

The impact of the contract on third parties in the Jordanian legislation

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Abstract

One of the effects of the contract with regard to third parties is what is known as the provision in favour of third party and it is a condition included in the contract whereby one of the two contracting parties is called the stipulator on the other contracting party and is called the undertaker, whereby he must do a specific matter for the benefit of a third person called the beneficiary. Thus, it becomes possible for a third party to have rights over the contract while he is not a party to it, that is, the contract produces an effect that goes to others, and it is an intended effect that the will of the two contracting parties directed to.

All that the law requires of the stipulator is that he has a personal interest in the stipulation , whatever this interest may be ,the stipulation is not a self-contained contract, as it is necessary for its validity to have a dependent agreement based on the original contract. And the most important thing that distinguishes the condition is that the beneficiary has acquired a direct right on a contract to which he was not originally a party, and accordingly the

beneficiary has the right to file a direct suit against the undertaker , demanding that he fulfill his obligation.

Keywords :provision in favour of third party

Introduction

Many civil and commercial transactions have made the provision in favour of third party of great importance, as it has become one of the legal basics on which it is relied upon, and helped in its spread and growth, whose growth would have played an important role in all aspects of life.

The success of insurance contracts is dependent on others benefiting from them, and this has helped in their growth and spread, and prompted jurisprudence, judiciary and legislation to approve the stipulation in the interest of others, and it is one of the most important contracts in which the idea of stipulation emerged, especially in the life insurance contract in the interest of others, as the acquisition of this right by others can only be conceived by virtue of the principle of benefit from others⁽¹⁾.

Goods transport contracts helped the spread of insurance contracts , because the goods are often transferred between the sender and the shipper for the benefit of the consignee, so the consignee acquires a direct right towards the carrier demanding him to implement the transport contractfor ,his interest and all this is thanks to the stipulation in the interest of others, as well as contracting contracts that include requirements that are included based on t he

¹ Al-Badawi, Muhammad Ali (1991). The General Theory of Commitment, Part One, Sources of Commitment , Beirut: Open University Publications, p. 214.

administration's request, according to which the contractor is obligated to take certain procedures against his workers, as these conditions entail a direct right for the worker, and this can only be achieved by acknowledging the validity of the condition in the interest of others⁽²⁾.

Accordingly, we will determine what the idea of stipulation is in the interest of others by defining it and its characteristics, and its difference from other legal systems, in addition to clarifying the legal basis for this idea, through the following topics:

The First Topic : What Provision in Favor of Third Parties is.

The second topic: the difference between the requirement for interest and other systems
The First Topic

What Provision in Favor of Third Party is.

The ,general principle is that the contract is the law of the contracting parties and to start with , the effects of contracts do not pass on those who are not contracting them, and only its parties benefit from the contract , and only its contracting parties are harmed by it , and they are the ones who enjoy the rights and bears the obligations emanating from it , known as the relative effect of the contract, in accordance with the practice of the majority of legal systems⁽³⁾.

As a result of the development of economic life, exceptions emerged to a relative rule of the effect of the contract, including the rule of “ Provision in favour of third party. ” By this , third parties acquire rights from a contract

²Al-Sarhan, Adnan Ibrahim, Khater, and Nuri Muhammad (1997) .The Explanation of the Jordanian Civil Law: Sources of Obligation, Personal Rights, Amman: House of Culture for Distribution and Publishing, p. 114

³.Al-Badawi, Muhammad Ali, previous reference, p. 215

to which they are not a party, or arrange an obligation in their debt, and they can stipulate a right for others after that, and accordingly we will discuss the definition of the of “ provision in favour of third party in the first requirement, and the rules of “ provision in favour of third party in the second requirement and thirdly the requirements of “ provision in favour of third party.”

- The first requirement: “ Provision in favour of third party (its concept and definition).
- The second requirement: the rules of “ Provision in favour of third party.
- The third requirement: requirements of “ provision in favour of third party.”

The First Requirement

“Provision in Favour of Third Party (its concept and definition).

There are persons who are not parties of the contract, delusion aliens to the contract and its parties , And they did not participate in the contract in any way, and they are considered a third party and the effects of the contract do not extend to them⁽⁴⁾.

First: The Concept of a Third Party

A third part, with respect to the effects of the contract , it is of great importance in relation to the contract, the two contracting parties, and their

⁴Al-Sanhouri, Abd al-Razzaq Ahmed, the mediator in explaining the new civil law, the theory of commitment .Cairo: The Egyptian Universities Publishing House, 1952, p. 478

successors, as the term “ third party” is always used in legislation, without the legislator interfering in defining it and without explaining its meaning.⁽⁵⁾

Jurisprudence did not lag behind in defining the concept of the third party. Some went to say that the third person is the person who is completely foreign to the contract, that is, he is the person who was not a party to the contract or disposition, nor a universal successor nor a singular successor to one of the two parties nor a creditor to either of them ⁽⁶⁾.

The idea of a third party expresses the concept, and he is that person to whom the effect of the contract does not pass, and this is a flexible and unbalanced criterion where the passing of the effect of the contract is relative even for those who are concerned with the definition, such as the singular and universal successors, and the ordinary creditor, all of these are affected by the contract at one time and are not affected by it at other times.

Both the Jordanian and Iraqi civil law allowed the effect of the contract to pass to the universal successor, and here it cannot be considered as a third party, and the ordinary creditor, as long as it is affected by a debtor's contract, is not considered to be a third party as well, while if the effect of the contract does not pass to the creditor or to the universal successor and are not affected by it, then they are considered to be a third party ⁽⁷⁾.

Second :The Definition of the Provision in Favour of a Third Party

⁵.Al-Sarhan, Adnan Ibrahim and Khater, Nuri Muhammad, previous reference, p. 125

⁶ Zaki, Mahmoud Gamal El-Din, (1978) *Civil Responsibility, Part One*, Cairo: Cairo University Press, p. 266.

⁷ Khater, Sabri Hamad (2004). *A third Party Of The Contract*, Amman: House of Culture for Distribution and Publishing, p. 25

First of all , the effects of the contract do not apply to third parties and do not pass to them , except that there are some exceptions as in the case of the joint contract , the heir apparent and the apparent creditor ; this principle is not absolute in terms of harm and benefit.

The rule of the provision in favour of a third party was affected by the rulings of the judiciary, as the judiciary contributed greatly to the development of this rule the provision in favour of a third party but subsequent developments tended to indicate that the provision in favour of a third party gradually takes this exception and this is the applicable principle (8) .

Jurisprudence defines the provision in favour of a third part as “ A contract between two persons, the stipulator and the contractor, whereby the first person stipulates that the second person is bound to a third person who is not a party of the contract called the beneficiary to perform a specific thing , so the beneficiary person creates a direct right from this condition that he can demand from the contractor to implement⁽⁹⁾ .”

The Jordanian Civil Code, which regulated the rules of provisions of in favor of third parties through the Articles(212-211-210).

The system of provisions in favor of third parties is a departure from the general rule that states that the contract only binds its parties, and the provision in favor of third parties is the real exception that responds to the Article(208) of the Jordanian Civil Code, where it says“ the contract does not

⁸ Zaki, Mahmoud Jamal Al-Dinibid , ibid .p. 245

⁹ Al-Sada, Abdel Moneim(1998) Sources of Obligation in Lebanese and Egyptian Law Cairo: Dar Al-Nahda Al-Arabiya, p. 453

arrange for something owed by a third party, but it is possible for the third party to gain a right.”

The most important definition of the provision in favour of a third party is “a contract that takes place between two persons, one of whom is called the stipulator, and the other is called the contractor , and according to this contract, the first requires the second to commit to the latter in the face of a third person who is foreign to the contract and called the beneficiary, and creates for the beneficiary a direct right in this provision ,which he can be demanded by the contractor ”⁽¹⁰⁾

And some defined it as: “The provision of one of the parties to the contract, which is the condition for the obligor to abide by this before a third foreigner to the contract, who is the beneficiary, so the foreigner generates a direct right according to which he can claim the obligee.” ⁽¹¹⁾

And we support the definition regarding the provision in the favour of a third party , ,which is: “a contract in which one of the two contracting parties called the contractor stipulates that the other party, called the obligor, must perform directly to a third party to the contract called the beneficiary, a specific performance that he derives from the contract directly, and does not pass into the responsibility of the contractor” ; this is because it is a comprehensive and inclusive definition of the idea of the provision in favour of a third party and it ,touches ,on defining the three elements of this idea and they are(the contractor , the obliger and the beneficiary).

The Second Requirement

¹⁰ Al-Kuzbari, Mamoun (2012) , The Theory of Obligations in Moroccan Contracts and Obligations Law Part One, Sources of Obligations.no .a publishing house, p. 264

¹¹ State, Ahmed Heshmat (1995) ,The Theory of Obligation in the Egyptian Civil Law , 2nd edition Cairo: Misr Press, p. 290

Rules of “ Provision in Favour of Third Party.

Based on what has been researched and reviewed in the above information and topics, it becomes clear to us that the parties of “ provision in favour of third party are the following ⁽¹²⁾:

First: The stipulator : It is the party that makes the agreement with another person who is called the undertaker.

Second : The undertaker: He is the person who undertakes a specific work for the benefit of the beneficiary in implementation of the conditions concluded between him and the stipulator .

Third : The beneficiary: He is the person who is contracted for his benefit , and from which a direct right arises for him, he can demand the contractor to implement it .

Cases of provision in favor of third parties are limited to one of the following relationships : the relationship of the stipulator to the undertaker , the relationship of the beneficiary to the stipulator and the relationship of the beneficiary to the undertaker and we will explain them as follows:

First: The relationship between the stipulator and the undertaker:

The relationship of the stipulator with the undertaker is governed by the insurance contract , and each of them has the right to ask the other to fulfill his obligations . According to the insurance contract, the stipulator is obligated to pay the undertaker the insurance premium on the due date, and in return the insured is obligated to fulfill his obligations , such as paying the value of the insurance amount. And based on the stipulator’s personal interest in the undertaker’s obligation towards the beneficiary, he has the right to

¹² Siwar, Mohi Waheed Al-Din ((1997) , Explanation of Civil Law, The General Theory of Obligation Part One, Aleppo: Aleppo University Publications, pg. 300

monitor the undertaker in how to implement the obligation because he is not a stranger to him, and he also has the right to file a lawsuit in his name against the undertaker when he fails to implement his obligation ⁽¹³⁾.

Second: The relationship between the stipulator and the beneficiary:

The stipulator relationship with the beneficiary may be related to his provision in favour of the beneficiary whom he may want to donate to, and he may want to compensate him: if he wants to donate to the beneficiary the relationship between them becomes a relationship between the donor and the donated, but the donation here is not conditioned on the form as it is an indirect donation, so the eligibility of the donor must be present in the stipulator, and if the provision is issued by the stipulator while he is in a terminal illness, the donation takes the ruling of a will, and it is permissible here to challenge it with the policy suit, and the bad faith of the beneficiary is not required.

And if the stipulator does not intend to donate, then the relationship between the stipulator and the beneficiary is determined by the position of the stipulator on the beneficiary so the stipulator may be indebted to the beneficiary and stipulated for him to fulfill his debt, and he may have wanted to lend to the beneficiary by stipulating in his favour, and accordingly we apply in the first case the provisions of fulfillment, and in the second case the provisions of the loan⁽¹⁴⁾.

Third: The relationship between the beneficiary and the undertaker

¹³Al-Far, Abdel-Qader (2005) Sources of Commitment. 2nd Edition. Amman: Dar Al-Thaqafa for Publishing and Distribution .p. 142

¹⁴Al-Sanhouri, Abd al-Razzaq . A Brief in explaining the civil law . ,ibid .p. 224 ,

This relationship is the most important rule in provision in favour of a third party as this rule is what gives it the special character as an exception to the rule of attributing the effect of the contract and not passing – it to non contractors . From this relationship between the beneficiary and the stipulator, a right is established for the beneficiary whose source is the contract of stipulation, as the beneficiary is not a party to the contract of stipulation and it is possible that he does not exist at the time of the stipulation, and he may be a person or an entity that is not specifically designated at the time of the contract when their designation is possible when the contract produced its effect ⁽¹⁵⁾ .

It follows that the beneficiary has a direct right that he receives from the stipulation contract and does not transfer to him the following results:

First : It is forbidden for the creditors of the stipulator to interfere with this right, as this right does not fall under the obligation of the stipulator during his lifetime, nor does it enter into his inheritance after his death .

Second : The creditors of the stipulator- during his life- do not have the right to enforce the right stipulated by their debtor, and they may not use the right of their debtor to revoke the provision because this right of veto is a will that is not possessed by anyone other than the stipulator. ⁽¹⁶⁾ .

The Third Requirement

Requirements of Provision in Favour of Third Party.

¹⁵ Al-Noun , Hassan Ali , Al-Dhanoun, Hassan Ali, and Muhammad Saeed Al-Rahmou (2002) A brief in the Theory of Commitment, Sources of Commitment: A Comparative Study of Islamic and Comparative Jurisprudence, Part One, Dar Wael for Publishing and Distribution, Amman. , p. 190.

¹⁶ Dr. Al-Dhanoun, Hassan Ali, and Muhammad Saeed Arhamo (2002) A brief in the Theory of ,Commitment, Sources of Commitment: A Comparative Study of Islamic and Comparative Jurisprudence .Part One, Dar Wael for Publishing and Distribution, Amman. pp. 190-191

In contracting , a person has the right to contract in his own name on obligations that he stipulates in favour of a third party ,if he has a personal material or moral interest in executing these obligations¹⁷

1. The stipulator contracts in his name, not in the name of the beneficiary.
2. The stipulation is a direct right of the beneficiary
3. The availability of a personal interest for the stipulator in the provision ⁽¹⁸⁾.

Accordingly, the essence of the provision is an agreement between the stipulator and the obligor, in which the first stipulates that the second must be committed towards a third person - the beneficiary -, and accordingly we can define the rules of provision in favor of a third party through the following:

First: The stipulator contracted in his name.

The stipulator initially contracts in his name with the obligor, not in the name of the beneficiary, and by contracting in his name, he is principal on his own behalf and not on behalf of the beneficiary. The representative contracts in the name of the principal who is considered a party to the contract, while the stipulator is a party to the contract and the beneficiary is foreign to him. This is what distinguishes the stipulation from the representation, and the characteristic of the contracting of the stipulator in his name entails a number of results that can be identified as follows:

- 1- The stipulator may demand that the person who signed the contract implement what is stipulated in favor of the beneficiary , as

¹⁷ Ghani Hassoun Taha. ibid .p. 330

¹⁸Ibid, p 331

the stipulator may contract in his own name on commitments that he stipulates for the benefit of third parties if he has a material or moral personal interest in implementing these obligations ⁽¹⁹⁾

2- The stipulator may nullify what is stipulated before announcing the beneficiary his desire to benefit from the stipulator unless this is contrary to the contract⁽²⁰⁾ .

3- The stipulator has the right to replace the first beneficiary with a beneficiary, or to seize the benefit from the contract for himself, “...and the stipulator has the right to substitute another beneficiary in place of the first beneficiary, and he also has the right to monopolize the benefit from the provision.” ⁽²¹⁾

Second : The Desire Of The parties to the Formation of a Direct Right of the Beneficiary .

The provision in favor of third parties is characterized by directing the will of the contracting parties to establish a right for the beneficiary , as the beneficiary acquires a direct right from the signing of the contract between the stipulator and the undertaker: the Jordanian Civil Code states in Article(2/210) that “the provision establishes for third parties a direct right towards the beneficiary⁽²²⁾, so the beneficiary acquires a direct right from the

¹⁹ corresponds to the Article (3/210) of the Jordanian Civil Code, corresponding to Article ,(154/3) Egyptian civil

²⁰ corresponds to the Article(1/211) of the Jordanian Civil Code and the Article ,(1/155) of the Egyptian Civil Code

²¹ Corresponding to the Article ((2/153) of the Iraqi Civil Code, which states: “The stipulator has the right to replace the first beneficiary with a beneficiary, and he has the right to retain for himself the benefit from the contract, and the Article(2/155) of the Egyptian Civil Code.

contract concluded between the stipulator and the undertaker. The Jordanian Civil Code in Article (2/210) of it stipulates that the provision gains a third party a direct right from the obligor, by saying, “It follows from the provision that the third party acquire a direct right before the obligor that he can demand from him to fulfill it, unless otherwise agreed upon, and this obligor has the right to uphold before the beneficiary the payment that arises from the contract”.⁽²³⁾

And the beneficiary acquiring this direct right from the contract to which he is not a party is the core idea in the provision system⁽²⁴⁾. If the contracting party acquires the right and then transfers it to a third party by any of the means of transfer, such as assignment, inheritance, or taking an oath, then we are not facing a provision in favor of a third party, since this right passed before reaching the beneficiary under the responsibility of the stipulator or the undertaker.⁽²⁵⁾

Third: The availability of a personal interest for the stipulated

The existence of the interest in the law is one of the conditions for the validity of the provision and it is the interest of the stipulator, not the , undertaker.⁽²⁶⁾ The interest for the stipulator is the gain that the stipulator

²³Corresponds to the Article (2/152) of the Iraqi Civil Code No. (40) of the year 1951 which states that “The stipulated party has the right to replace the first beneficiary with a beneficiary, and he has the right to retain for himself the benefit from the contract, and the text of Article (2/155) of the Egyptian Civil Code.

²⁴ Marashda, Adnan(1996) **provision** in favor of **third parties** :in bankruptcy cases in Jordan , Amman .The Jordanian Bar Association, p. 52

²⁵Al-Sada, Abdel Moneim (ibid) p. 458 ,

²⁶ Taha, Ghani Hassoun(1997) A brief in A theory of commitment, the first part in the sources of commitment, Baghdad, p. 332

reaps as a result of his provision in favor of third parties. The interest may be material or moral. The person who believes in the interest of his wife and children is based on the moral aspect and care for his family after him. If the purpose of the provision is to fulfill a debt owed by him to the beneficiary, then the interest is material. When the contractor contracts in his name, he must have a personal interest behind it, otherwise he is messing around. And the existence of the interest is to distinguish the requirement for the benefit of others from the officiousness of the , officious person does a necessary and urgent work without having a personal interest in that, but the stipulator must have an interest in the provision⁽²⁷⁾ . And the penalty for lack of personal interest is the invalidity of the provision. The personal interest of the stipulator must be a legitimate interest, otherwise the provision is invalid. Examples include life insurance for the benefit of a woman with the intention of establishing or continuing an illegal relationship between her and the stipulator, and here the motive for contracting is illegal. In this case, the contract is void⁽²⁸⁾ .

The Second Topic

The difference between provision in favour of third parties and other systems

Provision in favour of third parties means that the beneficiary, who is a foreigner to the contract has , acquired a direct right before the undertaker and this right is earned by the beneficiary directly from the stipulation contract . Through this topic , the difference between the provision in favour of third parties on behalf of the representative and Officiousness and undertaking on behalf of others will be explained through the following requirements :

²⁷Klopp, Iyad Ibrahim Muhammad (2014) Conditioning for the benefit of others, a jurisprudential study, master's thesis, Al-Azhar Gaza University, p .50

²⁸ Sultan, Anwar (1987), Sources of Obligation in the Jordanian Civil Law, Amman: University of Jordan Publications, p. 22.

The first requirement: the difference between the stipulation in favour of third parties and the representation .

The second requirement: the difference the stipulation in favor of third parties and the officiousness.

The third requirement: the difference between the stipulation in favour of third parties and the undertaking on behalf of others .

The First Requirement

The Difference between the Stipulation in favour of Third Parties and the Representation

In the representation , we find that the will of the representative replaces the will of the principal in concluding the legal actions with the addition of

the effects to the principal⁽²⁹⁾ , and from here sometimes there is confusion between the stipulation in favour of a third party and the representation by contracting: each of them is a contract concluded between two parties with the effects of the contract passing to others , so every act of the representative has its effect on the principal . And every disposal of the stipulator has its effect towards the beneficiary⁽³⁰⁾ However, the two systems are completely different in the following cases:

First : The stipulator contracts in his name and for the benefit of the beneficiary according to the provisions of Article (152) of the Iraqi Civil Law and the Article(210) of the Jordanian Civil Law⁽³¹⁾ which states: “A person may contract in his name on rights” It follows Accordingly, the

²⁹ Al-Shunaq, Muhammad Aref (1993), stipulating in the interest of others: a comparative study, Cairo University, Cairo, p. 93.

³⁰corresponding to Article (154) of the Egyptian Civil Code.

³¹ corresponding to Article (105) of the Egyptian Civil Code

beneficiary must express his desire to benefit from the stipulation which is contrary to the representation .

The representative contracts in the name of the principal and for his benefit and what results from this contract is added to the principal, and our evidence for that is the Article(112) of the a Jordan Civil Code which states that : “ : When the representative, within the limits of his representation, concludes) a contract in the name of the principal, the rights and provisions of the contract are added to the principal, unless the law stipulates otherwise⁽³³²¹⁾ .

Second : In the stipulation system in favour of third parties, there must be a material or moral interest for the stipulator based on the provisions of Article (1/210) of the Jordanian Civil Code and Article (1/152) of the Iraqi Civil Code, which states that: “..... If the stipulator has a personal, material or moral interest in the implementation of these obligations⁽³²⁾ and this interest is what drives the stipulator in terms of his control over the obligor's implementation of his obligation towards the beneficiary, and the role of the stipulator continues until the obligor fulfills his obligation in full. As for the representation, there is no interest for the representative in the contract that he concludes, but rather he performs his work to achieve the interest of the principal, and his role ends when the contract is completed and he disappears.

Third : The provisions governing the stipulator relationship with the beneficiary are different from the provisions governing the representative's relationship with the principal, where the stipulator has the right to nullify the contract, and the stipulator may put another beneficiary in the place of the first. And he may take possession of himself by benefiting from the

³² corresponds to Article (154/1) of the Egyptian Civil Code.

stipulation ⁽³³⁾ in accordance with the Article (2/153) of the Iraqi Civil Law and the Article (211) of the Jordanian Civil Code, and the stipulator has the right to terminate the contract in the event of non-implementation of the stipulation ⁽³⁴⁾ although the beneficiary of the contract is not obliged to accept the right from this stipulation .As for the beneficiary, he may be a future person, a future entity, or a person who has not yet been appointed when his appointment is possible at the time of concluding contract produces its effect according to the provisions of Article(154) of the Iraqi Civil Code⁽³⁵⁾ .

As for the effects of the contract concluded by the representative, they are added to the principal, and the representative cannot take any action except within the limits permitted by the law , and likewise the representative cannot go back on his behavior after the right is settled in the custody of the principal⁽³⁵⁾ . This is in accordance with the provisions of Article(112) of the Jordanian Civil Code⁽³⁶⁾ . The representative must submit an account to the principal to recover what he spends of the expenses while this is not considered necessary in the stipulation in favour of third parties.⁽³⁷⁾

³³ Al-Shunaq, Muhammad Aref, *ibid* , p. 15.

³⁴corresponding to Article (155) of the Egyptian Civil Code.

³⁵ Al-Sanhouri, *Theory of Contracts*, margin 2, p. 898.

³⁶ corresponds to the text of Article (105) of the Egyptian Civil Code.

³⁷ Al-Sanhouri, *Theory of Contracts*, margin 2, p. 898.

The second requirement

The difference between the provision in favor of third parties and the officiousness

Officiousness is when a person intentionally and without being obligated to do something useful and urgent for the account of another person ⁽³⁸⁾, Article (301) of the Jordanian Civil Code stated that: (Whoever does a beneficial deed for others without his order, but the court authorized it or decided by custom, he is considered as his representative , and the Iraqi legislator indicated in Article(135) that “whoever acting of someone else's property without his permission , his action is contingent on the owner's approval . If the owner permits, the approval is considered authorization and the officious person demands the allowance if he has received it from the other contractor . If the owner does not permit the behavior of the officious person , the action is invalid . And if the other contracting party has paid the officious one in exchange, then he has the right to return it to him, and if it perished in the hands of the officious person without any transgression on his part, and the other contracting party has paid it knowing that he is officious, then he has no recourse against him for anything from it. If a person concludes a life insurance contract for the benefit of his children, he undoubtedly has an interest in that . It is noted from the definition of officiousness that the existence of a state of urgency or necessity is what entitles the officious person to take over the affairs of others with reference to him due to the absence of the intention to donate⁽³⁹⁾ .

³⁸ Sultan, Anwar, previous reference, p. 402, and this definition is what each of the Egyptian Civil Code came in Article (188).

³⁹Explanatory Notes to the Jordanian Civil Law, Part 1, pg. 349.

Here we say that the officiousness system is similar to the system of stipulations in favour of third parties in that the third party acquires a right without interference on his part, but they differ fundamentally in that the officiousness is based on representation, and that the basis of the beneficiary's right is the direct right that he derives from the contract without involving representation.

The Third Requirement

The Difference between the stipulation in favour of third parties and the obligation on others

Article(209) of the Jordanian Civil Code states that⁽⁴⁰⁾ :

- 1- “ ,If a person undertakes to make a third party comply with an order then the third party is not bound by his commitment. If the third party refuses to comply, the obligor must compensate the person with whom he contracted, and he may, however, get rid of the compensation by executing himself the obligation he made .
- 2- If a third party accepts this undertaking, his acceptance shall have no effect except from the time of its issuance, unless it appears that he intended, explicitly or implicitly, to base the effect of this acceptance on the time in which the undertaking is issued .

In application of the general rules , the effects of the contract are confined to its two parties, and it is considered an exception to this rule that a person pledges and makes others abide by something⁽⁴¹⁾ . And it is in cases where it ,is not possible to obtain the consent of this person regarding a specific matter and this undertaking is a solution to a problem with which it is not possible

⁴⁰ corresponding to M (153) of it and the Egyptian Civil Code.

⁴¹ Sewar, Muhammad Waheed, *ibid*, p. 294.

to wait to obtain the consent of the person concerned⁽⁴²⁾ . For example : if there are partners in common money and one of them is absent and those present want to sell the money to a buyer at an attractive price and fear loss of opportunity, the partners contracting for themselves accept the undertaking on behalf of their absent partner to accept the sale when he is present⁽⁴³⁾ .An undertaking on behalf of a third party requires the following⁽⁴⁴⁾:

1. That a party undertakes on behalf of a third party in his name, not in the name of the person on whose behalf he contracted.
2. That the undertaker bind himself, and if he intends to bind another person, the contract is void.
3. An undertaking on behalf of a third party is assumed to induce the person not undertaking to accept a specific obligation, and the obligation of the undertaking on behalf of a third party is always subject to carrying out an action.

Conclusion and Results

The study clarified the legal provisions governing the rule of stipulation in favour of third parties in the Jordanian and Iraqi civil law, and the implications and conditions that must be met by this rule. The study also showed and focused on clarifying the position of the Iraqi and Jordanian legislators on the issue of stipulation in the interest of others, and an indication of whether the legislator organized it and a statement and the extent of the sufficiency of its texts to cover the subject, both in terms of clarifying its concept and its legal nature and distinguishing it from other contracts and its

⁴² Sultan, Anwar, *ibid* , p. 252, p. 182.

⁴³ Zarqa, Mustafa, *ibid* , p. 308.

⁴⁴ Sultan, Anwar, *ibid* , p. 182.

implications. At the end of this study the researcher concluded a set of results and recommendations which are:

1. The stipulation in favour of third parties has become a self-contained contract and is no longer a consequential agreement that is predicated on an original contract, and all of its conditions are that the stipulator has an interest in the stipulation, and that in the absence of the interest of the stipulator, the stipulation is void whether this stipulation is in a stand-alone contract, or predicated on another contract.
2. That the beneficiary obtains a direct right from a contract to which he is not a party is what distinguishes the stipulation in favour of third parties and the beneficiary has a direct suit against the contractor claiming him in his name and in his personal capacity.
3. The stipulator has the right to seize for himself the benefit of what was agreed upon in the stipulation contract, and this is proven if the beneficiary does not accept or before announcing his acceptance.
4. The stipulation in favor of third parties also includes the transfer of real rights.
5. The life insurance contract is the most important field for applying the rule of stipulation in favour of third parties. And had it not been for the stipulation, insurance would not have been able to spread in the way it is now.

Recommendations

The researcher has reached out to many recommendations, which can be summarized as follows :

1. The researcher recommends that the Jordanian legislator develop a comprehensive and clear definition of the concept of stipulation in

favour of third parties and put in place a comprehensive and comprehensive criterion to define the concept of third parties in an explicit text due to its great importance in relation to the contract, the two contracting parties and their successors.

2. The researcher recommends that the Jordanian legislator set a specific criterion to determine the relationship of the stipulator to the beneficiary.
3. The researcher recommends setting clear and specific foundations for stipulating the interest of others according to high standards that are in line with the development of economic and legal life and the expansion and modernity of transactions.
4. The researcher recommends the legislator to delve deeper and expand on the provisions of the law on the subject of stipulation in favour of third parties due to the lack of references in this subject.

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