

The Nature of the Obligation to Preserve the Goods in the Contract for the International Sale of Goods

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Abstract

International laws and agreements stipulate the obligations of the seller in the international sales contract at times and the obligations of the buyer at other times, but they do not mention among these obligations specified in their texts the joint obligations imposed on the two parties according to the Circumstances, which is the obligation to preserve the goods, as we find that they were stipulated independently in the texts of articles It is independent of the specific obligations of each of them, and the legal nature of this obligation has not been clarified. Therefore, in this research we will discuss the nature of the obligation to preserve the goods as a joint obligation on both the seller at times and the buyer at other times. Objectives: The study aims to clarify the legal nature of the obligation to preserve goods, as this obligation is based on the fact that the person who has the goods in his possession or at his disposal is obligated to preserve them and protect them from destruction and damage . It is necessary to clarify the legal nature of such an obligation, and determine whether it is an obligation to achieve A goal or a commitment to exercise care, and if it is a commitment to exercise care, what is the amount of care required? Methodology: The study was adopted to clarify the position of laws and agreements on this obligation in terms of stating the position of the Vienna Convention on the International Sale of Goods of 1980, as well as the Hague Convention of 1964, the principles of the European Contract , the American Trade Law, and the English Sale of Goods Law, in addition to stating the position of the Iraqi legislator on this obligation. Results: The result of the research is summarized in explaining the concept of the obligation to preserve goods in the international sales contract by stating its definition in the laws and agreements regulating it, in addition to explaining the discussions that were held at the Vienna Convention conference and how to organize the text of the obligation to preserve, and explaining the result from the nature of this obligation: is it The person obligated to preserve is obligated to achieve a result, and if he does not do so, he is considered in breach, or is his obligation limited to exercising only the necessary diligence, and what is the extent of this diligence? Conclusion: The subject goods to the obligation to preserve require the person obligated to preserve them to take the necessary measures on them for the purpose of preserving them according to what is consistent with their nature and the procedures they require for the purpose of preserving them in a way that protects them from destruction or damage to which they may be exposed..

Keywords: *obligation to preserve, goods, nature of obligation, judiciary, agreements and laws.*

Introduction

The expansion of international trade and the spread of international sales contracts, and the concept of sale not being limited to being local only, has become necessary to regulate the international sales contract, and this is what various laws and agreements have sought, as it is necessary to have a detailed regulation for it when the parties to the contract have been informed of the obligations and rights they have, since the sale process is international, and this requires more careful and accurate procedures than if the sale were local only, and sometimes there may be a condition between the two parties that there is a correlation between paying the price and delivering the goods, and the seller fulfills his obligation to deliver, but the buyer does not pay the price, and the goods accordingly remain in the possession or at the disposal of the seller until action is taken regarding them, and this results in these goods being exposed to destruction or damage, so the agreements and laws have imposed an obligation on the seller in this case to preserve them until action is taken regarding them, as he must do his best to preserve them from destruction, and vice versa, as he may wish The buyer rejects the goods after receiving them from the seller because they do not conform to what was agreed upon between them (Hindi, 2012, Page 121), and the goods are accordingly in his possession or at his disposal, and in this case he is obligated to preserve them until they are recovered from the seller. Therefore, the person in whose possession or at whose disposal the goods are is obligated to preserve the goods.

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Research problem

The problem of the research lies in the fact that the laws and agreements that regulated the obligation to preserve goods in international sales contracts were brief and did not detail the nature of this obligation, in addition to not detailing the nature of this obligation, as they came in general texts leaving the details to the discretion of the court and the arbitration body that is considering the dispute. It would have been more appropriate to have a detailed organization of it, especially stating the legal nature of this obligation and whether it is an obligation to achieve a goal, or an obligation to exercise care only, in addition to the fact that Iraqi law came devoid of any text at all on this obligation, and this is considered a legislative deficiency that must be addressed.

Research objectives

The study aims to clarify the concept of the obligation to preserve, as we show the position of laws and agreements on establishing a legal concept for it, in addition to looking at the judicial rulings related to this obligation. It also aims to determine the legal nature of this obligation, and address the legislative deficiency in not providing for it in Iraqi law.

Research methodology

In this research, we adopted the comparative descriptive approach by stating the position of the Vienna Convention on the International Sale of Goods, in addition to the position of the Hague Convention, the European Contract Principles, the English Sale of Goods Law, in addition to the American Commercial Law, as well as the UNIDROIT principles, with a statement of the situation in the Iraqi Commercial Law. We also adopted the analytical approach by analyzing the texts regulating this obligation and stating the shortcomings in them and interpreting them in a manner consistent with the method of their formulation, in addition to the applied approach by stating the judicial rulings on this subject.

The first topic**The concept of the obligation to preserve goods in the international sales contract**

The nature of the obligation to preserve the goods is the main motive for addressing this obligation and explaining its concept, as this obligation is different in nature from other obligations imposed on the seller or buyer, in addition to the great importance and privacy enjoyed by this obligation, whether at the level of laws and agreements or at the level of practical reality. Given these potential disputes, it is possible that the goods may be rejected by the buyer after they have been transferred to him, or that the seller may not deliver them to him at all if they are still in his possession and have not been transferred to the buyer, in which case the party who is in possession of the goods or has control over them is obligated to preserve them for the benefit of the other party.

The first requirement**The identification Obligation to preserve goods in an international sales contract**

The laws and agreements under consideration have set out texts regulating the obligation to preserve the goods in the international sales contract, and have placed the responsibility for this on the party whose position is better than the other, which enables him to take care of and preserve the goods, whether that party is the buyer or the seller. If he does not do so, he will be considered to have failed to fulfill his obligation.

First: The position of jurisprudence on Definition of the obligation to preserve goods in an international sales contract:

toMJurisprudence sets a specific definition or even an interpretation of this obligation and their position is almost unclear in this area, but by referring to the Vienna Convention on the International Sale of Goods of 1980, and by referring to the United Nations Conference on Contracts for the International Sale of Goods, we find that there are movements of jurisprudence in looking at the text and stating their comment and amendment to it, and according to what the seller's obligation to preserve includes, he seesSomeThe article on the seller's obligation to preserve is focused on the case ofKThe buyer has to take delivery of it, and the ruling, in its current form, is based on the assumption that the seller is ready to deliver the goods, butMay beTo keep it if the reason for the delay in receipt is on the part of the buyer, such as his failure to pay the price, and Professor Klingsborn suggests expanding the scope of the article on the seller's obligation to keep to include the case in which payment of the price and delivery of the goods are two concomitant conditions and the case in which the buyer is late in paying the price(Preparatory work for the ConventionUnited Nations Convention on Contracts for the International Sale of Goods,1980, p. 955),While the representative of the French delegation considered that the proposed change was unnecessary because the existing text "if the buyer is late in taking delivery of the goods" does not specify the reasons for this delay and could cover up the proposed amendment, which is the buyer's delay in paying the price, and the representative of the Greek delegation supported him in this.(Plantard, Travaux préparatoires de la Convention 1980, (p. 956), and from our side we see that the first opinion is the most correct, because the case of the buyer's delay in receiving the goods is not sufficient to determine the case and include it in a broader scope, as it is possible to interpret it from several aspects and leave the matter and interpretation to the jurists, except that setting another case in a way that makes there be a connection between the delivery of the goods and the payment of the price is clearer and more specific to the case that obligates the seller to preserve it.

For example, if the contract stipulates that the buyer shall receive the goods at the seller's warehouse during the month of October, and the seller delivers them on (1) October and places them at the buyer's disposal, and on (1) November, the day on which the buyer breaches his obligation to receive and on which the responsibility for the loss passes to him, the seller transfers the goods to a part of the warehouse less suitable for storing such goods, and on (15) November the buyer receives the goods, which at that time have been damaged due to the unsuitability of that part of the warehouse to which they were transferred, then despite the fact that the responsibility for the loss passed to the buyer on (1) November, the seller is responsible for the damage that occurred to the goods between (1) November and (15) November due to his breach of his obligation to preserve them.(discussionsUnited Nations Conference on Contracts for the International Sale of Goods, 1980, p. 182).

As for the buyer's commitment to preservation,In light of the discussions that took place on this subject, Professor Bennett, the representative of the Australian delegation, believes that the buyer's obligation to preserve the goods should be made clearer in the second paragraph thereof, and this can be amended either by amending the second paragraph or adding a new paragraph. This proposal achieves another advantage, which is that it makes the provisions of the articles relating to the sale of goods or their deposit in warehouses applicable to the provisions of the second paragraph of this article.(Bennett, Travaux préparatoires de la Convention Vienna 1980, p. 958).

Another aspect of jurisprudence sees in light of its assignment to the text of the buyer's obligation to preserve, as it sees that the draft agreement does not include any rule regarding the circumstances in which the buyer can reject the goods, which means that he can reject them unconditionally, and it sees that it is better to amend the text of the article and clarify that the buyer has no right to reject the goods except on the basis of lack of conformity and that if he intends to reject the goods, he must inform the seller of his intention, and provide him with the relevant documents, including the inspection certificate issued by one of the inspection companies, and it sees that it is better to include an amendment by inserting the phrase "without undue delay" after the phrase "informing the seller."(Tian Dian, Travaux préparatoires de la Convention 1980, p. 956).

Secondly: Definition of the obligation to keep goods in International agreements and national laws:

In addition to the differences between jurisprudence regarding the texts of the articles regulating the preservation of goods in international sales and the problems they have raised among them, a group of laws, agreements and special principles have been presented. International sales To text this commitment, where The Vienna Convention on the International Sale of Goods of 1980 sets out provisions that clarify the obligation of both the seller and the buyer to preserve the goods in question, and places the responsibility in this regard on the person most capable of preserving them, whether the seller or the buyer, even if the responsible party fails to perform his obligation. (Honnold, 1991, p. 575) where there is what is known as premature breach, which means that one of the parties, after concluding the contract and before its implementation, announces that he will not implement the contract (Al-Issawi, 2007, p. 118. Al-Azzawi, 2020, p. 25. Abdul Sahib, Hassan, 2018, p. 218. Hatem, Manhal, 2012, p. 67. Ibrahim, 2014, p. 772) where the injured party has the right to demand the termination of the contract by his will as a result of the other party's breach of his obligation (Abdul Hamid, 2000, p. 122) and termination carries the meaning of a penalty (Qasim, 2010, p. 59. Mohammadi, Al-Bazi, 2018, p. 225) and the injured party also has the right to stop the implementation of the obligation resulting from him as a penalty for the premature breach of the contract concluded between them (Qarun, 2020, p. 184. Shanab, 2007, p. 261) Perhaps the principle of commitment to preserve goods is a moral principle before it is a legal one, the basis of which is based on good faith (Sulaiman, Ali, 2021, p. 43. Abdul Ghani, 2001, p. 43) in addition to a set of economic considerations that require commitment to preserve goods, perhaps the most important of which is neglecting the goods, which could lead to their damage (Shafiq, 2002, p. 262). And if it is done breach for The contract must specify the fate of the goods. (Hussein, 2017, p. 24) If the buyer does not receive the goods, the sales agreement stipulates that the seller is obliged to preserve the goods and will not store them, if possible, in a manner that respects their value and is compatible with their nature. He must preserve the goods and use them in the most profitable way. The situation may develop if the buyer refuses to receive them if the goods have already reached him. He cannot leave them to their fate, but must preserve them and take the necessary measures to do so. (Sclechtrien, 2004, p. 234), in addition to that, and regarding the fate of the goods, to take into account the costs that may be somewhat expensive and unplanned, it is a necessary measure and procedure to protect the goods, as the original, according to the Vienna Convention, stipulates that neither party may adhere to the failure of the other party to perform its obligation if this is due to its negligence or its action (Article 80, Vienna, 1980), Article (85) of the Vienna Convention regulates the seller's obligation to preserve in the event that the buyer is late in receiving the goods, as the parties may agree that the receipt is at the seller's place of work, as he is the best one to anticipate the causes of damage that may occur to the goods, but if the receipt is not at the seller's place of work, the buyer bears the consequences of that (Joda, 2020, p. 270) or in the event that the price and delivery must be paid at the same time, and the buyer received the goods without paying their price, provided that the seller in these cases is in possession of the goods, or that the goods are under His control, and failure to pay the price here must be for an unlawful reason, but if it is for a legitimate reason, the seller has no right to demand anything, as the goods are not in conformity with what was agreed upon (Al-Saadi, 2022, p. 120). Accordingly, according to these cases, the seller must take the necessary and reasonable measures to preserve the goods, and he has the right, in addition, to detain the goods with him until he recovers the expenses he spent in order to preserve the goods (Article 85, Vienna, 1980). It is noted that the text of Article (85) applies basically if the risk has passed to the buyer, but possession of the goods is still with the seller, and the risk means the loss or accidental destruction of the goods, so the loss in this case is borne by a specific party (Sh, A, 2020, p. 376). By comparing the text of this article with Article (69/1) of the same agreement, we find that Article (69/1) has made the buyer bear the consequences of not receiving the goods or contracting to receive them, starting from the time they are placed under He disposed of it and did not receive it in violation of that contract, which means that as long as the goods are at the disposal of the seller and possession or disposal has not been transferred to the buyer, the seller remains obligated to preserve them (Sclechtrien, 2004, p. 235).

Article (86) of the Vienna Convention stipulates that the buyer is obligated to preserve the goods, so that the goods subject to sale are in the buyer's possession for this purpose after receiving them. However, the buyer makes a decision not to accept them for certain reasons, such as their non-conformity to what they

agreed upon, and decides to exercise his right to cancel, or to request the replacement of the goods. The principle in international sales is that the seller guarantees the conformity of the goods according to the terms agreed upon in the contract (Shahid, Abdul Sahib, 2023, p. 452), and conformity is achieved by comparing the quantity, quality, and description of the goods, as well as their packaging or packing (Abdul Shia, 2018, pp. 408-410. Al-Sharqawi, 1991, p. 10). Accordingly, the buyer must examine the goods to ensure their conformity (Hindi, 2012, p. 119. Abdul Aziz, 1997, p. 37). Here the buyer is obligated to preserve the goods and bear the storage expenses until they are received by the seller. In return, the buyer recovers all the expenses he has incurred, and he has the right to detain the goods as is the case for the seller if he does not meet the expenses, and often if the buyer breaches the duty to preserve the goods, which leads to their destruction, which leads to the loss of the right to nullify or terminate the contract or even request the replacement of the goods. (Al-Sharqawi, 2002, p. 233) However, there are cases in which the buyer is not required to take possession of the goods and maintain them on behalf of the buyer if the delivery is accompanied by payment of the price. The reason for this is that it is not logical for the buyer to pay the price of goods that he intends to reject. Likewise, the buyer is not required to take possession if the nature of the goods causes inconvenience to the buyer, such as: Nendangering his own goods or live treatment and that A sick person whose preservation may cost him significant expenses, and also if the seller is present at the place where the goods arrive or there is someone acting on his behalf, then the seller is more entitled to possess his goods and take care of his own interests without needing the services of the buyer. (Shafiq, 2002, p. 269)

But European Contract Law (PECL), we find that Article (7: 110) thereof stated that: "Right For A party left in possession of non-pecuniary tangible property due to the other party's failure to accept or recover the property shall take reasonable steps to protect and preserve such property." The second paragraph of the same article states that: "The party in whose possession the goods or property are left may fulfil his duty to deliver or return by depositing the property on reasonable terms with a third person to be held for the order of the other party and giving him notice thereof or by selling it on reasonable terms after giving notice to the other party and paying the net proceeds to that party, and in the event that the property is subject to rapid deterioration or if its preservation is unreasonably expensive, Gb) The party shall take reasonable steps to dispose of it, and may discharge its duty to deliver or return it by paying the net proceeds to the other party, and in any event the party in possession shall be entitled to recover or retain from the proceeds of the sale any expenses it may reasonably incur." (PECL, 110/7)

By observing the essence of what is stated in Article (7, 110) of the European Contract Law and what is stated in Articles (85-88) of the Vienna Convention, we find that it is similar to it, except that there is a difference between them, and perhaps the first and basic difference between the rules of both of them relates to the nature or composition, as it is noted that the European Contract Law (PECL) placed the seller's and buyer's duty to preserve the goods in one provision, while the Vienna Convention took into account the duties of both parties separately, and they also differ in terms of formulation, as the European Contract Law is formulated in a simpler form than the sales agreement so that the party in whose possession the goods are left can perform his duty (G. Felming, 2007, p. 523).

and Article (91) of the Hague Convention states: (1964, ULIS) "Where the buyer is in delay in taking delivery of the goods or in paying the price the seller must take reasonable steps to preserve the goods, and is entitled to retain them until his reasonable expenses have been reimbursed by the buyer." (ULIS, 1964) Article 92 of the Hague Convention stipulates the buyer's obligation to preserve, which is similar to what is stated in Article 86 of the aforementioned Vienna Convention on International Sale.

As for the US Trade Law, Article (2-603) states that if: "If the buyer desires to reject the goods, he shall, in the interest of the buyer's security, where there is no agent for the seller, the merchant buyer shall be bound, after rejecting the goods in his possession or under his control, to follow any reasonable instructions he receives from the seller concerning the goods, and in the absence of such instructions, to use reasonable endeavours to sell them on the seller's account if they are perishable or in danger of depreciating rapidly, and if the buyer sells the goods on the seller's account, the seller shall reimburse him from or out of the proceeds for the reasonable expenses of their care and sale. (UCC, 603/2) and therefore, if he does not do

so, he is considered to have committed a fundamental violation of what was agreed upon (Attia, 2011, p. 50. Ma'badi, 2019, p. 282. Jassim, 2013, p. 144. Abd Rabbuh, 2012, p. 11).

Article (2-604) of the law states that if the goods are perishable and the seller does not provide instructions inGWithin a reasonable period of time, the Buyer may store the rejected goods for the Seller's account, reship them to the Seller, or resell them for the Seller's account.(UCC, 604/2).

From the above, we can define the obligation to preserve in an international sales contract as “The obligation to preserve goods in international sales contracts can be defined as “an obligation incumbent upon the seller or buyer if the goods being transported are in his possession or at his disposal, to exercise due care for preservation and bear the costs imposed for preservation, to be recovered from the other party later.”

Third: The concept of the obligation to preserve according to the provisions of the judiciary:

Many court rulings and arbitration bodies have stipulated the obligation to preserve. In the case ofThe arbitration panel found thatHThe seller is entitled to compensation, which is the difference between the contract price of the trucks and their market price when sold to a third party, in addition to storage costs and expenses related to the service of the trucks." (case Trabunal, no142/94, 9/25/1995).

The same applies to the buyer's obligation to preserve the goods. Many judicial rulings have been issued regulating it, but they did not set a specific definition for the obligation to preserve, but rather relied on the provisions of Article (86) of the Vienna Convention. In one of the cases:“The court found that the buyer was liable for the loss incurred after the goods were resold to the yen as he had failed to take reasonable measures to preserve them and had detained the goods so that their value was nearly exhausted.” (razhointermediate, no. 29/1997, 12/17/1999).

The Second Requirement

Place of obligation to preserve goods in international sales contracts

The subject of the obligation to preserve is the goods that the obligated party is obligated to preserve, and one side has defined it as:It is a tangible and movable thing at the time of delivery and anything else is considered implicitly excluded.(Dawas, 2013, p. 12).

While another side of jurisprudence went to rely in defining goods on what was stated in the Vienna Convention on International Sales and its texts on goods excluded from application, and some inferred the concept of goods from the nature of the obligations specified on the two parties to the contract in the Convention.(Nasr, 2013, p. 52), andAnother goldAndTo define goods more broadly so as to include all things that can be sold commercially.(Schlechtriem, 2004, p. 47).

Accordingly, the goods, as the subject of the international sale contract, must meet the same conditions as the subject matter in general, namely that they must be present, specified, legal, and capable of being delivered. It is noted that the condition of legality and the ability to deliver are included in the conclusion and formation of the sale contract, so they do not enter into the definition of the concept of goods. Accordingly, the goods that are the subject of the sale contract must be present, and the standard adopted for their presence is the time of delivery, not the conclusion, in accordance with the provisions of the Vienna Convention.(Grenoble, 1995, p.154).

As for the laws,Article (61) of the English Sale of Goods Act defined goods as “all movable things except the things subject to the suit and money.”" (sale act,61,1979).

When looking at the inadequacy of the definition contained in the English Sale of Goods Act, it is noted that it stipulates that goods are all movable things except the things subject to the suit and money. It is not clear what is meant by the things subject to the suit. Does it mean related things? For example, the produce

of the soil must be sold according to its destined separation. According to the meaning of the Sale of Goods Act, these are always considered goods. However, a distinction must always be made between the products of the soil and the things connected to or forming part of it. (Attia, 1993, p. 93)

In a case where it was ruled that the sale of ash and remaining coal waste that was not specified or separate piles accumulated on the property, is not a sale of goods, but a sale for the benefit of the property, therefore the provisions of the Sale of Goods Act do not apply to it. (High court, 67, 1996).

As for the Unified Commercial Code, (UCC) and its amendments, where goods were defined under Article (2-105) of the 1963 Act as goods meaning all things "Including specially manufactured goods that are movable at the time of their determination in the contract of sale other than the money with which the price is to be paid, investment securities and things in progress, and also includes young animals that have not yet been born, crops and other specified things attached to the property as described in the section on goods to be separated from the property" (UCC, 105/2)

As for the European Contracts Act of 2020, when searching its texts, we did not find a definition of goods. However, by referring to the European Union Directive No. 771/219 issued by the European Parliament and the Council on 20 May 2019 on certain aspects related to contracts for the sale of goods, Article 2, in its fifth paragraph, defined goods as:

(a) Any tangible movable items and water, gas and electricity are considered commodities within the meaning of the foregoing where they are offered for sale in limited quantities or a specified quantity.

(b) any tangible movable items that include digital content or a digital service or are interconnected in such a way that the absence of such digital content or digital service would prevent the goods from performing their functions;"Digital Elements Goods"(EU directive, 2019, 771).

Likewise, Article 5 of the Iraqi Commercial Law No. 30 of 1984 considered the purchase of movable property of any kind with the intention of selling or renting it as a commercial act. (Commerce, 1984, p. 5).

The term goods accordingly includes movable and material things, and these things can be old or new, natural or artistic, in addition to that it can be a finished product or a part of a product, in addition to that the goods must be movable and tangible (Schwenzer & Fountouhakis, 2007, 26).

The sale agreement has excluded some sales under Article Two thereof, such as goods purchased for personal, family or household use unless the seller does not know or cannot know of their use in the aforementioned manner, auction sales, sales following seizure, financial and commercial papers, transportation, ships and aircraft. Perhaps the reason for this is based on the purpose for which they were purchased, the type of transaction or the types of goods sold (Muhammad, 2023, pp. 122-123). The burden of proving that the sale is for personal use falls on the party who insists on excluding the sale from being subject to the agreement, which is a material fact that can be proven by all means of proof (Ferrari, 1995, p. 70).

The second topic

The nature of the obligation to preserve in an international sales contract

The legal nature of the obligation to preserve goods does not go beyond being either an obligation to achieve a goal or an obligation to exercise care, since the obligation to preserve itself imposes this, as the seller or buyer, when the goods are in their possession or disposal, are obligated to preserve them. However, this obligation to preserve is not clear and has not been specified whether the seller is obligated to preserve the goods and is considered to have breached his obligation or preservation has not been achieved even if he made a reasonable effort to preserve them and performed the duty of due care, or whether his obligation is limited only to measuring it by exercising the necessary care for preservation without being obligated to achieve a result and thus he is relieved of responsibility if he proves that he has exercised the necessary care

for that. Accordingly, we will begin by discussing the concept of the obligation to achieve a goal and this obligation is considered to be exercising care, then we will clarify the legal nature of the obligation to preserve goods. According to the following:

The requirement the first

The concept of commitment to achieving a goal and commitment to exerting care

The obligation to achieve a goal, or as some call it the obligation to achieve a result, is consistent with the content of the goal desired by the creditor party and what he seeks to achieve, with the content of the obligation of the debtor party. Accordingly, the failure to achieve the desired result leads to the assumption of the debtor's error. (Saad, 2007, pp. 15-16).

As for the obligation to exercise care, we find among the obligations that require the debtor party to exercise due care, whether by law or agreement, and to do his utmost to implement it without being obligated to achieve a specific result. He is obligated to do his utmost to satisfy the creditor party, but he is not obligated to achieve a specific result. (bendabent, 2001, 280).

Accordingly, proof differs for each of them, as the burden of proof in the obligation to exercise care is a fundamental issue, as the creditor is required to prove the error and the burden of getting rid of it falls on the debtor, as the error does not exist on the part of the debtor unless he fails to exercise the care imposed on him in taking the necessary measures that lead to the result desired by the contracting parties. Accordingly, there should be no confusion between the presumption of error and the obligation to achieve a result, as the presumption of error is only in the obligation to exercise care and the debtor who assumed the error on his part must refute this presumption if it is simple by proving the opposite. As for the obligation to achieve a result, the debtor will not be able to get rid of his responsibility except by proving the foreign cause, and proving the foreign cause leads to the absence of a causal link between his action and the harm that befell the creditor. (Badr, 2011, p. 26. Aqsasi, 2010, p. 44. Amer, 1979, p. 296).

There are many criteria to distinguish between the obligation to achieve a goal and the obligation to exercise care, the most important of which are:

First - probability: The proponents of this standard rely on the element of probability, which is that the result may be related to reasons independent of the debtor's will and beyond his capabilities. In this case, his obligation is an obligation to exercise care in light of the independence of the reasons and their being beyond the debtor's will, which makes the impossibility of achieving the result beyond doubt. (Filali, 2013, p. 35).

Contrary to this concept, it means that the less the element of probability in achieving the result and the more it is not doubtful, the obligation is an obligation to achieve the result, meaning that the relationship is inverse between probability and achieving the result.

However, we see that despite the argument put forward by the proponents of this standard, we are faced with an international contract, and therefore the parties are free to set the situation they agree upon in their contract in accordance with the rule that the contract is the law of the contracting parties. Therefore, it is possible for them to ignore the element of probability and agree, although the obligation is originally an obligation to achieve a goal, their will in the contract stipulated that it be an obligation to exercise care or vice versa.

Second: Contribution: This standard looks at the extent to which it is related to the creditor's behaviour, so that it is an obligation to exercise care if achieving the result is not related to the absolute will of the debtor, but if achieving the result is related to the absolute will of the debtor, the obligation is an obligation to achieve a result. (Noura, 2015, p. 119).

We see that this criterion is not sufficient to determine the nature of the obligation, whether it is an obligation to exercise care or an obligation to achieve a result based on the will of the creditor. This does not make it an obligation to exercise care, but rather a reason for exemption, and this falls within the framework of the injured party's fault.(Filali, 2013, p. 39).

Third: The standard of will:Here, the proponents of this trend see a distinction between the obligation to exert care and the obligation to achieve a result, such that if the will is directed towards achieving a specific result, then the obligation is to achieve a result. The point here is the will through which he aims to obligate himself towards the other party.(Filali, 2013, p. 39).

However, we see that the will is not always sufficient to determine the intention of its owner, as it may be surrounded by some ambiguity, which leads to its lack of knowledge and inaccuracy in determining the nature of the obligation, whether it is an obligation to achieve a goal or an obligation to exercise care.

As for the burden of proof, it also differs, as the obligation to exercise due diligence is one of the obligations by which the debtor is obligated to exercise due diligence by law or agreement, and to do his utmost to implement his obligations without being obligated to achieve a specific result, as his obligation requires that he take all necessary measures to satisfy the creditor, but he is not a guarantor of achieving a specific result.(Noura, 2015, p. 119).

Therefore, if the plaintiff has to prove his claim, he must in this case prove, in cases that lack evidence, that there was negligence or error on the part of the defendant in light of the circumstances surrounding the non-implementation.(Filali, 2013, p. 39).

The obligation to achieve a goal is determined by the consistency of the goal that the creditor seeks to achieve, as the seller's obligation to transfer ownership of something and deliver it is consistent with the goal that the creditor seeks, so here the seller's obligation is an obligation to achieve a result.(Noura, 2015, p. 123)

Therefore, failure to achieve the result leads to the assumption of the debtor's error, given that he has failed to perform the obligations imposed on him, and he cannot escape responsibility except by proving the foreign cause.

The requirement the second

The nature of the obligation to preserve goods in international trade contracts

Neither the laws nor the agreements that are the subject of comparison have clarified the nature of the obligation to preserve goods in international trade contracts. After we have previously clarified what is meant by the obligation to achieve a goal and the obligation to exercise care, and we have learned the nature of the provisions and standards by which they are distinguished, it remains for us to know the nature of the legal nature of the obligation to preserve. Is the obligation of the seller or buyer, if the goods are in their possession or disposal, their obligation to preserve them an obligation to achieve a goal, or is the obligation imposed on them an obligation to exert reasonable effort to preserve the goods, and thus an obligation to exercise care?

As we said above, there are no explicit texts in the laws and agreements that clarify whether the nature of the obligation is to achieve a goal or to exercise care. However, by referring to the implicit provisions of the texts regulating the obligation to preserve, we note that what the text can reveal is that the obligation is an obligation to exercise care, by measuring it with what is necessary to preserve the goods without being obligated to achieve the result of preservation. It would have been more appropriate, given the importance of the obligation to preserve and the privacy it enjoys, as it is an obligation that may sometimes be imposed on the seller, and at other times imposed on the buyer, for there to be texts regulating it and clarifying its provisions with precision and care, so that each party knows the result of his failure to fulfill his obligation to preserve and what it may lead to, and takes all possible means to preserve the goods.

By referring to the Vienna Convention on the International Sale of Goods when it regulates the seller's obligation to preserve in Article (85) thereof, we find that it stipulates that the seller is obligated to preserve if the buyer is late in receiving the goods, or if he does not pay the price when payment of the price and delivery of the goods are two concomitant conditions, and the goods are still in his possession or at his disposal, and it imposes on the seller to take reasonable measures appropriate to the circumstances to ensure the preservation of the goods.

The phrase "taking reasonable and appropriate measures in the circumstances to ensure the preservation of the goods" can explain to us that the seller's obligation to preserve is an obligation to exercise care and not an obligation to achieve a goal, as the text imposed on the seller to take reasonable measures that enable him to preserve the goods. If the text had intended to impose an obligation to achieve a result, it would have been different.

The agreement also used the same phrase with regard to the buyer's obligation to preserve according to Article (86), as we find that the text also imposed on the buyer to take reasonable measures appropriate to the circumstances to ensure the preservation of the goods, if he wishes to reject them, and even more than that, as according to the second paragraph of Article (86), we find that it stipulated that if the goods are at the buyer's disposal, he must take possession of them on behalf of the seller without this being binding on him if possession requires unreasonable expenses or inconvenience.

And from this Although the Vienna Convention did not explicitly state the nature of the seller's obligation to preserve and the buyer's obligation as well, it implicitly stated that the obligation is to exercise care by making reasonable and appropriate efforts for the circumstances of the goods and preservation, without being obligated to achieve a specific result, which he cannot get rid of except by proving the foreign cause. In any case, we find that the Vienna Convention has given the right to the contracting parties to agree among themselves to determine the nature of the obligation, as the matter is left to the freedom of the parties to include whatever conditions they wish in the contract concluded between them. However, we see that despite all of this, and since when reading the text, its content can be known and it is known that the parties' obligation is by nature an obligation to exercise care and they can agree otherwise, this obligation is important in its nature and it would have been more appropriate for it to receive more detail, as the question arises about whether the obligation is an obligation to exercise care, then what is the amount of care that he is obligated to preserve?

We also find that the provisions of the Hague Convention of 1964 are similar to the provisions of the Vienna Convention mentioned above, as it did not stipulate anything different. Rather, the Vienna Convention took the text from the Hague Convention with minor amendments.

As for European contract law (PECL) Referring to the text of Article (7-11) It stipulated that the party in whose possession the goods are left as tangible property due to the failure of the other party to accept or recover the property must take reasonable steps to protect and preserve this property, and the second paragraph stipulated that the party in whose possession the goods are left must deposit them under reasonable conditions with a third party to be preserved for the benefit of the other party.

The European Contract Law also had ambiguous texts regarding the nature of the obligation to preserve, as we did not find an explicit text stating that the obligation to preserve was to achieve a goal or to exercise care, but it also stipulated the necessity of taking reasonable steps to preserve the goods and did not impose a penalty for failure to adhere to preservation, but only imposed that reasonable measures be taken to preserve the goods. We can conclude from this that the obligation to preserve according to the European Contract Law is an obligation to exercise care, and the party in whose possession the goods are must exercise the necessary care in order to preserve them, without being obligated to achieve a specific result from that preservation, such that if it were not achieved, the party in whose possession the goods would be held responsible.

Rather, it is more than that, as it gave the right to the party in whose possession the goods were and whose preservation was unreasonably costly to take reasonable measures and steps to dispose of them and he

could sell them, and this clearly indicates that European contract law made the obligation of the party in whose possession or control the goods were an obligation to exercise care.

As for the US Trade Law, it obligated the buyer, according to Article (2-603) of the Trade Law.(UCC) If he wishes to reject the goods and they are in his possession or control by following any reasonable instructions he receives from the seller in relation to the goods, and in the absence of specific instructions he is entitled to sell them if they are perishable or in danger of depreciation(UCC,603-2, 2003).

If the seller does not give reasonable instructions regarding the goods within a reasonable time after notice of rejection, the buyer may store the goods for the seller's account, reship them to the seller or sell them.(UCC,604-2, 2003).

It is noted from the texts of the Commercial Law above that the buyer who wishes to reject the goods and they were under his control must notify the seller and take reasonable instructions from him regarding the goods, with the right to sell them if they are subject to damage or a decrease in value, or to store them on behalf of the seller, and all of these cannot fall within the scope of the obligation to achieve a goal, but rather an obligation to exercise care. Despite the fact that the implicit position of the laws clarifies that the obligation of the seller or buyer if the goods are in his possession or under his control is an obligation to exercise care, we do not see this as sufficient, as the subject must receive greater detail, perhaps as we said previously to clarify the amount of care required to preserve them, and accordingly we see that the obligatory care to preserve, considering that preserving the goods is within the scope of international sales contracts, the care requires that it be the care of a careful man and the care of an ordinary man is not sufficient, as they may conflict, as this sale is not a simple local sale, but rather an international sale that requires the necessary sufficient care, so the amount of care must be the care of a careful man unless the parties to the contract agree that their obligation is An obligation to achieve a result, and since the obligation is an obligation to exercise care, the burden of proof falls on the one who claims that he did not exercise sufficient care.

Conclusion

After we have explained in this research the concept of the obligation to preserve goods in addition to the place where they are returned and the preservation is due, as we have explained the legal nature of this obligation, we will discuss the most important results and recommendations that we have reached as follows:

Results

In the research, we discussed the concept of the obligation to preserve goods and explained its definition in laws and agreements, in addition to stating the position of the judiciary on it. We also explained that the subject of the obligation to preserve represents the goods themselves, as they are what preservation is subject to, and what requires the person obligated to preserve to take the necessary measures in order to preserve the goods, as we explained that the seller is obligated to preserve the goods if the buyer is late in receiving the goods, or if the buyer does not pay the price and there is an agreement between the two parties on the correlation between paying the price and delivering the goods. In this case, if the goods are in the seller's possession or at his disposal, he is obligated to preserve them. The same applies to the buyer. If the buyer wishes to reject the goods due to what is in the contract or what is stipulated in the agreement, or if the goods do not conform to what was agreed upon between the parties, in this case, if the goods are in his possession or at his disposal, he is obligated to preserve the goods that are the subject of the obligation. We also concluded that there is no text in the laws and agreements that determines the nature of the obligation to preserve goods and whether it is an obligation to achieve a goal or an obligation to exercise care.

Recommendations

The Iraqi legislator came without any text on the obligation to preserve in the international sales contract in general, and the nature of this obligation in particular, so we see that there must be texts within the Iraqi Commercial Law that regulate the obligation to preserve, and the texts that we propose and are related to the research topic are as follows:

- 1- The obligation to preserve in an international sales contract means: An obligation incumbent upon the seller or buyer if the transported goods are in his possession or at his disposal, to exercise the necessary care for preservation and bear the expenses imposed for preservation, provided that he recovers them from the other party later."
- 2- The seller is obliged to preserve the goods if the buyer is late in receiving them if a date has been set for that, and if no date has been set it must be within a reasonable period for receipt. The seller is also obliged to preserve if the buyer does not pay the price of the preserved goods if there is a connection between paying the price and delivering the goods at the same time. The seller is generally obliged to preserve in cases where the goods are in his possession or at his disposal.
- 3- The buyer is obligated to preserve the goods if he wishes to reject the goods subject to the obligation, provided that the reasons for rejecting the goods are specified, such as if they do not conform to what was agreed upon, or if there is an agreement between the parties on cases in which the buyer has the right to reject the goods, in addition to the cases specified by laws and agreements, he must take the necessary measures to preserve the goods in his possession or at his disposal by taking reasonable measures to preserve them.
- 4- Reasonable measures to preserve goods mean any measure that can protect the goods from loss, damage or exposure of the goods to a decrease in value, as reasonable measures include depositing the goods in warehouses and exercising the necessary care to preserve them from loss or damage, with the right to sell them if they are exposed to a decrease in their value.
- 5- The expenses of preserving the goods mean all the expenses incurred by the obligor to preserve the goods in his possession or at his disposal, including the expenses of depositing them in public warehouses and the expenses of transporting, shipping and caring for them.
- 6- The person obligated to preserve the goods must exercise the care of a prudent man in the same circumstances, and the care of an ordinary man is not sufficient for preservation.

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