

Conditions for the specific implementation of contractual obligations (comparative study)

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Summary:

Specific execution is the creditor's way to implement his agreed-upon obligation with his debtor in kind if the latter does not do so voluntarily, and the judge cannot prevent him from exercising it as long as the conditions imposed by law are met. This right is established for the creditor in all types of obligations, whether it is an obligation to pay a sum of money or to transfer a real right or to perform an act or to refrain from an act. Between the adoption of specific execution as an original penalty under the Latin systems, and as a secondary penalty under the Anglo-Saxon systems, a question comes to our minds as to whether it is stipulated that the creditor has the right to request specific execution, and is he forced to do so? Meaning, in the event that the debtor does not carry out specific execution, is the creditor able to demand compensation at the outset? Or is it necessary to request specific execution, and if that is not possible, to demand compensation? What is the status of specific execution? Is specific execution considered an original or secondary penalty? Therefore, this study seeks to analyze and compare by presenting the texts of the Iraqi Civil Code No. 40 of 1951 and the French Civil Code of 1804 amended in 2016. English case law and international agreements, in order to know the extent of harmony and difference between them on the issue of the authenticity of specific execution under the legal systems mentioned above. In order to complete the idea, the concept of specific execution will be presented in the first chapter, in terms of its definition, conditions and place of specific execution. While in the second chapter we will explain the status of specific execution in the law and the judiciary on the various specific legal systems, while in the third chapter we will present the rules governing specific execution.

Keywords: *specific performance, contractual obligations, French civil law, right of substitution, alternative transaction.*

Introduction:

If the creditor demands that his debtor perform an obligation in kind, this cannot be achieved unless certain conditions are met. If these conditions are met, then it is possible to force the debtor to perform what he has committed to in kind. Then, the compulsory in kind performance of the obligation when it occurs differs according to the subject of the obligation, which may be the transfer of a real right or the performance of an act or refraining from an act.

The importance of the study:

Given the binding force of the contract, the creditor can force his debtor to implement the obligation if the debtor does not implement it voluntarily. This is done by warning the debtor, then submitting a request to the court, in order to force the debtor to implement this obligation by force. Since this procedure is considered a right for the creditor, the judge does not have the right to The authority to reject this request and see if this implementation is possible and does not burden the debtor, then an order is issued for it, and this right that the creditor possesses includes all types of obligations, including the obligation to transfer a real right, the obligation to perform work, and refrain from performing work, but as for monetary obligations, the result is equal whether it is through real implementation or through compensation. Specific execution as a remedy for contractual error has an important place in both the Latin and Germanic schools, as it is the backbone of these remedies. However, it does not have the same place in English law, in which compulsory execution is nothing more than a precautionary remedy.

However, standing on the threshold of the legal ideas rooted in a particular legal school will not help the follower of an idea to grasp its keys. And understanding its specificity, and this is what may push any researcher who has some scientific passion to delve into and delve into a certain legal idea, even if it is classified within the ABCs of law, because drawing the correct framework for the axioms in law is no less

important and significant than drawing up new ideas, and may even exceed it in importance, especially if the result of that is to touch on some of the eternal legal ideas. In other words, the importance that drives us to research this topic is the status of specific execution in legal systems, and the extent to which it is taken into account. If there are legislations that consider specific execution to be the original penalty that the creditor must resort to, we find, on the other hand, legislations that consider compensation to be the original penalty, and specific execution to be the original penalty. It is the exception, and this difference in the status of specific implementation is certainly due to the historical development of each law separately on the one hand, and on the other hand the conditions and controls of specific implementation set forth in the law.

Therefore, although specific implementation is considered one of the widely discussed topics, its status in legal systems is the new thing that we must delve into, especially since the majority of research and writings are almost full of Latin ideas, without paying attention to the subject of specific execution and the cases of granting it as a legal penalty to the creditor. On the other hand, there is a great deal of ambiguity prevailing in English studies due to the scarcity of writing in them, and this is what encouraged us to shed light on some of the distinctive ideas, whether in Iraqi or French civil law or English judicial precedents. We do not neglect international agreements and their role in determining the status of specific execution.

Objectives of the study:

This study aims to investigate the specific implementation in detail, starting from its concept, conditions and scope of application in both the Latin and Anglo-Saxon systems, by reviewing the priority of specific implementation, and focusing on articles 246 to 252 of the Iraqi Civil Code in force for the year 1951 and the French Civil Code after the recent amendment to the text of articles 1221, 1222 and 1223. By looking at its content and with the help of jurisprudence and the judiciary, we try to answer every idea through which it is possible to determine whether specific execution is an original or secondary penalty. Then we move to English law by looking comprehensively at all its ideas, which are rooted in one idea, namely reducing harm as a limitation to compensation, and other ideas. We find its scope in the rules of common law and the rules of justice, which are considered the cornerstone in drawing up English contract law and establishing treatments for breach of contractual obligation. In the result of this study, we will try to stand on a number of opinions, the best of which we prefer in both systems.

The problem of the study:

The problem of this study is represented by researching the authenticity of specific implementation in light of legal systems, especially the current Iraqi Civil Law No. 40 of 1950, and what is the specificity that exists in the French Civil Law amended in 2016 by determining its implications and concepts contained in its texts, and because the texts of the latter law are similar to the principles of Unidroit for the year 2010, We try to search for the distinctive exceptions in the Unidroit principles that do not exist in the French Civil Code, and then we focus on specific performance under the English system. Is specific performance considered original in transferring contractual obligations? Or if there is an alternative penalty to specific performance in this type of obligations, can specific performance be abandoned?

Study Methodology:

In this study, we will rely on the analytical and comparative approaches by presenting the texts of the Iraqi Civil Code No. 40 of 1951, the French Civil Code of 1804 amended in 2016, the English Code of Judicial Precedents and international agreements, and working to analyze their texts to highlight the position of specific implementation as it An original or exceptional penalty, then we try to graduate the differences between these systems to highlight where the specificity lies, and why this specificity exists in some laws and not others, and we do not forget the share of this study in judicial decisions as they are the basic pillar in English law, then we move to the judicial precedents found in the Iraqi and French judiciary, to clarify whether the position of the judiciary is different from the position of the laws or if it is on the same page.

Study Structure:

In this research, we will present two branches, in which we will divide the conditions for the specific implementation of contractual obligations into two branches. In the first branch, we will present the conditions for specific implementation in Iraqi law and French law, while in the second branch, we will present the conditions for specific implementation in English law and international agreements.

1. Conditions for Specific Execution in Iraqi Civil Law and French Civil Law:

Specific execution is considered one of the complex legal systems, which requires several conditions, including that the implementation of the obligation is still possible and not impossible, and that it does not burden the debtor, provided that there is an excuse and a request is submitted to the court by the creditor:

1.1. That the specific performance be possible and not impossible:

The creditor may request the debtor to perform the specific performance of the obligation, and the court may order the debtor to perform his obligation in kind if the specific performance of the obligation is possible. As long as the specific performance of the obligation is possible, the creditor has the right to demand the specific performance from the debtor, and the debtor must respond to this request of the creditor. Also, if the debtor offers specific performance, the creditor may not refuse it, since the rule in this regard stipulates that it is not permissible to deviate from the implementation of the obligation in kind as long as it is possible to do so by way of compensation, except by agreement and consent of the contracting parties⁽¹⁾.

The reason for applying such a rule lies in the general legal nature of the specific implementation and the implementation by way of compensation, since the optional specific implementation and then the contingent one is the origin and what is required from the obligation, and there is no doubt that it is the first stage that precedes the imposition of compensation, which cannot be imposed and arises except after the impossibility of The implementation of the obligation in kind means that the classification of the implementation by way of compensation is not an alternative obligation or an optional obligation. The compensation, no matter how monetary or in kind, cannot be reduced from the implementation of the obligation in kind to the status of an optional obligation or an alternative obligation because it is not entrusted to choice, and because the opportunity to change from fulfilling the obligation and implementing it in kind to implementing it by way of compensation is not fixed for any of the contracting parties, whether the creditor or the debtor, since it is the duty of The debtor may offer to fulfill his obligation in kind, and it is the duty of the creditor to accept this fulfillment.

This is not an alternative, because the debtor is not legally able to offer a monetary alternative to fulfill his obligation, as long as fulfillment of the obligation in kind is possible. This is because compensation (execution by way of compensation) is not an alternative to execution in kind, and is only a precautionary measure to which the creditor cannot resort unless the debtor is unable to fulfill his obligation in kind, in accordance with For the conditions under which it arose, or based on the established general legal rules that do not need other texts to confirm them, especially those related to the time of fulfilling the obligation and the possibility of determining it (2). And that this obligation is not impossible, and what is meant by that impossibility is that which is due to the debtor's error, then here compensation is made instead of specific execution, and if the debtor's personality is taken into consideration, while if The reason for the impossibility is due to a foreign cause, so here the obligation expires, and neither party has the right to demand compensation⁽²⁾.

. The impossibility of implementing the obligation occurs if a deadline for implementation is specified in the agreement and the deadline expires without implementation, as there will be no benefit from specific implementation after its time has passed unless the debtor provides evidence to the contrary. However, If the date of execution is not specified, specific execution is not possible if the creditor sets a suitable date for execution, and warns his debtor that he will not accept payment after it has passed, and the date has expired, unless the debtor proves that no harm has occurred to the creditor's right because of it⁽³⁾.

As for this condition, the Iraqi legislator explicitly stipulated it in Article 246, which stipulated in its first paragraph: (1 - The debtor shall be obliged to perform his obligation in kind whenever possible)⁽⁵⁾⁽⁴⁾. While the French Civil Code in the amendment of 2016 stipulated in Article 1221: (The creditor has the right to a specific obligation, after warning the debtor, to demand the implementation if it is impossible or there is a clear disproportion Between its cost to the debtor and its benefit to the creditor)⁽⁶⁾.

1.2. That the specific execution should not be burdensome to the debtor:

One of the conditions for compulsory specific execution is that it should not be burdensome to the debtor and that abandoning it should not cause serious harm to the creditor. This means that specific execution may be possible, but the debtor refrains from it and rejects it by his sole will, limiting himself to paying a cash amount as compensation for his failure to fulfill the obligation, and in order to The debtor's withdrawal from performing his obligation in kind is legally acceptable, provided that two essential conditions are met:

- 1- That the compulsory specific performance is burdensome to the debtor.
- 2- That the creditor is not subject to compensation for serious damage as a result of the debtor's withdrawal from performing in kind of his obligation.

1.3. Submitting a request by the creditor to the court to demand specific execution:

This condition is understood implicitly without the need to state it, as it is derived from the nature of the work of the judiciary. The judge does not consider any matter unless a request is submitted to him, i.e. a lawsuit is filed that meets its formal and substantive conditions. The compulsory specific execution must be carried out based on the creditor's request. If the creditor requests it and the conditions are met, Its conditions: the debtor cannot refrain from it, or take the initiative to offer execution by way of compensation instead of it (in-kind execution), and if he takes the initiative to execute by way of compensation, the court will force him to execute in-kind⁽⁷⁾.

However, if the creditor does not request in-kind execution and the debtor does not offer to perform his obligation in-kind, then it is replaced by monetary compensation, because the creditor is limited to demanding compensation and not offering The debtor's specific performance is understood as their implicit agreement to replace specific performance with compensation, on the one hand⁽⁸⁾.

On the other hand, if the creditor does not request specific performance and requests compensation and the debtor offers to carry it out, the optional specific performance will be achieved and not the compulsory specific performance, because the debtor offered to carry it out, and the creditor does not have the right to take the initiative to reject specific performance in such a case⁽⁹⁾.

However, if the creditor requests monetary compensation, he has the right to It should be noted that the implicit agreement to replace the specific implementation with monetary compensation should not be understood or taken to mean that there is a multiplicity of the subject of the obligation, as the obligation here has only one subject, which is the debtor's obligation In specific implementation, and compensation is only a path chosen by the contracting parties to implement the obligation itself. Therefore, the insurances stipulated for the obligation remain to ensure the fulfillment of the compensation. In other words, more precisely, compensation is not an optional obligation or an alternative obligation alongside specific implementation, because the obligation has only one subject, which is what the debtor has committed to, i.e. implementing the obligation in specific implementation, and the creditor alone or the debtor alone does not have the right to choose compensation without specific implementation of the obligation. Therefore, compensation cannot be considered an optional obligation, just as the debtor alone cannot take the initiative to offer compensation instead of the specific performance of his obligation. Therefore, the offer cannot be considered an alternative obligation. However, it is permissible to replace the specific performance with monetary compensation, but not by the will of the debtor alone nor by the will of the creditor alone, but rather by their agreement together if the specific performance remains within the realm of possibility, or the law rules if the specific performance of the obligation becomes impossible due to an error on the part of the debtor. In both cases, the debtor is only entitled to monetary compensation instead of performing the obligation in kind. Thus, forcing the debtor to perform in kind is coupled with the creditor's request for the in kind performance of the obligation. If the creditor requests it and it is possible and not burdensome for the debtor, then the debtor cannot offer monetary compensation instead. Likewise, the creditor cannot refuse in kind performance and request compensation if the debtor offers to perform it in kind. In kind performance What the debtor offers is an acquittal of his liability even if it is not what the creditor desires. However, if the creditor and the debtor agree that the debtor will pay monetary compensation instead of specific performance, then their agreement is valid and enforceable. This agreement does not have to be explicit, but it is possible for it to be implicit, as if the debtor offered compensation and the creditor did not demand specific performance⁽¹⁰⁾.

But the question is, does every refusal to implement require the creditor to submit a request to the court to demand specific implementation?

But the answer was that the refusal or unlawful delay in implementing the obligation will be the motive for the creditor to demand specific implementation, since his legal refusal does not allow the creditor to demand specific implementation, since the debtor can adhere to the defense of non-implementation⁽¹¹⁾.

Illegitimacy is not the only condition for demanding specific performance, but the creditor must, when submitting a request, provide that the debt is due for payment. This means that the creditor does not have

the right to demand specific performance of the obligation while the debt is not due for payment, as Dr. Adnan Sarhan and Dr. Nouri Hamad Khater say in their book (Explanation of Jordanian Civil Law): (The debt must be due for payment, and must have a judgment that has the force of law).

The thing judged upon, or established in an enforceable document, meaning that the creditor has in his possession an enforceable document, and if delivering the right to its owner is considered an essential part of the public authority's jurisdiction and one of its most important duties, this does not mean at all that that authority should be forced to help everyone who claims a right and to charge it with collecting what he claimed from his opponent by force and coercion, since the right must be proven and must be clear after investigation and scrutiny, for the public authority to perform its duty. And with its mission in the compulsory specific implementation, the documents and bonds that include clear and established rights that cannot be denied or ignored, which the creditor must possess and provide, and which the public authority does not hesitate to force the debtor and compel him to implement, are called executive bonds⁽¹²⁾. While the last condition is a condition that the specific implementation is still possible, and this condition is considered self-evident, as it is the basis for demanding specific implementation⁽¹³⁾.

1.4. Excuses for the debtor:

Excuses are considered a condition for specific execution, since if the debtor voluntarily executes his obligation, there is no need for an excuse. Excuses for the debtor are to put him in a position of being late in executing the obligation if he does not fulfill it immediately. Since the execution of the obligation is a compulsory specific execution, it requires the debtor to fulfill exactly what he committed to unless that is impossible, in which case execution is carried out by way of compensation, i.e. execution for a consideration. Therefore, it is necessary to Taking a pre-emptive action for the specific compulsory execution, and this action is represented by the excuses that the creditor records against his debtor for his failure to implement and fulfill the obligation. The commentators have provided numerous definitions of excuses that indicate in their content the debtor's failure to implement his obligation, and warn of the necessity of implementing that obligation, otherwise he will be placed in the position of the defaulter. Then there is seriousness in demanding that he implement the contractual obligations that are due from him, because the mere arrival of the obligation's due date, It does not necessarily mean that the legal consequences are automatically due to the possibility that the creditor is satisfied with the delay or at least tolerates it ⁽¹⁴⁾.

Finally, it can be said that excuses are a procedure that moral considerations require and necessitate, since alerting the debtor to his failure to perform or his delay in performing and then calling on him to perform his obligations is a procedure that all moral values require and necessitate before surprising the debtor with compulsory specific performance, and what this type of performance entails of On the one hand, it affects his dignity, reputation, and financial and social standing in many cases. On the other hand, perhaps the reason why the debtor did not take the initiative to fulfill his obligation to his creditor within the specified period is his reliance on the creditor's leniency and the assumption that he would not be harmed by the debtor's delay in fulfilling his obligation. Therefore, the debtor's excuses cut off the root of any such claim that the debtor might resort to claiming and taking refuge behind. What must be noted is The most common excuses are required in the claim for compensation, but they are also obligatory in the specific execution.

In fact, this approach was adopted by the Iraqi legislator, as he did not refer to the necessity of excuses in Article (246)⁽¹⁵⁾ of the Iraqi Civil Code in force for the year 1951, which is related to the compulsory specific execution, while in the texts related to compensation in return, the legislator was keen on excuses as a first step to the claim. By compensation after that, and among these texts is the text of Article 256 of the Iraqi Civil Code in force, which states: (Compensation is not due except after the debtor has been notified, unless the law provides otherwise)⁽¹⁶⁾. As well as Article 257 of the same law, which states: (The debtor shall be notified by warning him, and the warning may be made by any other written request, and it may also be based on an agreement stipulating that the debtor shall be notified as soon as the due date arrives without the need for warning)⁽¹⁷⁾, and this text has specified specific methods through which it can be done For excuses, the excuse may be written, or it may be an agreement between the two parties that once the due date for payment has arrived, the excuse is considered to have been made. As for Article 258 of the same law, it addressed the cases of excuses and stated: (There is no need for the debtor to excuse himself in the following cases:

A - If the performance of the obligation becomes possible in kind by the debtor's action, especially if the subject of the obligation is the transfer of a real right or the performance of an act and the performance must be completed within a specific time and this time has passed without it being completed or the obligation is the abstention from an act and the debtor fails to do so.

B - If the subject of the obligation is the abstention from an act and the debtor fails to do so.

C - If the subject of the obligation is the return of something that the debtor knows is stolen or something that he received without right and he knows that.

D - If the debtor declares in writing that he does not want to fulfill his obligation⁽¹⁸⁾.

In fact, we find that the Iraqi legislator⁽¹⁹⁾ has taken a middle position, as he has taken excuses in contractual obligations and abandoned them in another part, as he did not require them in the two types of specific implementation, and did not abandon them to consider the mere arrival of the deadline sufficient to alert the debtor to the necessity of implementation, but he narrowed its scope, only requesting it in compensation for a consideration, especially if the compensation is for delay in implementing the obligation, without stipulating it in the compulsory specific implementation⁽²⁰⁾.

If the creditor does not excuse his debtor before demanding specific performance in court, the debtor may, even after demanding specific performance, apply to the creditor for specific performance, which will result in the creditor losing litigation expenses. It is also not valid for the creditor to demand compensation from the debtor for the delay in performing the obligation in specific performance, because the creditor did not excuse his debtor before the judicial claim. However, the judicial claim is in itself an excuse for the debtor. After the claim, he must take the initiative to implement the obligation. Therefore, we agree with those who believe that it is not necessary to provide an excuse to rule on the debtor to implement his obligation in kind, because the request submitted by the creditor to the court is sufficient to rule on the debtor to do so. This request makes excuses unnecessary, because the creditor's request is in the form of a lawsuit, and the lawsuit is not considered by the court before the opponents are notified, while excuses are considered very necessary to rule on the debtor to pay compensation when he is late in implementing his obligation⁽²¹⁾.

While the French Civil Code, in Article 1220, stipulated the following: (A party may suspend the implementation of his obligation if it becomes clear that the contracting party will perform when due and that the consequences of non-performance will be sufficiently serious for him, and notification of this suspension must be made as soon as possible)⁽²²⁾.

As for Article 1221 of the same law above, it stipulated the excuses for compulsory specific execution, where the content of the text was: (The creditor has the right to a specific obligation, after the debtor has been excused, to demand specific execution unless there is a clear disproportion between its cost to the debtor and its benefit to the creditor) .

From the above text we can conclude that the French legislator has adopted the necessity of excuses in the compulsory specific execution, and this means that its position is different from the position of the Iraqi Civil Law, which abandoned the principle of excuses in the matter of compulsory specific execution. But the question is, is there a similarity between the French legislator and the Iraqi legislator in terms of adopting excuses in compensation for a consideration?

It seems that the French legislator in the new amendment in force for the year 2016, was not different from its previous position (before the amendment), since the text of the previous Article (1146) stipulated: (Compensation shall not be due unless the debtor has been notified to fulfill his obligation, with the exception of the case when the obligated debtor is obligated to give it and do it or can give it or do it except at a specific time that he leaves to expire, and the notification may be made by letter if It included sufficient warning⁽²³⁾, and this text was criticized for being clumsy and ambiguous, but later this text was amended and the divisions related to doing the work and giving something were deleted from it, so the text became as follows: (Compensation is not due unless the debtor is warned in advance to implement within a reasonable period unless the failure to implement is final)⁽²⁴⁾.

In the amendment of 2016, the content of the above article remained as it is in Article (1146), and the sequence of the article changed and became Article No. (1321). In Article 1344 of the same law after amendment, it spoke about the form of the warning: (The warning is made in accordance with Article 1344, which stipulated after amendment that the debtor be warned to fulfill either by a warning or by any

procedure that includes sufficient warning, or by merely fulfilling the obligation if the contract stipulates that)⁽²⁵⁾.

From this we conclude that the French legislator took excuses into account in both types of specific enforcement, compulsory enforcement and enforcement for a consideration, but he stipulated in enforcement for a consideration that if enforcement is impossible or non-execution is final, then there is no need for excuses.

2. Conditions of specific execution in English law and international agreements:

In order to resort to specific execution as a fair remedy, several legal conditions must be present that are well-established and at the same time limited in scope, including that the compensation is not sufficient to remedy the damage, or that the subject of the obligation is not proportionate to the specific execution. Therefore, we will summarize the conditions for specific execution in English law and international agreements in this section:

2.1. Conditions for specific execution in English law:

The conditions for issuing specific execution were not reached through jurisprudence, but gradually and through judicial practices, they were able to include a number of conditions, but the judges were not committed to a specific legal point of view, but by looking at the judge's conscience, they reached the point of rejecting the implementation of execution. The specific case is only in certain cases, and from here the conditions for granting specific execution were formed, and among these conditions are those that were inspired by the principles of justice and are applied to every suit brought before the judiciary in general, and others related to specific execution in particular⁽²⁶⁾.

The first condition: English law stipulated that specific execution should not be resorted to except in the case that the compensation The monetary compensation is not sufficient to cover the damage caused to the creditor, as the English law does not rule on compulsory specific execution unless the monetary compensation is not adequate to compensate for the damage resulting from the contractual breach. We have previously explained that the function of the remedies for contractual breach in English law is to put the creditor in the position he would have been in if the contractual obligation had been implemented. This understanding of the essence of the remedies for contractual breach will make us realize that the English judge Whether he applies the rules of public law or the rules of justice, he will seek to place the contracting creditor in the aforementioned position, and based on that, he will take the means that ensure this result, whether it is compensation or specific performance⁽²⁷⁾.

Therefore, it is clear after the above understanding that the compulsory specific execution of the creditor is not ruled upon unless the monetary compensation is not sufficient to put him in the position he would have been in if his contract had been executed. If the subject of the contract is fungible things, shares, or any assets that have equivalents in the markets, then there is no need to rule upon compulsory specific execution. On the other hand, if the subject of the contract is valuable things that cannot be obtained at the value of the compensation, Such as lands and real estate, in this loan there may be a place for compulsory specific execution in English law if the other conditions for this execution are met and its obstacles are absent ⁽²⁸⁾, but the court refuses to order specific execution when the recourse stipulated by general law, i.e. compensation, is appropriate, and this is especially the case in the case of selling state bonds, or ordinary goods of the like that exist in the markets⁽²⁹⁾.

In the result of this understanding, perhaps the question should be asked not about the sufficiency or appropriateness of monetary compensation, but about whether specific performance is more appropriate to remedy the breach of contract. In a famous case in 1898, South Africa 1898 Territories V. Wallington, the court does not grant specific performance of contracts of all kinds, but only does so if the legal remedy (common law) is inappropriate or defective, in which case It becomes the duty of justice to order specific performance, in other words, that complete justice can be achieved in common law by the payment of a sum of money representing the necessary and sufficient expenses to put the plaintiff in the position in which he should have been according to the contract. On the basis of these arguments, the court as a general rule refuses to order specific performance of loan contracts, or the borrowing of money on mortgage. In many cases, it occurs. Is the ordinary remedy possible in common law, which is execution for a consideration, not appropriate, and this would be the case, for example, in the case of the seller refusing to transfer ownership of a plot of land that he sold, and granting compensation does not satisfy the justice that the plaintiff expects⁽³⁰⁾.

In the case of (1803 Flint. Brandon), the defendant leased his land to the plaintiff for a period of (21) years. At the end of the period, the defendant asked the tenant to implement the restoration agreement between them. Then he asked the court to oblige him to carry out this restoration or repair through compulsory specific execution. The court rejected the request, because monetary compensation was more appropriate than specific execution under the circumstances of this case⁽³¹⁾.

The second condition: English law stipulates that the contract must be valid and fair at the same time, which means that it must not be voidable or ambiguous. This means that if the contract is contrary to public order and public morals, the law rejects the use of specific execution as a means of resolving the dispute between the two contracting parties⁽³²⁾.

The third condition: The question that arises among the conditions for specific execution in Iraqi and French law is that the obligation must not be burdensome to the debtor. Is there such a condition in English law? The answer was that the courts of justice do not rule on the compulsory specific execution of the debtor if ruling on it would cause him unjustified harm or damage, and this falls within the discretionary authority of the court to begin with, so The debtor is forced to repair and return a house after the end of the lease contract, for example, if this required repair is likely to cause harm or hardship that is not proportionate to the benefit expected by the creditor⁽³³⁾. The hardship intended here is the great hardship, which falls on the debtor, regardless of whether it is due to the creditor's action or not, or related to the subject of the contract or not, and even that which is due to personal reasons For the debtor, it is a hardship or fatigue that prevents a judgment of compulsory execution, and this is what we found in the case (1984 Platel. v. Ali") when the plaintiff requested compulsory specific execution of a contract to purchase a house, the sale of which had been postponed for four years without fault attributed to either party, and the seller's husband at that time had declared bankruptcy and then contracted bone cancer and his leg was amputated, so his wife became unable to sell the house as a result if she complied.

For her moral duty towards her husband and she tried to be close to him in this ordeal, so transferring the ownership of her property would cause her great hardship, so the court refused to oblige her to enforce the specific compulsory execution and ruled in favor of the plaintiff to receive compensation, and justified this refusal by saying that granting the specific compulsory execution in this case would amount to injustice due to the great hardship that falls on the debtor, and on the other hand, the ruling would be the opposite if the debtor's loss or His hardship is normal, such as the increase in the price of a house after its sale, such that the price received does not cover the purchase of a similar one⁽³⁴⁾. In another case (Dowson v. Solomon): (The unfair conduct or behavior of the plaintiffs, with regard to the performance of their obligations under the contract before its expiration and completion, led to the refusal of specific performance)⁽³⁵⁾.

The fourth condition: English law also stipulates that there should be no gross injustice⁽³⁶⁾, because the presence of this injustice may cause the refusal of specific execution. The judiciary confirms that mere injustice is not considered a reason for refusal, but rather this injustice must be gross. This means that it is not merely that the price is high that the injustice must be gross.

The English judiciary clarified its position on this in the 1861 case of Walters V. Morgan, "concerning a (mining) lease contract when the defendant had purchased a plot of land and then leased it to the plaintiff who later tried to enforce this agreement by force on the owner of the land (the lessor). The court refused to rule on forced enforcement, because it was proven that there was a cognitive disparity between the lessor who was not aware of the value of the mining land and the lessee who exploited this ignorance"⁽³⁷⁾.

The fifth condition: Among the conditions included in the Iraqi Civil Law and the French Civil Law, is the necessity of submitting a request by the creditor demanding specific performance. English law considered submitting a request to be self-evident, and such a condition was presented, but it went further than that, as it stipulated that the creditor should not delay in submitting the request, because the delay may be a reason for rejecting the request for specific performance, and this is the approach taken by the judiciary. English: In a number of judicial decisions, most notably in 1855 (Pollard V. Clayton), the court rejected the ruling on forced execution because the creditor, instead of immediately filing the lawsuit, entered into negotiations with the debtor's lawyer for a period of about eleven months. When the negotiations failed, he filed the lawsuit. The court considered this period a reason to reject the ruling on forced execution, because the delay makes the request lose its seriousness and harms justice⁽³⁸⁾.

The sixth condition: English law requires that the contract have a financial value, and the general rule says, it has been established for a long time that a contract that does not include a valuable consideration is not subject to specific execution, especially or for a consideration, i.e. through compensation, unless it has been emptied in the official form. Therefore, specific execution is rejected if this formal contract is not provided with a valuable consideration, and the creditor in this case has no right to Except for the right to compensation, and this rule applies to donations between living people and a binding promise to one party and to contracts that can be rescinded by the sole will of one of the contracting parties. In these cases, the official form is not considered in justice unless it includes consideration for a counterpart and must be explicitly stated in the contract or inferred from its terms. In the event of its absence, justice considers such an agreement to be shameful and does not reward it with specific implementation⁽³⁹⁾.

During our previous presentation of the conditions, it became clear that we have a not small number of them to obtain a judgment of specific execution, but due to the large number of judicial decisions, these conditions increase with them:

The seventh condition: In a lawsuit issued in 1852: (The court ruled that it is not possible to force the singer to sing as she pledged, as long as she refuses to perform this obligation, because her obligation is focused on personal services)⁽⁴⁰⁾.

With this decision, we can understand that English law rejects the adoption of the system of specific execution in contracts concluded and based on personal consideration, such as agency contracts, partnership contracts, and apprenticeship contracts, where the optimal solution is execution for a consideration⁽⁴¹⁾.

In another case (1997 Argyl stores Holding Ltd Co-op Insurance society Ltd), the plaintiff (Co-op Insurance society Ltd) is a shopping centre developer who undertook to provide a security system operation service for the shopping centre for a period of thirty-five years in the largest shop unit in this centre.

(A supermarket, and this unit was the reason for the success of the shopping center and a factor in attracting customers and generating business for the small shops in the center during normal working hours. The contract between them included a condition preventing the closure of this center for a period exceeding four months throughout the term of the contract, but in 1995 the center lost its money and the defendant, Argyll Stores Holding, notified it of its intention to close the center during the term of the contract, of which twenty years remained.

However, the plaintiff suggested that the tenant keep the centre open with a reduced rent until they find another tenant instead of the first one, but the defendant (tenant) closed the centre, which was considered a fundamental breach of the contract. The plaintiff tried to obtain a judgment for specific performance to force him to open the centre and continue the lease contract for the remaining period. The Court of Appeal agreed to issue this order, but the House of Lords rejected it, and one of the lords explained This is because, despite the difficulty of accurately estimating the plaintiff's loss for the remaining twenty years of the contract term, taking into account the effect of this on small shops, the established customs in the law prevent a ruling for specific performance even if the monetary compensation does not provide adequate satisfaction for the creditor; because it is unacceptable to force a person to perform personal service, let alone the fact that this requires direct supervision by the court⁽⁴²⁾.

In speaking of court supervision, there are contracts that require continuous supervision and monitoring by the court. This type of contract includes contracts for the delivery of goods in installments and construction contracts, although the latter is disputed, since if construction contracts are clearly described, and the land is in the possession of the debtor, and the monetary compensation is absolutely inappropriate, then there is no way for the judiciary to do anything but rule on specific execution⁽⁴³⁾.

The ruling on specific execution in construction contracts in its final state indicates the absence of difficulty in the court's supervision of these contracts, since even if the creditor claims that the execution of the obligation is defective or not as agreed upon, the validity of the claim can be verified by experts⁽⁴⁴⁾. It must be mentioned that there is a degree of flexibility in assessing the difficulty of supervising the implementation or not, and this is evident in the fact that the court responded to the request for specific implementation. In the case (1986) Posner v. Scott Lewis, the court obliged the lessor of luxury apartments to appoint a porter to service these apartments, and the opposite was ruled in the case (1893) Ryan v. Mutual Tontine Association, as the court did not recognize the right Tenants are obligated to oblige the

landlord to provide a porter to service the apartments, due to the different circumstances of the two cases and the court's awareness of the difficulty of following up on the implementation of this obligation by force⁽⁴⁵⁾

. The truth is that contracts for personal services often require direct and continuous supervision by the court to determine the validity of this performance, so we find that it is likely that the two prohibitions will come together in one case, the matter *The one who claims that the specific performance should not be ruled upon even if the compensation is not appropriate at all*, we find that despite that, compensation is ruled upon due to the lack of more appropriate treatments, and this is what we observed in the case (1997 *Argyl stores Holding Ltd Co-op Insurance society Ltd*), and this is what Lord Hoffman went to say that "The purpose of contract law is not to punish breaches but to satisfy the expectations of the party entitled to performance, the exercise of discretion as to whether or not to grant specific performance begins from the fact that both the landlord and the tenant in this case are large and sophisticated commercial organizations and I have no doubt that both were fully aware that the remedy for breach of covenant was likely to be limited to an award of damages."

The eighth condition: English law stipulated that the type of contracts must be reciprocal in order for the obligation to be implemented in kind, such as the case of a sales contract in which the buyer pledged to work for the seller for ten years in exchange for transferring ownership to him. In a case issued by the English judiciary in 1828, the minor requested specific implementation, but the court rejected this request due to the lack of reciprocity between the minor and the other party⁽⁴⁶⁾.

But the question is, does the court have the discretionary power to determine the conditions of specific execution, and is it bound by the circumstances of the case? Or can it deviate from those circumstances without questioning the judge? Specific execution is a special and exceptional means of recourse in its characteristics, as it is not binding on the court even if its conditions are met, but rather its determination is within the discretionary power of the court, so it can either order it or leave the parties For their normal rights, i.e., to claim compensation, this does not mean that the court's decision depends on the uncontrolled whims of the individual judge and without any standards or controls, but the rule only means that the order for specific implementation, usually justified by the principles governing the subject, can be rejected if the circumstances surrounding the subject indicate that it contradicts the goals of justice⁽⁴⁷⁾.

Absolute discretion could be understood in the past, when the judge studied each case not on the basis of clear, established principles to which he was bound, but on the basis of seeking to satisfy his conscience and his sense of justice. But since the precedents have merged together to form a system, and the principles to which the judge must adhere today have become clear, the discretion exercised by the courts is not arbitrary or capricious, but is based on the precedents to which he is bound.

The judge and this discretion depend only on the circumstances surrounding the contract or the conduct of the plaintiff, but if it turns out that all of that is legal and regular, the judge must grant specific performance as a matter of course, so the judge's exercise of discretionary power must be legal, as Lord Parker told us, "The principle that has always prevailed is that justice does not grant specific performance except in cases where it is – according to all the circumstances – just and fair to do so With it, and the implementation must be possible without extreme hardship for the debtor or not be unhelpful to the plaintiff, and the issue of extreme hardship is a matter of pure reality, and this condition makes the specific implementation have a humanitarian character⁽⁴⁸⁾.

Thus, the plaintiff must be satisfied with the remedy in common law if the specific performance relates, for example, to an obligation to refrain from an act, for example, which represents unprofitable damage to the debtor caused by a change in circumstances made by the plaintiff himself, or when the defendant is not able to enter the land which he has previously purchased, unless He had the chance to obtain permission from other co-owners, and if the plaintiff tried to benefit from a mistake made by the defendant to achieve advantages for his own benefit⁽⁴⁹⁾.

2.2. Conditions for specific implementation in international agreements:

In this section, we will present the conditions for specific implementation in international agreements, in the Vienna Convention of 1980 first, and then in the UNDRIT principles:

1. Conditions for specific implementation in the United Nations Convention (Vienna) of 1980: The legislator stipulated that a request be submitted by the buyer to demand specific implementation. In fact,

we previously noted that the request must be submitted by the buyer to the court, and the court has the discretionary power to accept specific implementation or not. However, this is something that is not available in the Vienna Convention, as it stipulates that the request be submitted by the buyer directly to the seller, and it is not The court has no authority to assess the request, in addition to the fact that the legislator in the above-mentioned agreement stipulated that this request must not conflict with the rest of the penalties, without specifying what the other penalties are. This is what Article 46 stipulated in its first paragraph, which states: (The buyer may request the seller to implement his obligations unless the buyer has exercised a right that conflicts with this request)⁽⁵⁰⁾. The legislator also did not refer to the necessity of excuses, since the buyer can directly sue the seller, and this is what he stated in Article 46 in its paragraph (a), as for Article 39 of the same agreement, which states: (1- The buyer loses the right to adhere to the defect in the conformity of the goods if he does not notify the seller, specifying the nature of the defect, within a reasonable period from the moment he discovered the defect or was obligated to discover it. 2- In all cases, the buyer loses the right to rely on the defect in the conformity of the goods if he does not notify the seller, specifying the nature of the defect, within a reasonable period from the moment he discovered the defect or was obligated to discover it. The buyer has the right to claim a defect in conformity if he does not notify the seller of this within a maximum period of two years from the date on which the buyer actually receives the goods, unless this period does not agree with the warranty period stipulated in the contract)⁽⁵¹⁾. It talks about notification in the event of a defect in the sale, so the buyer must notify the seller within a maximum period of two years, while the excuses we are talking about are related to failure to implement the obligation or failure to implement the obligation⁽⁵²⁾. The reason why the agreement does not require excuses is that it is based on freedom of contract, therefore the two parties may, during their agreement, require excuses before demanding specific performance⁽⁵³⁾.

The inadmissibility of granting a judicial period, according to the agreement, the court or the arbitration body before which the dispute is brought may not grant the seller any additional period when the buyer resorts to claiming any right resulting from the non-performance The seller of any of his obligations, according to Article 45/3 of the Convention, “The judge or arbitrator may not grant the seller any grace period to implement his obligations when the buyer adheres to one of the penalties stipulated in the event of the seller’s breach of the contract, and as is clear from the text, this principle is not limited to specific implementation, but rather it is a general principle that applies to various other rights granted to the buyer, such as rescission of the contract, and accordingly, if the seller fails to fulfill his obligation to deliver and resorts to The buyer to the arbitration panel to demand specific performance, the arbitration panel may not grant the seller an additional period to perform his obligation if the seller requests it, but it must order immediate performance⁽⁵⁴⁾. Article 61, paragraph (3) of the same agreement also stipulated that the court may not grant a judicial period to the buyer, since the text included: (The judge or arbitrator may not grant the buyer any period To implement his obligations when the seller adheres to one of the penalties stipulated in the event of the buyer’s breach of the contract)⁽⁵⁵⁾.

But we have previously mentioned that the agreement is based on freedom of contract, therefore the agreement does not bind the contracting parties, and this is what Article 47 of the agreement stipulates, so the buyer may grant the seller an additional period to implement his obligations, either on his own initiative, or pursuant to an agreement with the seller, such as if the sales contract includes a clause stating that in the event of the seller’s failure to implement If the buyer wants to perform the contract in kind, he must notify the seller of this and grant him an additional period. In this case, the seller acts according to the will of the contracting parties. The most common practice is for the seller not to perform his obligation, so the buyer grants him an additional period of time that is reasonable to perform his obligation. In this case, the buyer may not demand performance in kind except after the expiration of the additional period, or if the seller sends him a written notice that he does not want to perform the obligation, even if the seller does not want to perform the obligation. If this period expires, the buyer has the right to claim compensation in all cases⁽⁵⁶⁾.

We find this approach in Article 63 of the same agreement, which talks about the penalties imposed on the seller by the buyer: which stipulates in its two paragraphs: (1- The seller may specify an additional period of reasonable duration for the buyer to fulfill his obligations. 2- Except in cases where the seller receives notice from the buyer that he will not fulfill his obligations in The additional specified period, the seller may not, before the expiry of this period, use any of the rights granted to him in the event of a

breach of the contract, but the seller does not lose his right to claim compensation for delay in implementation)⁽⁵⁷⁾.

It gave the seller the right to agree to grant a period of time to the buyer so that he can fulfill his obligation, except in the event that the seller receives a notification from the buyer that he does not want to fulfill his obligation.

Conditions for specific performance in the 2010 UNDRIOIT Principles:

Article (1.1.7) of the UNDRIOIT Principles states: (Non-performance means any failure by one of the parties to perform any of its obligations arising from the contract, and the failure includes defective performance or delayed performance)⁽⁵⁸⁾.

The legislator stipulated the existence of one of the cases of non-implementation, which is either delay in implementing the obligation, or non-implementation of the obligation, or defective implementation. We noted that the legislator did not stipulate the existence of damage in order for a ruling to be made for specific implementation. As soon as one of the cases mentioned above is present, a ruling is issued for specific implementation⁽⁵⁹⁾.

Although the UNDRIOIT Principles do not require that notice be given for specific performance, they do allow the parties to agree in the contract that specific performance is not permissible before giving notice to the other party. Likewise, the creditor may consider that it is in his interest to give notice to the debtor who is subject to performance in order to prove the debtor's non-performance in anticipation of any future dispute, or in order to give the debtor a final opportunity to perform in kind if he wishes.

Thus, by directing the notification to the debtor, it is easy for the creditor to prove the debtor's negligence in the future in the event of a claim for compensation for the damages that have befallen him, whether or not specific execution has occurred⁽⁶⁰⁾. The jurisprudence justifies this approach by saying that directing the warning is not a matter of public order, and therefore the parties may agree that the expiry of the deadline for execution is in itself considered a warning. Some believe that directing the warning that must be directed to the debtor to request specific execution is The application of the principle of good faith, as it gives the debtor a last chance to voluntarily implement his obligations, and at the same time proves the debtor's non-implementation⁽⁶¹⁾.

Article (2.2.7) of the UNDRIOIT Principles stipulates the necessity of submitting a request by the creditor to demand specific implementation, as this article states: (In cases where the debtor is bound by a non-monetary obligation and does not implement it, the creditor may demand implementation unless)⁽⁶²⁾.

The legislator stipulated in the principles of the UNDRIOIT in Article (2.2.7)⁽⁶³⁾ that in order to demand specific performance, the obligation must still be possible and not impossible, (in cases where the debtor is bound by a non-monetary obligation and does not perform it, the creditor may demand performance unless: A - Performance is impossible from a legal or factual standpoint...)⁽⁶⁴⁾.

In conclusion, we have noticed that the conditions for specific implementation between the Iraqi Civil Law and the French Civil Law are mostly similar, while English law was distinguished by its countless conditions. Every judicial decision issued by their courts shows a new principle through which a new condition for specific implementation can be identified. As for international agreements, including the United Nations Convention (Vienna) for the International Sale of Goods and the UNDRIOIT principles, they were More inclined in its conditions to the Iraqi and French civil laws, in terms of the necessity of submitting a request to the court by the creditor, and the requirement that the obligation must still be possible and not impossible, and not burdensome at the same time. Perhaps this condition was shared by all of the Iraqi, French and English laws as well. As for the excuse condition, we find that international agreements neglected to stipulate it in their texts as a condition among the conditions for specific implementation, and in fact As we know, excuses are not among the general principles, therefore both parties may stipulate them in their contract. Therefore, based on what was mentioned above, we note that the conditions of specific implementation have wide importance, and are also multi-faceted, as they give the injured party full knowledge so that he can take all necessary measures to ensure his right, and on the other hand, the debtor's knowledge of these conditions and knowledge of the consequences of his failure to implement the obligation is a reason for him to implement his obligation quickly, and the last aspect is specific to the court as it will take action quickly as long as all the conditions of specific implementation are available.

Conclusion

1. Results

1- Both French and Iraqi civil laws stipulated several conditions for resorting to specific execution, the most important of which is that the latter must still be possible, not burdensome, and based on a request submitted to the court.

2- The laws differed in excuses as a condition for specific execution, as the French legislator considered it the basic condition for demanding specific execution, unlike the Iraqi legislator in civil law, as he abandoned excuses as a condition for resorting to specific execution.

3- English law stipulated several distinct conditions for resorting to specific execution, the most important of which is that the monetary compensation is not sufficient to cover the damage incurred by the debtor, if the subject of the obligation is the transfer of ownership of a property, where compensation is not sufficient to redress the damage, and that the contract is based on personal consideration, and there are several conditions in which English law agreed with French and Iraqi law, which is the condition of submitting the request, and that the implementation of the obligation is not burdensome.

4- Although the French and Iraqi civil law legislators have stated the resolution of execution at the debtor's expense as a direct, pressing means with the aim of specific execution, the French legislator had differed in some details of this means, as the latter stipulated that the debtor be first warned, with this obligation being carried out within a reasonable period and cost, without the need to obtain permission from the judge in order to carry out the execution at the debtor's expense, but this permission was stipulated by the French legislator in one case, which is the removal of the violation, and what distinguishes this approach from the Iraqi legislator is that the latter did not stipulate warning, nor carrying out this obligation within a reasonable period and cost, and stipulated permission in all types of obligations without distinction, except in the case of urgency, in which case there is no need for permission, although this last condition was not addressed by the French legislator.

5- The English law considers compensation as the basis, and has set several conditions for resorting to specific execution, but this is not the only difference, but the latter law has created the alternative deal system, the basis of which is to reduce the damage that befell the creditor as a result of the debtor's failure to fulfill his obligation or delay in fulfilling the obligation.

6- The French and Iraqi legislators stipulated damage in order to pay the penalty clause, but the Unidroit Agreement stipulated that the mere breach of the contract imposes on the breaching party to pay the penalty clause through its phrase: (This amount shall be paid to the creditor independently of any actual damage that may have befallen him) according to the provisions of Article (4.7.13) of the principles.

2. Recommendations

1- We recommend that the Iraqi legislator include a condition among the conditions of exhaustion as a criterion to protect the debtor, and the condition is related to the creditor's good faith, to protect the debtor from the creditor's abuse of his right, or because the creditor has the intention to harm the debtor, or because the request for specific execution costs the debtor exorbitant or outrageous costs, without the creditor suffering any harm.

2- Since the excuse is a condition of specific execution according to the consensus of jurisprudence, and some legal systems recognize its necessity, we propose amending the text of Article 246 of the Iraqi Civil Code in force so that the first paragraph thereof is as follows: (The debtor shall be forced to perform his obligation in specific execution whenever possible after the debtor has been warned).

Footnotes

) Dr. Abdel Fattah Abdel Baqi, *Obligation Provisions*, Nahdet Misr Press, Cairo, no year of publication, 1(p. 41, as well as Dr. Abdel Baqi Al-Bakri, *Explanation of Iraqi Civil Law, Implementation of Obligations, Comparative Study*, 1st ed., Al-Zahra Press, 1971, p. 35, and Dr. Abdul Majeed Al-Hakim, previous source, p. 16.

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)4(Dr. Samir Abdel Sayed Tanago, *Obligation and Evidence Provisions*, Vol. 1, 1st ed., Al-Wafa Legal Library, Egypt, 2009, p. 236.

See paragraph 1 of Article 246 of the Iraqi Civil Code No. 40 of 1951 in force.) 5(

See Article 1221 of the French Civil Code amended in 2016.) 6(Jabouri, previous source, p.335.-Dr. Yassin Muhammad Al) 7(Bakri, previous source, p.42.-Baqi Al-Dr. Abdul) 8(ory of Obligation, Dr. Anwar Sultan, previous source, p. 39. Also Dr. Ismail Ghanem, General The) 9(Obligation Provisions, Vol. 2, 1st ed., Sayed Abdullah Wahba Library, Cairo, 1956, p. 59. Sanhoury, previous source, p. 763.-Razzaq Al-Dr. Abdul) 10(urses of Dr. Adnan Sarhan and Dr. Nouri Hamad Khater, Explanation of Jordanian Civil Law, So) 11(Personal Rights Obligations (Comparative Study), 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2021, p. 255. -Sanhoury, previous source, p. 763, as well as Abdul Basit Jami and others, Al-Dr. Abdul Razzaq Al) 12(Wasit in Explaining Civil Law, Vol. 5, Arab House of Encyclopedias, Cairo, 2002, p. 362. Zainab Zamel Ghaleb, Creditor Protection in the Scope of Contractual Relations, Master's Thesis in) 13(Private Law, College of Law and Political Science, University of Iraq, 2020, p. 45. (14) See Article 246 of the Iraqi Civil Code in force No. 40 of 1951. (15) See Article 256 of the Iraqi Civil Code in force No. 40 of 1951. See: Article 257 of the Iraqi Civil Code No. 40 of 1951.) 16(force No. 40 of 1951. See Article 258 of the Iraqi Civil Code in) 17()18(Excuses are derived from a Roman idea, and Egyptian law and Italian law were influenced by this idea, as They stipulated excuses in both types of specific execution, whether compulsory or compensation, while modern laws such as German laws did not take excuses into account in both types of execution. For more, see: Dr. Abdul Razzaq Al-Sanhoury, previous source, p. 831, and Abdul Majeed Al-Hakim, previous source, p. 47. Hakim, previous source, p. 47.-Dr. Abdul Majeed Al) 19(Juboury, previous source, p. 244.-. Yassin Muhammad AlDr) 20((21) See Article 1220 of the French Civil Code amended in 2016. (22) See Article 1222 of the French Civil Code, amended in 2016. (23) (Article 1146 Les dommages et intérêts ne sont dus que lorsque le débiteur est en demeure de remplir son obligation, excepté néanmoins lorsque la chose que le débiteur s'était obligé de donner ou de faire ne pouvait être donnée ou faite que dans un certain temps qu'il a laissé passer. La mise en demeure peut résulter d'une lettre missive, s'il en ressort une interpellation suffisante A moins que l'inexécution soit définitive, les dommages et intérêts ne sont dus que si le -Art. 1231.) 24(débiteur a préalablement été mis en demeure de s'exécuter dans un délai raisonnable. (25) See Article 1344 of the French Civil Code of 2016. Dr. Fathi Abdel Rahim Abdullah, previous source, p. 57.) 26(The same source, p. 60.) 27((28) Dr. Nouris Abbas Al-Aboudi, previous source, p. 308. ales du droit privé d'aujourd'hui, Les métamorphoses économiques et soci -R. Savatier) 29(South Africa Territories V. Wallington (1898) A. C. 309.) 30(Ph. Malaurie, L. Aynès et P.Y. Gautier, Les contrats spéciaux, 2e éd. Defrénois 2005, p210) 31()32(Dr. Nouris Abbas Al-Aboudi, previous source, p. 308. (33) Dr. Fathi Abdel Rahim, previous source, p. 89. t will not necessarily be ordered the remedy is a discretionary one, Treitel 1979, An Outline Of The) 34(Law Of contract 'Butterworths 2nd Edition London 'p.358. "Specific performance was denied on the grounds that it would cause hardship on Mrs Patel if she was) 35(required to move out. Whilst the hardship was not the fault of Mr Ali Goulding J held that it would be 'hardship amounting to injustice' if specific performance was ordered" available at: <https://e-lawresources.co.uk/cases/Patel-v-Ali.php> 2023/3/23 n with the performance (However, in Dowson v. Solomon unfair conduct by the plaintiffs in connec tio) 36(of their obligations under the contract prior to completion led to a refusal of specific performance". For more, see: Dr. Yassin Muhammad Al-Jabouri, previous source, p. 233. racting party due to the commitment to what is The law defined fraud as the harm that befalls the con) 37(stated in the contract. The seller is called the fraudulent one and the buyer is called the fraudulent one. As 3022

for gross fraud, some have defined it as major fraud, which is when there is deception in the price of the sale such that the difference is large, meaning that the price written in the contract is significantly more than the real price, such that it causes harm to the buyer.

Catherine Elliott and Frances Quinn, op. cit. p. 364.) 38(

, p.358. Treitel ,op.cit) 39(

(40)Dr. Adel Al-Jabri Muhammad Habib, previous source, p. 250.

Treitel ,op.cit , p.361.) 41(

(42) (<https://e-lawresources.co.uk/cases/Lumley-v-WagnerphpAlso> 2023/3/23

<lumley 23/3/2023-contracts/resources/5.3.1-https://opencasebook.org/casebooks/628>.) 43(

(44)) (<https://www-lawteacher-net.translate.goog/cases/co-operative-insu> rance 2023/2/ 23 .

Equity will not decree specific performance where it would be unable to supervise the acts directed) 45(or impossibility of giving specific direction, R. David: Les grands systèmes de droit contemporain, 1964, lov oter et p.12.

Dr. Fathi Abdel Rahim Abdullah, previous source, p. 66.) 46(

In Ryan v Mutual Tontine Association (1893) the lease of a flat 98 promised tenants that a resident) 47(porter would be 'constantly in attendance'. The person appointed had other employment and so was in fact often absent from the flats. The court refused specific performance of this term of the lease because it would require a level of constant supervision beyond that which the court was able to asses.

Lord Hoffmann said that " The purpose of the law of contract is not to punish wrongdoing but to) 48(satisfy the expectations of the party entitled to performance... The exercise of the discretion as to whether or not to grant specific performance starts from the fact that the covenant has been broken. Both landlord and tenant in this case are large sophisticated commercial organizations and I have no doubt that both were perfectly aware that the remedy for breachofthecovenantwaslikelytobelimited https://en.wikipedia.org/wiki/Coop_Insurance_Society 2023/2/23 .

) (flight v. bolland. Rolls. Feb. 15, 19, March 17, 1828. An infant cannot sustain a suit for the specific) 49(performance of a contract, because the remedy is not mutual. The bill was filed by the Plaintiff, as an adult, for the specific performance af a contract. After the suit was ready for hearing, the Defendant, having discovered that the Plaintiff was, at the time of the filing of the bill, and still continued, an 818 FLIGHT V. HOLLAND 4 RTJSS. 299. infant, moved the Court, that the bill might be dismissed with costs to be paid by the Plaintiff's solicitor. "Upon that occasion the Vice-Chancellor made an order, that the Plaintiff should be at liberty to amend his bill, by inserting a next friend for the Plaintiff ; and the bill was amended accordingly. Upon the opening of the case, a preliminary objection was taken, that a bill on the part of an infant for the specific performance of a. contract made by him could not be sustained. Mr. Bickersteth and Mr. Koe, in support of the objection. There is no instance of a decree for specific performance at the suit of an infant, and it would beThe filing of such a lawsuit would be contrary to the principles of the Court of Justice, and the courts of equity, which operate only on the principle of fairness, would not provide and assist them, as the treatment is not reciprocal :

<https://vlex-co-uk.translate.goog/vid/flight-v-bolland> 2023/2/23

(50) Cheshire and Fifoot - The Law of contract, 1964, p. 533.

(51) Dr. Fathi Abdel Rahim Abdullah, previous source, p. 65.

d that he has agreed to buy unless he is fortunate Where the defendant will be unable to enter the lan) 52(enough to obtain a licence from adjoining owners.

Cheshire and Fifoot ,op.cit.p.534.)53(

)54(See Article 39 of the United Nations Convention on the International Sale of Goods of 1980.

(55) Ahmed Ali Ahmed Al-Maamouri, Specific Execution in the United Nations Convention on Contracts for the International Sale of Goods, Master's Thesis, Faculty of Law, Barmouk University, Jordan, 2016, p. 44.

(56) Dr. Youssef Muhammad Mahmoud Al-Shindi, Specific Implementation of Contractual Obligations: The Rule and Exceptions in the Principles of UNIDROIT and the French Civil Code, Sharia and Law Magazine, Volume 35, Issue 88, p. 23.

e of Goods of 1980.See Article 3/45 of the United Nations Convention on the International Sal) 57(

See Article 61 of the United Nations Convention on the International Sale of Goods of 1980.) 58(

(59) cela s'explique par l'exigence de bonne foi qui doit présider à l'exécution du contrat. A ce stade, le créancier devrait encore offrir à son débiteur la possibilité de remplir ses obligations, sinon parfaitement, du moins sans conséquences néfastes pour lui. IL semble donc qu'il faille procéder à une dernière mise en garde, valant aussi constat de l'inexécution, avant toute mesure d'exécution, même lorsque l'inexécution ne procède pas d'un simple retard .

(60) See Article 47 of the United Nations Convention on the International Sale of Goods of 1980.

(61) See Article 63 of the United Nations Convention on the International Sale of Goods of 1980.

See Article (1.1.7) of the 2010 UNDRIT Principles.) 62(

See Article (2.2.7) of the 2010 UNDRIT Principles.) 63(

(64) Dr. Youssef Muhammad Mahmoud Shandi, previous source, p. 338.

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