TRANSFORMATION OF NULL LEGAL ACTIONS: AN ANALYTICAL STUDY

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Abstract

This research addresses and analyzes the transformation of invalid legal actions into valid ones to reduce the phenomenon of invalidity of legal dispositions, which achieves stability in civil transactions. Most of the legislation has sought to do so. The analytical methodology followed the text of Article 142 of the Palestinian Civil Code No. 4 of 2012. This research sheds light on the theory of the transformation of invalid legal actions in Palestinian Civil Law by analyzing the relevant legal texts and showing their accuracy and effectiveness to arrive at an appropriate formula for the legal text. Accordingly, the research problem is to determine whether the legislator was accurate in drafting Article 142 of Palestinian Civil Law and whether it needs to be amended. This shall be done by analyzing this legal text and clarifying its accuracy through the explanation of the definition and conditions of the transformation of invalid legal actions. The research concluded that the legislator was not accurate in drafting this legal text, and an amendment has been proposed, besides other results.

Keywords: Palestinian Civil Law, Invalid Legal Actions, Transformation, Nullity, Voidability, Original Act

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1. INTRODUCTION

The question of the validity of legal actions is an issue of utmost importance[1], not only for the two parties to the act but as constituting a supreme interest of the state and the economic system in general. This is because no society can be conceived without valid and binding contracts, whether at the level of companies or individuals (Smits, 2014, p. 51). In this sense, various legislation has endeavored to limit nullity to save legal conduct that falls under the risk of nullity as a result of the parties' ignorance of the requirements and conditions for the validity of the actions they conclude.

However, it is noticeable that some legislation has exaggerated the importance of limiting nullity, despite the need for legislative measures to be balanced in terms of urging and focusing on avoiding nullity versus working to revive null behavior based on the theory of null legal behavior transformation.

The analysis of some legislative and even jurisprudential and judicial positions demonstrates

[1] See for the elements of valid contracts Walston-Dunham (2009, p. 417).

clearly that many legislative bodies seek to expand the scope of saving null contracts while recognizing the consistency of these efforts with the basic logic of creating a theory of transformation of legal actions. Such acts seem like an exaggerated connotation of contractors who neglected the conditions of the correctness of legal actions (Jadalhaq & El Maknouzi, 2019).

This, besides the untimely and sometimes hasty legal treatment of the issue of nullity, has prompted some legislators to address this issue in ways that have provoked controversy and brought legal texts into conflict with sound legal logic. Among such legislation is that of the Palestinian legislator in Civil Law No. 4 of 2012, compared with the treatment of the theory of legal disposition transformation in Article 174 of the Civil Code, where confusion occurred between transformation and correction, which are two completely different things (Jadalhaq, 2010).

Studies related to the issue of transformation of legal actions in other Arab legislation have been found (Al-Baali, 2009), while there is no study on this issue in Palestinian Civil Law No. 4 of 2012. Furthermore, this research sheds light on the theory of the transformation of invalid legal actions in Palestinian Civil Law by analyzing the relevant legal texts and showing their accuracy and effectiveness to arrive at an appropriate formula for the legal text, leading to achieving stability in civil transactions in society. Accordingly, the title of this study was chosen using the analytical methodology to answer the main research problem:

RQ: Was the Palestinian legislator successful in drafting the text of Article 142 of the Civil Code regarding the transformation of null legal acts?

The structure of this study is as follows. Section 1 is the background information and introduction. Section 2 reviews the previous literature. Section 3 analyzes the methodology that has been used to conduct analytical research. Section 4 studies and analyzes the transformation theory of the invalid dispositions in Palestinian Civil Law. Section 5 highlights the conclusion and recommendations of this research.

2. LITERATURE REVIEW

Several previous studies dealt with the issue of the transformation of legal actions. The first study concluded with the necessity of developing new legal texts regulating the process of contract transformation, as it makes the invalid contract useful and effective for the parties. Also, the transformation cases must be expanded to achieve the contractual balance between the contracting parties and increase growth and development in social and economic life (Al-Fatlawi, 1997). A second study concluded that the cases of contract transformation in Islamic jurisprudence are diverse and numerous, and are not limited to invalid or voidable contracts. In Islamic jurisprudence, multiple terms were used, such as conversion and inversion, not just transformation, as is the case in positive law. The transformation in Islamic jurisprudence does not require the invalidity of the original contract, unlike in positive civil law (Al-Baali, 2009). A third study concluded that the theory of transformation, to contribute to achieving stability in dealing and contractual balance, should not remain restricted to the principle of the authority of will and should not make the judge search for the supposed intention of the contracting parties, but rather the judge must search for the contract objectives. Also, it is necessary to expand the development of legal texts for contract transformation. Furthermore, despite the importance of the theory of contract transformation, it is not widely applied, so it must be expanded to achieve the greatest economic benefit (Saida, 2014). A fourth study concluded that the judicial applications of the theory of transformation are limited and the role of the judge in search for the presumed intention of the contracting parties is an important and fundamental issue to apply this theory. Also, the judge must support the role played by the legislator by creating the appropriate ground for the implementation of the contract transformation theory. Furthermore, the implementation of transformation theory should not be limited to contracts but should include all legal actions (Sofian, 2018).

3. RESEARCH METHODOLOGY

The analytical methodology followed for the text of Article 142 of the Palestinian Civil Code No. 4 of 2012, where the researchers analyzed this text and exposed its consistency with the general rules of law related to the topic of research. Besides clarifying the position of jurisprudence on the theory of the transformation of legal actions, the mechanism of distinguishing between this theory and other suspected theories and defining the subject of the research to ensure that it's clear. Moreover, several related legal concepts were presented to accurately explain the concept of legal action transformation and related legal terms. The descriptive approach was initially followed to clarify and explain the transformation theory and its related concepts. This led to the ease of analyzing the relevant legal texts. The research philosophy followed depends on the description and analysis of the legal texts as well as the opinions of legal scholars, with the aim of reaching a consensus between the legal and jurisprudential positions. This methodology eventually leads to the achievement of maintaining the validity of contracts as much as possible, which is positively reflected in the stability of transactions in society. Therefore, the research was designed into several sections in which the researchers described, explained, and analyzed the theory of contract transformation, the necessary conditions for the transformation of a void contract into a valid contract, and the implications of this mechanism. This methodology included a balanced analysis and criticism of relevant legal texts and jurisprudential opinions.

4. RESULTS AND DISCUSSION

4.1. The concept of transformation

The theory of transformation of false legal conduct in the idea of nullification is existentially linked to the notion of nullity, the latter correlated with the jurisprudence of a violation of the conditions

stipulated by law, so that nullity is the penalty for violation of those legal rules, and the matter is whether this link is conscious or unconscious (Al-Sharqawi, 1956, p. 94). Some jurisprudence considered it a logical result of the lack of conditions required by law in the formation of the contract (Ghanem, 1930, p. 275)[2].

A void contract is null according to the general principle that it does not produce any of the effects that the contracting parties were aiming to achieve, but accidentally and exceptionally it can produce effects as a material fact and not as a contract or legal action (Hijazi, 1995, p. 1085). This is the idea of transformation adopted by the legislator to limit the scope of nullity and to maintain the economic regime represented by the circulation of funds and wealth through the conclusion of contracts[3].

Contract transformation has not been defined by the legislator, which is a normal matter, since such a definition is not the task of the legislator, but derives from jurisprudence and commentary, as there are many jurisprudential definitions of transformation. Where some jurists define it as "a change in the description of the contract that would have all its effects notwithstanding the nullity that inflicts it when it was in its original state," others consider the transformation of a contract as a kind of interpretation of the contract because of the fulfillment of its intended purpose whereby it becomes an obligation other than that required by prima facie expression (Al-Baali, 2009, p. 28). That is, it is "A means of maintaining the null and void contractual bond in a new gown different from the contract originally intended, which response to the description, adaptation, or nature of the contract" (Mansour, 2006, p. 284).

This definition has been criticized, for although it attempts to clarify the idea of contract transformation, it is ultimately confused with adaptation theory, although they are separate theories that differ in several substantive areas since contract adaptation is often based on the contractors' genuine will as assumed by the judge in determining an interpretation of that will (Belbeshir, 2013, p. 25). The transformation of the contract is based on a hypothetical will assumed by the judge (Yousry, 1958, p. 186), and some believe that the transformation of the contract is "the replacement of a new valid contract with an old, null and void one without adding any new elements in order for the contract to be valid" (Sultan, 1998, p. 317). Some define contract transformation as "the *coup d'état* of the false contract into a valid contract as an exceptional effect" (Rawas, 2004, p. 137).

However, we note that this definition adopts an unlawful term to express the contract transformation, "*coup d'état*", and that the transformation was considered an exceptional effect of the null contract while most jurists agreed upon it being an accidental effect (Al-Sanhouri, 1998a, p. 622; Sultan, 1998, p. 318; Mansour, 2006, p. 247). We also find those who, in response to criticism of the definitions given, state that "transformation is a legal process by the judiciary aimed at creating a new, valid contract whose elements are available in the same null contract without implying any change in these elements informed by the virtual wall of the contractors" (Al-Shabani, 2001, p. 7). This definition is most apt, as it clarifies the true meaning of the contract's transformation and the fundamental objective of the implementation of this system, which is to save the null contract and its consequences.

4.2. Distinguishing transformation from similar legal systems

Here we discuss some of the legal systems on which jurisprudence has relied that serve to mix and confuse concepts and their application to transformation, in an attempt to consider them as an alternative to transformation theory. The most convergent systems will be addressed.

4.2.1. Distinguishing the transformation of the contract from its adaptation

The principle is that the act or contract transformation is far from the concept of adaptation, but since the judge, when applying the theory of transformation, is obligated to determine the intention of the potential or hypothetical contracting parties, by giving the null contract an adaptation that takes it out from within the circle of nullity, this matter has created, for many jurists, a confusion between the two concepts, which has led some of them to say that adaptation and transformation are identical and are one concept (Belbeshir, 2013, p. 24). Some jurisprudence has gone so far as to demand the abolition of the theory of transformation and remain content with adaptation (Tanago, 2005, p. 221)[4], and an opinion in such jurisprudence defines adaptation as: "a fact or an attribute attached to the contract and thus it is either null or true, and this is called transformation" (Yousry, 1958, pp. 90–91).

These jurisprudential views, which called for or propounded a denial of the autonomy of each theory from the other (transformation and adaptation), have hit upon one part of the truth and logic and missed it in another part, and in the part that was hit upon is very accurate — namely, that adaptation is the first stage toward transformation through the judge's interpretation of the intention of the parties or the potential parties, giving the null contract an adaptation that saves it from the guillotine of nullity. The truthful part is that both ideas seek to change the description of the contract, but they differ in that transformation is applied to a void contract, whereas adaptation in its origin and as a separate notion responds to a valid

[2] Note also, "A contract is an agreement giving rise to obligations which are enforced or recognized by law. The factor which distinguishes contractual from other legal obligations is that they are based on the agreement of the contracting parties" (Peel, 2011, p. 1).

[3] Artificial legislations were not the first to adopt the theory of contract transformation. Islamic jurisprudence defined contract transformation by naming it "Contract Inversion" through the jurisprudential rule: "The lesson in contracts is for purposes, not for words and phrases", given that the inversion of the contract is an exceptional effect of the null contract, because of the interest of Islamic jurisprudence in the necessity of benefiting from the null contract within the limits that do not violate the provisions of Islamic law and do not disturb the balance of justice and truth" (Al-Fadl, 2006, p. 188). Islamic jurisprudence plays an important role within the framework of private law in Arab legislation. For more details, see Jadalhaq and El Maknouzi (2019, p. 2).

[4] "When a person performs a certain action, he does not monopolize the right to adapt what is issued by him, because adaptation is an act independent of the will of individuals. Sometimes adaptation has another name that is contract transformation... and that a special text for the issue of transformation is useless, because transformation is a kind of adaptation." (Tanago, 2005, p. 221).

contract, so that if the judge makes a mistake in adaptation, the contract would not be affected, whereas in the case of a void contract, if the judge made a mistake in adapting and exploring the presumed intention of the two parties, the contract will be considered null and void. This is despite the meeting points between them, which are: both seek to give another description of the contract; the judge searches for the common intention of both parties to decide on transformation or adaptation (Belbeshir, 2013, p. 25). However, the differences between them are substantial and significant and are summarized as follows: 1) transformation arises only concerning a null and void contract that the legislator aims to save from nullity, and adaptation arises concerning a valid contract as a separate idea (Al-Fatlawi, 1997, p. 122), but serves as an aid in transformation, 2) transformation operations result in incidental effects of nullity, whereas for adaptation, their effects are original.

Here, in my estimation, these views are formally valid but not in substance. Both ideas are identical in the sense that adaptation leads to a contract change. It is possible to acknowledge where those views came from if we rely on the linguistic concept of transformation. As for the legal content, adaptation cannot be a transformation because if adaptation leads to the transformation intended by the legislator, there would be no need for the theory of contract transformation. This is contrary to fact. If we assume that this is true, can the judge, when adapting a contract as null, assume on his own that the intention of the potential parties would have gone to the valid contract (to which it is intended to transform the null contract) if it were not for the legislative assumption, a presumption of the legislator that cannot be proven otherwise that no null contract would have been transformed by adaptation?

4.2.2. Transformation and correction

Some jurisprudence defines correction as "correcting the contract by introducing a new element to it that legally makes it valid" (Al-Sanhouri, 2011, p. 501). Another view defined it as "correcting or renewing the contract with the removal of the nullity that threatens it, meaning that the voidable contract after correction becomes irreversible" (Al-Morsi, 2006, p. 17; Al-Shabani, 2001, pp. 289–290). Where the contract transformation is the replacement of an old null contract with a new valid one with the conditions set by the legislator to correct the contract by removing a defect, the contract is retroactively corrected from the date of its inception (Al-Morsi, 2006, p. 17). Some define it as "a combination of a voluntary act and a material action issued by the party in whose favor the nullity of the act has not been decided. It has a retroactive effect like a permit since the corrected act is considered correct from the time of its emergence, not from the time of its correction" (Mohsen, 2020, p. 27).

Concerning contract correction, there is no theory in legislative texts that deal with or regulates contract correction. In the case of contract transformation in legislative theory, all that has been said about correction concerns application in some sporadic subjects, but there is no general rule or specific theory.

There are two concepts of interpretation regarding the correction of a contract. The first draws within its scope every means of making the defective contract valid, whether by altering or diminishing an element of the contract, replacing an old element with a new one; adding to it; or detracting from it (Mohsen, 2015, p. 1685). The second is narrow, providing one means of changing an element of the defective contract to make it valid and arranging a retroactive effect extending to the time of concluding the defective contract; that is, making it enforceable and arranging for its effects after it was found ineffective, and the correction of the contract is by law (Al-Sanhouri, 1998b, p. 104); the defect that restores the validity of the contract may be eliminated by replacing or altering a new element with an old one[5], by adding or supplementing an old element of the contract, or by derogating or reducing the old element, but for this to be achieved, three conditions must be met to activate the contract correction:

The first condition is that we are facing a defective contract and that the defect is at its formation, not during its implementation because in that case, we are amending the contract and not correcting it. It is also stipulated that the defect can be rectified because it is not possible to correct null contracts for violating public order or those null because of lack of capacity (Al-Fatlawi, 1997, p. 41)[6]. The second condition is that we agree with the change in one or more of the elements of the contract. The third condition, of course, is that the contract remains of its kind without any change, thereby preserving the legal nature of the contract.

Accordingly, transformation is like the correction in several respects, the most important of which is that they respond to null contracts, and from this that they aim to save contracts from nullity and work to stabilize economic dealings. The similarities between them are also highlighted by the principle of retroactivity in the effect of each (Al-Sanhouri, 2011, p. 633). As correction produces retroactive effects from the date of concluding the contract, not from the date of the change in the null element (Al-Fatlawi, 1997, p. 244), and the same is true regarding transformation, as it too produces its effects from the date of conclusion of the contract and not from the date of transfer.

The two systems also meet in that the role of the judge is limited to verifying the fulfillment of

[5] Islamic jurisprudence finds that correcting a contract is different from detracting from a contract, since correction is exclusive to the corrupt contract, which is considered a non-existent contract, but it is permissible for it to be annulled by its parties. As for the detracting of the contract, it applies to a null contract, which is not a contract, and the correction of the corrupt contract involves removing the reason that led to its corruption, whether it be coercion, ignorance, a corrupting condition, or any other reason. Thus, it becomes clear that correcting the corrupt contract involves correcting the whole contract by removing the cause that led to the corruption. As for detracting, it is a way to make a part or portion of the null contract valid by nullifying the incorrect part and keeping the correct one. Furthermore, detracting is possible for all kinds of null and corrupt contracts, while correcting the contract is only applicable to corrupt contracts (Naji & Hamid, 2012, p. 180; Fouda, 2005, pp. 550–551).

[6] These agreements are considered unlawful, so they cannot be enforced (see also Swain, 2015, p. 231). The reason for the invalidity of the contract is the lack of capacity of the contracting party to protect him. For more details, see Jadalhaq and Al-Qatawnah (2019, pp. 247–276).

the conditions required for either contract transformation or correction (Mohsen, 2020, p. 99). Despite the points of convergence between the transformation of the contract and its correction, they differ at essential points that make each of them an independent system. The contract is corrected by changing one of the elements of the void contract by substitution, addition, or reduction, while the transformation of the contract requires for its implementation that the null contract must gather under it the pillars and elements of the new valid contract in full, so that no element can be added to it, nor can any element of the contract be reduced or replaced by another element.

The two systems also differ in terms of their legal nature, as the null contract, when it is transformed into another valid contract, changes the legal nature of the original contract, whereas the correction system does not affect the legal nature of the contract, as we find that the corrected contract continues with the same legal nature.

Transformation is also distinguished from a correction in another issue, which is that the transformation of the contract is one of the accidental effects of the null contract as a legal fact, while a correction is considered one of the original effects, an exceptional original effect that falls out as an exception to considerations that the legislator deems necessary for achieving stability, including the effects resulting from the corrected contract (Al-Shabani, 2001, p. 306).

The role that the parties will play in each is another essential difference that emerges between the contract transformation and its correction. Correction takes place in two ways: either by the law and without interference with the parties' will, or by the real will of the contractors; while transformation is based on a presumed will, which is hypothesized by the judge, based on which he seeks to save the contract from nullity (Al-Fatlawi, 1997, p. 125).

4.2.3. Distinguishing transformation from interpretation

Interpretation is the clarification and removal of ambiguity. In contracts, it is intended to determine the mutual intention of the parties involved, whether the contract was made with mutual consent or not, and interpretation is the judge's way of determining whether the will of the parties is valid or flawed. This requires no verbatim adherence to the terms of the contract (Al-Fatlawi, 1997, p. 112), but rather that the contractors' mutual intention be drawn and that the terms of the contract be defined[7].

In carrying out the task of interpretation to determine the contractors' mutual will, the judge follows rules and is guided by specific factors that he extracts from the circumstances of each case separately, indicating his method and means of extracting the intended meaning (Al-Suhaili, 2005, p. 73).

Interpretation in its natural concept, as described above, is remarkably close to the system of transformation in that the latter necessitates the judge to take a position on the potential mutual intention or the probabilistic will that the legislator assumed, and the judge's position here requires interpretation. In both cases (transformation and interpretation), the judge attempts to identify and arrive at the true meaning or intention intended by the two contracting parties (Al-Fatlawi, 1997, p. 114). In the case of a simple interpretation, the judge aims to eliminate ambiguity and narrow the rift between the contractors, and in the case of a transformation, interpretation is used to determine the supposedly mutual intention of the contractors.

However, the similarity between contract transformation and interpretation does not mean that they are identical, for indeed they differ in several points:

1) The orbit of interpretation is the disclosure of the real will, which exists but is not clearly expressed, whereas the orbit of transformation is the disclosure of a will that does not exist or an imaginary unreal will, but one that might be possible or assumed.

2) Interpretation of a contract is not applied to void contracts but valid ones, except that the meaning is unclear or the parties will be vague, so the interpretation is used to clarify this. Conversely, transformation only applies to a void contract that contains elements of a valid one and is intended to disclose the will's direction toward this valid contract.

3) Moreover, interpretation maintains the original contract without introducing any new elements into it and only constitutes a search for the meaning intended by the two contracting parties when it is unclear. Contrariwise, transformation cancels the first null (original) contract (Al-Suhaili, 2005, pp. 75–76).

4.3. Conditions for applying the theory of transformation

Article 142 of the Palestinian Civil Code stipulates that: "If the contract is null and void or voidable and the elements of another contract are fulfilled, the contract shall be valid as the contract whose elements are fulfilled if it appears that the contractors' intention is to conclude the contract". As Article 140 of the German Civil Code is the historical source for Arabic texts dealing with the issue of the transformation of legal actions, as the aforementioned article stipulates: "If the wrongful legal conduct meets the conditions of another legal conduct, then it is the latter that is taken if it is assumed that the contracting parties wanted it and if they had known about the nullity".

The conditions for applying the theory are now clear: the contract is null and void, the false act or conduct fulfills the elements of another correct act, and the contracting parties intend to conclude the correct act. We will explain and analyze these conditions in the following sections.

4.3.1. Nullity of the original act

The theory of nullity itself, deep, multidimensional, and complex, has provoked many ideas that are sometimes harmonious and often conflicting, regarding which neither jurisprudential opinions nor

[7] Among these factors: Is the trust between the contracting parties, the current custom and the nature of the transaction, and references to the sources of obligation.

judicial jurisprudence has settled on a systemic approach.

Even the definitions in jurisprudence are multiple and differ. One view of jurisprudence defines nullity as a description of the legal act itself as a consequence of a defect rather than a penalty directed at its effects (Al-Sharqawi, 1956, p. 140). The defect is attached to the act if it violates a legal rule related to the conclusion of the act and concludes that nullity is a description attached to the legal action rather than leading to the ineffectiveness of the act. Another view[8] defines it as a description of a defective legal act in its origin in violation of a legal rule or agreement, which leads to the imposition of a penalty comprising impairment of the effectiveness of the act and loss of its legal effects.

According to the Palestinian legislator, to apply the theory of transformation, the act must be either void or voidable. This is what is expressly stipulated in Article 142 of the Civil Code[9]. The implementation of the theory of transformation is linked to null contracts, and it cannot be implemented with valid contracts in any way, even if such is the desire of the contracting parties (Al-Fatlawi, 1997, p. 31; Hassanein, 1983, p. 267; Sultan, 1998, p. 198). In these latter circumstances, the option is for the two parties to agree to terminate the valid contract and conclude a new contract following their will.

Absolute nullity is the penalty arranged initially by the legislator as a consequence of the failure of one of the elements of the contract, i.e., from the beginning of the formation of the contract (Al-Fatlawi, 1997, p. 114), and the basis for the nullity of the contract is the presence of a defect in it that results from the violation of a jus cogens legal rule. This defect manifests itself at the stage of establishing the contract. Nullity only affects rules relating to the establishment of the contract. In theory, if nullity strikes a contract because of a defect in the main or original formation of the contract, it strikes the contract at its basis or from the beginning (Fouda, 2005, p. 191). Whenever the defect is found, the nullity is found, and given that the defect is the basis and cause of nullity, the law establishes the system of nullity to protect the emergence of legal actions in general and the contract, especially under its rules (Al-Shawarbi, 2006, p. 420). The nullity must extend to the entire contract with all its parts if they are multiple, or to a part or parts other than the other if the parts affected by the nullity are the basis of the contract and cannot be separated from the rest of the contract[10].

Reversibility/voidability is based on the second part of the first of the conditions set by the Palestinian legislator that the theory of contract transformation is implemented, i.e., the contract's voidability or relative nullity, and it is to be noted regarding the majority of Arab jurisprudents and commentators that when they dealt with the types of nullity individually, their views settled on nullity as the penalty for violating conditions and as not extending to the conditions for validity in the other two respects. When they approached the theory of contract transformation, matters began to become more intertwined and characterized by confusion.

In this regard, it is unnecessary to clarify that the contract's rescission is the penalty resulting from the existence of a defect of will or lack of eligibility. In the case of its absence, it nullifies consent and leads to absolute nullity. Therefore, the inclusion of the aforementioned provision of Article 142 of the Palestinian Civil Code in the case of nullity must make us stop and reflect[11].

Regarding the first legislative provision of the German legislator's adoption of the theory of contract transformation on which this theory is justified, the German legislator spoke only about nullity — and here it is understood that he means absolute nullity rather than the two types of nullity, and there is no evidence that the two types of nullity are different in terms of reasons and effects. The legislative exit at the time was to address absolute nullity, which cannot be followed by a permit on the one hand, and conversely, the statute of limitations is not valid under the eternity of objections rule[12]. The legislative will is embodied in reducing the cases of absolute nullity (nullity at the time)[13], while a voidable contract is initially a valid contract and is not subject to transformation, as it is valid and arranges for its effects unless it is used. The party whose interest has been legislated as permitting it to request the contract's nullification by revocation, and it is possible to be immune from revocation by permit[14], and by prescription, the right to request annulment is statutory[15], meaning that its validity has been proven irreversibly.

[8] Concerning the presented definition, the legal nature of nullity has been described as resembling the legal qualification of criminal acts in a criminal legal system. The judge considers the nature of the act that occurred, the form of the material element, and the circumstances surrounding it. If it becomes clear to him that the acts violate the provisions of the law, he describes the act as a crime, if this is proven to him, he will move to apply the penalty in the criminal text to the act. This is the case in civil nullity, which is a legal system for civil penalties. It begins with the term nullity when the violation of the provisions of the law is proven, then moves to the application of the penalty, which paralyzes effectiveness and loses the contract's binding force (Fouda, 2005, pp. 20–26).

[9] The same applies to the rest of the Arab legislation, except for the Iraqi legislator, whose article of the Civil Code is identical with Article 140 of the German Civil Code.

[10] The element of consent is one of the most important elements for a contract to avoid nullity (Jadalhaq, 2017, p. 30).

[11] This text corresponds to the texts of Article 144 of the Egyptian Civil Code and Article 105 of the Algerian Civil Code.

[12] Where Article 139, Paragraph 1 of the Palestinian Civil Code stipulates: "1. A void contract does not have an effect and the license is not returned to it...". Also, Article 140 of the same law stipulates: "A nullity lawsuit lapses after fifteen years from the time of the contract". As for the nullity exception, it may be made at any time.

[13] Although the term nothingness has begun to fade in front of the transformation theory to the extent that it has become an unacceptable idea, and despite my reservations on this issue, there remain cases of nullity that cannot be covered by legislative rescue even in the presence of the transformation theory. The best example of this is the nullity of an act because of the illegality of the object or its violation of public order and morals, where behavior taken under the influence of drugs remains null and cannot be transformed into correct behavior.

[14] Whereas Article 144 of the Civil Code states: "1. The right to nullify the contract shall be extinguished by express or tacit permission. 2. The permission is based on the date on which the contract was concluded, without prejudice to the rights of third parties. 3. However, it is permissible for anyone with an interest in the contract to excuse the one who has the right to nullify the contract by expressing his desire to permit or nullify it within a period not exceeding ninety days starting from the date of the notice. If this period lapses without expressing his desire, it is considered a leave of absence for the contract".

[15] Article 145 of the Civil Code states: "1. The right to annul the contract is forfeited if the owner does not adhere to it within three years unless the law provides otherwise. 2. This period shall start to run in case of lack of capacity, from the day on which this reason ceases to exist; in case of mistake or deception, from the day on which it is revealed; and in case of duress, from the day of its interruption. In any case, the right to nullify may not be invoked for a mistake, misrepresentation, or coercion if fifteen years have elapsed from the time of the completion of the contract". For details about duress, see Jadalhaq (2017, pp. 30–53). For details of deception and its impact on the contract see Jadalhaq (2020, pp. 109–140). For details about mistake, see Jadalhaq (2019, pp. 1–16).

The controversial issue here, to which the majority of Arab jurisprudence referred in the adoption of the legislative positions allowing application of transformation to voidable contracts, is that the legislator, when he included the case of voidability, meant voidable contracts that have been judged to be void, as in this case, they are equal in effect to void contracts as absolutely void, therefore, allowing the theory of transformation to be applied. This approach is purely theoretically correct, but from a legal logical point of view, it is inaccurate[16].

Avoidance presumes that a contractor's will was affected by a defect of wills, such as error or fraud. Would the contract be transformed if the contractor whose will was undermined by the nullity was upheld and ruled out? This hypothesis is difficult to imagine, such as in the case of a fraud-distorted sales contract. How can the act be transformed? Will it be transformed into another activity that does not require the will to be free from the defect of fraud?

Therefore, the basis of Arab jurisprudence in the preceding paragraph regarding the equal effect between the null contract of absolute nullity and the avoidable contract, if the latter is judged null is an idea taken into consideration, because it cannot be conceived as explained above. However, if the effect is the same, the reason is different, and the purpose of the transformation disappears.

4.3.2. The null conduct fulfills the elements of another valid conduct

Article 142 of the Civil Code included this condition, whose meaning is that a new contract is to be extracted from the remnants of the old contract that was decided to be null, if the new contract is different from the old null contract, for otherwise there is no need for the idea of transformation in terms of origin. To achieve this condition, the null contract must include the elements of a valid contract without addition, as long as the desired economic adjective of concluding the null contract will be achieved under the valid contract, if the new contract is different from the old contract, meaning that the difference between the two contracts is in terms of effects, content, or type.

Jurisprudence differs on this issue. One view is that the difference should have resulted in the existence of the two contracts in two different legal scopes and is not limited to changing the content only (Al-Ahwani, 1995, p. 271; Al-Fatlawi, 1997, p. 80; Al-Shabani, 2001, p. 130; Yousry, 1958, p. 149), while another view holds that it is not sufficient to change the content of the new contract from the old contract. An example of this is a permanently null lease that is turned into a temporary lease (Mansour, 1957, p. 375).

It can be said that the view calling for the necessity that the new contract differs from the old contract is correct, although this is not explicitly stipulated in the text of the treated article because logic requires that the two contracts be different in terms of legal nature — for otherwise, the legislator has established the idea of the parties' probable will and made the presumption to the contrary unsustainable as long as the two contracts are sufficiently different in content. In this regard, the reliance on a permanent or life lease contract and its transformation into a temporary contract is an example that is not inherently related to transformation, but rather to the non-effectiveness of the contract for a period longer than the legislator had specified[17].

4.3.3. The contracting parties' intention to conclude a correct act

This condition is based mainly on the will of the contracting parties based on the principle of the authority of the will, whereby it is expressed as the will necessary to transform the contract or the subjective conditions for transformation, so the transformation of the contract is nothing but a means to direct the contracting parties' will away from nullity and in the right direction to achieve the goal that the contracting parties were seeking to achieve — provided that it is proven that the intention of the two parties would have gone to the new contract had they been aware of the reason or reasons for the nullity of the first contract. However, there are cases in which the legislator requires the transformation of the contract even without considering the intention of the contracting parties[18], and in this regard, it is necessary to address the role of the parties and the role of the judge.

As to the role of the parties, it is logically accepted that the required or intended will here will not be the real will, but the various jurisprudential views differ in particular regarding the role of the will and its classification. One view of jurisprudence holds that the contractors' potential will should be based on the other conduct to which the original conduct was transformed (Al-Sanhouri, 1998b, p. 106)[19], while another view of jurisprudence is based on a genuine will as a condition for the transformation; as it was further argued that this requirement was intended not to be the trigger for the contract by the parties will so that it would not have been concluded without such adaptation; if the adjustment is not so substantial, the judge gives the correct adaptation of the contract; and in this, he is not looking for a hypothetical will of the contracting parties, as it is sometimes said, but gives the correct name to the real will of the contracting parties (Tanago, 2005, p. 96).

Here, it can be said that the two previous views set aside all appreciation for their owners. The first view, based on the probabilistic will, is rebutted by the fact that the word "probability" is possible in this field, for the contracting parties' expectation of nullity and their non-expectation is equal in these two hypotheses, and thus the question of probability would be unsatisfactory (Hijazi, 1995, p. 33), for

[16] This point will be discussed at the end of the discussion of the remaining conditions for applying the theory to present a comprehensive overview of the idea that inspired this study.

[17] Where the Palestinian legislator has set the maximum term of the lease contract at 30 years under Article 611 Para. 1 of the Civil Code.

[18] For example, the legislator considers the sale by someone who faces a final illness (death disease) a will according to Article 508 Para. 2 of the Civil Code. For details about the death, and disease see Jadalhaq (2011, pp. 515–544).

[19] He adds that this does not mean that the contracting parties wanted the other act as a real will, but rather that they would have wanted it if they had known that the original act was null; their real will went to the original null act, and their potential will go to the other act, and a careful distinction must then be made between the precautionary will and anticipated will, which are often confused. The transformation of the contract thus cannot be based on a precautionary will, although it may be based on an anticipated will (El-Desouky, 2010, p. 91).

the contracting parties cannot have a contingent will, as they did not know of the nullity and did not think of the possibility of taking precautionary actions. Rather, this contingent will not exist, for otherwise, the matter is one of interpretation (Al-Shabani, 2001, p. 149; Al-Ahwani, 1995, p. 272).

A third view holds that the intended will here is the hypothetical will, and the reason is that they do not wish to declare explicitly that the necessary will is the assumed will because they are influenced by the principle of the authority of the will and fear of talking about the role of judicial contribution in the creation of the new contract within the framework of the transformation of the contract through the hypothetical will that the judge assumes (Fouda, 2005, p. 651), which gives him a positive role in the field of establishing contracts. However, this fear is misplaced since the role given to the judge has a legislative source and is not genuine jurisdiction of the judge, so it is not an unknown and unreal intention, but rather an assumed intention based on the jurisprudential rule, "What is not fully realized is not fully left." The judge can prove this when implementing the contract transformation (Al-Sanhouri, 2011, p. 503; Hijazi, 1995, p. 337).

Regarding the role of the judge, to reach the hypothetical intention of the contracting parties, the judge uses several criteria or controls, including the attempt to approach the needs of the parties to the contract and the requirements of justice, or the negotiations before the contract, to determine the real intentions of the two parties and their conformity with the reality of the situation, then measures that against the subsequent intentions of the parties. Where he seeks such a will, the jurisprudential rule is applied that "the expression in contracts is for purposes and meanings, not for words and premises". It is thus deemed that the contracting parties made a mistake when choosing the appropriate legal means to conclude the required action, as the legislator did not address these criteria in anticipation that they would become restrictions on the transformation process, leaving it to the judge to disclose them.

5. CONCLUSION

After completing this modest study, many important points became clear to us. The motive and justification for implementing the theory of legal action transformation find their justification in two issues; the first being to revive and restore existence to a non-existent or null behavior; and the second being to consider the economic interests of the contracting parties, in the sense of violation, if there is a way to save.

The error that the Palestinian legislator made in Article 142 of the Civil Code appeared clear as, being affected by other Arab legislation, he considered that the scope of application of the theory of legal action transformation extends to include actions that are absolutely null and voidable, and the reason for the error was clarified in the previous result that a voidable contract is subject to correction by authorization, or that the right to request its revocation is forfeited by prescription so that it turns into a valid contract. Accordingly, the Palestinian legislator had to produce the text of Article 142 of the Civil Code as follows: "If the contract is void and the elements of another contract are fulfilled, then the contract is valid as a contract whose elements are fulfilled if it appears that the intention of the contracting parties was to conclude this contract". The explanatory notes for the draft civil law included a text other than that approved for Article 142, where the original text was as follows: "If the form of a null contract is such that the elements of another contract are fulfilled, then that other contract is concluded in its place if it appears that the intention of the two contracting parties was to go to it". The committee objected to this formulation, and the current one was adopted.

The Palestinian legislator considered the transformation of the act with the fulfillment of the conditions set out in Article 142 of the Civil Code — almost definitively — an inevitable and unavoidable issue, and considered that the intention of the contracting parties had tended toward concluding the intended transformation, which is a hypothetical intention, i.e., a legal presumption. However, it does not appear that the explanatory note suggests the nature of that presumption, whether it is a definitive presumption or a simple one. If the legislator intends to consider it a definitive presumption — and this, in my estimation, is closest to the legislator's intent — then the legislator has relied on economic interest in its larger sense, which is that of the general economic system, and this greatly exaggerates the scope of the law, as the issue is nothing but the individual interests of the contracting parties, which cannot be made part of the public order, and makes transformation a foregone conclusion. Otherwise, we must ask what the point is of regulating the conclusion of the actions of the legislator opens a back door to save all null actions. In the researcher's estimation, the assumed intention of the contracting parties must be considered a presumption that can prove the opposite. If it were to say otherwise, lawsuits filed to nullify contracts would become nothing but a formal procedure and a requirement to implement the theory of active transformation. When a lawsuit is filed by one of the parties to the contract against the other party, how can a definitive presumption be taken from the supposed intention? Accepting otherwise places the claimant in a very weak position if he does not insist on nullifying the contract.

This research was limited to Palestinian Civil Law due to its modernity and its need for legal research to reveal the points that need to be amended and developed in order to achieve the objectives of the law. This is the case of current research on this subject, as it deals with one or more Arab or European legislation. Defining the research in Palestinian Civil Law helped the researchers to focus on analyzing the relevant legal texts and jurisprudential opinions, which resulted in new opinions and amendments to the current legal texts. The researchers faced difficulty in conducting this research, which is represented in the lack of legal research in the Palestinian legislation, so this prompted the researchers to search for the opinions of legal jurists in comparative and similar legislations to the Palestinian law.

The conclusions and recommendations of the research result in saving contracts that have been stained by invalidity to become valid and have their legal effects among the contracting parties. This is reflected positively in the stability of transactions in society. In addition to achieving the accuracy of drafting the text of Article 142 of the Palestinian Civil Code in line with the general rules of law, which is consistent with the rules of logic and justice, according to what was indicated during the research.

Finally, we can say that this research is an introduction to future studies related to finding ways or means to save legal actions from invalidity as much as possible, because this would achieve individuals' reassurance about the validity of the legal actions they concluded, which would achieve more stability in civil transactions and thus achieve public order within society.

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