



ROOTING THE CONCEPT OF CONTRACT ECONOMY IN FRENCH JURISPRUDENCE AND JUDICIARY: A COMPARATIVE ANALYTICAL STUDY

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Abstract: *The process of tracing the formation of contract economy as a legal concept entails searching for it in jurisprudence and the court. This notion is not new to them, and it is observed that it first arose in the Anglo-Saxon tradition. As for French jurisprudence, it lagged, unlike the court, which had a long history with this notion. It was used by the Paris Court of Appeal in the nineteenth century, which saw it as revealing the parties' same intent. As a prerequisite for adopting the theory of emergencies, it was also embraced by the French State Council when it evaluated the imbalance in the contract economy resulting from unanticipated unusual events. It was also used by the administrative judiciary to check the validity of altering administrative contracts to ensure that these adjustments do not impede the contract's economy or alter its purpose. In 1996, however, it started to expand in the Latin school, which was represented by French law. From a legal perspective, it was exposed in publications and research, and the phrase continued to be used afterward.*

Keywords: *Contract economy, flexible concepts, the content of the contract, inflation in legal concepts, contractual justice.*

1. Introduction

In the legal context, the term "economics of the contract" included a wide range of ideas. The term's etymological origins suggest an emphasis on the contract's monetary value or its viability as a business venture. This means that the economic meanings and realities of the contractual interactions are not denied, but rather read into the contract to achieve a condition of contractual equilibrium. Yet they still just refer to the economy. This should not be the situation legally. The above suggests that the fields of law and economics maintain their autonomy and develop an adaptively equitable and balanced connection, with the proviso that the meaning of the economic contract economy varies from the meaning of the legal contract economy. From this vantage point, investigations and research were conducted to assess the contract economy from a legal standpoint, and it was found, upon closer inspection and in the process of attempting a definition, that the notion is obscure and humiliating. The focus of the research is the concept of contract economy in French jurisprudence, as well as the reasons why this concept was accepted by French jurisprudence. These reasons include the concept's exceptional solutions and its positive aspects, which are exemplified by the concept's high flexibility in addressing the imbalance that afflicts the contract across all of its elements and stages. It was multidisciplinary in that the idea could accommodate several visual representations, and it was so throughout the whole contracting process. Due to its inherent fuzziness and lack of clarity, the study's central challenge is dictated by the dialectic between identifying the notion of the contract economy and the amount to which it is independent of conventional conceptions. As a result, accepting this idea allows for the creation of conceptual inflation and the compromise of the principle of predictability necessary for the emergence of new unexpected solutions to positions in contract theory. As a consequence, judges can intervene as a neutral third party in contractual relationships, since their discretionary powers are



expanded to deal with the issue of indeterminacy and the high degree of flexibility in general. The study's purview extends to French court judgments and jurisprudential views on the topic at hand, with the potential for cross-reference to relevant French civil law statutes and their equivalents in Iraqi law.

2. Manifestations Of Contract Economy In French Jurisprudence

The economics of the contract in the jurisprudential aspect took multiple meanings and concepts. The linguistic meaning emerging from the term means the economic benefit or feasibility of the contract. Thus, the contract is read in terms of its economic benefit and feasibility to create a state of contractual balance, while not denying these economic meanings and their existence within the contractual relations. However, they remain purely economic terms. In law, this should not be the case. According to the foregoing, law and economics as sciences remain independent of each other, and the relationship between them is adapted to be equal and balanced, with the caveat that the meaning of the economic contract economy differs from the meaning of the legal contract economy. From this point of view, research and studies were carried out to evaluate the contract economy from a legal perspective, and when scrutinizing this concept and trying to define it, it is noted that it is an elusive and embarrassing concept.

Because this concept is characterized by flexibility and ease of movement, and it has many manifestations in the general theory of the contract, and it works according to a wide area of the contract spaces and in a variegated manner, and it moves from one stage to another of its stages. You will find it sometimes in the stage of formation and another in the stage of implementation, and sometimes you will find it in the stage of expiration of the contract, this is different from its multiple functions, of course (Shandi, Amayreh, & Ismail, 2020). To reach the jurisprudential appearance of the contract economy, this needed to be done by following the aspects of the contract economy in French jurisprudence. These aspects have been linked by French jurisprudence as well as the judiciary with legal concepts that are almost compatible with the concept of contract economy, such as cause, object, contractual (binding) minimum, legitimate expectation, contractual harmony, and substantial commitment. It has also been linked to concepts that are almost contradictory to it, such as arbitrary conditions, economic coercion, and penal clauses. All of these manifestations can be expressed as an implicit emergence of the economy of the contract, that is, of meaning. At a later stage, the concept of contract economy was declared as a term. This will be discussed in the following two paragraphs:

2.1. Implicit Emergence of Contract Economy

Much of the French jurisprudence used the contract economy and meant the content or conditions of the contract (Tamdoğan, 2006). By this method, he means concepts that are either compatible with him in the sense of verifying his existence and referring to him or that they are in opposition to him and contradict him, the first of which can be considered positive manifestations of the concept of contract economy. The second is what is considered a negative manifestation of it, and there is what can be an intermediate state between this and that, examples of the first group are the cause, the place, and the essential obligation (Berkelaar, 2014). Examples of the second are economic coercion, arbitrary conditions, and the penal clause, which can be combined with the term economic abuse.

Some legal jurisprudence called the contract economy and meant by it the reason and purpose of the contract, given that the reason and according to the traditional concept has two meanings. The reason in the subjective sense is the motive for the contract, and the reason in the objective sense is the direct purpose of the contract (Rousseau, 1989). The subjective reason is personal and is subject to the will of the parties. Therefore, the concept of personal reason is not commensurate with the concept of contract



economy and cannot be synonymous with it. Yes, it is commensurate with defining it as an envisaged economic value, but it is not commensurate with the concept of contract economy. The concept of contract economy is a concept that is abstract from the will of the parties, that is, in the sense that the will of the parties cannot control it. The most important difference is that the cause is related to the formation of the contract, while the economy of the contract arises with its formation and continues with it and becomes a tool for evaluating it. In other words, the contract economy is an essential objective reference standard for the interpretation, analysis, and implementation of the contract, and therefore the contract economy does not always have to be the exchange. It is not necessarily permanent economic profit or mutual benefit, it is broader than the group of motives that are no longer necessary to share today (Mackintosh, 2000). According to the meaning that was added to the reason, whether in the subjective or objective sense (Mohammed, 2020).

Another aspect of jurisprudence went to make the concept of the contract economy another expression of the object or subject of the contract, and the subject of the contract is the obligations arising from the agreement of the two wills, while the contract economy is tangible actions to implement a material process (Guarnieri, Cerqueira-Streit, & Batista, 2020). The economy of the contract cannot be reversed in its place, as it is a different concept from the legal obligations associated with the place (De Giovanni, 2022). The difference is that the subject of the contract is legal obligations arising from the agreement of the will of the parties to the contract (sale, transfer, lease, etc.), while the economy of the contract is supposed to be tangible executive actions by the parties (transfer of ownership of the thing sold, transfer of a person or thing, provision of the thing in return for paying the price, etc.). The solution is also commensurate with defining the contract economy or a related criterion in understanding the contract economy in the formative stage, but it remains insufficient because the contract economy is a fundamental and tangible process essentially (Vargo & Lusch, 2004).

As for the fundamental obligation, is one of the modern concepts used in some solutions related to the contractual relationship (Karmarkar & Apte, 2007). The idea of this commitment revolves around reaching the basic clauses in the contract, on which the contract depends whether or not it exists, by analyzing the contract through its most important clauses to the least important clauses, which is another expression of the distinguished commitment in the contract. If the obligation loses one of its basic elements, the contract loses its legal qualification. This distinctive obligation is related to the economy of the contract and is with it in terms of meaning, given that this obligation is compatible with the economic function of the contract, as well as its economic value. Also, the economy of the contract here is a criterion for distinguishing or defining the items that fall within its scope from the items that are outside it, and therefore it refers or guides to the items associated with the essential obligations that pertain to the distinguished performance of the contract as in international contracts (Raustiala, 2005). This performance is present in every contract and it is an essential obligation whose existence is linked to the legal conditioning of the contract, and when this obligation loses one of its elements, then the contract loses its legal conditioning. However, this obligation is not always objective, nor is it always abstract, unlike the concept of contract economy, which is an objective obligation, as well as an abstract obligation (Dusuki, 2008).

The common meaning in jurisprudence in France in its division of essential obligations is either substantial obligations by nature, substantial obligations according to the law, or substantial obligations by agreement of the will of the parties. Modern trends call for the essential obligations to be objective as required by the nature of the contract, which makes this essential obligation fully compatible with the concept of the contract economy, and therefore we can say that each contract has its economic concept and that there is in each contract its economy. In this direction, Jestaz says that the essential obligation arises from the nature of things, an obligation that constitutes the essential part of it (Crothers, 2005). Therefore, he believes that the basic obligations by their nature constitute the essence of the contract, while the basic obligations of the will of the parties are just to refer to it only (Asfar-Cazenave, 2015).



The economy of the contract can also be imagined on the opposing side, when this economy is realistically violated, as it expresses exaggerated conditions and is represented in the form of arbitrariness in economic coercion resulting from a kind of exploitation to obtain an excessive advantage for one of the parties at the expense of the other (Siles-Brügge, 2019). Or in economically strict terms when there is a state of imbalance, whether it is to exploit the weakness of the will of the other party. Or it was not intended, given that the economic relations pursued through contracts represent contradictory interests. Thus, the contractual relationship is an opportunity for the parties to show their strength, and to maintain the legal path of this relationship. Care must be taken not to abuse this power. The intervention of the judiciary can be justified to impose a penalty in the case of coercion resulting from economic abuse for the abuse of economic dependence, which leads to creating a state of imbalance between the economic interests of the two contracting parties, which shows an excessive advantage for one of the contracting parties at the expense of the other.

The contract economy takes the initiative in re-arranging and analyzing the unequal benefits or interests, and weighing these benefits under the economic entity of the contract, regardless of the traditional conditioning of economic coercion as a defect of satisfaction. Rather, the disruption of the intentions of the contract becomes a path to the aforementioned adjustment, since the defects of satisfaction are linked by their nature to the economic benefit (Appelbaum, Batt, & Clark, 2013).

Of course, the economy of the contract in this form becomes a criterion for appreciating the reality of the contract as a realistic concept in the judiciary, once the material context of the contract is observed and the underlying economic organization and the concrete conditions of the parties are taken into account by rearranging the obligations contained in the content of the contract.

In the same way, the concept of the economy of the contract is dealt with in determining the defects of the other will and in a manner consistent with the accurate view of the concept of the economy of the contract, because it is a natural result of unfair conditions such as unfairness, for example, as it is an imbalance in the economic balance of the contract (Shrestha, Shrestha, & Joshi, 2013). The same applies to the error that occurs from the miscalculation of the choice of one of the parties, or the fraud and coercion that results from the misconduct of one of the parties towards the other party. This concept also expands to include the agreement of the two parties to evade a specific legal regulation or to obtain exemptions or privileges by resorting to another legal regulation with what is called fraud or legal fraud in the contract (Sefton-Green, 2005).

As for the arbitrary conditions that fall within the category of exaggerated conditions, which may have an opposing meaning and contradictory to the concept of contract economy, their violation can be assessed, and depending on the concept of contract economy, they harm the general economy of the contract and thus miss the ultimate interest. With this criterion, the judge can intervene by extending the penalty or penalty allocated to the arbitrary conditions contained in the contracts concluded between professionals and consumers to those contained in the joining contracts. In the sense that the penalty prescribed for arbitrary conditions is extended from its moral dimension to the economic dimension if those conditions violate the general economy of the contract. This conflict with the nodal economy creates a state of imbalance between the performance of the parties and is not based on a legal system or duty as in the consumer law protection system.

In the consecration of this jurisprudential solution, the French legislator went further by considering any clause that empties the basic obligation of the contract from its essence as if it did not exist. Thus expanding the application of the principle of arbitrary conditions to any joining contract, and as a result, the imbalance of the principle of contractual balance can be imagined to be related to the content of the contract and cannot be imagined in the main objective of the contract, or the adequacy of the performance price. It is what concerns the extent to which the meaning of the contract economy applies to the concept that differs from it, which we can call economic abuse in its two parts, economic coercion, arbitrary conditions, or penal conditions.



The economy of the contract may be called the meaning of the contractual balance, and this matter applies as a different effect on arbitrary conditions, so it is also in lax contracts. Especially when the ability to predict is not achieved in the occurrence of exceptional circumstances affecting the implementation of the contract, which makes it burdensome for the debtor. Sticking to implementation with these circumstances represents arbitrariness on the part of the creditor, and this exhaustion is economic. Therefore, it affects the general economy of the decade and makes it unbalanced. Restricting financial exhaustion in connection with this contract, while ignoring the financial liability of the debtor in other than this contractual relationship. It appears clearly that what is meant by this is to look at the contract itself as an independent institution with its economy, which must be preserved through a comprehensive reading of the contract and a review of its general plan.

By following up on the judicial decisions related to the onerous execution situation when exceptional incidents occur, it is clear that the judge does not interfere in amending the contract. Nor is it a consecration of the principle of the subject judge's intervention in amending the contract in case of emergency circumstances, but rather it is shedding light on the impossibility of refusing to renegotiate, given that the implementation of the contract in its previous form becomes economically burdensome for the debtor. Thus, it is a breach of the economy of the contract as a whole. Accordingly, contract economy does not mean contractual balance as much as it is an objective criterion and reference base for the implementation of the contract in a productive contractual process. As for the Iraqi civil law, the term economy of the contract was not mentioned in jurisprudence, neither implicitly nor explicitly. This definition does not allow anything other than the principle of the authority of the will that is nominated by the will of the contracting parties. It is the reference rule for evaluating the contract and is subject to it in the creation, interpretation, amendment, and termination, regulated by the general rules of law and restricted by public order and public morals. In this context, it does not allow the introduction of objective criteria, such as the contract economy criterion, for example.

In the view of the researcher, the terms mentioned in jurisprudence do not accurately reflect the meaning and concept of the contract economy adopted by the French judiciary and are rooted in its decisions for the reasons mentioned in their proper place. In addition, if one of them is very close to it, which is the concept of the essence of the obligation or the basic obligation in the contract after giving it the objective character, that is, in the sense that it arises from the nature of the contract. Likewise, the term content or content of the contract can be synonymous with the meaning of the contract economy, on the basis that the shift from the idea of cause and object to the idea of the content of the contract established by the French legislator in the recent amendments can allow the expression of this economic concept. It is adopted as a methodology and reference base to express the basic function of the contract, and it reveals the French legislator's endeavor to develop the general theory of the contract by introducing new concepts and standards as effective tools in legal regulation.

However, it is noted that the French legislator, in adopting the term content of the contract, abandoned the vague idea of the place and cause. However, the traditional controversy and disputes related to cause and place were not bypassed. These deep-rooted conflicts may arise from confusion and misunderstanding, and the French legislator must establish means that cut off the origins of these conflicts. Perhaps the adoption of the concept of contract economy as a theory in French civil law is one of these means.

2.2. The Explicit Emergence Of Contract Economics



The concept of the contract economy remained for a long time linked to French jurisprudence and jurisprudence, as an idea circulating in jurisprudence with the concepts of legal principles through which it was imagined that it expresses it or is synonymous with it. As a concept applied by the judiciary for a long time, articles and research have recently appeared that clearly and explicitly refer to it and mention it as a term in French jurisprudence. Which is a remarkable development for this concept in the explicit appearance. This was done by the French jurist (Mestre) at the end of the twentieth century and through an article published in the Constitutional Journal of French Civil Law in 1996, in which he raises questions about this common concept in the judicial decisions of French courts (Braunstein & Folbre, 2001). It continued to appear after that, especially at the beginning of the twenty-first century, in the writings of some authors (Pimont) (Schafer, 2021), as an explicit title indicating its meaning and function and its incompatibility or compatibility with many of the classic legal concepts of French civil law (Hesselink, 2009).

3. Aspects Of The Contract Economy In The French Judiciary

The emergence of the contract economy in the French judiciary as a legal concept for a long time came as an embodiment of a legal principle that the judiciary followed in resolving disputes based on its basic function in the application of justice. This legal principle or idea is the possibility of the judge's intervention in amending or supplementing the legal rule represented by the legislative text in case the text is incompetent or insufficient. The same is the case with the possibility of the judge replacing the legislator in deriving the legal ruling in the absence of the explicit text in dealing with a specific legal dispute, based on the intent to achieve the same purpose and end, but this function to achieve that end was the subject of controversy (Rösler, 2007).

The ongoing systematic jurisprudential dispute regarding the function or work of the judiciary can be summed up as confining the work of the judiciary to the interpretation or application of legislative rules or expanding beyond that to escalate and rise to the stage of law creation, especially in the case of legislative vacuum and the absence of a legislative text addressing. The question is what are the limits and legitimacy of this intervention and the extent to which it is compatible with the desired justice. In other words, what is the specific space for the judiciary and the legality of this intervention, so that we can give the concept of the contract economy the legal cover, so that it is approved by the legislator by stipulating it? Of course, the research in jurisprudence and the judiciary and the nature of their impact on the legal reality requires the follow-up of philosophical theorizing with consideration and analysis.

Two conflicting philosophical theories emerged in this field, the first is the theory of the perfection of legislation, its roots go back to the philosophy of (Hegel) echoed by the great philosopher (Kelsen), its idea is based on the fact that the absence of a legislative text that orders or forbids doing an action. This means that the addressees stand in the area of legal permissibility, and therefore there is no obligation to do any positive or negative action. Deficiency in legislation means a ruling on permissibility, and the existence of this ruling means that there is no deficiency in rulings, but this theory has not been accepted by the prevailing trend in jurisprudence. Rather, it was subjected to severe reactions for violating reason, logic, and reality (Calleros, 2006). This means that it assumes that the legislative texts have anticipated all the circumstances and social facts in the present and the future, and the evolving reality proves the opposite because there are disputes against which there are no legal rules governing them. The legal thought realized long ago that legislation cannot be characterized by perfection, and must be afflicted with the imperfection inherent in human nature, and every act attributed to man is not excluded by shortcomings, including legislation that is an act of man (Kirat & Vidal, 2008).

In contrast, Aristote put forward the theory of imperfection in legislation, which contradicts the first one, which is based on the fact that the law is general, and there are special cases for which the general law is not sufficiently expressed or specified. tarnished This is not considered a defect in the law, and there is no error or negligence on the part of the legislator, but rather it is a natural matter, so the



legislator issued the law in general terms. Then something happens in the future that does not agree with the general texts, so it is natural to complete the deficiency left by the legislator and to fix the abandonment that arose because the law is expressed in its general capacity (Al-Bsherawy & Al-Mashhadi, 2021).

The apparent weakness of the theory of legislative perfection and the corresponding stability in the theory of deficiency in legislation raises questions about the fate of disputes that there is no legislative text to address them and the position of the judiciary towards them. And based on the function of the judiciary in achieving justice, the necessity of achieving this goal is to search for a solution to these disputes, whether it has a text in the legislation or search for it in other sources, or it is inspired by the essence and spirit of the law represented by justice.

The recognition of the inadequacy of the legislation and its failure to provide the judge with the legal basis to apply it to the dispute that is brought before him as a result of the development that has the significance of creating images, standards, and values in the life of society that could not have been expected.

In addition, in the application of the idea of the correlation between the judge's job and its purpose, abstaining from the judiciary in the cases brought before him under the pretext of the absence of the text or its ambiguity is a refusal to perform justice (Kazem & Semisem, 2019). This means reducing the rules of the law to the reality presented in the case, which is consistent with the principle that the judiciary is not linked by law to the rules of law. Therefore, the lack of rules of law cannot exempt the judge from his assignment to adjudicate in cases and requests (Li, 2012). As a result, the French Civil Code, in its fourth article, clearly stated: (A judge who refuses to judge, under the pretext of silence, ambiguity, or lack of legislation, may be charged with the crime of denial of justice (Krishnan & Kumar, 2011).

As for the Iraqi legislator, he followed the same path in stipulating the principle that the case must be accepted, in Article (30) of the Iraqi Civil Procedure Law No. 83 of 1969, as amended (Saleh, 2018). As well as in anticipating deficiencies in legislation, according to the text of the second paragraph of Article 1 of the Iraqi Civil Law No. 40 of 1951, as amended (Al-Ayal, 2022). Likewise, the text of Article (30) of the aforementioned Iraqi Civil Code, is specific to the issue of private international law disputes (Al-Bayati, 2014).

The philosophical debate concluded with the necessity of granting the judge discretionary power, based on the recognition of the deficiency theory in the legislation in addition to the principle of the governmental lack of interdependence between the judiciary and the rules of law. However, he did not stop at the extent and limits of this discretionary power, so he went towards giving the judiciary a role in creating legal rules based on the theory of judicial commitment (Spriggs, 1996). In addition, since the contract is one of the means of objective legal formulation that derives its binding force based on a simple presumption, which is embodied in the contract's conformity with justice. With the concept of violation, the contract's loss of this supposed presumption leads, as a result, to the loss of its binding force. Thus, it paves the way for the judge's ruling as an obligation to replace the obligation created by the unfair contractual will.

For all of the above, a conclusion can be reached to the effect that the necessity of contract approval for justice obliges the judge to find fair, realistic, and objective solutions, by implementing his diligent role within his discretionary authority that the legislation has delegated to him by text or content in many general and detailed rules in contract theory, such as the authority of the judge. One of the most importantly realistic and objective solutions reached by the French judiciary is the concept of the contract economy as a basic objective reference standard for interpreting, analyzing and implementing the contract.



The first appearance of the concept of the contract economy was in the year 1894, and then the judicial decisions of this concept followed, and we will confine ourselves here to the most prominent decisions, for example, according to the chronological appearance of the term:

The first appearance of the term contract economy was in the decision of the judgment issued by the Paris Court of Appeal on February 1, 1894, aforementioned (Muchlinski, 2001), which states that: (To arrive at the true meaning of an agreement, it is necessary to study and review its general economy), meaning that The court considered the economy of the contract as a revealing indicator of the joint will of the contracting parties.

Also, this term has been used by French administrative law for a long time, as it was adopted by the French Council of State in the decision issued on March 30, 1916, when the disruption of the contractual economy was considered a condition for applying the theory of unpredictability (emergency conditions). French administrative law also used it to monitor the legality of administrative contract amendments. Whenever the administration is committed not to concluding the contract after inviting it to competition, these amendments cannot disrupt the market economy or change its purpose except in the event of unexpected events that do not result from the true will of the parties.

Likewise, the decision of the French Court of Cassation dated July 6, 1959, known to specialists as the Fourrures Renel case, in which the court referred to the economy of the contract and relied on it in its ruling in the process of conditioning and searching for the applicable law in international commercial contracts.

And the decision of the Chamber of Commerce was issued on (January 16, 1996), whose content is summarized in determining the delivery time by delivery according to the crane clause appearing in the bill of lading. The Chamber of Commerce decided that this condition is related to the economy itself of the contract of carriage, and through it, the extent of the carrier's obligations is determined without detracting from a general rule. Therefore, it concludes that this condition is enforceable against the consignee without there being a need to express the consignee's desire to accept it (Stempel, 1988).

Likewise, the decision issued by the Paris Court of Appeal dated (January 12, 2000) in the Kannas case, through which this court relied on evaluating arbitrary conditions and extending the penalty resulting from them to the extent that these conditions violate the economy of the contract. That is the transition of arbitrary conditions in the judiciary from the personal criterion represented by the abuse of the right to the objective criterion represented by the breach of the economy of the contract (Thompson & Bunderson, 2003).

Also among those decisions is the decision issued by the French Court of Cassation in the case of the Servianne Association, which rejected the payment submitted by this association against the tenant implying that the invalidity of the contract must arise from the absence of the cause and the place. This is because there is no real price according to the general terms of the lease contract when the contract is concluded. Through the court's consideration of this case, it established its decision because of the basic terms of the lease contract as a whole, which allowed the aforementioned association to achieve rights related to the contract directly with the tenant's company. These rights as a whole cover the low amount of rent and become a justification for it, based on the concept of the economy of the contract, which does not focus on paying the simple amount of rent only, but rather includes all the basic conditions of the lease contract, including the construction of buildings stipulated in the contract, whose ownership will be transferred to the renting association (Borgonovo & Gatti, 2013).

4. Methodology

The comparative analytic technique was followed by presenting and evaluating the relevant French jurisprudence and court judgments and comparing them, if applicable, with their equivalents in Iraqi law.



5. Results

The results show that the contract economy is considered one of the flexible and variable concepts. It was resorted to due to the urgent need to find compatibility between the rigid rules of law and the changing practical reality, with what the discretionary authority of the judge allows in adjudicating disputes before him and finding appropriate solutions. This concept has shown its worth in the optimal use of French courts have long been. The importance of the concept of the contract economy emerged through the French judicial use of it a long time ago, and it did not initially receive the same attention from the French jurisprudence, despite its ability to devise effective solutions to address the imbalance of contractual relations. The contract economy arises with the emergence of the contract and continues with it as a reference base in analyzing the contract and determining its fate as an objective concept that is abstract from the will of the contracting parties in its traditional sense in French jurisprudence. The economy of the contract and when it is used by the judiciary as an objective criterion or an exceptional realistic tool in dealing with the imbalance of the contractual relationship does not mean that it is a concept intended to replace any of the elements constituting the contract. It is identical with it or synonymous with it, but rather it is a mirror that reflects the content of the contract and highlights that in a way that allows it to interpret, adapt or evaluate the contractual relationship in a comprehensive perspective as a single process that is indivisible or reducible. The contract economy harmonizes with flexible legal concepts in terms of concept, significance, and influence, and it has a place in contract theory, and it takes a wide area from it, such as the concept of contractual justice, good faith, and the concept of public order. The optimal use of the contract economy by the judiciary in modern realistic solutions and its exposure to the issue of analysis and interpretation of the contract or to the problem of breaching the contract or breaching it for various reasons necessitates a new understanding of the criterion of the binding force of the contract, and in a way that contributes to thwarting the traditional understanding of it based on the principle of the authority of the will by rationalizing the concept of will Contractual, as a flexible concept that allows achieving the minimum benefit and the minimum contractual balance under the umbrella of contractual justice and achieving the primary goal of the contractual relationship.

6. Conclusions and Discussion

The findings indicate that contract economy is seen as one of the notions that are flexible and varied. Due to the urgent necessity to discover compatibility between the rigorous principles of law and the ever-changing practical world, and what the judge's discretionary power permits in adjudicating issues before him and finding acceptable solutions, it was resorted to. This notion has long shown its value in the efficient utilization of French courts. Despite its potential to design efficient ways to solve the imbalance of contractual relations, the notion of contract economy did not originally get the same attention from French jurisprudence, although its relevance came from the French judiciary's use of it decades ago. The contract economy emerges with the creation of the contract and continues with it as a reference point for assessing the contract and deciding its destiny as an objective notion abstract from the will of the contracting parties in the traditional meaning of French law. The economics of the contract, whether utilized by the court as an objective criterion or an extraordinary practical instrument in addressing the imbalance of the contractual relationship, is not meant to replace any of the parts composing the contract. It is not identical or synonymous with the contract; rather, it is a mirror that reflects the contract's content and emphasizes it in a manner that enables the parties to understand, adjust, or assess the contractual relationship as a single, indivisible, or reducible process. Therefore, we suggest to the judicial authority in Iraq, represented by the Supreme Judicial Council, the Federal Court of Cassation, and the Courts of Appeal, the need to adopt the economics of the contract when analyzing

the contract and deciding its fate, particularly in light of the stagnation and inadequacy of many relevant provisions of the Iraqi civil law, and as required and permitted by the discretionary authority of the Iraqi judiciary. We recommend that the Iraqi legislature adopt the concept of contract economy in civil law due to its efficacy in addressing the issues surrounding contractual relations during the formation and implementation phases, as well as in providing a necessary solution for terminating contractual relationships. In conclusion, they urged fellow graduate students in law schools as well as legal affairs specialists and researchers to continue researching and investigating the benefits of the contract economy and its positive aspects, including it in their upcoming studies and advocating for its implementation within our legal institution, which is represented by the legislative and judicial authorities.

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