

The Concept Of Violation And Its Applications In The Civil Law

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Abstract

Words are adjectives that convey the contents and effects gained from them. They are sometimes used according to the perspective of expression, also for approval, and sometimes from the perspective of openness and waving, and to understand the action without confirmation is what is known as the idea, which is the emphasis on the criterion of the concept with the importance of the word and the concept for the fundamentalists, contrary to the utterance, which is indicated by the word, and it is divided into the concept of agreement and the concept of disagreement. Violation means giving a meaning to an unspecified fact other than a specific ruling for a specific fact, either because of discrimination in the cause in both cases or limiting the meaning in this case, expressing that it is referred to in itself by the decision contained therein, and this decision has been refuted by various issues. The concept of contravention is one of the principles of jurisprudence. Many branches and jurisprudential rulings have been associated with it, and the jurists' statements about it and their view of it differed according to their taking the concept of contravention or not taking it.

Keywords: Violation , Consent , Drafting Text , Right In Rem , Personal Right , Expression, Approval , Utterance , Perspective , The Principles Of Jurisprudence .

Introduction

Introduction To The Research Topic

The interpretation of legal texts went through stages until it settled as we wanted from the purpose of this legal text. The concept of disobedience was affected by the jurisprudence and sciences that were popular at the time among Muslims, and among them was the science of the principles of jurisprudence, which the scholars of the principles were interested in researching. It was for the nature of the fundamentalist approach that this concept should be carefully and with a certain degree of importance, and these joint verbal linguistic investigations were the focus of the researchers' attention.

As we would like to clarify an important issue discussed by the fundamentalist and the legal elites benefited from it in applying it to the legal text, It is (the concept of opposition to the operative), under which several concepts and sections fall, perhaps the most important of which are the concept of condition, the concept of description (adjective), the concept of limitation, and the like.

This appears to the provisions of the principles of jurisprudence and what it contains of the principles of the main impact in the field of jurisprudence and law as long as there are legal texts, written legislative provisions and updated facts that require intervention and treatment, explicitly written legal texts, despite their abundance and variety, are not able to address all the problems, joints and transactions of practical reality, hence, it is unavoidable to go along with

fiqh in its principles and take into account its purposes and meanings without being restricted to the text-based structure and relying on it to find and derive the ruling that governs a specific fact.

Therefore, we studied this concept according to the jurists and the first in accordance with what was stated in the legal text, then we explained its impact on the legal objective and in civil law in particular.

The Importance Of Research

The importance of research in the concept of violation, especially in the Iraqi civil law, appears in terms of removing many of the ambiguities and problems that may accompany the adoption of this concept or the concept of consent when applying the rules and texts of the law, this is because legal texts cannot include all images, cases, and updated facts, that can occur in life, as the legislation is not able to address the facts and events that occur in the future and predict them in advance and predict their invention by the current development and reason, whether in the field of civil transactions or facts and others.

Therefore, Sharia and reason left the door of ijtehad open in order to apply the previous texts, whether in their utterance or in their meaning, to all cases, images and emerging facts that resemble the practical impact. This is what reason, logic and principles of justice require, that close cases and facts have the same rulings .Here comes the role of legal elites, jurists, interpreters, law explainers, rulings and lawyers to clarify the justification and purposes of the ruling and the significance of the text, and then its inclusion of similar cases so that the text includes everyone, and the measurement is made in practice, in its general sense, which includes the various types of ijtehad in what no text governs or treats the case.

The Research Problem

The concept of contravention is based on deriving the legal ruling from the same codified written legal texts, not from custom, but is this deduction limited to the significance of the concept of the text, or does it extend to include the explicitness of the textual construction as well, and the extent to which this concern is an argument and a reliable and binding source when deducing the legal ruling accordingly, this problem is what this study attempts to discuss and discuss its circumstances and find logical solutions that are not without conditions and criteria that must be observed and reinforced by applications from the texts of the Iraqi Civil Code No. 40 of 1951 as amended.

Scope Of Research

This study deals with the reality of the concept of contravention and its impact on deducing the legal ruling and its validity as a legal evidence to rely upon in studying the basic elements and factors to find the ruling that governs a specific fact, as well as an indication of the validity of this concept within the context of the meaning of the text, these powers that represent the place of each text and its role in finding the legal ruling with reference to the legal applications contained in the Iraqi civil law, which is the subject of our study.

Research Methodology

The fact that the topic of the research is accurate and effective in finding the legal ruling and its overlap with the written legal texts, and in order to form a legal and logical opinion for the ruling of a specific fact within the context of the significance of the legal text, In our study of this subject, we chose to follow the analytical method to find out the legal and jurisprudential

rooting through analyzing and scrutinizing opinions to elicit the preponderant rulings that ensue to demonstrate their compatibility with other provisions and texts of the law. All of this is a reason for contemplation and investigation to reach every new solution that shows the effect of both the concepts of disagreement and consent together in forming a sound legal ruling and not neglecting the impact of their deliberations in a way that achieves legislative sufficiency.

Research Plan

The conduct of that method in the research requires that we divide it into two sections. In the first section, we deal with the impact of the concept of violation in deriving the legal ruling, and we will explain in it the definition of the concept of violation and its divisions, let us then stand on its authority in two demands, and then show, in the second topic, the applications of the concept of contravention in the Iraqi civil law, and we will discuss in it the conditions of its work, and then we will discuss its applications contained in the Iraqi civil law.

The Effect Of The Concept Of Violation In Deriving The Legal Ruling

The effect in the violation is meant the result that results from it, since the effect of everything is its result, i.e. the result of the concept of the violation and its signal, where the concept of violation is one of the relatively recent concepts that it has been using recently, especially among legalists. This concept was not known to the jurists with this wording, although it was known to them in terms of intent and meaning, and before explaining the impact of this concept, I will present the definitions of jurists that agree with the concept of violating the meaning, but differ from it in the wording and clarify its divisions, this is in (the first requirement) to show in (the second requirement) the validity of this concept in deriving the legal ruling.

Define The Concept Of Violation

Clarifying the impact of the concept of contravention requires defining its general and general concept as a concept of the violator from the utterance of speech, by defining and giving the meaning of this concept and clarifying its descriptions that distinguish it from other concepts. Also, this concept has more than one copy and section that must be addressed in order to complete its general concept, so, knowing what is required, we will discuss in (the first section) the reality of the concept of violation, to show in (the second section) the divisions of this concept as follows:

The Reality Of The Concept Of Violation

Mentioning the reality of everything is in its manifestation and manifestation in the clearest way, and that is only possible by clarifying its meaning, defining it and clarifying its divisions. It is known as the concept of disobedience, and the issue of inference with the concept of contravention is one of the most important topics that scholars of the fundamentals dealt with, through which we can understand the rules for deducing practical rulings from legal texts, and he defined the concept of violation with many definitions, including:

What came in the language, the concept here expresses that it is an object noun that came from understanding, as it is said that he understood them, that is, he knew him with the heart. The concept can be called the known that is known and known by the heart, as well as the realization of something with certainty, The meaning and the intent that is understood from the utterance is termed as a signified or intelligible in the language, whether it is denoted by a singular or a sentence, or if it is real or figurative. This meaning of the concept is one of the

verbal affirmations, and there is another meaning that is more comprehensive than it, which corresponds to the authentication, so every meaning is understood from it, even if it is not denoted by the word, and this general meaning is also not intended by the fundamentalists, as it is specific to the people of logic.

The predominant meaning of the concept of dissent is to prove the opposite of the spoken judgment of the silenced one, and it is called the discourse evidence because its evidence is of the same type as the discourse or because the discourse denotes it, or it is “the ruling adheres to one of the two attributes of the thing, which indicates that everything else is different from it.” (Al-Shirazi Ibrahim bin Ali, 2015).

Among the examples of the concept of dissent, which the fundamentalists derived from the Holy Qur'an: The Almighty's saying: if there comes to you a disobedient one with information, investigate, where the meaning of this verse indicates that a person of righteousness came with a news that did not have to be confronted with clear and proven, as the Prophet Muhammad, peace and blessings be upon him, said In every weaning camel, in every forty daughters of Laboun, the shepherd does not differentiate from her account. Whoever gives her a freelancer will have her reward, and whoever refuses, I will take her, and half of the camel is one of the determinations of our Lord, from which nothing is permitted for Lal Muhammad., it indicates that this text in its literal meaning is the obligation of zakat on slaughtered camels and sheep, this ruling requiring zakat on camels and sheep is restricted to a specification, which is the sum, as it became clear to us previously.

Branches Of The Concept Of Violation

There are several types of the concept of disagreement among fundamentalist scholars, varying in their authenticity or not, and this is why we notice some of these scholars adhere to some of these types and not others, as the concept of dissent is divided into several sections, and their number varies with each fundamentalist, some see that all types overlap with the concept of adjective, while others separate the divisions of the concept of violation into an adjective, an end, a condition, number, condition, limitation, time, place, cause and title, however, we will confine ourselves to the most important five agreed-upon titles, namely, the concept of adjective, the concept of condition, the concept of number, the concept of enumeration, and the concept of title. The following is a statement of these types.

The Concept Of Condition

It is an indication of the intended meaning of the utterance without logic, that the silent one who did not meet the condition of the utterance contradicting it in the ruling, and this section is one of the most famous categories of the concept of violation. It is considered one of the most widely used sections in the texts of the Noble Qur'an, and it is what is invoked by most of those who support the concept of disobedience. It is also considered an argument for some of the Hanafis, despite their disregard for the concept of disobedience, (And I know that most of the companions of Abu Hanifa made the concept of the condition an argument) (Mashhur musaa ,2017) · An example of the condition is if the teacher says to the student if you memorize your lesson. I will give you a prize. The explicit pronouncement of this pronouncement is that the teacher will suffice the student with the prize if he memorizes his lesson, and his contrary concept indicates that if the student does not memorize the lesson, he will not receive the teacher's prize.

What is meant by the concept of the condition here is that it indicates the absence of the ruling when the condition is absent (Abd, Adnan Ibrahim 2016) , and from him the Almighty says: “And if they should be pregnant, then spend on them until they give birth” the Holy Qur'aan of Surah Al-Talaq , The semantic utterance of this noble verse is the obligation to spend on pregnant women, even if they are divorced women, so the condition was restricted in the Almighty’s saying: “if they should be pregnant”. It indicates the obligation to spend on them, and otherwise it is not obligatory to spend on them. This is the meaning of the concept of the condition, and from that the Almighty’s saying: “O you who have believed, if there comes to you a disobedient one with information, investigate, lest you harm a people out of ignorance and become, over what you have done, regretful” the Holy Qur'aan of Surat Al-Hujurat. In other words, if the author of the news was immoral, then it is necessary to clarify and verify his statement, as for his contrary concept, which is restricted by a condition that requires the acceptance of this news if the author is not immoral, that he is a just person (Al-Khanfar Hussein Ali 2018)

Adjective Concept

The concept of the adjective as an additional compound indicates the verification of the significance of the restriction of the news or the request, which is restricted to one of the attributes of the subject, or, as the scholars of the origins say, it is the indication of restricting the judgment to one of the attributes of the Essence, on the negation of the judgment about the Essence when that attribute is absent (Al-Assawi, Jamal al-Din Abd al-Rahim 2012): It should be noted that the adjective may be a matter of exaggeration, emphasis, generalization, exaggeration, or even out of the ordinary, or it may be an answer to a question (Al-Ghamdi Yasser bin Darwish 2020). In all these cases, the attribute is null and has no effect, as in the Almighty’s saying:” And know that one fifth of whatever you take as spoils belong to Allah, the Messenger, kinsmen of the Messenger, the orphans, the needy, and the destitute traveler” the Holy Qur'aan of Surat Al-Anfal , in other words, the description of (booty) indicates that the

In light of this, the concept of an attribute is that the judgment is attached to one of the attributes, indicating that what is not characterized by this attribute has no effect in the judgment, a similar concept is found in the Holy Qur'an’s affirmation that it is not an ornament to eat from the sacrifices of the Magi and the polytheists ,Allah says: “The good things have this day been made lawful to you. The food of those to whom the Book was given is lawful to you, and your food is lawful to them” the Holy Qur'aan of Surah Al-Maidah . The verse indicated, with its explicit utterance, that all the food of those who were given the Book was permissible for the believers, but it indicated in its contradictory meaning, which is restricted to the attribute, that the food of the polytheists is restricted, because the verse restricted the lawful food from those who were given the Book, and it is not permissible to eat from those who are other than them among the polytheists.

Concept Of Number

It is the indication of the non-verbal pronunciation that the non-countable does not agree with it in the judgment, which means contradicts it. This section is led by two concepts: the concept of approval and numerical disagreement. The meaning is understood according to the context of the sentence. If the number precedes the number and is intended to exaggerate, it indicates the concept of the first approval, as if the employer said to the accountant, Do not give the worker a dinar, for the accountant is considered disobedient if he gives him more than one dinar, although the concept of violation here indicates that dinars are different from one

dinar, but the number here came in the form of exaggeration, that is, it does not give the worker anything, even if it is a dinar. But if the number is derived and I want the same number, then its concept is the concept of numerical violation, as if the employer said to the accountant: Give the worker a dinar, for if the accountant gave the questioner more than or less than the dinar, he would have disobeyed his employer, because the number here is limited by itself and was not intended to exaggerate.

Since the proof of the significance of the concept of number and its negation can be traced back to the presumptions, there is no problem in the presence of the presumption indicating the proof of the concept, and the lack of proof of the presumption of the number, but what is ambiguous here is when detaching from clues and restricting the sentence to a number. Does it indicate the concept? For example, it is said (fasting the month of Ramadan is thirty days), here the presumption came with the concept that the lunar month is not more than thirty days, so here the increase is negated, however, the omission is possible, and the context may indicate the negation of the omission without the addition to the verse:

“And bring to witness two witnesses from among your men” the Holy Qur'aan of Surat Al-Baqarah

Concept Of Purpose

It is the lengthening of the ruling to an end and it is (to, and up to) or what is understood from restricting the ruling with them to an end: like what Abdullah bin Sinan narrated on the authority of Imam al-Sadiq, peace be upon him, (he said: “Everything in it is halal and haram, it is halal for you forever, until you know what is haram from it in particular and leave it.” so, if the end is one of the restrictions that restricts the ruling, i.e. attributing the predicate to the subject, then it is inferred by its evidence on the concept that the purpose of the commission is to establish the reality of the total request, not the partial request, so the end is the reality of the request, and it is necessary to raise its reality when the goal exists, and this is the concept (Al-Qahtani, Muhammad 2020).

And as God Almighty says: “And if he has divorced her [for the third time], then she is not lawful to him afterward until [after] she marries a husband other than him” the Holy Qur'aan of Surat Al-Baqarah . The noble verse includes one of the letters of the end, which is (until), so the concept here indicates the ornament of returning the divorced woman three times if she marries another husband other than her divorced one. The jurisprudence differed regarding this concept in that if the ruling is restricted to an end, as in the Almighty's saying: “Then complete the fast until the night” the Holy Qur'aan of Surat Al-Baqarah . Most of the jurisprudence went to the fact that it indicates the negation of the ruling after this end, and according to Abu Hanifa, the denial of the ruling after the end is a matter of reference, not of a concept (Al-Nuaimi, Ibrahim 2012).

The Concept Of Exclusive

Restriction has two meanings: The first meaning: to shorten the terminology that is known to the linguists and scholars of rhetoric, whether it is of the type of limiting the adjective to the described, as in the saying: “There is no sword but Zulfikar, and no man but Ali” (Efendi, Ahizade 2015) or is it a type of restricting the described to an attribute, as in the Almighty's saying, “And Muhammad is but a messenger” “You are but a warner”.

The second meaning: What includes shortening and the exception that is not called

shortening by terminology, as in the Almighty's saying: "So they drank from it except a little", what is meant by the concept of limitation here is this second meaning.

As the concept of restriction differs with its different tools, which is that restricting the judgment to the word (only) denotes the restriction and the affirmation of the judgment in it, and its negation of anything else, where the term is not used in a place in the legal texts or Arabic poems except that it is noted that it is limited and negated. The original is said in the actual usage, as in the Almighty's saying: "Indeed, Allah is but one God" the Holy Qur'aan from Surat An-Nisa . and saying: "Only those fear Allah, from among His servants, who have knowledge" .” the Holy Qur'aan of Surat Ftaer , and his (PBUH) saying: "Actions are only by intentions.”(Al-Sabawi, Ali Khaled 2020).

Nickname Concept

Indication of the uttered from the name of the genus or the name of the science that the aforementioned ruling is denied other than it , in most jurisprudence, it is not considered evidence that it has a different concept, because revealing the identity of the person sentenced by his name is knowledge is one of the requirements of this expression with the origin of the ruling pronounced, hence, it is not considered a useful concept until an indication of the contrary concept related to the title emanates from it.

What is meant by the concept of violating the title is to deny the ruling on what is other than it, because if I had said (Zaid came) there was no indication in this utterance to deny coming on behalf of anyone else(Hamad Abd al-Hamid 2012) , And whoever said (Muhammad is the Messenger of God) indicates that other than Muhammad is not a messenger from God, and this is a lie, for the permissibility of weighing the intended purpose of singling out mention is the intention to inform the message of our Prophet Muhammad, the best of prayers and peace be upon him, for this reason we find some scholars of origins and they are the most general and most do not say, and others consider him to be perverted .

The Opinions Of Jurisprudence On The Concept Of Violation

To clarify the effect of the concept of contravention and to prove its validity or not to the deduced ruling, and whether this concept is a conclusive presumption or not, it requires exposure to the evidence and opinions of jurisprudence, which were divided between those who take this concept and those who do not, in the following two branches:

The Opinion That The Concept Of Contravention Is Valid

Most of the fundamentalists inferred the concept of discord, including the Imamis, the Malikis, the Shafi'is and the Hanbalis on what they inferred from considering this concept as a way of inferring the ruling by text and reason(Al-Shirazi, Ibrahim bin Ali 2012) , as the owners of this opinion invoked the concept of violation and considered it as evidence from the evidence of the legal rulings.

This is evidenced by the evidence of our Imam al-Sadiq (peace be upon him) with the different concept in the narration of Abu Basir when he said: I asked Aba Abdullah about the sheep, so it does not move and a lot of stupid blood is spilled from it. He (peace be upon him) said: "Do not eat, for Ali (peace be upon him) used to say: If a leg runs or blinks, eat" (Abd, Adnan Ibrahim 2016) The inference of Imam al-Sadiq with the saying of his grandfather, Imam Ali (peace be upon him), is only if it has an understanding, and if the sheep's leg does

not run or does not blink its eyes, it is not permissible to eat from it, and it has been ruling forbidden.

He (may God bless him and grant him peace) said, I will be more than seventy. The Prophet, may God's prayers and peace be upon him, inferred the concept of number, and every saying or action on the authority of the Messenger is a Sunnah, and he (peace and blessings of God be upon him) was the most knowledgeable of the people of language with it.

As for God saying, "Then complete the fast until the night," and the Prophet's saying, peace and blessings be upon him, "Everything is permissible until you know that it is forbidden in and of itself," the scholars of origins differed in it in two aspects (Al-Shirazi, Ibrahim bin Ali 2012).

The first aspect: When entering the end into the operative, their opinions differed in that the end - i.e. the result located after the end object as in "to" and "until" - Is it considered included in the rulings, or outside it as a subject, or does the changer end up in it as a subject and a ruling? On several opinions:

An opinion of them went to detail between counting them of the same purpose, then entering into it, as in the saying "the silence of the day to night" and counting them of the same gender, so do not enter with her, such as "everything is permissible., while another opinion went to the differentiation between the fact that the end is located after the end tool "to", then it does not enter into it, and he indicated that it is located after the object of the end "up to" so it enters into it, as in the saying "eat the fish until its head." the Holy Qur'aan from Surat Al-Baqarah .

The Opinion That The Concept Of Violation Is Not Valid

The proponents of this opinion (Youssef, Rafid Hamid 2018), arguing that the opposing concept is invalid with the following evidence:

1. If the description did not infer the negation when negating, there would be no benefit in it, and this saying is rejected, since the benefit is not restricted by referring the description to the ruling. It is sufficient to specify the subject of the ruling and restrict it to this benefit resulting from it.
2. The rule in any preventive restrictions is based on precaution, but this argument with its validity cannot be taken into account, since the purpose of the precaution is to reduce and compress everything related to the subject and to separate what is other than the restriction from the inclusion of the person judging him, and such a meaning is not understood in anything, because affirming the judging for a subject does not mean denying that the ruling has been abrogated for anything else, as is the case in the concept of the title, Which means that counting the restriction is precautionary, it is not necessary to count it as well as a restriction for the ruling under application of this concept.
3. The description is eloquent, so it is necessary to entrust the judgment to it, due to the presence of the predicate, which is the appropriateness of the judgment to the subject, so it is not possible to ruling the thief's punishment when you stole it, so there is no reason for the judgment to rotate around the title in order to occur and remain (AlCaliph Walid bin Ibrahim 2020) , however, this notice, even if it is accepted, but everything that did not reach the point of prominence and appearance has no effect in denoting the concept.

4. The inference of sentences that prove their significance to the concept, as in his saying (may God's prayers and peace be upon him): "The rich man is unjust", it is an inference that does not benefit, so there is no objection to the indication of restricting the description to the concept sometimes as long as there is a presumption .

For example, with regard to the concept of number, there is no doubt that restricting the subject matter of the ruling to a special number does not indicate the absence of the ruling in anything other than it, as if it were said: "Pray two rak'ahs before going to sleep", as it does not indicate that it is disliked to pray other than the two rak'ahs before sleeping.

The Field Of Application Of The Concept Of Violation

The application of the concept of violation is intended to subject the sections of this concept to a legal text for their actions and to control them in a legal base. These sections refer to (adjective, condition, title, purpose, limitation, and number), but before presenting these applications, it is necessary to address the conditions and prohibitions of the works of the concept of the offender, therefore, we will work to clarify these conditions and prohibitions in the (first requirement) to present the legal texts that were taken in these sections in both personal rights and in-kind rights, in the (second requirement) as follows.

The Rules For Adopting The Concept Of Violation

Adopting the concept of contravention is not, as one might think, that it is permissible and the door to its actions is wide open, as it became clear in the arguments of those opposed to adopting this concept, rather, its adoption has principles and criteria that require verification of their availability in order to demonstrate the authority of its adoption, therefore, it should be discussed first to clarify the conditions of its work, so that we can then look at the impediments to its work, each of which has a separate branch, as follows.

Principles Of The Concept Of Violation

Principles here mean those conditions and criteria that must be respected when interpreting any legal text in preparation for applying one of the sections of the concept of violation to it, in order to avoid finding a ruling that contradicts the spirit of the legal text and the intent of the legislator, the adoption of this concept opens the way for jurisprudence to emerge in the fields of deduction, which does not stop at the appearance of the utterance, but rather discover what is behind it, as long as that does not contradict the linguistic meaning and does not contradict the custom of the Sharia, moreover, those who are going to invoke the concept of contravention, if they say that the invocation of it is free of conditions and restrictions, then not every utterance has a contrary concept.

Rather, they stipulated several conditions for invoking it, including the following.

That a special concept indicating its judgment is not realized in the unspoken about it, because the existence of such a semantic concept is a way of judgment and not a guide to discourse (Al-Khanfar Hussein Ali 2018) , which should not be contradicted by what is more likely than the uttered or the concept in agreement, with the permissibility of leaving the general by analogy, because the concept of disagreement is only an argument if it is not restricted by something that is stronger than it, as in the text and the warning, if something stronger than it contradicts it, it is not permissible to invoke it, as God Almighty says: "Believers, retaliation is decreed for you concerning the killed. A free (man) for a free (man), a slave for a slave, and a female for a female" the Holy Qur'aan from Surat Al-Baqarah · This verse indicates, in its

explicit utterance, that the female is measured by the female, and indicated in its contrary sense that the male is not killed by the female, nor is it measured by him, but the text has been mentioned about retribution between male and female in general, as in the Almighty's saying: "We have written for them a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds equal retaliation" the Holy Qur'aan from Surat Al-Maidah , because the judgment of the evidence is uttered verbally in the matter and the concept of dissent is understood from it, so the uttered is a stronger word than it, but on the condition of balance in the particular and the general, but if the uttered word is general and the concept is specific, from which it is inferred, then it is used and considered as an argument and it is legitimate to follow it, because the concept is stronger than the general utterance in terms of denoting the specific, and the uttered general derives its validity in that it is uttered only .

That the one who was silent about it does not have the probability first, or it has equality with the uttered, otherwise it is necessary to establish the ruling in the silent about it, so it is a concept of agreement and there is no room for taking the concept of violation as in the Almighty's saying: "do not say: "Fie on you", nor rebuke them" (Abdel Aziz, Wafa Ahmed 2019) . It is not permissible to understand from this noble verse the possibility of a child hitting the parents, because the beating that is silent here is more haraam than the reprimand that is explicitly uttered in the Qur'an.

And as God Almighty says:" Those who consume the wealth of orphans wrongfully, only consume fire in their bellies, and they shall roast in the Blaze "The honorable verse indicated, with its explicit verbal utterance, the prohibition of eating the wealth of orphans, and other than eating is like eating in terms of sanctity, as in destroying orphans' money, because this is what comes to be understood from the justification for the prohibition, as well as what was mentioned in the Almighty's verse: "Do not kill your children because you fear poverty. We will provide for you and them. Killing them is a great sin"The non-ablative does not indicate that he contradicts him in the ruling, because the richness about which he is silent is more preferable to the ruling than what is uttered by it, on the evidence of the silent discourse, and if the killing of children is for fear of shame or honor, then it is equal to the ruling that is uttered by it, so the concept of consent is equal and therefore does not work with the opposite concept(Al-Ghamdi Yasser bin Darwish 2020) .

The utterance in which the restriction was mentioned came in the form of independence, so if it came as a subordinate to something else, then there is no concept contrary to it, as in the Almighty's saying: "and your stepdaughters who are in your care from your wives with whom you have lain" It is customary for the stepdaughters to live in the same residence with their husbands, and the restriction was for that. This does not mean that the rule of those who are not in those dwellings has a concept contrary to the rule of those who are in those dwellings. Therefore, this restriction is not understood by him, and it is the view of most scholars of the foundations .

And as God Almighty says: "do not touch them while you cleave to the mosques" the Holy Qur'aan from Surat Al-Baqarah ., It is understood from the verse with its explicit verbal pronunciation that it is not an ornament for a person who is observing i'tikaaf in the mosque to have his wife during his i'tikaaf, here the judgment is restricted to being in mosques, and its concept is denoted by its contravention of direct ornament if the i'tikaaf is outside those mosques, and this concept is not correct and is not said to be authentic, and this is an incorrect concept, and it is not said to be authentic, because the person in i'tikaf is absolutely prohibited from direct contact, whether he is in the mosque or elsewhere, hence, the restriction according

to the verse (in the mosque) was independent and had no meaning in relation to the restriction preventing the person in i'tikaf from having intercourse with his women.

If the utterance was not an answer to a question of a special ruling, nor an incident specific to the aforementioned, as in the Almighty's saying: "do not consume usury, doubled and redoubled" the Holy Qur'aan from Surat Al Imran , There is no concept of double in this verse, because the prohibition here was what they used to deal with because of the deadlines. The creditor, if his debt became due, would say to his debtor: Either you give what you owe, or you raise your debt, so the principal of your debt will be multiplied many times, so the verse was revealed prohibiting that, and as in the saying of the Prophet, peace and blessings be upon him, "Tanners purify it." The summary of the incident is that when the Messenger of God passed by a dead sheep, he said its tanners purify it. The text of the hadith indicates that the skin of this sheep is pure with tanning, and the concept of contravention indicates that skins other than this sheep are not pure, but the ruling here is to explain an incident that was in front of the Messenger, so it is not permissible to take the contrary concept, as there is no concept of a violation of this ruling, because what is meant is to give a ruling for a specific situation or event, not for a ruling that negates anything else (Mashhour, Musa 2017) , because the benefit of the explicit utterance came specifically to that question or that incident, so the lesson here is the generality of the expression, not about the reason. The difference between them is that the connotation of the concept is weak, so it falls out with the slightest presumption, unlike the general expression, for its connotation is strong, so it is an argument .

Also, as the Prophet, may God bless him and grant him peace, said, "He who believes in God and the Last Day, let him honor his guest. So, his saying, "He who believes in God and the Last Day is a restriction that is not understood, because it is a mention of glorification. .

Limitations Of The Application Of The Concept Of Violation

The scholars of the origins mentioned several impediments that block the adoption of the concept of violation. If any of them are available, the text is limited to the uttered without having a contrary concept. These impediments prevent it from considering it and arranging the effect on it, including:

The specification of the explicit utterance should be a mention of gratitude, the Almighty's verse: "And it is He who subjected the sea for you to eat from it tender meat" the Holy Qur'aan from Surat Al-Nahl , it is not intended to prevent the eating of cod from the whal, which indicates in its contrary sense that if the meat is from the meat of the sea and is not tender, then you do not have the right to eat it like fresh meat. This is not true at all, because all sea fish are halal, whether they are fresh or not, because the verse only came in the context of gratitude and the manifestation of the kindness from Him, Glory be to Him, by the goodness of tender meat and a reminder of the blessings of God Almighty on the servant, and there is no doubt that the new meat is better than the old, which was dried and exposed to the sun, usually the soul desires the ripe first more than the dried one, and gratitude comes from the first more than the second from grace.

Specifying the operative by explicitly stipulating it to agree with reality, as in the Almighty's saying: "The believers should not take the unbelievers as guides in preference to the believers" the Holy Qur'aan from Surat Al Imran , The verse was revealed about a people who embraced the Jews rather than the believers, so the verse came to forbid such a situation that occurred without intending to be specific to it, as it came in the interpretation of this verse that it was revealed regarding the hypocrites, as they used to take care of both the Jews and the

polytheists, and they would come to them and provide them with news, and they want from that to have the upper hand and victory over the Noble Messenger, so God, may He be glorified and exalted, revealed this verse, and God commanded the believers and forbade them to do such evil, so loyalty to unbelievers is not permissible in all cases, and there is no contrary concept in that.

Determining what is uttered by remembrance in accordance with what has been done by custom and prevailing action, as in the Almighty's saying: "and your stepdaughters who are in your care" because the predominant course is that the stepdaughter is the wife's daughter in the lap of her mother's husband, as this verse indicates that its explicit utterance is that it is absolutely forbidden to marry the stepdaughter, although this ruling is restricted to the fact that the stepdaughter is in the husband's lap, then his contrary concept indicates the dissolution of the stepdaughter who is not in his lap, and this is not permissible.

If the explicit utterance is specified by mentioning for the sake of confirmation and verification, the Noble Prophet said: "It is not permissible for a woman who believes in God and the Last Day to mourn over a dead person more than three, except for a husband, for she is mourning for him four months and ten.". This hadith is reported in its literal meaning that it is not permissible for a woman to mourn for a dead person other than her husband above three, but this ruling is limited to the description (belief in God and the Last Day), which indicates in its contrary sense that the one who had more than three is not a believer, and this is not permissible, because the utterance here came out of the exaggeration.

Examples Of The Concept Of Violation In The Iraqi Civil Law

The legal elites had a prominent role in explaining the effect of introducing the concept of violation in a way that fills the legislative void and takes into account the spirit of the legal text and the feasibility of its legalization. This concept was one of the methods adopted in deducing the legal ruling and interpreting the text in a manner that governs a specific fact, therefore, in this requirement, we try to address some examples of this concept in each of the texts related to personal rights, as well as in the texts of real rights, in two separate branches:

The personal rights means the legal texts related to the theory of obligation in which the concept of violation is established, and this concept has several types.

As for the significance of this text in its contrary sense, that the contract is not completed and has no legal effect unless it is made by two wills, as this text indicates the absence of the defect without the addition to the order of the effects of the contract, if there is a legal act issued by one side, but there is no contract created by one side, the will and the binding offer are each considered a legal act issued by one side, and both are binding on their owners, but the source of their obligation is the unilateral will, not the contract that can only be made by an offer and acceptance according to the contrary concept.

Article (80) of the Iraqi Civil Code stipulates that: "1- The offer of goods with an indication of their price is considered positive, 2- As for the publication, advertisement, and statement of prices being dealt with, and every other statement related to offers or requests addressed to the public or individuals, it shall not be considered an affirmative upon doubt, but rather an invitation to negotiation. According to the operative paragraph of the first paragraph of the above article, the affirmative is the offer made to the public or to specific individuals,

with the price specified for the thing offered, i.e. a statement of its essential elements.

The text above referred to the concept of the adjective, and as previously, may be a matter of exaggeration, or it comes out until the exit of the majority, so what is meant by this concept is to attach the judgment to one of the attributes, indicating that what is not characterized by this attribute has no effect in the judgment, as the concept of violating this paragraph indicates that every offer devoid of a price statement does not rise to the level of an offer, but rather remains a mere invitation to negotiation, because it came vacant from the statement of its basic pillars and devoid of an essential characteristic that negates the positive characteristic. It is noted that the above text, although it has a meaning in terms of the operative, also has a connotation in terms of the opposite concept, as we find that the second paragraph of the previous article indicates that the presence of doubt in every offer of publication, advertising and the statement of prices being dealt with makes such offers a mere invitation to negotiation, being offers that are not based on certainty and ambiguity, if these attributes are negated, the contradiction of these provisions will be proven. The failure to prove the attribute (statement of prices) proves a contrary provision by making the offer a mere invitation to negotiation, and if the adjective (doubt) is not proven in publication and announcement, a judgment corresponding to the spoken judgment is achieved by making the offer an affirmative, unquestionable offer, if the adjective (non-discussion of the terms of the contract) is not proven, a judgment will arise that is contrary to the uttered judgment by making the contract for bargaining and non-compliance.

As For The Concept Of Violation Related To The Condition

Article (113) for an Iraqi civilian states that: “Coercion must be considered that the compulsion is capable of inflicting his threat, and that the compulsion fears the occurrence of what has become of his threat, that he most likely thinks that the compulsion will occur if he does not do the compulsion”. This article stipulates that in order for coercion to be realized as a defect of will, two conditions must be met:

1. To be able to inflict his threat.
2. If the compulsion predominates, the compulsion will occur to him, if he does not do the compulsive thing.

This text indicates what it says. If these two conditions are met, the ruling is established that the contract is suspended in order to achieve coercion. The concept of the condition means the indication of the meaning of the utterance without the pronouncement, that the silent one who did not meet the condition of the uttered contradicting it in the judgment, that is, it indicates the absence of the judgment when the condition is absent, where this article indicates in its contrary sense that if the two conditions are not fulfilled, coercion is not achieved, so the opposite of the previous ruling is proven because the conditions for achieving coercion are not fulfilled.

As for the concept of violating this text, it indicates that the contract whose terms allow for the possibility of rejection, modification and discussion of the terms is a bargaining contract in which the obligee has the freedom to negotiate, not merely accepting the subject.

In light of the foregoing, we find that the previous legal texts have taken the concept of violation under the concept of condition and adjective, each of which is one of the most important sections of the concept of violation. The violation of the utterance of the previous

legal texts is achieved to prove the opposite of the uttered text because one of the restrictions of this text is absent. The restriction may be a conditional restriction, a number, or an attribute, and this means suspending the judgment on the subject with one of its attributes. The word will indicate the realization of the opposite of that ruling, for example, we find that Article (73) of the Iraqi Civil Code refers to the restriction (the offer is linked to acceptance). It is a number that restricts the emergence of the obligation through the contract with the presence of two wills to fulfill it, and in the absence of this number, the agreement does not rise to the level of the contract, and then a ruling contrary to the operative ruling is established.

According to its explicit utterance, the bid must be awarded to one of the bidders who submits the largest bid for the possibility of arranging the effects of the contract, while this operative had a different concept related to the restriction of limitation, as there is no room for the effects of this contract, which is located in the auctions, except through one method, which is the award of the auction to the owner of the largest bidder.

Paragraph (1) of Article (90) of the Iraqi Civil Code states that “1- If the law imposes a specific form of the contract, it shall not be concluded unless this form is fulfilled, unless there is a provision to the contrary”, Also, what was stated in the first paragraph of Article (91) of the same law as: “1- The preliminary agreement under which both contracting parties or one of them undertake to conclude a specific contract in the future is not valid unless it specifies the essential issues of the contract to be concluded and the period during which it must be concluded”.

As for the concept of the end, we find that the Iraqi legislator indicated to the completion of the contract that all of its elements of consent, place and reason are available, however, the last pillar is not required to be explicitly mentioned in the contract. Rather, it is sufficient that there is a reason for this obligation and that it be legitimate, if such a reason is mentioned in the contract, it is considered the real reason for the contract to be concluded, as paragraph (p) of Article 132 of the Iraqi Civil Code states that: “3- But if a reason is stated in the contract that it is the real reason until evidence is established to the contrary”. This is what was stated by the operative text of the article above, but this utterance is restricted to an end, and since restricting the judgment to a goal definitely indicates the denial of the judgment after this end, and because the end of a thing is its end and the end of a thing is cut off, and it is known that if a thing is cut off and ends, it becomes specific to a ruling and has an effect, and after him it became specific to another ruling, any other effect, and it is against it, meaning that if it is proven by evidence for another reason for this contract and this reason is illegal, the contract is voided because of the illegality of the reason, that is, if the goal is achieved, the text becomes a ruling other than the ruling of the operative.

Applications Of The Concept Of Violation Of Rights In Rem

The rights in kind in the Iraqi civil law are not absolute but rather specific. These rights are the insurance mortgage, the possessory mortgage, the right of concession, and the most rights that preserve the creditors' money in case the debt becomes insolvent, therefore, we will clarify the applications of the concept of violation contained in the legal texts related to these rights and clarify the forms and types of this concept.

Perhaps the first of these is the concept of adjective, as we note that Article (1285) of the Iraqi Civil Code stipulates: “A security mortgage is a contract by which the creditor gains on a property designated for the payment of his debt a right in kind.”

In defining a possession mortgage, Article 1321 of an Iraqi civil states: “A possession mortgage is a contract whereby the mortgagor makes money locked up in the hands of the mortgagee”.

We note in the text of Article (1285) that the insurance mortgage as a contract is only applicable to real estate and not to other movable things, also, the text of Article (1321) clarifies that the possession mortgage is nothing but a contract in kind that can only be completed by taking possession (possession), whether the mortgaged money is tangible or intangible, this is on the one hand and on the other hand, and according to the concept of violation, we find that the absence of the quality of (real estate) with money pledged in insurance makes the contract void. The ruling contrary to the text is proven by the non-completion of the contract, which must give a right in kind to the mortgagee creditor by advance and follow-up in whatever hand it is, so the creditor is not given such right by the absence of the quality.

The same is the case with the possessory mortgage, as the absence of the attribute (possession) achieves a ruling contrary to the legal text that makes the contract void as a mortgage and thus the mortgagee loses the advantages of the right in kind such as preference, tracking and imprisonment.

The other type of the concept of violating it is in the end, that is, the legal text has a provision that is restricted to an end according to its utterance, and after this end is achieved contrary to the previous ruling, for example, Article (1295) of the Civil Code states: “2- He has the right to manage the mortgaged property and to receive its yield until the time of its attachment to the property in accordance with the rules of procedure”. We note that there is a purpose in this text, meaning that the provision of this text is restricted to the purpose of this end is (until the time of its attachment to the property). The provision of this article, according to its wording, states that the owner of the mortgaged property has the right to manage his property in accordance with the nature of the property, if the mortgaged property is a house, it is permissible for him to inhabit it, and if it is land, it is permissible for him to plant it, also has the right to exploit the mortgaged property by renting it to others, so he may invest his property and obtain its revenue, all of this is determined by the operative part of the article above, but reaching the goal specified in the text gives a ruling contrary to the above, if the debtor does not perform his original obligation and does not pay what he owes to the mortgagee, the latter may execute on the mortgaged property, that is, taking executive measures, and from this end, the opposite of the previous ruling is established. Since the start of the execution procedures on the mortgaged property, the property owner is restricted from using and exploiting the mortgaged property, so he cannot obtain its yield.

As for the concept of limitation, i.e. restricting the judgment to the word (I or not), we note such a concept in the text of Article (1093) of the Iraqi Civil Code, which is related to the common path by stating that: “It is not permissible for any of the partners in the private way to do something in it, whether it is harmful or not, except with the permission of the other partners.”. The joint private road is the road designated to serve the real estate located on it, therefore, according to the text of this legal text, none of the owners of real estate overlooking this road can commencement of any work in it except after obtaining the approval of all owners of real estate common in this way, i.e. according to the concept of violation related to the restriction of inventory, in the event of the absence of the restriction by obtaining the permission, it is permissible to carry out any of the works in the private way.

Conclusion

Through researching the topic (the concept of violation and its applications in the Iraqi civil law), I reached at the end of this research the following most important results:

1. The concept of contravention denotes a new ruling in view of the evidence of the contrary, and the contravention of the ruling of the uttered for the one who is silent about it, due to the failure of one of the restrictions prescribed for taking the explicit utterance.
2. It became clear that every text of the Qur'an or the Sunnah of the Prophet has an explicit logic and a different concept, and this is one of the inimitability of the Arabic language, the language of the Qur'an, and if the contrary concept is restricted by several restrictions, it is not applied in them.
3. The differing opinions of jurists and scholars of origins regarding the authoritativeness of the concept of discord is a matter that does not weaken the effect of this concept in interpreting the legal text and deriving the legal ruling from it, rather, it is one of the reasons for the jurisprudence of the jurists and the difference in their knowledge in inference.
4. According to the flexible formulation of the provisions of the Iraqi Civil Code, we noted that they were affected by the concept of contravention, because the original restrictions contained in legal articles are focused and consistent with the intent of the legislator, and by the absence of the restriction, another ruling appears that contradicts the operative.
5. The concept of violation has several sections, as in the condition, adjective, purpose, limitation, number, and others, most of them had several applications in the Iraqi civil law, although some of these sections were agreed upon on their authority and others were not.
6. Working with the concept of contravention in interpreting the legal text and deducing its provisions is not absolute and without any restriction, rather, those protesting it stipulated several conditions for inferring this concept, so if any of them fails, no restriction contained in its divisions indicates the opposing concept, and it has no other ruling.
7. Through the application of the rules of the principles of jurisprudence and the adoption of its principles, it is clear that it is easy to derive rulings and interpret the legal text, which otherwise is difficult.

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