

Dissolution of the nodal association in Algerian civil law

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Abstract:

Electronic contracting, as one of the modern forms of agreements, raises numerous challenges concerning the authentication and verification of the websites facilitating the contracts. These challenges include identifying the contracting parties and assessing their legal capacity to enter into agreements. Additionally, issues arise regarding the determination of the contract's place and time, largely due to the unique nature of electronic contracting platforms, which differ significantly from traditional, long-established forums.

Furthermore, the inability to physically inspect the goods or services being exchanged often exacerbates these challenges. This study emphasizes the significance of addressing the dissolution of the contractual bond, a concept that represents a justified exception to the principle of the binding force of contracts. Departing from such a foundational legal principle necessitates the establishment of robust regulations to ensure transaction stability while safeguarding the interests of the weaker party in the contractual relationship. Notably, consumer protection laws across various legal systems align in their recognition and regulation of this right, ensuring a balanced and equitable framework.

Keywords: electronic contracting, principle of binding force of the contract, dissolution of the nodal bond, weak party, Algerian civil law.

Introduction:

The reality reflects a significant shift in many traditional principles of contracting due to changing circumstances and the growing complexity of contractual methods. These developments have made it increasingly difficult for ordinary individuals to fully comprehend the intricacies of modern contracts, particularly in the realm of consumer transactions and electronic contracts. This has resulted in a lack of parity and equality between the

contracting parties, leaving consumers economically disadvantaged when dealing with professional entities. In light of these realities, efforts to restore balance and fairness in consumer contracts, even during the execution phase, have gained prominence. One notable measure is the recognition of the consumer's right to "withdraw" from the contract, a concept embraced by many contemporary legal systems. This approach has also been recently adopted by Algerian legislation, aligning with broader trends in modern legal frameworks.¹

So if the contract is validly formed and one of the contracting parties fails to fulfill its contractual obligations or is unable to fulfill them due to a foreign cause, the other contractor is in an uncomfortable position legally or factually, he other contractor is in an uncomfortable position legally or realistically, as he finds himself obligated to the other party legally, because the contract still exists, and realistically, because he cannot fulfill his obligations. Because the contract still exists, and realistically cannot obtain the consideration, either "The regulation of the right of retraction is not limited to the modern positive laws that have used it by this name, but as some jurists say, we find a precise and comprehensive regulation of it in Islamic jurisprudence based on the theory of the unnecessary contract that is unique to this jurisprudence, which is based on the theory of options that Islamic jurisprudence is famous for, and the retraction from the contract that is decided with the unnecessary contract is characterized by the fact that it is not limited to the case of haste in the contract, but extends to include other cases so that we can say that there is a general theory for retraction from the contract that is organized in Islamic jurisprudence under the idea of the unnecessary contract that combines these cases, which is decided to protect the element of consent in general, and for me. because it has become impossible, or because the debtor has failed to fulfill his contractual obligations."²

And in the face of this situation, the creditor of the unperformed obligation has no choice but to dissolve the contractual relationship that binds it to the defaulting debtor to get rid of the obligation's incumbent upon it, in the face of the defaulting debtor, which puts the creditor in a stronger position.³

Based on the above, various legislations have been keen to provide legal protection for the weak party in the contractual bond through a new mechanism, namely the right to withdraw from the electronic contract, so what role does this mechanism play in granting legal protection to the weak contractor?

Section I: Creating options for the weak contractor (dissolution or enforcement)

The basis of contractual weakness is based on the lack of actual equality between the parties to the contract, which creates a weak position for one of them, in practice, in the face of the other contractor, and this weakness affects

the will of the contractor, so that a strong will is formed in exchange for a weak or even non-existent will, which is often reflected in the content and conditions of the contract, that is, the rights and obligations of each of the parties to the contract, especially the weak party, so that the obligations of the latter party increase and its legal status worsens, which benefits the strong party to the contract.

1.1 Dissolution of contract:

The dissolution of a contract marks the official termination of an agreement, releasing both parties from their obligations. It can happen for various reasons, such as mutual consent, fulfillment of the contract's terms, or a breach by one of the parties. In some cases, external factors like legal changes or unforeseen events, such as natural disasters, may make it impossible to carry out the contract, leading to its termination.

When a contract is dissolved, all obligations between the parties come to an end, but there may still be legal or financial consequences. For example, if one party fails to meet their commitments, the other may seek compensation for any losses incurred. In cases of a breach, the injured party may be entitled to damages to recover financial or other types of harm caused by the contract's failure.

Properly dissolving a contract requires following any termination clauses specified in the agreement and documenting the process clearly. Open communication between the parties is essential to avoid misunderstandings and disputes. By ensuring that the dissolution is handled correctly and in accordance with the law, both parties can protect their rights and move forward without unnecessary complications.

1.2. Execution of the contract:

The execution of a contract refers to the process of putting its terms into effect. Once all parties involved have signed the agreement, they are legally bound to fulfill their respective obligations as outlined in the contract. This includes carrying out specific actions, delivering goods or services, or making payments according to the agreed timeline and conditions.

Successful contract execution requires clear communication and cooperation between the parties. Each party must understand their responsibilities and ensure that they meet the specified deadlines. Any deviation or delay in performance can result in disputes or even a breach of contract, which may lead to legal consequences or financial penalties.

Throughout the execution phase, it is important to document any significant actions or communications related to the contract. This creates a clear record of progress and helps resolve any misunderstandings that may arise. If changes to the terms are necessary, they should be formally agreed upon and documented through an amendment to the contract.

Ultimately, the goal of executing a contract is to fulfill the mutual expectations of all parties involved. Proper planning, diligent performance, and adherence to the contract's terms ensure a smooth execution process and minimize the risk of conflicts. When carried out effectively, the execution solidifies trust and lays the foundation for future collaboration.

A. General principle:

The general principle refers to a foundational rule or concept that serves as a guiding standard in a particular field, situation, or system. It provides a broad framework for decision-making, interpretation, or action. In legal contexts, general principles are often used to fill gaps in the law, clarify ambiguous provisions, or establish fairness and consistency in judgments.

These principles are typically universal in nature, applying across various contexts to ensure coherence and predictability. For example, in contract law, a key general principle is that agreements freely entered into must be honored (*pacta sunt servanda*). Similarly, in ethics, principles like honesty, fairness, and respect for others serve as benchmarks for acceptable behavior.

By adhering to general principles, individuals and institutions can navigate complex situations with a sense of direction and purpose. They provide a reliable foundation for interpreting specific rules and ensure that actions align with broader values and objectives.

B. Exceptions to the rule:

- Ruling on the payment of a down payment:

Exceptions to the general rule often arise in specific contractual arrangements, such as the payment of a down payment or deposit. A deposit is a sum of money given by one party to the other at the time of concluding a

contract, serving as part of the agreed consideration. This payment demonstrates the payer's commitment to fulfilling their obligations under the contract and provides the recipient with some level of security.

If the parties explicitly agree that the deposit is meant to confirm the validity of the contract, the agreement becomes binding, and the contract cannot be revoked solely on this basis. In such cases, the deposit serves as evidence of mutual consent, reinforcing the seriousness of the agreement. Any attempt to revoke the contract after the deposit has been made may result in legal disputes or claims for damages.

In the event of a breach, the treatment of the deposit depends on the terms agreed upon by the parties. If the breaching party is the one who paid the deposit, they may forfeit it as compensation to the non-breaching party. On the other hand, if the recipient of the deposit breaches the contract, they may be required to return the deposit, potentially with additional damages.

Overall, the rules surrounding deposits highlight the importance of clear agreements and mutual understanding in contracts. By explicitly stating the purpose and consequences of a deposit, parties can minimize misunderstandings and ensure a fair resolution in case of a dispute. This approach aligns with the principles of good faith and equity in contractual relationships.

- The concept of emergency conditions:

The concept of emergency conditions refers to unforeseen and exceptional circumstances that fundamentally alter the equilibrium of a contract, making its performance excessively burdensome for one party. For example, if a contractor agrees to supply foodstuffs to a hospital and a sudden war causes a sharp rise in prices, the contractor may face significant losses. In such cases, the question arises: should the contractor be strictly bound by the principle of *pacta sunt servanda* (agreements must be kept), or should there be some relief due to the changed circumstances?

The contingency theory, which provides a basis for addressing such situations, has its roots in canon law. Canon law prohibited fraud in contracts, viewing it as a form of usury, whether the unfairness occurred at the time the contract was formed or during its execution. This doctrine aimed to ensure fairness and protect parties from unforeseen exploitation or hardship arising from unexpected changes.

In French jurisprudence, opinions differ regarding the foundation of the contingency theory. Some argue that the theory is based on an implied condition that the circumstances under which the contract was made will remain stable. If those circumstances change significantly, the contract's foundation is considered to have been disrupted, warranting intervention.

Others believe the theory is rooted in the concept of injustice. They argue that forcing one party to bear the full burden of unforeseen events, while the other benefits from the unchanged terms, creates an imbalance that must be corrected. This perspective emphasizes the need to prevent one-sided hardship in the performance of contracts.

A third view holds that the basis of the theory is justice itself. Proponents of this approach argue that fairness demands that contracts be adjusted to reflect new realities when extraordinary events occur. By allowing for modifications or even termination of the contract under emergency conditions, this perspective seeks to achieve a more equitable outcome for both parties.

Section II: The right to rescind the contract:

The right to rescind a contract refers to the legal ability of one or both parties to cancel a contract and restore the situation to its pre-contractual state. Rescission effectively nullifies the agreement, as if it never existed, releasing both parties from their obligations. This remedy is often sought in cases where there has been a fundamental breach, misrepresentation, fraud, undue influence, or mistake during the formation of the contract.

One of the key purposes of rescission is to protect the aggrieved party from being bound by an unfair or invalid contract. For example, if one party misrepresented critical facts that influenced the other party's decision to enter into the contract, the misled party may have the right to rescind. Similarly, if the contract was formed under duress or coercion, the injured party can seek to annul it.

When rescinding a contract, both parties must return any benefits received under the agreement to restore fairness. For instance, if one party received goods or money, they must return them as part of the rescission process. This ensures that neither party is unjustly enriched as a result of the invalidated contract.

However, the right to rescind is not absolute and may be subject to certain limitations. Rescission must usually occur within a reasonable timeframe, and the aggrieved party must act promptly upon discovering the grounds for rescission. Additionally, rescission may not be available if the contract has already been substantially performed or if third-party rights are affected.

Ultimately, the right to rescind aims to preserve justice and fairness in contractual relationships. It provides an essential safeguard against the exploitation or unfair treatment of parties, ensuring that contracts are based on genuine consent and mutual understanding.

2.1. Definition of the right to renege on a contract

The right to renege on a contract refers to the legal authority of a party to withdraw from or terminate an agreement under specific circumstances. This right may be explicitly stated in the contract or granted by law in cases where continuing the agreement would be unreasonable or unfair. It serves as a safeguard to protect parties when unforeseen events or significant breaches disrupt the original intent of the contract.

This right is often exercised when one party fails to meet their obligations, such as in cases of breach or non-performance. The injured party may terminate the agreement and seek remedies, including compensation for any losses incurred. Additionally, the right to renege can apply in situations involving fraud, misrepresentation, or undue influence, where the contract's validity is called into question.

Some contracts include clauses that allow one party to renege under specific conditions, such as force majeure or hardship, where unforeseen events make fulfilling the terms impossible or excessively difficult. These clauses provide a structured and fair mechanism for terminating the agreement without legal penalties, protecting both parties from undue harm.

Reneging on a contract is a serious decision that requires careful consideration of the contract's terms and applicable legal principles. Proper documentation and adherence to legal procedures are crucial to ensure that the termination is valid and to minimize the risk of disputes or liability.

1- Characteristics of the right of rescission

The right of rescission has several key characteristics that distinguish it as a legal remedy in contract law.

First, **it is a remedy for contract invalidity or breach**. Rescission allows one or both parties to cancel a contract and return to the status quo before the contract was made. This is typically invoked when a contract is deemed to be invalid due to factors such as fraud, misrepresentation, coercion, or mutual mistake.

Second, **it is retroactive** in nature. Rescission operates as though the contract never existed, meaning that both parties must return any goods, money, or benefits they received under the contract. This principle ensures fairness by undoing the effects of the agreement and aiming to restore the parties to their original positions.

Third, **it must be exercised within a reasonable time**. Once the party seeking rescission becomes aware of the grounds for it, they must act promptly. If too much time passes, the right to rescind may be lost, especially if the contract has been substantially performed or if third-party rights have intervened.

Lastly, **it may require court approval**. While rescission can sometimes be agreed upon by both parties, in certain cases, it may need to be authorized

by a court, especially if there are disputes about the grounds for rescission or its terms. This ensures that the cancellation of the contract is legally justified and that both parties are treated equitably.

a) The right to rescind the contract from the public order:

The consumer's right to rescind a contract is considered a matter of public order, meaning it cannot be waived or restricted in advance. This principle ensures that consumers have the legal ability to cancel a contract if it does not meet the agreed terms or if they were misled during the contract formation. Any provision or agreement that seeks to limit or eliminate this right is deemed void, as it undermines the protection of the consumer's interests.

This right serves multiple purposes. It compels the seller to act in good faith by ensuring that the goods provided conform to the declared quality and specifications. The ability to rescind the contract provides a safeguard against fraud, misrepresentation, or failure to meet the standards promised at the time of purchase. In this way, the right to rescind is a tool for ensuring that consumers are not unfairly bound by defective or misleading agreements.

Furthermore, the right to rescind plays a vital role in protecting consent, which is a fundamental element of any contract. When a consumer agrees to a contract, their consent must be informed and voluntary. If the conditions of the contract are not met, or if the consumer was misled, rescinding the contract helps to restore the principle of genuine consent in contractual relationships.

Ultimately, this right is part of a broader legal framework designed to protect consumers, who are typically the weaker party in a contract. By ensuring that consumers can rescind contracts in cases of non-compliance or unfair practices, the law seeks to create a more balanced and equitable marketplace where consumers can make informed decisions without fear of exploitation.

b) The right to deviate from the contract is an exception to the principle of the binding force of the contract:

The right to deviate from a contract challenges the principle of the binding force of contracts, which is grounded in the idea that once a contract is made, both parties are obligated to adhere to its terms. This principle ensures stability and predictability in contractual relationships. However, there are certain exceptions where the law recognizes that strict adherence to the contract may not be appropriate, especially when it leads to unfair outcomes.

One of the primary situations where the right to deviate applies is in consumer contracts. In these cases, consumers often have less bargaining power and may enter into agreements without fully understanding the terms or implications. As a result, the law may allow consumers to deviate from or even

cancel a contract if they were misled, if the terms were excessively one-sided, or if there was a lack of informed consent.

Another instance where deviation is allowed is in contracts involving unequal bargaining power, where one party is at a significant disadvantage in negotiating the terms. The law may intervene to prevent one party from being forced to fulfill an unfair contract that they were coerced into or that does not reflect their true intent. This ensures that contracts are not used to exploit weaker parties in the agreement.

The right to deviate from a contract, therefore, serves as a safeguard to ensure that contracts are fair, just, and based on genuine consent. It provides a necessary balance to the principle of the binding force of contracts, recognizing that there are situations where strict enforcement would lead to inequity or harm. In these cases, deviation offers a means of protecting vulnerable parties and ensuring that contracts do not become tools of exploitation.

a) The discretionary nature of exercising the right to rescind the contract:

Article 90 bis of the Insurance Law clearly establishes that the right to rescind a contract is a personal right granted to the consumer, allowing them to exercise their discretion without any obligation to justify their decision. This right is purely at the consumer's discretion, meaning that they are free to choose whether or not to cancel the contract based on their own interests and preferences. The consumer is not required to provide any specific reason for exercising this right, ensuring that the decision remains entirely in their hands.

The discretionary nature of this right also ensures that the consumer is not bound by external factors, such as the opinions of others or the conditions of the contract itself, when deciding whether to rescind the agreement. This provides the consumer with significant freedom to make choices based solely on their satisfaction or dissatisfaction with the product or service. In essence, the consumer's dissatisfaction with the goods is sufficient to trigger the exercise of this right, without the need for additional justification.

The exercise of the right to rescind does not lead to the establishment of liability for the consumer. In other words, if a consumer decides to cancel the contract, they are not held accountable for any penalties or consequences for simply exercising their right. This is particularly important in the context of consumer protection, as it ensures that individuals can make decisions without fear of unfair repercussions, especially if they are dissatisfied with the goods or services provided.

Furthermore, the judiciary has no authority to intervene in the consumer's decision to rescind the contract. Since the right is based on the consumer's personal discretion, the courts cannot control or challenge the reasons behind the decision to return a product or cancel a service. This reinforces the

consumer's autonomy and ensures that the legal framework remains supportive of their freedom to make choices regarding contracts, without unnecessary interference or limitations.

b) The right to renege on a contract is a restricted right:

The right to renege on a contract is not an absolute or unrestricted right; it is subject to certain limitations and conditions. One of the primary restrictions is the time frame within which the right must be exercised. Once the specified period has passed, the right to renege lapses, and the party wishing to terminate the contract loses the ability to do so. This time limitation ensures that the right to renege is exercised promptly and that parties do not hold onto an option to cancel indefinitely, which could create instability in contractual relationships.

In addition to the time limitation, the right to renege is further constrained by the category of contracts involved. It is typically reserved for specific types of consumer contracts, where there is a recognition of unequal bargaining power or where the consumer may have been misled or coerced into the agreement. For instance, consumer protection laws often allow for the cancellation of contracts related to goods or services purchased under certain conditions, such as when the consumer was not fully informed about the terms or when the goods fail to meet agreed-upon standards.

The nature of the contract itself also plays a significant role in determining whether the right to renege applies. Some contracts, especially those involving essential services or long-term commitments, may not be subject to the same cancellation rights as others. This distinction is based on the objectives of the law, which aims to balance the protection of vulnerable parties, like consumers, while maintaining stability and fairness in all types of agreements.

The circumstances in which the contract was concluded are another key factor in deciding whether the right to renege is applicable. If the contract was entered into under deceptive practices, undue influence, or other unfair conditions, the law may grant the right to cancel. However, this right is generally not available for situations where both parties entered the contract knowingly and willingly, without any external pressures or misleading actions.

c) Free exercise of the right to rescind the contract:

The right to rescind a contract is typically exercised free of charge, allowing the consumer to cancel the agreement without having to pay a fee for the termination. This ensures that the consumer has an accessible remedy if they are dissatisfied with the goods or services provided. However, there are exceptions, particularly when it comes to the costs associated with returning

the goods. These expenses, which are often borne by the consumer, are aimed at compensating the seller for the costs incurred in the return process.

In the context of correspondent sales, the seller's interests are protected by this requirement, ensuring that they are not unduly burdened by the return of goods. The consumer, while benefiting from the right to rescind the contract, must bear the reasonable costs of returning the goods to the seller. This arrangement helps maintain a balance between the protection of consumer rights and the seller's need to recover costs associated with returns, especially in cases where the consumer has exercised the right to rescind without just cause.

The French Consumer Code emphasizes the free exercise of this right in Article 7-21-L.121, reinforcing the principle that consumers can rescind contracts without incurring additional charges, except for the cost of returning the goods. This provision aims to encourage consumer confidence by making it easier for them to change their minds, thereby promoting fair business practices and preventing sellers from taking advantage of consumers who may feel trapped in unfavorable contracts.

Similarly, in Algerian law, Article 14 of Executive Decree No. 15-114 concerning consumer loans supports the free exercise of the right to rescind. This provision highlights the importance of consumer protection in the context of financial contracts, ensuring that consumers are not bound by agreements that they regret or that were entered into under false pretenses. The law provides a safeguard for consumers, recognizing that they should not face financial penalties for exercising their legal right to withdraw from a contract.

Despite the free exercise of the right to rescind, some legal opinions suggest that the consumer should bear the costs of returning the goods. This is seen as a way to discourage misuse of the right to rescind, preventing consumers from canceling contracts on a whim or as a means to exploit the system. By making the consumer responsible for return costs, the law seeks to encourage consumers to only rescind contracts when they genuinely wish to do so, rather than taking advantage of the system for frivolous reasons.

This measure ensures that the right to rescind is used appropriately and that both consumers and sellers are protected. It strikes a balance between protecting the consumer's ability to change their mind and preventing the right from being abused. The cost of returning the goods serves as a deterrent, ensuring that consumers are more likely to make considered decisions when entering into contracts, knowing that there are some costs involved in the rescission process.

d) The right of recourse is associated with contracts of a special nature:

A contract is considered to be concluded remotely when the parties involved are not physically present in the same location during the formation

of the agreement. Instead, their intentions are communicated through written communication, telephone, or other forms of remote interaction. This type of contract is common in situations where parties are located in different places, such as in long-distance business dealings or electronic transactions. Remote contracts are often used in situations where face-to-face communication is not feasible or necessary for the formation of the agreement.

In the context of electronic transactions, the right to rescind the contract becomes especially important. Consumers typically do not have the opportunity to inspect the goods or services before committing to the purchase, which increases the risk of receiving something that does not meet their expectations or needs. To protect consumers from these uncertainties, consumer protection laws grant them the right to retract their agreement within a certain time frame. This right allows consumers to cancel the contract without facing penalties if they find the goods or services unsuitable or if they change their minds after further consideration.

This legal safeguard is vital in a marketplace that increasingly relies on digital commerce, where consumers make decisions based on online descriptions, images, or reviews rather than direct interaction with the product. By providing consumers with the right to retract, the law ensures that they are not trapped into contracts for goods or services that do not fulfill their intended purpose or meet the expected quality standards. This right helps to balance the power between consumers and sellers, especially in situations where the consumer may be at a disadvantage due to the lack of direct inspection.

In essence, the right of recourse in remote contracts serves as a protective measure, enabling consumers to make informed decisions without the fear of being locked into unfavorable or unsuitable agreements. This right promotes fair practices in commerce and enhances consumer confidence, knowing that they can cancel a contract if the product or service does not align with their needs or expectations.

Conclusion:

In conclusion, it can be stated that a buyer in a mutually binding contract may seek to dissolve the contractual bond with the seller if the latter fails to fulfill their contractual obligations. The law grants this right to the creditor as a means of protection and assurance. Consequently, the right of recourse has evolved into a legal mechanism designed to safeguard the creditor's interests.

This system is founded on several legal principles, notably the concept of contractual imbalance, which arises from the lack of genuine equality between

the contracting parties. This imbalance places one party in a weaker position, practically and legally, relative to the other. Such weakness can influence the will of the weaker party and is often reflected in the terms and conditions of the contract, particularly in the allocation of rights and obligations. As a result, the weaker party tends to bear disproportionately greater obligations, further deteriorating their legal standing within the contractual relationship.

¹ Executive Decree No. 15-114 dated Rajab 23, 1436, corresponding to May 12, 2015, concerning the modalities and conditions of offers in the field of consumer loans. (JRR 24 dated May 13, 2015).

² Tounsi Hocine, *Dissolution of Contract: An Applied Study on the Ba'ah Contract and the Contract of Contracting*, National Book Foundation, Algeria, 2001, p. 5.

³ Fathi Majidi, *Lectures in Civil Law: Measurement of Obligations*, Faculty of Law, Ziane Achour University, 2009/2010, p. 49