



## **BALTIC JOURNAL OF LAW & POLITICS**

A Journal of Vytautas Magnus University  
VOLUME 15, NUMBER 2 (2022)  
ISSN 2029-0454



Cite: *Baltic Journal of Law & Politics* 15:2 (2022): 408-417  
DOI: 10.2478/bjlp-2022-001024

### **Provisions for unilaterally amending the contract in Jordanian law**

**Assistant Professor Nasir Muhammad Saeed Al-Balawi**

[nasir-albalawi@hotmail.com](mailto:nasir-albalawi@hotmail.com)

Assistant Professor, Jadara University, Jordan

ORCID: <https://orcid.org/0000-0001-9497-3572>

Received: July 20, 2022; reviews: 2; accepted: October 21, 2022.

#### **Abstract**

The study aimed to clarify what is meant by the individual will and to indicate the types of individual actions within the scope of the contract, and to explain the rules and provisions governing the amendment of the contract by the individual will in accordance with the general provisions in the Jordanian Civil Code, and this research is important because there is no theory or special study to modify the contract by the individual will, which requires its research to clarify and remove ambiguity, and based on the above, the researcher reached a set of results that can be summarized, the most important of which is that there is more than one type of unilateral behavior may be Independent, i.e. it has nothing to do with a concluded contract, or the unilateral conduct is in a contractual context in the sense that there is a contract concluded and the individual will intervenes to amend it, as one of the most important justifications for the unilateral amendment of the contract is to rebalance the contractors if one of them is weak in his position against the other, or the amendment is for the good regularity of the contract and maintain its place, and the most prominent recommendations made by the research were the need to include in the Jordanian Civil Code a text that gives the right to modify the contract by unilateral will but must be put Restrictions and conditions that ensure the stability of transactions, that is, the unilateral amendment should be within a very narrow scope and in cases where there is no justice and there is a great injustice to one of the parties.

#### **Keywords**

Individual will, Contract Modification, Individual Actions.

## **Introduction**

Contracts are subject to the fundamental rule that the contract is *pacta sunt servanda*, in the sense that what the parties to the contract have agreed upon, must abide by, and no party may breach it or request its amendment, and this rule has been approved by the majority of positive laws such as the French Civil Code, as addressed in article 3311 by saying: "Agreements made legitimately take the place of law for their authors. Among contractors, the content of the contract is enforceable, as they respect and abide by it, as is the case with any rule of law." (Abu Al , Basal,2005).

This rule is only a natural consequence of the principle of the authority of the will, since the street recognizes the will with authority within the limits of order and public morals, what the will of the parties is held on to them is an applicable law, and therefore the origin of the valid contracts is the obligation, that is, the obligation of the parties to implement the clauses contained therein, and the inability of one of the intending parties to revoke it by its own will, where it is binding on the parties to it, and they must fulfill the obligations arising therefrom, not only that, but that the parties to the contract do not Any of them can individually modify the contract either by increase or decrease unless they agree to do so, on the basis of a provision in the law binding on them, which means that the obligations contained in the contract are equal to or imposed by law and this equality was established by the law itself when it obliged the parties to perform their contractual obligations (Anbar,1987; Uludağ, 2020).

If it must be agreed to dissolve this contractual relationship or terminate it by agreement and in accordance with the way it was created, but the recent trends in the jurisprudence of civil law related to contracts have gone in another direction in which the role of the sole will in the avoidance of the contract in the event that the other party does not perform its contractual obligations, what is this principle and what are the provisions and consequences of it and this is what will be addressed in this research.

## **Search Problem**

The problem of the research is based on a major question, which is the search for the extent to which the contract can be amended by the sole will of one of the parties to the contract, and whether individuals aspire to modify the contract by unilateral will despite the fact that there is a provision in the law that allows this for the Jordanian Civil Code and their unilateral amendment based on the rules of justice?

## **Research Questions**

- 1 What is meant by a unilateral will?
- 2 -What are the types of individual behaviors?
- 3 -What are the rules and provisions governing the modification of the contract by unilateral will?

4 -How is the contract amended by unilateral will in accordance with the general provisions of the Jordanian Civil Code?

### **Research Objectives**

- 1- Clarifying what is meant by individual will.
- 2- .Indicate the types of individual acts within the scope of the contract.
- 3- .Explain the rules and provisions governing the modification of the contract by unilateral will.
- 4 -Clarification The contract is amended by unilateral will in accordance with the general provisions of the Jordanian Civil Code

### **Importance of Research**

The importance of the topic is highlighted by the absence of a theory or a special study to modify the contract by unilateral will, which requires its consideration to clarify and remove ambiguity.

### **Research Methodology**

Due to the multiplicity of research methods and for the purpose of answering all questions related to the subject of our research, we have adopted in our research the analytical and comparative approach to the views of jurisprudence and judicial rulings in both Islamic jurisprudence and the Jordanian civil law to come up with legal rules that can be applied to practical reality.

Section I: What is the modification of the contract by unilateral will.

A contract, which is the agreement of two wills to produce a legal effect, is the primary voluntary source of the obligation, and it is a public source. Thus, the dual will of the offeror and the midwife is the source of the contractual obligation, whether the contract is binding on two sides or binding on one side.

A unilateral will is a legal act of a person with the aim of producing a legal effect, without the need for a second will to correspond to it. There is no doubt that the legal effects that a unilateral will can have are diverse: a unilateral will can transmit a right in kind, as in a will, and can remove that right, as in the assignment of a right in kind. It can also have a revealing effect, as in the recognition of the descent of a child in French law. The sole will can modify or terminate certain contracts (Al , Jubouri,2012; Yakut, 2020).

What is this unilateral will, what is its definition and the types of unilateral act, through the following demands:

The first requirement: the definition of the individual will.

The jurisprudential and theoretical orientations in the recognition of the actions of the individual will have disappeared, including those who have forgotten them and those who have recognized the individual will as a source of commitment besides the contract (Alfadhel,1996; Yavuz, 2020).

There is no doubt that a unilateral will, which is a unilateral legal act, produces different legal effects, a unilateral will may be a reason for gaining rights

in kind such as a will, or a reason for its lapse such as the waiver of an easement or a right of mortgage, it may prove a personal instigation arising from an avoidable contract such as leave, it may make a contract applicable to the cause of others such as acknowledgment, a contractual bond such as the removal of the agent or his removal from the agency may end, or the creation of the right of the person (obligation) such as the promise of a prize or his termination of acquittal. What is this individual will and what kinds of actions does it involve?.

Section I: Definition of the individual will.

By unilateral will we mean unilateral legal conduct as a source of obligation and different from a contract based on the congruence of two wills of two different persons, and a unilateral will is capable of producing multiple legal effects, it is able to create the obligation as in the promise of a prize, or to forfeit the right to waive it, and it is a leader in correcting the avoidable contract as in leave, and leads to the cancellation of a particular contract as in deposit, rent and labor(Sulaiman,2003).

The jurists differed in the definition of the unilateral will, where they gave different definitions, there are those who defined the individual will as a legal act represented by the expression of the will and its effects are produced by the will of its owner alone, and therefore it differs from the contract that is made by two wills and not by one will. It was also defined as: "a unilateral act of law producing different legal effects either as a cause of gain or as a cause of the extinction of a right in kind, the termination of a contractual bond or the extinction of a personal right". (Alfadhel,1996).

In Islamic jurisprudence, the unilateral will in Islamic jurisprudence has many legal implications, such as the creation of an obligation, the transfer of a right in kind and the expiry of a right. It may even have a greater role in this jurisprudence. For some sects, such as Maliki, the unilateral will is a general source of commitment.( Sanhour,1954).

In the Jordanian Civil Code, unilateral will has several legal implications and is a voluntary source of obligation. But it is not a public source, but a source when the law so provides. As long as the unilateral will is a voluntary source of obligation, it is consistent with the contract in several characteristics, but it is distinguished from it in that it does not require a second will, the will of the midwife, in order to produce its legal effects.

Chapter II of the Jordanian Civil Code is devoted to the provisions of unilateral conduct, including article 250 of the Code, which states: "The disposition of the sole will of the administrator may be carried out without interruption on acceptance unless there is an obligation of others to do something, in accordance with the provisions of the law", and this was confirmed by the Jordanian Court of Cassation, which affirmed in one of its rulings that: "In article 250 of the Civil Code, the legislator authorized the obligation to be by unilateral will.( Decision of the Jordanian Court of Cassation in its Human Rights Capacity No. 2000/1476 (Five-Year Commission) dated 25/10/2000,Adalah Publications).

From the foregoing, the researcher finds that despite the multiple differences in the definition of unilateral will, the content of these definitions is the same in terms of their agreement that they are unilateral legal conduct that can produce legal effects.

Section II: Types of individual behaviour Unilateral conduct takes on two special tasks depending on the area in which the unilateral conduct operates, it may be an independent unilateral conduct and it may be unilateral conduct in a contractual context, as follows:

First: The unilateral independent act: The unilateral and independent act is an act taken by the will of one person in order to produce a specific legal effect without a relationship between this act and any contract. This effect is to create an obligation, for example, the promise of a reward, which is the most important application of the Jordanian Civil Code, where It came in Article (255) of the Civil Code regulating the promise of an award as a source of personal right and obligation (Al , Jubouri,2012).

Accordingly, the independent unilateral act can be expressed as an act issued by a unilateral will that aims to create obligations, arbitrate obligations, or control the obligations established by him without having a contract that collides with it. The role of the unilateral will in the emergence of independent voluntary behavior is different from unilateral contracts in which the role of the unilateral will is in the effects of these contracts and not in their affairs.

Second: Unilateral conduct in a contractual context: Unilateral conduct here takes on another meaning that differs from the previous meaning of independent unilateral conduct, so that unilateral conduct is defined as an act taken by the will of one of the contractors in order to produce a certain legal effect in the contract concluded without the need for the consent of the other contractor. In a contractual context, the effect of unilateralism is clearly highlighted as the jurisprudence sees in unilateral contracts whose effects are repeated, as we have already mentioned, because their nature accepts unilateral conduct by one contractor and is binding on one party without binding on the other party(Sultan,2002).

Second requirement:Rules and Provisions Governing the Unilateral Will.

In order to study the rules and provisions governing unilateral conduct and its control in the Jordanian Civil Code, it is necessary to examine the convening of such conduct, and then the provision of such unilateral conduct, as follows:

Section I: Convening and Forming the Disposition of the Unilateral Will

What distinguishes unilateral conduct is that it is concluded by one will, without the need for acceptance, and thus differs from the contract, and if the unilateral act is confirmed, this situation is subject to the provisions of the contract, except for those provisions concerning the need for the existence of two wills, as required by the text of article (251) of the Jordanian civilian. That's it.( Al , Zoubi,2004).

Second: The provision of disposition by unilateral will: The Jordanian Civil Code has regulated within the scope of financial transactions three rules by which

the provision of acting by unilateral will can be controlled, in terms of its necessity and enforceability with respect to the conduct and its proof of the right of the disposer to it, while excluding many of the applications of unilateral conduct addressed by Islamic jurisprudence, because they no longer exist at present. (Sultan,2002).

Based on the foregoing, the researcher considers that the unilateral will in the context of contractual obligations is a will issued by one of the contractors after the conclusion of the contract and affects this contract without the need for the consent of the other contractor or for a decision of the judiciary.

The second section:How to modify the contract by unilateral will.

The French jurist (ghozi) is the first to draw attention to the amendment (especially the amendment of the obligation) as a legal concept that is not synonymous with change, where (ghozi) pointed out in his letter on the amendment of the obligation by the will of the parties published in 1980, at this date and jurisprudence uses the amendment as a legal concept that has an existence independent of other legal concepts, and he pointed out that the justice of the obligation is meant "the legal act according to which the parties agree to change during the period of implementation one or more elements of the agreement. which binds them while retaining the contractual bond, and thus the amendment was considered a legal concept with a special scope of application and a distinct legal system."( fayed,2005).

It is well known in the world of law that one of the parties can terminate the contractual bond by its own will, but the modification of the contract by unilateral will is not as common and widespread as the idea of termination by unilateral will, despite the fact that this idea was advocated at the beginning of the twentieth century. (Sultan,2002).

Amending the contract by unilateral will is for the terms and content of the contract, as the unilateral will finds in the contractual conditions fertile ground to highlight, amending the contract to the contract by modifying these conditions and changing the contract as agreed upon, so the amendment focuses on the content of the contract. There are two types, and in this topic, two axes are highlighted as follows:

First Requirement: The contractor performs the contract without the conditions and obligations.

As is known when the contract is concluded, a number of obligations are included in it expressly and the contract is not limited to obliging the contractor to what is contained in it, but also deals with what is necessary in accordance with the law, custom and justice according to the nature of the obligation(fayed,2005).

The contract may be accompanied by a condition agreed upon by the parties, in which those conditions and obligations as a general principle may only be amended or revoked by agreement, but there are many cases provided for by law in which the sole will has the right to amend, and these cases are:

First, where the contract of requirement for the benefit of third parties provides that the contractor shall pay the right directly to the beneficiary, the

conditional shall, at its sole will, transfer the right in interest for the contractor to pay to him contrary to what was required to sell the contract of condition. This is what we find applied in the text of Article (211) of the Jordanian Civil Code.

Second: When the agreement provides for the solidarity of the debtors against the creditor, he has the right to claim all the debt from any of them, but if he exonerates one of them from solidarity, his right of recourse to the debtor who acquitted him of solidarity with all the debt is forfeited and any of the rest is returned to the entire debt, and this is indicated in Article (333) of the Jordanian civilian.

Third: The agreement establishing the easement right specifies the rights and obligations of the owner of the mortgaged property and the owner of the consensual property, the owner of the accompanying property must use the easement as prepared for him, and the owner of the property to which the easement is entitled to enable the easement owner to use his right, but the benefit of the approved property is to free his property from part of the easement if the easement loses all the benefit of the approved property and only a specific benefit remains for him that is not commensurate with the burdens borne by his property to deprive the owner of the approved property of the use of the easement. Part of the easement and to individually amend the easement agreement contrary to what it provided for by enabling the easement owner to use the easement right fully on the property to which it is encumbered, as indicated in Article (1273) of the Jordanian Civil Code.( Abu Al , Basal,2005).

Fourth: With regard to the employment contract, its amendment and the modification of the working time, where the agreement between the employer and the worker determines the time of work at which the worker is at the disposal of the employer. This is what is taken advantage of by the text of article 31 of the Jordanian Labor Law.( Al-Attoum,2008).

Second requirement: the contractor taking a unilateral act in respect of a matter not dealt with in the contract.

This form of modification of the contract relates to matters that the contractors overlook when concluding the contract, so one of the contractors when concluding the contract and one of the contractors at his own will and without the consent of the other party adds it and there are some applications for this image, namely:

First: Lending, when the bare contract does not specify the type of use of the returned eye, the place of use and the time of use, by releasing the contract to the borrower to benefit from the place of the contract, the borrower may at his sole will benefit from the nude at any time, anywhere and for any use he wants without taking the consent of the borrower, provided that he does not exceed the known contracts, if he exceeds it and the nude perishes within them. This is addressed in Article (772) of the Jordanian Civil Code, which states:

- 1 -The borrower may benefit from the nude as usual in the absolute loan that has not been restricted by time, place or some kind of benefit.
- 2- If it is restricted by time or place, he shall observe this restriction and shall not, when determining the type of use, exceed the same amount or the least harm.



Second: The bare deposit, the borrower may deposit the bare by his own will in each place where he takes the loan and the borrower's deposit of the nude is a unilateral act not provided for in the contract of the nude or authorized to the borrower, and this unilateral deposit of the nude exempts the borrower from the guarantee of the loss of the returned eye at the depositary if it perishes without default on his part, provided that the deposit of the bare is in a subject where the borrower owns the return where the borrower may not deposit in all places where he does not have the return if he makes. Thus, the eye returned to the depositary was lost, and the borrower must secure it, provided that the deposit of the bare is in a place where the borrower owns the loan, and this is what (775) of the Jordanian Civil Code indicates that: "The borrower may deposit the bare with an honest person who is able to save it and does not guarantee it if it perishes at his disposal without infringement or default."

Third: Agency Contract: The client may in the agency contract be restricted by the agent agency without his consent, the restriction is a unilateral act carried out by the client without the contract authorizing him to do so and does not require the consent of the agent, but it is required that the agency does not attach to the right of third parties, as this third party must then agree to the restriction of the agent's agency, and this is what Article (863) of the Jordanian Civil Code indicates that: "The principal may dismiss his agent whenever he wishes, unless the power of attorney attaches to a right of third parties or it has been issued for the benefit of the agent, the principal may not terminate or restrict it without the consent of the person in whose favor it was issued."

### **Conclusion, conclusions and recommendations:**

Through this research, the amendment of the contract by the individual will in the Civil Code was researched, through the statement of the definition of the individual will, the statement of its types, and then the statement of its provisions and how to amend and the factual examples of the amendment of the contract by the individual will in the Jordanian Civil Code, and in the conclusion of this research the researcher reached a set of conclusions and recommendations, the most important of which are the following:

#### **First: Results**

-The sole will does not only give rise to the obligation but can create a right, its dropping, transfer or modification.

-There is more than one type of unilateral conduct, which may be independent, i.e. unrelated to a contract concluded, or unilateral conduct is in a contractual context, meaning there is a contract concluded and the unilateral will intervenes to modify it.

-Modification of the contract by unilateral will, either to be on the obligations and conditions expressly guaranteed by the contract, and this form of amendment was manifested in many applications in the Jordanian Civil Code, including with regard to the requirement for the benefit of others, the employment contract and the right of easement.



- One of the most important justifications for the unilateral amendment of the contract is the rebalancing of the contractors if one of them is weak in his position vis-à-vis the other, or the amendment is for the good regularity of the contract and the preservation of its place.

### **Second: Recommendations**

-The researcher recommends that the Jordanian Civil Code include a provision that gives the right to amend the contract by unilateral will, but must put restrictions and conditions that ensure the stability of transactions, that is, the unilateral amendment should be in a very narrow scope and in cases where there is no justice and there is a great injustice on one of the parties.

- We recommend that a system of notification be established by the amendment to the employment contract by unilateral will by the employer that includes the necessary period of reflection so that the worker can make his decision to approve or reject as the French legislator has done and that texts be made that clearly and explicitly regulate the issues of notification and termination.

### **List Of References and Sources**

- Abd al-Razzaq al-Sanhouri, Sources of Right in Islamic Jurisprudence: A Comparative Study of Western Jurisprudence, Part I, Introduction to Formula 47 of the Decade, House of Revival and Expansion of Arab Heritage and its Expansion of Arab History, Beirut 1953/1954.
- Abu al-Basal, Abdul Nasser, Studies in the Jurisprudence of Jordanian Civil Law, The General Theory of Contract, 2nd Edition, Amman, Al-Nafais Publishing House, 2005.
- Al-Attoum, Mansour Ibrahim, Explanation of the Jordanian Labor Law, A Comparative Study According to the Latest Amendments, 3rd Edition, Jordan, Al-Ahliyya Amman University, National Library Department, 2008.
- Al-Fadl, Munther, The General Theory of Obligations: Sources of Commitment, Amman, Dar Al-Thaqafa for Distribution and Publishing, 1996.
- Al-Jubouri, Yassin Mohammed, Brief in the Commentary on Jordanian Civil Law: Part I, Volume I, Contract Theory, Section I, Amman, Dar Al-Thaqafa for Distribution and Publishing, 2012.
- Anbar, Mohamed Abdel Rahim, Brief on the Theory of Emergency Circumstances, Zahran Press, Cairo, 1987.
- Fayed, Ayed Fayed Abdel Fattah, Modifying the Contract by Unilateral Will: A Theoretical Attempt at the Law of Comparative Obligations, Arab Renaissance House, Cairo, 2005.
- Slimane, Ali Ali, The General Theory of Commitment, Algeria, Diwan of University Publications, 2003.
- Sultan, Anwar, Sources of Compliance in the Jordanian Civil Code, Dar al-Thaqafa for Distribution and Publishing, Amman, 2002.

- Uludağ, O. (2020). Transfer of L1 processing strategies to the interpretation of sentence-level L2 input: A cross-linguistic comparison on the resolution of relative clause attachment ambiguities. *Eurasian Journal of Applied Linguistics*, 6(2), 155-188. <http://dx.doi.org/10.32601/ejal.775796>
- Yakut, İ. (2020). Promoting the correct production of English sounds in extensive reading-circle classes: Explicit vs. implicit pronunciation training. *Eurasian Journal of Applied Linguistics*, 6(1), 101-118. <http://dx.doi.org/10.32601/ejal.710224>
- Yavuz, A. C. (2020). The effects of differentiated instruction on Turkish students' L2 achievement, and student and teacher perceptions. *Eurasian Journal of Applied Linguistics*, 6(2), 313-335. <http://dx.doi.org/10.32601/ejal.776002>
- Zoubi, Mohammed Yousef, *Named Contracts: Explanation of the Contract of Sale in Civil Law*, Amman, Culture House for Publishing, 2004.