

Literary Agreements in Civil Law Comparative Study

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Literary agreements in civil law are one of the most important topics to focus on in studies, because this type of agreement raises many questions about the legal nature of the agreements whether it is a contract or a commitment hanging on the will, but the right opinion is an independent and stand-alone agreement. Agreement below the contract level. This agreement is often fulfilled, so if it is fulfilled in this case, it will have consequences between the two parties, the most important of which is the abstention of the recovery, but among others, it is to prevent the demand for implementation because it lacks the lawsuit.

Key words: *Literary Agreements, Civil Law, Contracts*

Introduction

First: The Essence of the Idea of Research

The pre-contract phase comprises a set of agreements whose nature and content vary and have binding or non-existent force.

The most important of these agreements are literary agreements known in English law as Gentlemen's agreements, known in European laws as honor agreements.

The motives for this type of agreement are that the parties or some of them do not wish to abide by the law for a reason related to their positions or the circumstances of their activity, so they resort to the method of literary agreement instead of the contractual agreement.

In order not to include the scope of the law and its survival within the rules of literature and morality, the confusion has been raised between them and the natural obligation that lacks legal compulsion to avoid the element of responsibility and therefore one party cannot implement its obligation without the other party being able to resort to authority The law to

force him to implement, as well as the overlap between him and the obligation that is suspended on the will, because the literary agreements are subject to the conscience of the person and his will, if he wishes, he will implement it, and if he wishes, he will refrain from implementing them without responsibility for them.

If the literary agreements have not had a tangible impact on the world of law and their survival in the scope of conscience is an answer to the lack of claims in which the ability of these agreements to be implemented by force in kind or in the manner of compensation is raised, yet the civil judiciary is not without provisions that raise the susceptibility of obligations. Arising from these agreements for forced execution.

Therefore, if the literary agreements do not contain a civil obligation, they remain outside the law and cannot be bound by the law, but if the literary agreement contains a specific obligation, it will be binding and can be enforced in force.

Second: The Problem of the Study

The problem with the subject of the research is the lack of legislative provisions governing or regulating literary agreements in Iraqi civil law, which raises the question of the legal texts to which they apply.

Fourth: The Importance of the Study and its Objectives

The importance of the study comes from the absence of an integrated legal study on literary agreements in terms of their concept, conditions, nature, legal value and provisions.

As for the objective of the study, it aims to establish a legal system of literary agreements because they are very much involved in working life, because there are detailed legal provisions relating to literary agreements, including determining their nature and legal value and the impact of their fulfilment between the parties of this type of agreements. Moreover, its effect on the debtor's creditors.

Sixth: Methodology of the Study

A clear study of the legal regulation of literary agreements in civil law requires us to adopt a comparative inductive approach by extrapolating the provisions of the Iraqi Civil Code in order to find out the details of the matter.

Our inductive approach not only stands at the laws, but we will also seek to review the opinions of Egyptian jurists.

The First Research

Resume Are Literary Agreements

To determine what literary agreements are in civil law, they must be understood, as well as the characteristics of these types of agreements within the scope of civil law.

Literary agreements in nature are mixed with some legal actions that approach them in some aspects and differ in others.

In the light of the above, we will divide this research into two demands, in the first demand we will deal with the concept of literary agreements, and the second requirement will be devoted to the study of the legal nature of literary agreements.

The First Requirement

Concept of Literary Agreements

It requires us to define the concept of literary agreements, to define the definition of this type of agreements, and to show their characteristics that are distinct from other legal agreements and procedures,

Therefore, we will divide this requirement into two branches, and in the first section, we will deal with the definition of literary agreements, while the second section will address the characteristics of literary agreements.

The First Branch

Definition of Literary Agreements

Iraqi civil law and the laws in question are devoid of definition of literary agreements, in order to count the existence of a legal organization and the statement of their rulings, so the legal jurisprudence to define the literary agreements has defined it as: the agreements that the parties wanted to imprison their effects in a personal internal circle, which is The circle of conscience and not to take it out to the objective external circle, which is the circle of law (Al-Jamal, 2001.). Another opinion also defined them as agreements that include action or refraining from action without this obligation being enforceable by the courts and that the binding force of the agreement stems from the conscience of the parties to the agreement and their honor is still subject to judicial procedures (Al-Awji, 2007).

It is clear from the foregoing that the literary agreements are referenced to the human conscience and the principle of its mandatory power is the honor of both parties, because it is

outside the scope of the law with its legislative, executive and judicial tools and therefore it is below the contract and does not file a lawsuit.

It is known that these agreements take place between the owners of trades, professions or traders, which necessitates them to approach a certain behavior in the practice of their trade or profession, and examples of these agreements are the agreement between traders not to reduce prices to a certain extent, resulting in a loss to the other competitor or not to raise the prices of raw materials that Depends on the competitor (Al-Awji, 2007).

The Second Branch

Characteristics of Literary Agreements

Literary agreements are characterized by several characteristics, the most important of which are the following:

First: Literary agreements are consensual agreements: the consensual agreements are sufficient to conclude the agreement of the two parties without emptying the satisfaction in a certain form, so nothing else is required; the important thing is to have an explicit or implicit expression for the conclusion of the literary agreements (Abdul Majid Al-Hakim, 2015).

Therefore, it is enough for the agreements to express the will of the parties without emptying satisfaction in a certain form such as writing or other or believing it from an official point of view such as notary or what is same, and if there is writing it is for proof and not for the convening of literary agreements

Second: Literary agreements of period agreements: period agreements are agreements in which time is an essential element, and what is stated can only be implemented with time (Hijazi, 1972).

Therefore, literary agreements are time-long agreements for the entry of time, for example the literary agreement between two traders not to raise prices within a certain percentage.

Third: Literary Agreements Are Subject to the Rules of Ethics

The source of this rule is the human conscience, as opposed to the legal rule that includes the element of punishment as well as the source of this rule is the human being through the legislature.

Therefore, the violation of the moral rule does not take a penalty in the legal sense and does not bring a lawsuit, but the judiciary, but the punishment is an indignation that falls on the person by society (Hijazi, 1972).

Therefore, literary agreements fall within the scope of the rules of morality and human conscience, the creditor does not have a lawsuit and cannot ask the other party to carry out an obligation in force, unlike agreements that are subject to legal rules. The creditor can file a lawsuit to claim the implementation of the obligation in its inability.

After the definition of literary agreements and the statement of their characteristics, it is necessary to determine their legal nature.

The Second Requirement

The Legal Nature of Literary Agreements

Jurisprudence in determining the legal nature of literary agreements in civil law has gone to different opinions, such as:

Some have argued that literary agreements are a commitment that is attached to the will (Al-Jamal, 2001.) and knows the obligation that is suspended on the will is the obligation that is left to the will of one or both parties without being responsible for not implementing.

Therefore, according to this opinion, the literary agreements are a commitment that is dependent on will or insinuation if the parties want to implement it and if it wants not to implement it without being responsible for not implementing the agreements that the other party has committed to.

However, it is clear that the parties within the scope of the literary agreements did not leave the obligation and the non-commitment to their pure will or will, but it is only that the parties agreed to remove their agreement from the circle of law and subject it to the authority of morality, conscience and morality.

Therefore, the will of the parties has expressed their firm commitment to implementing the commitments contained in the literary agreements, regardless of the absence of a penalty for non-implementation and not the suspension of implementation on the will of both parties. (Mustafa Mohammed Al-Jamal, 2001)

Another trend was that literary agreements were only a natural obligation and defined a natural obligation was the obligation in which the element of indebtedness was available without liability and the creditor could not force the debtor to fulfil its obligation through civil litigation.

It is clear from the previous definition of a natural obligation that it is similar to literary agreements, since there is no lawsuit in which the creditor can force the debtor to fulfil its obligation, and the debtor does not have a responsibility for non-implementation.

However, this view is considered that the natural obligation differs from the literary agreements in terms of the source of each, that the natural obligation is issued by the law, as in the obligation that expired the statute of limitations, in which the element of indebtedness is available without the element of responsibility, but the literary agreements are the source of the will of the parties without Based on the text of the law (Al-Jamal, 2001.).

In the light of the above and despite the trends that have gone to adapt the literary agreements as a commitment that is dependent on the will of the parties or a natural commitment, the literary agreements remain of their own nature.

Literary agreements are agreements that are final, are the source of the will of the parties and are locked in the rules of morality, morality and conscience and outside the scope of the law. Therefore, it differs from the obligation of will and natural commitment and has its own nature.

After we have finished defining the concept of literary agreements in terms of their definition and characteristics, as well as the legal nature of the literary agreements, the subject of the fulfillment of literary agreements must be addressed as they raise many problems, and this is what remains the subject of our study in the second subject.

The Second Research

The Effect of Fulfilling the Literary Agreements

After we have shown the concept of literary agreements and their legal nature we mentioned that they have a special nature must be studied to meet the natural agreements, this type of agreement, although subject to the scope of morality and conscience and not arranging responsibility for not fulfilling them, now that the parties are often careful Their reputation and honor are therefore fulfilled, and therefore if they are fulfilled it raises a lot of problems and questions about the effects of loyalty.

Therefore, the nature of the effects of fulfilling the literary agreements must be addressed. In the light of the above, we will divide this issue into two demands, we will address the first demand after the meeting between the parties of the literary agreements, and the second requirement will be allocated to the effects of the fulfillment of the agreements for creditors.

The first requirement

The Effect of Fulfilling the Literary Agreements between the Two Parties

The fulfilment of the literary agreements has important implications between the parties, the most important of which is the prevention of recovery, as well as the fulfilment of the disease of death and partial fulfilment, and therefore we will divide this requirement into the following points:

First: Withholding of Recovery

If the parties to the literary agreements or one of them fulfill their obligations under the agreements in question, he shall refrain from recovery because he has carried out what is required by their will and therefore cannot claim his return.

The reason for preventing restitution in literary agreements is because the fulfilment has been signed on something that is due in disclaimer and committed to under the literary agreement and that all that the moral obligation differs from other obligations is that its parties are committed to fulfilling a moral obligation and as the obligations remain to be payable under The text of the law (Al-Hakim, 2015) , in addition to the recovery, the deceased shall be made wrong and therefore if he is not in a mistake and if the parties to the literary agreements knowingly fulfill the obligation, they are forbidden to recover.

Thus, it is clear that literary agreements differ from the gift that the law allows the donor to return from the gift for certain reasons, which shows that fulfilment in literary agreements is a legal act between benefit and harm.

Therefore, the eligibility required meeting the literary agreements as a revolving act between benefit and harm (Defines the conduct between benefit and damage is the conduct that is likely to profit and lose) ,therefore it is stipulated that he should be of an adult age (See article (106) of the Iraqi Civil Code, which stipulates that the age of majority is considered to be an adult of the age of 18) and if he is deficient in eligibility, it is valid provided that it is not damaged to meet (Al-Sanhouri).

Second: Fulfillment in the Disease of Death and Partial Fulfilment

We mentioned earlier that literary agreements are considered to be the actions of a circle between benefit and harm, i.e. an act of compensation, and therefore the description of the donation is not qualified.

If the place of literary agreements is fulfilled in the disease of death, then the ruling of the will shall not be valid and is not subject to the authorization of anyone, and it is not permissible to recover all of this provided that it does not harm other creditors, and this is stipulated in article (378) of the Iraqi Civil Code, which states that "it is not valid for the debtor to One of his fines for his death will be fulfilled if such loyalty harms the rest of the creditors (Al-Hakim, 2015).

It is understood from this text that fulfilling the place of literary agreements in the disease of death is considered correct and is not subject to anything else provided that it does not harm other creditors, since most literary agreements result in the scope of trade and such as not raising prices to a certain extent in order to do not harm competitors.

As for the partial fulfilment of the place of literary agreements, we have previously shown that this type of agreement is subject to moral, moral and conscientious rules and therefore the creditor cannot force the debtor to implement them.

The fulfilment of part of the place of literary agreements does not change its nature and remains subject to moral literature and the creditor cannot force it to carry out the rest of its place and therefore applies to the part that applies to all (Meguid, 2015).

With regard to the guarantee of maturity in the fulfilment of the original in the obligations if they are due after they are fulfilled, then the person who is entitled to the thing under his hand can return the claim of entitlement to the deceased and force him to guarantee the benefit by replacing it with something else or monetary compensation (Al-Fadhli).

However, the issue of literary agreements is different, so if it is worth what has been fulfilled by one of the parties to the literary agreements, then it does not guarantee the benefit, especially if the pledge is free of charge, in this case does not guarantee the benefit.

All of the above we have studied in the relationship between the parties to the literary agreements and it remains for us to show the impact of the loyalty for the creditors and this is what we will address in the next demand.

The Second Requirement

The Effect of Loyalty among the Creditors of the Deceased

It is true that literary agreements come out of the scope of the legal text and interfere in the field of morality, conscience and literature, but fulfilling them affects the financial liability of the deceased, which reduces the positive elements in his financial capacity on which creditors

depend for their right and thus raises the question whether loyalty With literary agreements, it is worth comparing literary agreements with regard to the compulsion to fulfil their place.

If the payment of the place of the literary agreement is fulfilled on the basis of collusion or fraud between the debtor and the creditor, it is detrimental to the other creditors, then it is not contrary to the conduct of their right, and it is stipulated that the creditor who has been issued to dispose of this fraud is aware of this fraud, and one of the things that can indicate fraud and the knowledge of the creditor of the literary agreements The debtor cheated on the fact that the debtor's moral agreements are insolvent, and this is stipulated in article (264/1) of the Iraqi Civil Code, which states, "1- If the debtor acts as a mosquito, it is necessary that his conduct does not apply to the creditor' right, that such conduct shall involve fraud from the debtor and that the one who issued the conduct shall be informed. By this fraud and merely knowing that the debtor is insolvent enough to borrow the fraud from him, as the knowledge of those who were issued to act on the debtor's fraud is assumed if he or he has known that the debtor is insolvent (Meguid, 2015)."

This is if the conduct is a netting, but if the place of the literary agreements is a donation, then creditors can appeal the act and it is not enforceable against them, as stipulated in article (264/2) of the Iraqi Civil Code, which states that "2- If the disposal is a donation, it shall not be executed against the creditor, even if the person who issued the donation is of good faith, even if it is established that the debtor did not commit fraud."

Therefore, the effect of the fulfilment of the literary agreements for others is that creditors can challenge the claim that the debtor's actions do not take effect against them.

It should be noted that the literary agreements do not have a lawsuit for the parties to the agreements, but for others from the agreements as creditors of the debtor of the literary agreements can challenge them by the case of non-enforcement of the actions, as the implementation of the agreements is a legal act with the debtor's money, which lacks elements of Financial liability.

However, this challenge to literary agreements under the non-enforcement claim requires certain conditions to be met until it is heard before the competent court.

It is stipulated that the right of the creditor must be entitled to perform, and if the creditor's right is not due to be performed, he cannot initiate such a claim, and this is what is stipulated in article (263) of the Iraqi Civil Code, which states that "every creditor may have his right to be performed....) (Ahmed, 2018).

It also requires that the creditor's right to the debtor in the debtor acting in literary agreements previously because of the impugned conduct in relation to the terms relating to the right of the creditor to comply with the literary agreements.

Moreover, one of the conditions for challenging the literary agreements relating to fulfillment must be harmful to the appellant creditor and this damage shall be achieved if such fulfillment leads to the debtor's insolvency of literary agreements or an increase in the insolvency of the debtor, as stipulated in article (263) of the Iraqi Civil Code, which states that "it is permissible. Each creditor who has been entitled to perform and issued by a debtor who has acted harmfully must request that such conduct not be enforced if the conduct has diminished the debtor's rights or increased its obligations and resulted in the debtor's insolvency or increased insolvency..." (Hijazi, 1950) In addition, it is stipulated that the fulfillment of literary agreements should be poor for the debtor, so if it is harmful to the creditor but not impoverished the debtor, he cannot challenge the fulfillment (Al-Hakim, Summary in The Explanation of Civil Law, C1, Sources of Commitment, 2007).

If these conditions are met, then creditors can appeal the implementation of the literary agreements and refer to the debtor for all the damages it has caused.

At the end of the research, we must see our findings.

The Conclusion

After we have completed the study of our subject (literary agreements in civil law), it is clear that literary agreements are agreements that create final obligations and that each matter is not subject to the scope of the law but is within the scope of moral rules, literature and conscience.

The literary agreements also have their own nature and differ from the pending obligation to be implemented at the will of the parties and also differ from the natural obligation in that it is considered an agreement that produces final obligations that must be implemented and not that it lacks the cause and the compulsion.

Although liability is not arranged if literary agreements are not fulfilled and the debtor cannot be forced to implement, therefore, if it is fulfilled, it has implications between the parties to the literary agreements as well as the impact on the creditors.

The fulfillment of the place of literary agreements has implications between its parties, and these effects are that the recovery will be withheld in the event of implementation, because the debtor of the literary agreements in the event of implementation has fulfilled something



that is due to him and a duty of disclaimer, even if it is not supported by civil liability in the event of his failure.

Moreover, fulfilling the place of literary agreements in the disease of death is valid if it does not cause damage to creditors and the provisions of the will cannot be applied to it in the event of fulfillment in the disease of death, because the debtor's illness does not change the nature of the conduct (fulfilling the literary agreements) as it is often netting and does not transfer it. To the actions of his donations.

The fulfilment of the literary agreements also has implications for creditors, so creditors can challenge the fulfilment of the literary agreements if such loyalty results in damage to creditors or the disposal is issued on the basis of fraud by the debtor and the disposal is known to be fraud, if the literary agreement contains the transaction. If it contains the meaning of the donation, it is merely damage; it may be appealed, even if it is not based on fraud.



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