



Subcontracting contract

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I. INTRODUCTION

Man has spent time and effort trying to develop the necessary and basic requirements of life, from obtaining food to clothing and housing, as man lived within many periods of time, and he developed in each period of them in all aspects of life, and with his development, the nature of living changed and the quality of life became better and easier. Humans mainly used bones, wood, clay and stones for housing and making tools. The construction process has witnessed a qualitative leap and a great development throughout the stages of history. Today, in light of the development of the economic aspect and the abundance of funds to achieve the requirements of life, tunnels were dug in the mountains, railways were built, highways were built in several directions, and skyscrapers and towers were built. Bridges and stadiums with different designs, the Iraqi legislator, like other legislators, organized the contracting contract according to legal texts that specified the obligations of the contracting parties. The subcontractor or the subcontractor who has various specialties and methods that contribute to facilitating the completion of the work Filled and completed and delivered in a short time.

The first topic

What is a subcontracting contract?

The subcontracting contract is the contract according to which the contractor who is entrusted with the execution of work deals with another contractor in order to carry out all or part of this work. Based on the above, we will discuss in this topic the definition of the subcontracting contract, and we devote the first requirement to the definition of the subcontracting contract with an indication of its characteristics.

The first requirement

We deal with this in two branches. We dedicate the first section to the definition of the subcontracting contract, and we dedicate the second section to showing the characteristics of the contracting contract.

First branch

In this section, we discuss the definition of a subcontracting contract, as we first deal with what is meant by contracting in language and idiomatically contracting, and then we address the legislative definition of a subcontracting contract and in the following detail:

First: contracting in language

Negotiating and arguing, including their saying: He negotiated the matter as a contract, if he negotiated and argued with him, and they negotiated in the matter: negotiate.

Second: Defining the contracting idiomatically

Contracting Language: Negotiation and Argument (5: 2011: 435).

The contracting contract was not known by this terminology to the advanced jurists, even as it was not known in laws such as the French law and the ancient Egyptian civil law, so the contracting business fell under the lease of persons until the new Egyptian Civil Code of 1948 came, separating the contracting contract from two other contracts: the lease contract and work contract. Most of the Arab laws were affected by this designation, and the Islamic Fiqh Academy defined its legal definition as ((a contract whereby one of the parties undertakes to make something or perform a work in return for an allowance pledged by the other party...whether the contractor submits the work, which is what is called by the jurists a lease for work))

Chosen Definition: Contracting: A contract whereby one of the parties is obligated to make something or perform work in exchange for a consideration without being subordinate to it or acting on it.

Definition of subcontracting: It is an agreement between the original contractor and another contractor that the second contractor performs the work assigned to the first or part of it in return for a wage. A new contract with the alternative contractor.

Subcontracting contract: It is an agreement between the contracting contractor with the beneficiary and a second contractor whose place is to assign what has



been contracted for construction and reconstruction with the beneficiary for the second contractor to implement all or part of it in return for a specified fee. The second contractor is called: the subcontractor, the subcontractor, and the contractor Sub (20: 2003: 12).

Third: The legislative definition of the subcontracting contract

The first paragraph of Article (882) of the Iraqi Civil Code states that (the contractor may assign the execution of the work in whole or in part to another contractor if conditions in the contract do not prevent him from doing so, or if the nature of the work is not such that it is assumed that he intends to rely on its sufficiency Personal)

It is clear from the above text that the Iraqi legislator has permitted in this paragraph for the contractor to entrust the work in place of the contracting to a second contractor to complete it. The nature of the work assumes, for example, dependence on the contractor's personal competence (1: 1997: 88).

Second branch

Characteristics of a subcontracting contract

The Iraqi legislator defined contracting in Article (864) of the Civil Code as: ((a contract in which one party undertakes to make something or perform a work in return for a wage pledged by the other party)). From studying this text, it becomes clear that the contracting contract is characterized by some characteristics that can be summarized as follows:

First: The contracting contract is a consensual contract

It is not required for its contract to be a specific form, so it may be concluded in writing or orally and in writing it is not necessary except in proving the contracting and the other party is called (the employer). (8: 2015: 400).

Second: The contract of contract is one of the contracts of financial compensation

So we said (compensation) take out the donation contracts. And our words (financial) take out the marriage, because even if it is a mutual contract, the consideration is not financial. Rather, the contracting contract was one of the contracts of netting, because each of its two parties receives a return for what he gives, so the contractor undertakes to provide the work and may pledge to provide the materials also in return for a consideration paid by the other party (5: 2011: 321).

Third: The consent in the contracting contract is based on two elements:

The thing to be made or the work to be performed by the contractor, who is one of the contracting parties, and the compensation that the employer is obligated to.

Fourth: It is a binding contract for both sides

The contracting contract, since its conclusion, entails obligations on each of its parties. The contractor is obligated to complete the work and then deliver it, and the guarantee is imposed on him, and the business owner is also obligated to receive the work after its completion and to pay the allowance.

Fifthly: It is a contract for work

The essential element in the contract is required of the contractor, which is to perform a specific work and that he also performs the work completely independently and is not subject to any kind of subordination or supervision on the part of the employer. The contracting contract specifies the outcome desired by the contracting parties and leaves the contractor free to choose the means and tools to ensure its achievement.

Sixth: It is a specific contract

The specified contract is the contract in which each of its parties can specify, upon contracting, the value of the benefit that it provides to the other contracting party and the value of the benefit that he will take from him without the determination of this value being dependent on a probable matter that is not feasible, as in the Gharar contracts.

Seventh: It is an extended contract:

because the obligation in the contracting contract is implemented with continuous or periodic payments, and the extended contract has sections: a contract with continuous implementation. The lease contract, the work contract for a specific period, and a periodic contract, such as the supply contract, and the contracting contract include both sections.

The extended contract corresponds to the immediate contract, such as the sale contract, which is executed in one go, and the implementation of the contract may be slackened to a period that is optional or obligatory.

This division entails two things:

First: Annulment does not apply to a contract whose effect extends to the past, because what has been executed cannot be returned, so the annulment rule does not apply except to the time following the annulment.



Second: Extended contracts are the natural scope of the theory of emergency conditions. As for immediate contracts, this theory cannot be applied to them unless their implementation is deferred.

Eighth: The contract of contract is one of the contracts of personal consideration

The personal consideration becomes clear when the business owner contracts with a contractor of skilled liberal professionals, as is the case for the doctor, lawyer and painter, as the achievement of the expected result depends on the extent of the confidence and experience he attaches to the professional contractor. By automatically moving the contract to the general successor. (7: 2004: 9).

The second requirement

We deal with this in two branches, we dedicate the first section to studying the pillars of the contracting contract, and we dedicate the second section to distinguish the contracting contract from the suspected contracts.

First branch

Elements of subcontracting

Considering that the contract of contract is a consensual contract because the law did not stipulate any form for its contract, and therefore, for its contract, the necessary elements must be provided for the conclusion of any other consensual contract.

First: the corner of contentment

By mutual consent in the subcontracting contract, it means the compatibility of the wills of the contractor and the employer. In order for this mutual consent to be valid, the will of both parties to the contracting contract must be free from defects, and accordingly we divide the corner of satisfaction into two parts, the first of which is the conditions of the contract, and in the second part the conditions of validity

1 - Conditions of meeting

The contracting contract must match the offer and acceptance between the two parties to the contract, the contractor and the employer, and there must be mutual consent on the nature of the contract and the work that the contractor performs for the employer the wages he receives on his behalf. The consent may be expressed explicitly or implicitly because the contracting contract is one of the mutually agreed upon contracts, then (the first condition) is It is necessary to agree on the nature of the contract, that is, if the intention of the contracting parties goes to the same thing. Named as the other contractor believed, and for the most complex contracting as the contractor thought (2: 2013: 313).

2 - Conditions of health / eligibility and defects of the will

The first condition: eligibility of the employer

The employer is obligated to pay the wages, so the contracting is for him an act of disposition. Therefore, if the employer has the capacity to dispose of, that is, she must have reached the age of majority and is not subject to continued guardianship over him. The minor or the interdicted for his foolishness or negligence, even if he was authorized by the administration, is not qualified to conclude a contract Contracting in the capacity of the employer, and if the contract is concluded, the contracting is voidable for his benefit, and the deputy of the minor or the ward does not have the right to contract the contract in the name of the minor or the ward, because it is an act of disposition as we have presented. But the contracting on the part of the employer may be a management act, as in the rental by the lessee. The contract that the employer concludes with the contractor to restore his house, and the contract he concludes with a carpenter or weaver to make the furniture necessary for his residence or to make a garment for himself. All of these contracts are considered a management business and it is sufficient for them. If the employer has the capacity to manage, and then it is permissible for the minor or the interdicted, due to his foolishness or the negligence of the authorized person in the administration, to conclude the contracting contract in these works in his capacity as an employer. So, this is also the rule for major repairs if they are necessary to preserve the thing, but making something new or erecting a building or making improvements to it is not by the necessary repairs. Or the interdicted, and the deputy of the minor or the interdicted also does not own it unless after obtaining permission (10: 1964: 47-49).

The second condition: defects of will

Defects of the will mentioned by the Civil Code are coercion, error, and unfairness with deception and exploitation. If the will of both the contractor and the employer is defective from the first three defects, the contract is suspended on the permission of the one who decides the suspension in his interest, he may authorize or revoke the contract within three months from the time the coercion rises, or In which the error is revealed or the deception with unfairness is revealed. If no evidence has been issued during this period indicating the desire to rescind the contract, the contract shall be considered valid. Either the fourth defect of the will, which is exploitation, does not make the contract suspended, that is, it does not prevent the contract



from being enforced, but it allows the aggrieved contractor to demand By removing his injustice to a reasonable extent within a period of one year from the date of concluding the contract. (2: 2013: 378).

Second: the shop

Corner of the shop: The obligations of the contractor may be limited to a mere undertaking to provide the work, and the employer undertakes to provide the material used in this work. The shop has the conditions required by the general rules, which are as follows:

- 1- The necessity that the work be possible, there is no obligation to the impossible. If the place of contracting is impossible, the subject of the obligation is void.
- 2- The place of contracting must be specific or identifiable, and it must be specified if its nature and descriptions are mentioned and that is sufficiently specified.
- 3- The necessity for the work to be legitimate. If the work was illegal, it was in violation of the law or public order m or morals contracting was void. (24: 2004: 288-289).

Third: Corner of the reason

The reason for the contract is the main motive or motive that led the person to accept the contract, without which the contract would not have been concluded. The person may contract based on more than one motive, and not all of these motives are considered a reason for the contract, because often among the motives behind the establishment of the contract is a decisive main motive if No, when a person enters into a contract, this motive is the reason for the contract, excluding other secondary motives. The person who buys a house concludes a contract of sale based on several motives or motives, including the desire to find a suitable home for his family and appearing as the owner in front of people, If the main motive for the purchase is housing, then it is considered the reason for the contract. It is noted that the reason for the contract is measured by a personal criterion. It differs from one person to another according to the different denominations of contracts that they make. Rather, it differs with respect to one type of contract. Therefore, the reason for the contract is described as the personal reason. The reason for a person buying a car may be to use it for his own ride, while another person buys The car is to be used as a taxi and to invest his money from this way. A person may rent an apartment for his residence, and the same person may rent another apartment for use as an office from which he manages his business.

The reason for the contract must be legitimate. The rental contract of the apartment is to use it as a place for prostitution, secret gambling, or to hide smuggled or stolen goods. The reason for the contract is illegal and the contract is void. Likewise, if the motive for concluding a gift from a man to a woman is the woman's acceptance of establishing or continuing a sexual relationship outside of marriage between her and the man, then the reason for the contract is illegal, and the law stipulates the legality of the reason for the contract to protect society from contracts whose conclusion affects public order or public morals. 21: 1977: 203).

Second branch

Distinguishing the contracting contract from other suspected contracts

The characteristics that we mentioned of the contracting contract make this contract distinguished from other contracts. However, the contracting contract is ambiguous with contracts so that it is difficult to distinguish between them, as we will see below.

First: Distinguish the contract of contract from the contract of sale

The seller is obligated to transfer the ownership of a thing or a financial right to the buyer, so the subject matter of the sale contract is to transfer the ownership of the thing sold. As for the subject of the contracting contract, it lies in the completion of a specific work that the contractor undertakes in return for a specified wage, but the latter may undertake to provide the work and its material at the same time, and this is what we can see from the text of Article (550) of the Algerian Civil Code which states the following: "The contractor may: It is limited to an undertaking to provide his work only, provided that the employer provides the material he uses or uses in carrying out his work. The contractor may also undertake to provide both the work and the material. Article 551 of the same law states that "if the contractor undertakes to provide all or some of the work material, he will be responsible for its quality and must guarantee it to the employer." Thus, the problem that arises in the case of the contractor purchasing the work material and using it in construction lies in the extent to which the contractor is considered a seller of that material or remains The contract, with its legal adaptation, is a contracting contract. Some of the jurisprudence sees that it is not sufficient to consider the contract a sale contract just because the contractor submits the work material, while others have put forward two



criteria to distinguish the contracting contract from the sales contract. The first is the economic criterion that is based on the importance of the work, according to the ratio of the value of the material to Work value. If the value of the work greatly exceeds the value of the material, then the contract is a contract, but if the value of the material exceeds the value of the work, then the contract is a contract of sale. But it may happen that the material has a tangible value in addition to the value of the work, so the contract in this case becomes a mixture of selling and contracting. The second criterion is related to the privacy of the work, which is that if the contractor performs a work specific to the needs of the customer, then it is a contracting, and a part of the jurisprudence added another criterion that takes into account the direction of The contracting parties wanted at the time of concluding the contract. If the two parties are interested in the means and how to complete the project, the contract is considered a contract, either if the work has been implemented and the desired result is achieved and he did not care about the approved means, then the contract is considered a contract of sale. (18: 2016: 49-50).

Second: Distinguishing between a contract of contract and a contract of employment

The Court of Cassation ruled on December 14, 1939 that the servant's responsibility for his servant's work is not based on mere choice, but is in fact based on a dependency relationship that makes the servant to control the work of the servant and manage it as he pleases with the orders and instructions issued to him, and the owner of the house authorized He is not responsible for the fault of the manufacturer who hired him for a specific work if he did not interfere with him in the conduct of this work. The criterion for differentiation is the subordination of the worker to the management and supervision of the employer. The contractor is not subject to the management and supervision of the employer, but rather works independently according to the terms of the contract concluded between them, and therefore the contractor is not considered subordinate to the employer. The latter is not responsible for the contractor, the responsibility of the subordinate, either in the work contract. The worker is subject to the management and supervision of the employer, whether he is renting a measurement of the amount of time or a measure of the quantity of production and does not work independently from the employer, but receives his instructions and has to implement them within the limits of the contract concluded between them and from Then the worker is considered subordinate to

the employer, and the latter is responsible for the subordinate's responsibility for the subordinate. The Court of Cassation has ruled that adapting the work contract and distinguishing it from the contracting contract or other contracts is the availability of the element of dependency in the worker's subjection to the supervision of the employer and His title, which is stipulated in Article (674) of the Civil Code (23: 2004: 234).

Third: Distinguishing the contracting contract from the agency contract

The agency contract is similar to the contracting contract in some matters and differs from it in others. The similarities between them are the following:

- 1- The subject of the agency contract: the work, as well as in one of the forms of the contracting contract.
- 2- The agency contract responds to a human benefit, as well as in one of the forms of the contracting contract.
- 3- The agent works for the benefit of his client, as well as the contractor performs work for the employer.

The agency contract is as follows:

- 1- The one who was contracted in one of the forms of contracting in the eye, while the one contracted in the agency contract is for the benefit.
- 2- Contracting is a necessary contract, while agency is an unnecessary contract. Each of the two contracting parties has the right to terminate it, even without a reason.
- 3- Contracting is one of the compensation contracts that are intended to obtain compensation, while the agency contract is one of the donation contracts in which the consideration is not originally stipulated.
- 4- The contractor is not a representative of the employer, while the agent is a representative of his client and his hand is a plot.

From the foregoing it becomes clear that the contracting contract is completely different from the agency contract, and it cannot be adapted as an agency contract, except that the agency contract can be included under the contracting contract while each of them retains its independence, as if the employer assigned the contractor to purchase the necessary tools for construction in a building contract, for example. , by giving him the value of these tools for the contractor to buy them. Here, an agency contract was concluded between the employer and the contractor to purchase the necessary tools, but this contract between them does not affect the contracting contract between them and does not enter into it. (9: 2004: 118).



Fourth: Distinguishing the contracting contract from the industrial contract

Al-Sanhouri believes that the most correct opinion in his opinion is that ((the contract is a contract or sale according to the ratio of the value of the material to the value of the work)). Al-Sanhouri gave two examples of increasing the value of the material over the work and another example of increasing the work on the material. He said about him that the matter is apparent in the previous proverbs where the value of the material is reduced To a large extent, with regard to the artist's work, it is affiliated with the work, and the contract is a contracting, and where this value is greatly increased in relation to the work in the car that needs minor repairs, the contract is a sale, but it often happens that the material has a tangible value alongside the value of the work, even if it is less valuable It is like the wood that the carpenter brings to make furniture and the cloth that the weaver brings to make the dress, so the contract in this case becomes a mixture of sale and contracting, whether the value of the material is greater than the value of the work or less, and the sale falls on the material and its provisions apply in relation to it. 16: 1984: 141).

Fifth: Distinguishing the contracting contract from the lease contract

The work contract relates to the work itself, while the rental contract aims to benefit from a material thing and in order to know the description of the contract that links the taxi driver to its owner, the element of dependency is looked at. If the driver is bound by the relationship of dependency with the owner of the car, the contract is a work contract and if the driver is independent in his work without supervision or Orientation was a lease (19: 2007: 23).

The second topic

The contractor resorts to subcontracting usually in large contracts, where the works are numerous and branched. Subcontractors entrust if the work is based on building health works, carpentry, heating and cooling works and other works. The original contractor is between the works of the subcontractors, so we will divide the subcontracting contract into Two requirements, the first deals with the relationships constituting the subcontracting contract and the assignment of the subcontracting contract, and the second deals with the termination of the subcontracting contract.

The first requirement

Relationships that make up the subcontracting contract and assignment of contracting

We divide this requirement into two sections. The first section deals with the establishment of various relationships between the original contractor and the subcontractor, then a relationship between the employer and the original contractor, and finally a relationship between the employer and the subcontractor, either. The second section deals with the assignment of the contracting either with regard to the second requirement deals with cases of termination of the contract

First branch

First: the relationship of the original contractor with the sub-contractor

The original contractor must enable the subcontractor to complete his work. If the original contractor pledged, as an employer in the second contracting contract, to provide the materials, he must submit them. If the work of the subcontractor requires that he submit to him some drawings and models or the building lease, the original contractor must submit them to him to enable him If the original contractor does not fulfill his obligation to enable the subcontractor to complete the work, the subcontractor may request execution in kind, even by means of a financial threat, and he may also request the termination of the subcontracting with compensation in both cases if necessary, and the contractor is also obligated By receiving the work from the subcontractor after its completion. If the subcontractor completes the work and puts it at the disposal of the original contractor, this must have the initiative to inspect it as soon as possible according to the usual dealings and to receive it in a short period. If he refuses without a legitimate reason after his excuses from taking over the work, it is considered that have received it. (2:2013:90).

As stipulated in Article (880) of the Iraqi Civil Code:

- 1- If the fee is not specified in advance or has been determined roughly, reference shall be made in determining it to the value of the work and the contractor's expenses.
- 2- It must be considered that there is an implicit agreement on the obligation of remuneration if it appears from the circumstances that the recommended thing or work was to be performed only in return for a corresponding remuneration for the purpose of determining the amount of remuneration between the employer and the



contractor, which consists of the following elements:

A- The value of the work performed by the contractor, as it includes the nature, size and quantities of the work and the size of other responsibilities undertaken by the contractor, in addition to other expenses that include:

- The value and price of the construction materials used in the work.

- Wages of workers and construction equipment.

b- The expenses incurred by the contractor in order to complete the work.

C- Either the second paragraph of this article indicates that there is an implicit agreement that the work performed or manufactured by the contractor has a wage, but in many cases it is not agreed upon between the two parties at the time of the conclusion of the contract due to the lack of clarity in the true picture of prices at the time. It is assumed in this case that The contractor's obligation to work or make the agreed-upon thing is with a wage that he collects as a consideration for the work he makes.

Second: The relationship of the original contractor with the employer

If a contractor agrees with another person (the business owner or the beneficiary) to perform a certain work for him. It is implied in the contract that he performs it himself, or if the nature of the work requires that, the contractor may not entrust the implementation of all or part of the work to another person, and if there is no condition or requirement of the nature of the work, the contractor may agree with another contractor to implement all or part of the work, and the responsibility of the first contractor remains. The second contractor is not entitled to demand anything from the first contractor, unless he refers it to the employer, and this subcontracting is valid and implemented against the employer, and the relationship between the original contractor and the subcontractor is an employer-contractor relationship regulated by the contracting contract. From the Sub (22: 2013: 66).

The named subcontractor with respect to the work or the goods subject of the subcontracting shall undertake to the contractor the same obligations and responsibilities incurred by the contractor towards the employer under the provisions of the contracting and to protect and indemnify the contractor for those obligations and responsibilities and for all compensation claims, demands, litigation expenses, damages, costs, fines and expenses of whatever kind arising about it and in connection with it and for any failure to

implement those obligations or fulfill those responsibilities (13: 2008: 68).

Third: The relationship of the employer and the subcontractor

The relationship that exists between the employer and the subcontractor is an indirect, not direct, relationship, given the absence of a contract linking them. The employer is linked to a contracting contract with the original contractor, while the subcontractor is linked to a contracting contract with the original contractor, not with the employer. His contract between the employer and the subcontractor that the latter cannot recourse against the employer with a direct lawsuit to claim his rights that were established for him under the original contracting contract that binds the employer to the original contractor, but this does not mean that the subcontractor cannot recourse at all to the employer where he is entitled. He may do so, but through an indirect lawsuit for this, he files it in the name of the city (the original contractor) as a creditor to the latter, and since the strict guarantee does not exist between the original contractor and the sub-contractor, the employer cannot return in the name of his city (the original contractor) with that guarantee on the contractor from The subcontractor because the original contractor is not a creditor of this guarantee to the second contractor (17: 1976: 250).

There is an exception to this general rule stipulated by some Arab laws such as the Egyptian Civil Code in Article (662) (The sub-contractors and workers who work for the contractor in the execution of the work shall have the right to claim the employer directly for a period not exceeding the contract that the sub-contractor workers have such right before Both the original contractor and the employer (where Article (883) of the Iraqi Civil Code is identical to the same content (4: 2016: 26).

Second branch

Relinquishment of the contract

There is no text in the Iraqi Civil Code dealing with the provisions of assignment of contract, and the reason for this may be due to the scarcity of its occurrence in practical life compared to subcontracting. It includes the assignment of the contracting contract with all its rights and obligations, and it entails that the assignee becomes an employer towards the contractor instead of a master. The (assigned) work where he is credited with the rights of the employer and owes his obligations arising from the contracting contract to



the contractor. It can be imagined that the contracting assignment will occur in two cases

First: Assignment of the contract to a third person

The contractual relationship that was between the employer and the contractor (assignor) ends, and in this case, the provisions (assignment of right) are applied in relation to the transfer of the rights of the original contractor and the provisions of the (debt assignment) in relation to the transfer of his obligations. Whereas Article (340/1) of the Iraqi Civil Code stipulates that (the transfer made between the assignor and the assignee is held contingent upon the acceptance of the transferee). In this case, the employer waives the contracting contract to a third person, as the employer may be the owner of a piece of land by entering into a contract A contracting to construct a building or a group of shops or residential houses, and then he wants or may be forced, due to financial circumstances, to sell that land and refrain from continuing to construct those buildings and structures, so he assigns the contracting contract to the buyer. If the original contractor assigns to another contractor without the consent of the employer, then the contractor is not The assignee is responsible before the employer, and the relationship of the first and second contractors remains governed by the contract between them. With regard to the transfer of the rights of the assignee, it shall be effective against the employer as soon as it is announced, and accordingly Article (363) of the Iraqi Civil Code (No. The transfer is effective against the transferee or against third parties unless the transferee accepts it or is notified to him. (4: 2016:259).

Second: The contractor waives the wages to a third person

The contractor may find himself compelled in order to carry out the work in place of the contracting to obtain some funds, and for this he waives to someone his wages that he is entitled to under the contracting contract in exchange for the assignee to pay a sum of money that the contractor will use to complete the work on which the contract is contracted. Rather, his waiver is limited to the wage only, so the assignor remains a creditor of the rights arising from the contracting and a debtor of the obligations arising from the said contract, and all of that is with the exception of the wage because the assignor of a contract has become a creditor to the employer. However, it is necessary to point out that in order for the transfer of wages against the

employer to be effective, the employer must be notified of that transfer, as the aforementioned notification is sufficient for the transfer to apply to him in application of the provisions of Article (363) of the Civil Code, which states that (No The assignment shall be effective against the transferee...unless the transferee accepts it or notifies it to him... (17: 1976: 296).

The second requirement

Contract expiration

The contract of contract ends like any other contract and may be The termination for general reasons such as the completion of the work, the impossibility of its completion, its termination, the expiry of its term, or his dismissal. The contracting contract may be terminated for reasons related to the employer, such as abandoning the contract at his own will, exceeding expenses, or his bankruptcy. Inability to implement and we will look into these cases as in the below.

First, the work agreed upon.

If the contracting contract is to complete a work such as building a residential project and the like, then the contracting contract ends with the completion of this work, whether the contracting is in the form of leasing the joint tenant or it is in the form of Istisna', because the completion of the work is the purpose of the contract and thus the purpose of the contract has been achieved. It is considered beneficial for its survival, or if it combines an estimate of the duration and work, as if your company said that you build this project in one year and it was said that the combination of both is valid, then which of them ends the contract? In other words, is the completion of the agreed-upon work a reason for the termination of the contracting contract in this case? The correctors of the contract have agreed if he combines the estimation of the time and work on the termination of the contracting contract by completing the work before the end of the period, because by completing the work the purpose of the contract has been achieved and he fulfilled what he owed before the end of the period, he does not have to do anything else as if the debt was paid before its term (9: 2004: 281) .

Second: The impossibility of completing the agreed-upon work

The text of Article (664) of the Egyptian Civil Code No. (131) of 1948 came in application of the general principle contained in Article 373, so the contractor, as a debtor in the contracting contract, may prove that the work entrusted to him has



become impossible for a foreign reason, so his commitment to the impossibility of implementation expires as the obligation of the employer expires and the contract is terminated. Legal dissolution (Article 159) as if the contractor was a painter and his hand was cut off before the completion of the painting or a surgeon was paralyzed or an illness that prevented him from performing operations, or the work needed an administrative license and the administration refused to grant it or expropriated the land prepared for construction for the public benefit, except that the contractor deserves in these cases if he performed some work as compensation according to the principle of enrichment without cause, then he deserves the lesser of the two values, the value of what he spent of his money and time, and the value of what the employer has benefited from. If the bond refuses, the other party may request annulment with compensation, and if the contractor became bankrupt and he was the one who provided the material and the work was not completed before the bankruptcy, then the material remains the property of the contractor and the employer may not recover it from the bankruptcy even if the wage was paid. All of it is in advance, since the lesson is that the employer accepts the work, not that the work is completed. The provisions of Article (663) (23: 2004: 309) apply.

Third: Termination of the contracting contract

The origin of the annulment is that it takes place by a judicial ruling, and this is the general rule for all disputes that occur between individuals. Executing his obligation if he asks this contractor to carry out his commitment and alerts him that if he does not perform the implementation, he will ask for rescission and alert the debtor with his excuses and excuses by warning him and this is the meaning of the common proverb ((He has excused the one who warns)) The warning is made by the notary, but there is no need for excuses if it becomes impossible. Implementation of the obligation is impossible. (11: 1980: 177).

The contract ends before its execution by termination if one of the contracting parties breaches his obligations in accordance with the general rules established for the termination of contracts binding on both sides. The employer may request the termination of the contract, and if the employer breaches one of his obligations, such as refraining from enabling the contractor to complete the work, accepting and receiving the work, or paying the wage, the contractor may also request termination of the contract (2: 2013: 109).

Fourth: Dismissal of the contracting contract

It is for the two contracting parties (the employer and the contractor) if they resign with their consent after it is held (Article 181 Iraqi civil). Dismissal is possible, and Article (182) of the Civil Code stipulates that (1) the contracted item must be present and in the hands of the contracting party at the time of the dismissal. The dismissal in the remainder is in proportion to his share of the price. Either the price is destroyed, and it does not prevent the validity of the dismissal. Opinions have been expressed regarding the adaptation of the legal nature of the dismissal, which are:

- 1- The dismissal is considered a new contract and not the rescission of the first contract.
- 2- The dismissal is considered an agreement termination.
- 3- The dismissal is considered an annulment among the contracting parties and a new contract for others, and the Iraqi Civil Code took the last opinion, as Article (183) stipulates that (the dismissal in the case of the contracting parties is annulled and in the right of others a new contract) (12: 2015: 276).

Fifthly, the bankruptcy of the employer

Article (890) If the business owner is declared bankrupt, the contractor or the bankruptcy agent may rescind the contract without either of them having the right to claim compensation for this termination.

It is noted from the text of the article that the termination of the contract due to the bankruptcy of the employer does not give the right to any party to claim compensation for the damages that come from the termination of the contract. Thus, it appears that the legislator made the bankruptcy of the business owner a justification for the contractor to terminate the contract through termination, while the law did not consider the contractor's bankruptcy a reason. A justification for the employer to terminate the contract, so despite the bankruptcy of the contractor, the contract remains valid and continuous (3: 2009: 85).

Sixth: The death of the contractor.

The contracting contract expires with the death of the contractor if his personal qualifications are taken into account in the contract. If they are not taken into consideration, the contract shall not terminate on its own and the employer may not terminate it in other than the cases in which Article (663) of the Egyptian Civil Code No. 131 of 1948 is applied, unless the contractor's heirs do not have sufficient guarantees for proper implementation, and Article (667) of the same law stipulates:



(1) If the contract expires with the death of the contractor, the employer must pay to the company the value of the works that have been completed and what was spent to carry out what was not done to the extent of the benefit that he accrues from these works and expenses.

(2) The employer may, in return, demand the delivery of the materials that have been prepared and the fees that he has begun to implement, provided that he pays fair compensation for them.

(3) These provisions shall also apply if the contractor begins executing the work and then becomes unable to complete it for a reason that he must

This article corresponds in the civil law texts in the Arab countries to the following articles: Article 666 Libyan, 633 Syrian, 889 Iraqi, 542 Sudanese, 674 Lebanese, 805 Jordanian, and 687 Kuwaiti. (24: 2004: 253).

Seventh: The contractor's inability to complete the work

The contractor dies if he becomes unable to complete the work for a reason he has no control over, such as being injured by something that makes carrying out the work impossible for him. Contracting is annulled as it was by the death of the contractor, and the inability to work takes the death sentence. Paragraph 3 of (666) of the aforementioned Egyptian Civil Code stipulates this provision explicitly, as it says: ((These provisions also apply if the contractor starts executing the work and then becomes incapacitated. from completing it for a reason beyond his control)) It is equal if the contractor started executing the work and then became incapacitated or became incapacitated after concluding the contract and before starting to implement the work, and it is sufficient here to mention the contractor's death, so his inability to carry out the work is attached to his death. (10: 1964: 257).

Finally, I mention the summary of the research and the most important results that were reached through the research.

1- The contracting contract is more general and comprehensive than the istisna contract in Islamic jurisprudence because the contracting contract includes making things and also includes performing the works that the contractor is independent of the employer, in addition to that the contracting contract included two different contracts in Islamic jurisprudence, namely the istisna contract and the provisions of the joint wage and their joining together In a new name, which is the contracting contract, so the contracting contract

derives most of its provisions from these two contracts.

2- In light of the openness and urban expansion and the growing development in economic life and the diversity of projects that Iraq is witnessing, the legislator must re-review the provisions of the contracting contract in general and establish a special legal framework in which to regulate the provisions of the subcontracting contract in the Iraqi civil law and address the legal gaps with the contribution of legal, technical and administrative specialists The Ministries of Planning and Finance, the Ministry of Construction, Housing, Municipalities and Public Works, the Ministry of Trade, the Federation of Iraqi Contractors and other stakeholders and specialists, and listen to all different points of view in order to resolve them to ensure the rights of all parties.

3- That both the original contractor and the subcontractor be qualified to complete the work entrusted to them and that all parties to the contract enjoy the spirit of cooperation because this work is related to the progress and prosperity of the country and society.

4- To ensure the success of the contract, the employer must abide by the principle of good faith with the contractor and commit to paying the wages to the original contractor and enabling him to complete it. In light of that contractor, in turn, he is obligated to carry out the work assigned to him and complete it according to the formula agreed upon in the contract, and the contractor guarantees the quality of the work material and ensures the quality of work after delivery To the fullest extent and commitment to the subcontractor.

5- The contractor is not bound by any additions or modifications to the work unless they are fully agreed upon by all parties to the contract. The contracting contract may include a financial penalty clause that all parties to the contract are bound by. At the same time, whoever violates the contract bears compensation for the damage unless the breach is due to A force beyond his control.

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