree of the French civil code, No. 131 in February 10, 2016, academic journal of legal research, volume 17, No. 01, Bagdad, 2018.

- **Theses and memories:**

1. Alain Lagadec, from interpreting contract terms to contract qualification, thesis for the degree of doctor of law, Toulon University, 2017.

- **Internet websites:**

1. Antoine Dolisi, public order, good manners and contract, University of Strasbourg, 2017, Dalloz edition, available at https://www.lepetitjuriste.fr/lordre-public-bonnes-moeurs-contrat/ (last accessed 16/01/2022)
2. Berenice de Bertier- Lestrade, good faith in French reforming of contract, Toulouse university presses 1, available at https://books.openedition.org/putc/7357?lang=fr (last accessed 21/01/2022)
3. C François, introduction: reforming contract law, l'IEJ of Paris 1, available at https://iej.univ-paris1.fr/openacces/reforme-contracts/introduction/con (last accessed 18/01/2022)
4. Cecile Rebiffe, Anne Renard, facing the judge for the contract after reforming the law of obligations, CMS Francis Lefebvre, 2017, available at https://www.lexplicite.fr/juge-contrat-reforme-droit-obligations/ (last accessed 21/01/2022)

5. Cert Europe, everything related to electronic contract, Paris, 2022, available at https://www.certeurope.fr/blog/tout-savoir-au-sujet-du-contrat-electronique/ (last accessed 18/01/2022)
6. Claude Wits, judge and review the contract: a vision in French law, judge and balance the contract, 2018, available at https://www.actu-juridique.fr/civil/le-juge-et-la-revision-du-contrat-vision-du-droit-francais/ (last accessed 28/01/2022)
7. Contract: definition, bases, types and effects, Arab legal library, 2022, available at https://www.bibliotdroit.com/2019/01/blog-post_25.html (last accessed 18/01/2022)
8. Etienne Wery, how to write an e- commerce contract practically?, DA/OR No. 52, 154th edition, bruylant, Bruxelles academy, 2000, p 17, available at https://www.droit-technologie.org/dossiers/comment-rediger-en-pratique-un-contrat-de-commerce-electronique/ (last accessed 17/01/2022)
9. François Terre, Reforming the law of obligations: professor François Terre's point of view, 2016, available at https://actu.dalloz-etudiant.fr/focus-sur/article/reforme-du-droit-des-obligations-le-point-de-vue-du-professeur-francois-terre/h/735bd7c88d4ce52ac16eb9e24f9b2be8.html (last accessed 20/01/2022)
10. Gabrielle Olivier reforming contract law: why reform? and why by ordinance?, fiche No. 2, 2015, available at https://www.kpratique.fr/Reforme-du-droit-des-contrats-Pourquoi-une-reforme-et-pourquoi-par-ordonnance-fiche-n-2_a365.html (last accessed 20/01/2022)
11. General life, what is the contract ?, France, 2020, available at https://www.vie-publique.fr/fiches/276037-quest-ce-quun-contrat#:~:text=Le%20contrat%20est%20un%20engagement,ou%20encore%20contrat%20de%20mariage.r (last accessed 17/01/2022)
12. Gerard Picovschi, contractual liability: error in executing the contract, Paris, 2022, available at https://www.avocats-picovschi.com/responsabilite-contractuelle-la-faute-dans-l-execution-du-contrat_article_623.html (last accessed 17/01/2022)
13. Gilles J. Guglielmi, public contracts law, Panteon- Assas university, Paris 2, 2022, available at https://www.guglielmi.fr/spip.php?article54&lang=fr (last accessed 17/01/2022)
14. Gregory Bressolles, François Durrieu, the effect of electronic service quality on satisfaction and loyalty intentions, the difference between customer and visitors, BEM-Bordeaux management school, pp 02-23, available at https://www.afm-marketing.org/git-prix-et-valeur-liste-des-publications.html (last accessed 17/01/2022)
15. Guillaume Meunier, overview of reforming contract law, public regime, proof and obligations, 2016, available at https://www.actu-juridique.fr/civil/presentation-generale-de-la-reforme-du-droit-des-contrats-du-regime-general-et-de-la-preuve-des-obligations/ (last accessed 18/01/2022)
16. Law No. 177-2015 in February 16th 2015 relating to modernizing and simplifying the law and procedures in the field of justice and internal issues, JORF No. 0040 in February 17th 2015, available at www.legifrance.gouv.fr (last accessed 18/01/2022)
17. LEGIFRANCE, consumption code, available at www.legifrance.gouv.fr (last accessed 18/01/2022)
18. LRFP (Federal law relating to product liability), what is product liability?, France, 2010, available at https://www.bfu.ch/fr/services/aspects-juridiques/responsabilite-du-fait-des-

produits#:~:text=La%20loi%20f%C3%A9d%C3%A9rale%20sur%20la,n'a%20commis%20aucune%20faute (last accessed 18/01/2022)

19. Marc Mignot, decree of February 10, 2016 includes reforming the contracts law: public regime, proof and obligations, (XII), comment article by article, Strasbourg university, 2016, https://www.actu-juridique.fr/civil/commentaire-article-par-article-de-lordonnance-du-10-fevrier-2016-portant-reforme-du-droit-des-contrats-du-regime-general-et-de-la-preuve-des-obligations-xii/ (last accessed 24/01/2022)
20. Mustafa Makki, the pre-project to reform the civil liability law after consultation, Dalloz Actu Student, 2017, available at https://actu.dalloz-etudiant.fr/le-billet/article/lavant-projet-de-reforme-du-droit-de-la-responsabilite-civile-apres-consultation-quoi-de-neu/h/912a24208e7a061ff0136f2898b7c027.html (last accessed 21/01/2022)
21. Nathan Lehiany, legal definition of good faith, Paris, 2022, available at https://www.definition-juridique.fr/bonne-foi/#:~:text=La%20bonne%20foi%20est%20synonyme,obligation%20par%20l'autre%20partie (last accessed 17/01/2022)
22. P. CATALA (dir.), pre-project to reform the law of obligations and the law of prescription, available at https://www.justice.gouv.fr/sites/default/files/migrations/portail/art_pix/RAPPORTCATALASEPTEMBRE2005.pdf (last accessed 21/01/2022)
23. Pierre CATALA, Ministry of justice, a report on the pre-project to reform the law of obligations (Arts 1101-1386 of C.C), prescription law (Arts 2234-2281 of C.C), 2005, available at https://medias.vie-publique.fr/data_storage_s3/rapport/pdf/054000622.pdf (last accessed 21/01/2022)
24. report of the president of the republic regarding to ordinance No. 2016-131 in February 10, 2016 contains a reform of contract law, public regime, obligations and proof, available at https://www.legifrance.gouv.fr/eli/rapport/2016/2/11/JUSC1522466P/jo/texteORF (last accessed 21/01/2022)
25. Rupert Savy, consumer protection in France, international journal of comparative law, Limoges, A° 1974, pp 591-625, available at https://www.persee.fr/doc/ridc_0035-3337_1974_num_26_3_15568 (last accessed 19/01/2022)
26. São Paulo university, representations and terms, Parasail, available at https://edisciplinas.usp.br/pluginfile.php/1887610/mod_resource/content/1/ch-09_representations_and_terms.pdf (last accessed 22/01/2022)
27. Steve Allen, towards social value convergence, a comparative study of the basic principles of contract law in the EU and China, Oxford University comparative law forum 5, 2017, available at https://ouclf.law.ox.ac.uk/towards-a-social-value-convergence-a-comparative-study-of-fundamental-principles-of-contract-law-in-the-eu-and-china/#g (last accessed 22/01/2022)
28. Wikipedia, civil law and legal system, 2022, available at www.en.wikipedia.org/w/index.php?title:civil.law.(legal.system) (last accessed 11/01/2022)