

## The Expiration of the Obligation to substitute for Fulfillment

Muslim Hassan Sabeeh Kadhim<sup>1</sup>, Siamak Jafarzadeh<sup>2</sup> and Reza Nikkhah<sup>3</sup>

### Abstract

*When we talk about the discharge of obligation, we refer to the situation where a person stops fulfilling their commitments or promises. There can be several reasons for this. One common reason is the inability to fulfill obligations, which can happen due to significant pressure on the person, either from other commitments or difficult circumstances. In such cases, the person may find themselves unable to fulfill their promises and obligations. Another reason could be a lack of interest in one's obligations. For example, the commitment may no longer be important to them, leading the person to ignore their obligations and bypass them without consideration. Alternatively, the person's surrounding circumstances may change, making the commitment unattainable. This can happen when there are changes in the person's economic, health, or social status. In such cases, the person may find themselves unable to fulfill their obligations due to the changes in their life. It is important to note that the discharge of obligation can have a negative impact on personal and professional relationships. When a person fails to fulfill their obligations, they lose credibility and others' trust in them. This can lead to deteriorating relationships and loss of professional opportunities. Therefore, it is important for a person to be honest and committed to their promises and obligations to maintain good relationships and achieve success in life. For the importance of this topic, I have written this brief research to understand how the discharge of obligation through a substitute for performance works. The discharge of obligation through a substitute for performance means that the person has not fulfilled their obligations or promises. There can be several reasons for this, such as the inability to fulfill obligations, lack of interest in obligations, or even changes in circumstances that make the commitment unattainable. Sometimes, the discharge of obligation can have a negative impact on personal and professional relationships, as the person loses credibility and others' trust in them. Therefore, it is better for a person to be honest and committed to their promises and obligations to maintain good relationships and succeed in life. Acceptance by the creditor, in the event of fulfilling his right, in exchange for what is intended by it to be replaced by all his dues and the deserving thing that almost serves as a substitute for this fulfillment. There are two pillars for fulfilling in exchange. There must be an agreement between the creditor and the debtor to replace the original place of fulfillment with the transfer of ownership of something else from the debtor to the creditor. The eligibility must be available in both parties, and the will of both parties must be free from defects, without any mistake, fraud, coercion, or exploitation, and the agreement must have a place and reason. The reason is to fulfill the original debt, and the place is to replace the original place with the transfer of ownership of something else from the debtor to the creditor. The agreement to fulfill in exchange should be proved according to the general rules of evidence, on the condition that if the creditor proves that he accepted to receive something he is not entitled to without reservation, then it is assumed, until the evidence proves otherwise, that he agreed for it to serve as a substitute for fulfillment. Agreement on the fulfillment in exchange is not enough; it must also be implemented by actually transferring ownership from the debtor to the creditor. Consequently, fulfillment in exchange cannot be done through a will, such as if the debtor bequeaths money to fulfill the debt, because a bequest can always be revoked and ownership of the bequeathed does not transfer to the beneficiary during the life of the testator. Also, fulfillment is not achieved if the debtor retains the right to reclaim the property he handed over as fulfillment of his debt.*

**Keywords:** Commitment, Expiration, Fulfillment in Exchange, Delegation, Set-Off, Union of Liability.

### INTRODUCTION

Causes of the Discharge of Obligation Equivalent to Performance: We have presented that these causes are fulfillment in exchange, renewal, set-off, and union of obligations. In fulfillment in exchange, the creditor compensates for the debt by something equivalent to it, and in renewal, the creditor fulfills the original debt with a new debt. One form of renewal is recourse in fulfillment, and in set-off, the creditor fulfills the debt he owes to the debtor with a debt in the debtor's favor. In the union of obligations, the creditor fulfills a debt owed to him by assuming this debt himself after it becomes due from him.

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<sup>1</sup> Urmia University, Faculty of Law, Private Law Department. E-mail: Fin929.muslim.hasan@uobabylon.edu.iq.

<sup>2</sup> Urmia University, Faculty of Literature and Humanities, Department of Jurisprudence and Islamic Law. E-mail: jafarzadeh@urmia.ac.ir.

<sup>3</sup> Urmia University, Faculty of Literature and Humanities, Department of Jurisprudence and Islamic Law. E-mail: R.nikkhah@urmia.ac.ir.

We divide this topic into four sections, dedicating the first to fulfillment in exchange, the second to renewal, the third to recourse in fulfillment, and the fourth to the union of obligations.

### **First Section: Fulfillment in Exchange**

The jurists of Egyptian law have provided several definitions for fulfillment in exchange, including: Fulfillment in exchange is the fulfillment that occurs by the creditor accepting something instead of executing the obligation to perform something else other than what was originally deserved<sup>(1)</sup>. The debtor is originally supposed to fulfill with what he committed to, according to the creditor-debtor relationship that binds them. If the debtor offers something else other than what he committed to, then the creditor can reject this fulfillment<sup>(2)</sup>. Article (350) of the Egyptian Civil Code states: "If the creditor accepts, in fulfilling his right, to be compensated with something other than what is due, this serves as a substitute for fulfillment<sup>(3)</sup>." The definition of fulfillment in exchange is also mentioned in Article (399) of the Iraqi Civil Code, which states: "If he accepts to fulfill with something else other than what is due, this serves as a substitute for fulfillment."<sup>(4)</sup> Therefore, fulfillment in exchange is an agreement between the creditor and the debtor that the debtor will fulfill to the creditor with something else other than the original obligation, and the debtor actually fulfills this thing, so the creditor compensates in fulfillment in exchange with something else other than the thing that is the subject of the obligation.<sup>(5)</sup>

### **Conditions for Fulfillment in Exchange**

The Egyptian and Iraqi legislators have referred to these conditions:

**First:** There must be an agreement in which the creditor accepts to be compensated for the fulfillment of the original obligation by transferring ownership of something else.

Fulfillment in exchange is carried out through a new agreement after the debt has arisen between the debtor and the creditor, and this agreement is subject to the general rules of eligibility, place, and reason.<sup>(6)</sup>

**Second:** The fulfillment of the corresponding obligation must be executed in reality. In order to have a fulfillment in exchange, the debtor must actually fulfill his new obligation after concluding the agreement with the creditor.<sup>(7)</sup>

### **Effects of Fulfillment in Exchange**

The effects of fulfillment in exchange, as it constitutes fulfillment, are governed by the provisions of fulfillment in the Egyptian and Iraqi civil laws. Consequently, the provisions of fulfillment in both the Iraqi and Egyptian laws apply, resulting in the following:

The guarantees for the original debt are removed and do not return even if the compensation is due in the hands of the creditor

The provisions related to determining the payment party apply, to determine if the debtor has several debts of the same kind in his debt and has paid compensation for the fulfillment of some of them without others. In this case, he has the right to pay when he has paid the compensation.

If it becomes apparent that the debtor has paid compensation for a non-existent debt, the provisions of fulfillment are followed, not the provisions of property transfer. Therefore, the debtor does not return to the creditor for the amount of the debt, but he recovers the compensation he paid under the pretext of recovering what is not due.

The creditors of the debtor have the right to appeal on the grounds of the debtor's failure to fulfill his obligations. If the insolvent debtor fulfills the compensation for one of his creditors before the due date for fulfillment, this fulfillment does not apply to the rest of the creditors. Also, the fulfillment in exchange does not apply to them even if it occurs after the due date, if this fulfillment is the result of collusion between the debtor and the creditor who received the compensation.<sup>(8)</sup>

## **Second Section: Renewal and Recourse in Fulfillment**

The Iraqi legislator and the Egyptian legislator considered renewal and recourse in fulfillment as two similar systems with differences between them, because recourse can be complete or incomplete, and complete recourse implies the meaning of renewing the debt.

### **First Requirement (Renewal)**

The Egyptian and Iraqi legislators defined renewal as an agreement that terminates an old obligation and creates a new obligation that replaces it and differs from it in one of its essential elements<sup>(9)</sup>.

The three conditions for renewal are: the existence of an existing obligation that replaces the new obligation, the difference between the new and old obligations in one of their elements, and the presence of the intention or will to renew.

**First Condition: Existence of an Old Obligation:** The Egyptian and Iraqi legislators said that renewal, like fulfillment, must have a debt that is the subject of it, otherwise it is void. If the old obligation has expired for any reason of expiry or has become void, there can be no renewal. If the old obligation is capable of being invalidated, it can be renewed because it is an existing obligation but it is threatened with disappearance.

**Second Condition: Creation of a New Obligation:** The Egyptian legislator did not differ from the Iraqi legislator in the essence of this condition as well, where they said that in renewal there must be the creation of a new obligation, otherwise the old obligation will not expire. Renewal occurs by changing the debt into a new obligation that differs from it in location or source.

**Third Condition: Intention to Renew:** Completing renewal requires that both parties have the intention to renew, and this intention must be clearly demonstrated. Article (1/345) of the Egyptian Civil Code referred to this, and although the Iraqi Civil Code does not include such a text, it can be considered because it applies general rules. Requiring the intention and will to renew is natural.<sup>(10)</sup>

### **Effects of Renewal**

The expiration of the old commitment and the establishment of a new commitment<sup>(11)</sup>: In Egyptian and Iraqi law, renewal leads to the expiration of the old commitment and the establishment of a new one. Renewal thus has a dual effect, one of which is eliminative and the other constructive.

The eliminative effect: The eliminative effect consists of the expiration of the old commitment, with all its branches, and as a result, the guarantees attached to it, such as sureties, mortgages, and privileges, expire. This expiration is final and irreversible.

The constructive commitment involves the creation of a new debt with its own characteristics. The two effects are inseparable, as one cannot be achieved without the other. This commitment has its own components, qualities, guarantees, and obligations.<sup>(12)</sup>

### **The Second Request (Substitution in Fulfillment)**

Article 359/1 of the Egyptian Civil Code and Article 405 of the Iraqi Civil Code address the concept of substitution in fulfillment, stating that "substitution occurs when the debtor obtains the creditor's consent to a third party who undertakes to fulfill the debtor's obligations."<sup>(13)</sup>

### **Types of Substitution**

Complete substitution: Article 1/360 of the Egyptian Civil Code and Article 406/1 of the Iraqi Civil Code address this type of substitution, which occurs when the contracting parties agree to replace an old commitment with a new one. This substitution renews the commitment with a change in the debtor, and the delegate must discharge the debt before the delegator who is liable.<sup>(14)</sup>

Incomplete substitution: Incomplete substitution is a legal process between the delegator and the delegate, with the delegate having a delegate. The delegation assumes the existence of two agreements: an agreement between

the delegator and the delegate, where the delegator instructs the delegate to fulfill the obligation towards the delegate, and an agreement between the delegate and the delegator, where the delegate undertakes to fulfill the obligation towards the delegator<sup>(15)</sup>. The Iraqi Civil Code, in Article 2/406, clarifies that incomplete substitution does not involve the renewal of the debtor, and therefore, the commitment does not expire upon substitution. Instead, a new commitment is created alongside the old commitment.<sup>(16)</sup>

### **Effects of Substitution**

Article 361 of the Egyptian Civil Code and Article 407 of the Iraqi Civil Code stipulate several provisions stating that "the delegate's commitment remains valid even if it was made before the delegator, and if his commitment is null or subject to payment from the payments, the delegate has the right to recourse against the delegator unless there is an agreement to the contrary."

Complete substitution: This is a renewal of the debt with a change in the debtor, and all the provisions of renewal apply. The relationship between the original debtor (the delegator) and the creditor (the delegate) is terminated, and the delegator's obligation is discharged before the delegate. The right to recourse remains with the delegate, creating a new debt relationship between them.

As for incomplete substitution, a new commitment arises alongside the old commitment, so incomplete substitution does not lead to the expiration of the original debt. Therefore, incomplete substitution is not considered a form of debt renewal with a change in the debtor. Both the delegator and the delegate remain obligated to the creditor, and if either of them fulfills the obligation, the commitment of the other debtor expires.

If the delegate fulfills the debt to the creditor, can he recourse against the delegator? This depends on the nature of their relationship. If the delegator had a previous debt to the delegate that was encompassed by the substitution, fulfilling the debt results in the expiration of the three debts. If there was no such debt, the delegate has the right to recourse against the delegator unless the intention was to make a gift, and recourse can be based on agency, gratuitousness, or unjust enrichment.

The delegate's commitment to fulfill the debt to the creditor remains valid regardless of its cause, meaning that his commitment before the delegate remains valid even if it was invalid before the delegation. Therefore, the delegate cannot rely on grounds for nullity or defenses that he could have relied on before the delegation. If the delegate accepted the delegation due to his indebtedness to the delegator, and then it turned out that this debt was null or expired for a reason prior to the delegation, he cannot rely on this payment against the delegator but must fulfill the debt to him and then recourse to the delegator. <sup>(17)</sup>

### **The Third Topic: Set-Off and Its Types**

Article 407 of the Iraqi Civil Code defines set-off as "the cancellation of a claim owed to a person against a claim owed by that person to another."

The Egyptian legislator also defined set-off as "the balancing of debts between two different persons, each of whom is a creditor and a debtor to the other, resulting in the cancellation of debts to the extent of the lesser debt at the same time."

Therefore, set-off is a method of extinguishing an obligation. <sup>(18)</sup>

### **Legal (Compulsory) Set-off**

Article 362 of the Egyptian Civil Code states that "1- The debtor has the right of set-off between what is due to him from his creditor and what is due from him to this creditor, even if the causes of the debts differ, if the subject of each of them is money or fungible items of the same type and quality, and each of them is free from dispute, payable, and suitable for claim. (2) Set-off does not prevent the deferral of the payment deadline for a grace period granted by the judge or granted by the creditor." Similarly, Article 409/2 of the Iraqi Civil Code stipulates the conditions for legal set-off. These conditions are:

There must be two offsetting debts, with each creditor being a debtor to the other.

There must be a correspondence in the subject matter of the debts.

Both debts must be suitable for claim.

Both debts must be free from dispute.

The debts must be due for payment.

The debts must be attachable, and no right of a third party must be attached to either of them. <sup>(19)</sup>

### **Optional Set-off**

Some jurists call it voluntary set-off, and it occurs when some of the conditions for legal set-off are not met, and the parties agree by their mutual consent to set-off between the debts. Optional set-off occurs when there is no correspondence between the debts or no offset between them. Thus, optional set-off can be invoked when an impediment prevents legal set-off, and the interests of one or both parties to the relationship are considered.

Effects of Optional Set-off: Optional set-off only takes effect from the time the interested party declares his intention to carry it out, so it has no retroactive effect, and the debts do not expire from the time the debts meet, but from the time the intention to set-off is declared. Optional set-off between unequal debts is not permissible unless the creditor agrees to the larger debt.

The third type of set-off is judicial set-off, so named because the judge decides on it. This set-off occurs when the conditions for legal set-off are met, except for the requirement that the debt be free from dispute and the amount known. It differs from optional set-off, which occurs from the time of agreement. The Iraqi legislator did not adopt this type of set-off. <sup>(20)</sup>

**Article 365 of the Egyptian Civil Code States:** "1- Set-off shall not occur unless it is insisted upon by the interested party, and it is not permissible to waive it before the right to it is established. 2- Set-off results in the cancellation of the debts to the extent of the lesser, from the time they become suitable for set-off, and the determination of the payment destination in set-off is the same as in fulfillment." Similarly, Article 413 of the Iraqi Civil Code states: "Set-off occurs to the extent of the lesser of the debts, and it does not occur unless insisted upon by the interested party."

Article 369 of the Egyptian Civil Code states: "If the debtor fulfills a debt and has the right to set-off in it, he may not claim damages from the third party by the insurances that secure his right unless he was unaware of the existence of this right." Similarly, Article 416 of the Iraqi Civil Code states: "If the debtor fulfills a debt and has the right to set-off in it, he may not claim damages from the third party by the insurances that secure his right unless he was unaware of the existence of this right and had a valid excuse." It is apparent from these texts that a distinction must be made between the parties and third parties regarding the effects of legal set-off. <sup>(21)</sup>

### **The Fourth Topic: Assumption of Debt**

The Egyptian and Iraqi legislators define the assumption of debt as the convergence of the creditor and debtor statuses in one person for the same debt, meaning the transfer of the debtor status to the creditor or vice versa at the same time. <sup>(22)</sup>

#### **First Claim: Sources of Assumption of Debt**

Assumption of debt through inheritance: The most common way of assuming debt is through inheritance. In this case, a person becomes a debtor to another while being an heir at the same time. If the creditor dies, his estate becomes a debt to the debtor for the amount of the debt. <sup>(23)</sup>

Assumption of debt through transactions between living persons: Assumption of debt can also occur between living persons, especially in the commercial environment. For example, if a company purchases bonds that it had previously issued, it becomes a creditor and debtor for their value, or if the drawee purchases a bill of exchange after accepting it but before its due date, he becomes a creditor and debtor for its value.

It is noted that some of the advanced forms of assumption of debt occur through transactions between living persons, as well as through inheritance. (24)

## **Second Claim: Effects of Assumption of Debt**

Legal texts. Article 370 of the Egyptian Civil Code states:

If the statuses of creditor and debtor converge in one person for one debt, this debt is extinguished to the extent of the assumption of debt. If the reason for the assumption of debt ceases to exist, and its cessation has a retroactive effect, the debt returns to existence, along with its attachments, for all concerned parties, and the assumption of debt is considered as if it had never existed." The corresponding articles in the Iraqi Civil Code are Articles 418 and 419.

These texts summarize that there must be a distinction in the effects resulting from the assumption of debt based on whether the reason for it persists or ceases. The assumption of debt leads to the extinguishment of the debt to the extent of the assumption, as the entire debt may be assumed as if the debtor were the sole heir of the creditor, or only a portion of the debt may be assumed, as if the debtor inherited half of the creditor's estate. (25)

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