

## The Third-party Intervention in Determining Price A comparative study

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### Abstract

*The absence of legislative regulation in Iraq regarding the issue of third-party interference in determining the price, and the many legal problems raised by this interference, the dispute over the legal jurisprudence in so far its rules is concerned, and the differences in the court's approaches as well motivates us to do this research. The research is done to determine the legal rule so as to set peace among the contact parties. And the study shows that the third party involved in determining the price is any person to whom the effect of the contract is not directed, and his job is considered as a combination of agency and contracting if he receives a payment. However, if it is unpaid, it is subject to the general theory of the contract, because it cannot be compatible with any contract. It also states that the contract associated with this permission is considered a suspended contract on a probable suspended condition, in which the third party determines the price, and whose decision obliges the parties and the court unless he exceeds its proposed authority permitted by the contract or commits a serious error. And the study sums up that the French legislator has explicitly stipulated the possibility of third party intervention in determining the price, while the general rules in Iraqi and Egyptian legislations are relied upon to find the legal basis for its intervention. The study attempts to delve into all the jurisprudential and judicial disputes regarding the aspects in the subject of the study to recommend to the legislator by adding legislative texts that provide direct solutions to the problematic area. The study recommends jurisprudence and the judiciary to adopt solutions that would be compatible with available and proposed legislative texts.*

**Keywords:** Third Party, Price, Contract, Suspense Condition, Error Grossier

### INTRODUCTION

The price is an essential element without which a sale contract cannot be concluded. It represents the object of the buyer's obligation and an essential part of the content of the contract. One of the most important conditions that must be met in it is that it be estimated or capable of being estimated, in addition to being serious and an amount of money. It is estimated. The price is either directly determined by the parties, or by specifying one of the bases that make it estimable, which is selling at the market price, or at the price that took place in dealings between the parties, or at the price at which the seller bought, or leaving the estimation of the price to a competent third party upon whom the parties agree, and often The parties do not resort to this last basis; This is because the third party who carries out this task is usually a person with great experience in the field in which the contract is being concluded, which makes it easier for the parties to overcome the difficulties related to determining the price of the sold item, in addition to avoiding the possibility of the parties falling into fraud if the price is determined by them in an incorrect manner. direct.

The importance of this study appears in two aspects: the first is the scientific aspect, as the subject of the study has not received the research and investigation it deserves at the level of specialized studies, except for some brief references that appeared in the literature that deals with so-called contracts, which has made many of its topics shrouded in mystery. The second is The practical aspect, which is represented by providing insight into contracting parties and third-party alike, as well as adjudicating all legislative and judicial rulings that relate to the subject of the study.

This study aims to clarify the legal provisions for the intervention of third-party in determining the price in civil legislation, and to attempt to reach a resolution to the existing jurisprudential and judicial controversy regarding the legal nature of this intervention and the contract associated with it, the extent of the binding force enjoyed by the third party's decision, and the possibility of challenging it.

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The study raises a major problem represented by the absence of legislative regulation of the subject of the study in Iraqi legislation. For the purpose of finding the legislative framework for this intervention, the descriptive approach will be used to determine the legal rules that can be applied, then supplemented with the analytical approach to show the shortcomings and defects in these rules. We will follow the method of comparative study by using... The legislative provisions established by the French legislator, and what the courts are adopting, as well as a statement of the legislative and jurisprudential position in Egypt, in order to achieve what this study aims to achieve, and to provide appropriate recommendations to the Iraqi legislator.

Therefore, the study plan was divided into two sections: In the first section, we address the legal status of third-party interfering in determining the price, and we divide it into two topics: We hold the first to define the concept of third-party, and we devote the second to explaining the legal nature of third-party interference in determining the price, and in the second section we will discuss the effects of third-party interference in determining the price. The price is determined by the agreement of the parties, and we divide it into two requirements as well: in the first we explain the legal nature of the contract associated with the authorization of third-party to determine the price, and in the second we discuss the binding force of the decision of the authorized third party in determining the price, and we follow them with a conclusion that includes the most important conclusions and recommendations that we have reached.

## **THE FIRST TOPIC**

### **The Legal Position of Third-Party Involved In Determining The Price**

Research into the legal status of third-party involved in determining the price requires addressing two basic issues. The first relates to defining the concept of third-party and clarifying the standard adopted in that regard, while the second issue concerns determining the legal nature of the third party's mission. Therefore, we will divide this study into two requirements: We devote the first requirement to defining the concept of third-party. We make the second requirement to clarify the legal nature of third party intervention in determining the price.

### **The First Requirement**

#### **Defining The Concept of Third-Party**

The term third party is one of the oldest legal terms, and the Romans used it in their famous phrase “*Res inter alios acta aliis neque nocere neque prodesse potest*,” which means that contracts cannot benefit or harm anyone other than their parties or third-party (Josserand, 1939, p. 144), and the word “alien” (*aliis*), which was used by Roman jurists, became the third person (*La tierce personne*) according to the French jurist (Domat), then the French jurist (Pothier) tried to give this word a less complex and more precise meaning, so he used the word “other” instead (*La tiers*) (Al-Ziyadi, 2015, p.8). The French legislator in civil law adopted this last word in the texts of civil law, as it was used by Egyptian Civil Law No. 131 of 1948, as well as Iraqi Civil Law No. 40 of 1951.

The term third party gives different connotations depending on the subject in which it is mentioned, and this is what made its meaning difficult to precisely define, especially within the scope of civil law, especially in light of the absence of legislative definition of it, on the one hand, and the wide jurisprudential disagreement regarding it, on the other hand, so it was natural to The attention of researchers, ancient and modern, is directed to studying it, and trying to define its meaning, and the other that concerns us in this study is what jurisprudence usually calls the non-absolute, or completely foreign, or originally alien to the contract, and upon closer examination of the definitions mentioned by jurisprudence for this term, we notice that they are divided into two directions. One of them is that it attempts to define the third party itself in order to reach its meaning that distinguishes it from other terms, and we can call the definitions of those of this tendency a positive definition. Secondly, it attempts to define the concept of the third party by excluding the group of third-party from the group of parties to the contract. This trend is by definition negative.

Among the definitions of those who follow the first trend is the definition of the French jurist (Louis Josserin -Louis Josserand) as he defines a third party as “a person who is not bound by any relationship of obligation to one of the parties to the contract, neither in the present nor in the future, and for this reason Article (1165) of

the French Civil Code of 1804 was enacted - which stipulates that the contract does not benefit or harm others.” - As a sales contract is concluded between (A) and (B), nothing worries me, as this is not my concern, but rather the concern of others,” as the Frenchman (Cuny) says that a third party “is one who has no relationship with the contracting parties or one of them, or has no relationship with them.” Except for necessity or as a result of the nature of things, the contract does not concern him with anything, so how can it concern him with a contract in which his will had no role in it? Therefore, a sale, gift, loan, or any other contract concluded by a neighbor of mine does not concern me in anything, and I can ignore the existence of contracting parties in this way” (Khater, 2001, p. 50).

The definition of others in the previous manner was criticized by the French jurist (Weill) who believes that if the third party were the ones who had no relation to the contracting parties, the legislator would not need the text of Article (1165) - the previous one - in which it decided that the contract does not benefit or harm this third party, as this is an obvious matter that does not need a text (Rabia, 2018, p. 20), and even if this article includes this meaning, it should be interpreted in another way in a way that produces a legal effect, not adhering to the literal meaning of the text. In addition, this definition did not provide us with a clear standard through which the persons of third-party can be accurately determined. .

As for the second approach, which adopts the method of exclusion (negative definition), the third party is defined as “any person who is not a party to the contract” (Billot, 2016, p. 1), and is also defined as “the person who was not a party to the contract, neither principal nor representative” (Khater, 2001, p. 26), and is also defined as “the person who was not a party and was not represented in the contract and is not affected by its effect.” The one who is obligated and often can be opposed” (Corun, 2018, p. 2160), as one aspect of ethnic jurisprudence defines him as “the one who is not a party to the contract, nor a successor, nor a creditor to one of its parties, so the effect of the contract does not extend to him, as he neither benefits from it nor is harmed by it.” He neither acquires a right nor is bound by an obligation” (Al-Hakim, 1963, p. 304; Al-Sharif, 1955, p. 268; Al-Husseini, 2014, p. 9), and Dr. Al-Sanhouri also defined it as “the one who was neither a party to the contract nor a successor to any of the contracting parties, so the effect of the contract does not apply to him.” As long as he is away from the circle of contracting,” he added: “Two men are selling a house, so what do I have to do with this matter?” The sale may be valid or invalid, the contract may or may not be annulled, ownership may or may not be transferred to the buyer, both the seller and the buyer may be bound by certain obligations under this contract, but as for me, I am far from all of that, and nothing of its effect will affect me, if... The effect arises from the contract (Al-Sanhouri, 1998, pp. 860-861).

The criticism that is directed at the definition of the proponents of this trend is that, on the one hand, it is assumed that whoever is not a party to the contract does not have the effect of the contract extended to him, but the special successor is not a party to the contract, nor is the ordinary creditor. Despite this, some of the effects of the contract may extend to the first and be affected by the second. (Khater, 2001, p. 26. Sharqi and Al-Kalabi, 2021, p. 81). On the other hand, this definition added another problem to us in addition to the problem of defining the concept of a third party, which is defining the concept of a party in the contract. What is meant by a party? When is a person a party to a contract?

Legal jurisprudence proposed several criteria to determine the person who is called the party to the contract, and the first of these criteria is the will criterion proposed by the French professor (Jacques Gastan). Jacques - Ghestin), according to which the parties were defined as “the people whose will participated in the creation of the contractual association” (Ghestin et al., 2000, p. 448), or “the ones who create the contract by agreement of their will,” and the party was also defined as “the one who contributes to the contract Because he wants to do so” (Khater, 2001, p. 29). Thus, according to this standard, the party is the person who concluded the contract, and the third party is everyone who did not participate in concluding the contract. This standard is not free from criticism, as it is not sufficient to grant the status of a party, so the representative contributes. With his will in forming the contract without being a party to it (Al-Saadi and Abdel-Wahhab, 2017, p. 4), it is also not correct to determine the party at the time of forming the contract, as it is permissible for the person to be a party to the contract upon implementation (Kahlawan, 2015, p. 325).

After that, Professor Jacques Gastan tried to overcome the criticism directed at the criterion of will in the narrow sense that he proposed by expanding the role of will in determining the legal status of the party and third-party in the contract. He stipulated that two conditions should be met in order to acquire the status of a party: the first, that he bear one of the effects of the contract, and the second. That he has expressed his will in order to create this legal effect, and thus he classifies the party into two categories: the contracting party and the associated party, and the first means the person who expressed his will in forming the contract, while the second is the one who expressed his will after forming the contract ( Ghastan et al., 2000, pp. 464-468), as for the third party, it is every person who did not express his will at all, neither during the formation of the contract nor after that. There are also two types: The first is the person who is not linked to the contract, that is, the one who did not express his will neither during the formation of the contract nor after it. But it is linked to the effects of the contract according to the text of the law, and this category includes the third party who has the right to use a direct lawsuit on behalf of his debtor. As for the second, he is the absolute third party, that is, the one who has any of the previous cases and has not expressed his will and is not linked to the contract according to the text of the law. He is only obligated to respect the contract in accordance with the principle of the validity of the contract (Al-Saadi and Abdel-Wahhab, 2017, pp. 10-11). Gastan et al., 2000, p. 448. Kahina and Abdullah, 2019, p. 71. Khalifi, 2022, p. 69. Ajeel, 2014, p. 86).

The French jurist goes (Martin) to rely on the criterion of interest to determine the concept of the party, and Martin believes that “the contract is the result of different needs that the two contracting parties strive to achieve a balance between, so negotiation precedes the contract to make a kind of settlement between the conflicting interests” (Khater, 2001, pp. 29-30) This standard has been subjected to criticism, because it relies on the element of conflict of interest with other interests in determining the concept of the party in the contract, and therefore there are only two contradictory interests in the contract, even if it includes three people, and this concept seems sound if it is limited to the assumptions to which its owners were exposed, Such as a contract concluded by a minor with a third party with the permission of his guardian, as there are only two contradictory interests in it, the interest represented by the guardian and the minor on the one hand, and the interest of the contracting party with the minor on the other hand, even if there are three people (the minor, the guardian, and a third party), but the matter will not be the same. Likewise, if the contract is extended through a legal process to a third person in other cases, such as renewal by changing the creditor, or acting on behalf of fulfillment (Khater, 2001, pp. 30-31.).

We conclude from the above that what Professor Jacques Gastan reached in his last criterion is what will be the basis for determining the status of the third party and the party to the contract, but after making some amendments to it, as we see that the power to amend the contract or terminate it with consent can be sufficient as a dividing criterion to distinguish between The third party and the party, without any necessity to confirm that the person who concluded the contract in person or on behalf is considered a party; Because the latter inevitably has the power to amend or terminate the contract, and therefore whether or not the possession of this power represents the essential element in determining the status of the third party and the party, and according to this idea we can define the third party as “any person who does not have the power to amend the contract or terminate it consensually,” as for the party. He is the one who has this authority.

## **THE SECOND REQUIREMENT**

### **The Legal Nature of Third Party Intervention In Determining The Price**

Article (1952) of the French Civil Code, amended by Law No. 744 of 2019 relating to the simplification, clarification and modernization of the Companies Law - after the preceding article indicated that the sale price must be determined and set by the parties - stipulated that “however, it may be left For estimation by a third party, and if the third party does not wish to make the assessment or is unable to do so, there is no sale, unless it is estimated by another third party,” as stipulated in Article (1843-4) of the same law, which was also amended by the aforementioned law. However, “First - in cases where the law refers to this article to determine the price conditions for transferring a partner’s rights, or recovering them by the company, the value of these rights shall be determined, in the event of a dispute, by an expert appointed by both parties, or in the event of disagreement.” Between them, by ruling from the President of the Judicial Court or the competent commercial

court, the urgent procedure in the subject of the case is not subject to any appeal. The expert appointed in this manner must apply, if any, the rules and procedures stipulated in the company's bylaws or under any binding agreement between the two parties. To determine the value of these rights. The Egyptian and Iraqi civil law did not contain a text similar to the French text, and despite that, jurisprudence in Egypt and Iraq is agreed that leaving the price to be determined by a third person agreed upon by the parties is an unblemished matter, as it would make the price estimable, especially since Article (527/1) of the Iraqi Civil Code and Article (423/1) of the Egyptian Civil Code permit the estimation of the price to be limited to a statement of the basis according to which it is determined later (Al-Sanhouri, 2009, pp. 378-382. Al-Amiri, 1974, p. 89. Taha, 1970). , pp. 193-194. Mubarak et al., 2018, p. 80. Al-Fadl and Al-Fatlawi, 1993, pp. 80-81. Ajeel, 2008, pp. 243-244. Hassan, 2018, p. 131).

Usually, this third party is appointed by agreement of the contracting parties at the time of sale, and may be appointed in a later agreement, such as stipulating in the sales contract that the price should not be determined by a third party agreed upon later. The parties may also entrust another person to appoint the third party who will By determining the price (Ajeel, 2008, pp. 245-246), and it is not required that he be a natural person, as this person may be a legal entity, whether he is a person of public or private law, as long as he has accepted to carry out the task, and it is required that a third party be able to perform that task. The task, and here the question was raised about whether it is required for the legal person to determine the price that it be within the limits of its jurisdiction in accordance with what is determined by the legal rules or the document establishing it, or not? Jurisprudence holds that if the document establishing the legal person or legislation prohibits him from performing this role, then he may not assume the task of determining the price, but if there is no explicit prohibition, then there is no question of him doing so (Al-Ahwani, 1984, p. 95).

The question that arises here is what is the legal nature of the work of this third party? Especially since Article (1592) of the French Civil Code, before its recent amendment, indicated that determining the price could be left to arbitration by others, while Article (1843-4) of the same law indicates that determining the price in the event of a dispute is made by an expert. Is he an arbitrator, an expert, or something else? Firstly, the third party who determines the price cannot be considered arbitrator; Given the difference between the mission of each of them, arbitration assumes the occurrence of a dispute over rights that previously existed, and the issue here is not the case, but rather focuses on determining the price of the sale, and there is no dispute between the parties. On the contrary, they are in complete agreement to implement the contract as concluded by (Taha). , 1970, pp. 191-192. Ali, 2017, p. 103), and even if a dispute occurred between the parties regarding determining the price and a third party was sought to determine it, he cannot also be an arbitrator; Because the dispute here is related to determining an essential element of the formation of the contract, which is the price, and not determining the penalty resulting from breach of the contract. In addition, the arbitrator, upon issuing the decision, is obligated to state his reasons (Article 270 of the Iraqi Code of Civil Procedure, Article 1482 of the French Code of Civil Procedure, and Article 43/ 2 of the Egyptian Arbitration Law), while the third party who determines the price is not obligated to state any reasons for his decision, and the third party's decision to determine the price is not subject to appeal, while the arbitration decision accepts that (Tricot et d'autres, 2012, p.5), and in support of this opinion, the Chamber of Commerce of the French Court of Cassation stated in its decision issued on February 16, 2010 that the clause that gives third-party the authority to determine the sale price instead of the parties cannot be considered an arbitration clause; It does not give him judicial authority, but rather enables him only to determine an element of the contract, which is the price (Cass. Civ. 16 February 2010, 09-11.586).

On the other hand, he cannot be considered an expert, because the expert's work is merely to help overcome scientific or technical difficulties in an issue for which a specialist is required (Abdel Halim, 2006, p. 53), and his opinion is advisory and not binding on the parties, while the opinion of a third party authorized to determine The price is binding on the seller and the buyer (Mubarak et al., 2018, p. 78; Ali, 2017, pp. 103-104), and although Article (1843-4) of the French Civil Code gave the name "expert" to the third party who undertakes the task of determining the price of shares, the The rulings of the French judiciary indicate that he is not considered an expert within the meaning of Article (263) of the French Code of Civil Procedure, as the Chamber of Commerce of the Court of Cassation stated in its decision issued on December 18, 2019 that the third party

is responsible for estimating the sale price in accordance with the provisions of Article (1592).) of the Civil Code is neither an arbitrator nor a legal expert; Because he is only required to implement the agreement of the parties in order to determine the sale price or transfer of the shares, and therefore he cannot judge the breach of the contract (Cass. Civ. 18 December 2019, 18-14.117), and the same chamber, in its decision issued on March 26, 2013, stated that the expert appointed in accordance with Article (1843-4) of the Civil Code is not an ordinary expert, whose opinion, in his opinion, aims to enlighten the judge in making his decision, but rather He is a technician charged by law with determining the value of shares in the event of a dispute (Cass. Civ. 26 March 2013, 12-10.144), and the Versailles Court of Appeal also held that a third party appointed under the provisions of Article (1592) of the Civil Code is not subject to any of the rules of judicial expertise. Rather, it performs its mission in light of the authority granted to it by the parties (Versailles, 27 September 2005).

Therefore, the prevailing opinion in jurisprudence and judiciary is that this third party is an agent on behalf of the parties and his task is limited to determining the price, and it is not permissible for any of them to remove him independently, but rather they must agree on that, as is the case with his appointment (Al-Sanhouri, 2009, p. 379, footnote 1. Taha , 1970, p. 192. Al-Fadl and Al-Fatlawi, 1993, p. 80. Ajeel, 2008, p. 248. Abu Al-Saud, 2010, p. 153. Nahla, 2007, p. 90-91. Some have objected to this opinion from several angles, the first of which is that it is not permissible for a single person to He is a representative of both parties to the contract. The second is that the agent may be dismissed, while the third party here may not be dismissed without the consent of the other party. The third is that the agent is supposed to be the executor of the will of the principal, while the third party here imposes his will on his client. The fourth is that the agency is only in legal business. While determining the price is a material act, others responded to these objections, and believed that the first objection cannot be accepted because it is permissible for a person to be a representative of both parties to the contract when the subsequent approval is obtained. Here, there is something stronger than the subsequent approval - that is, a *fortiori* - so the two sellers Read together allowing others to estimate the price. The second objection is also rejected, because the agent appointed by the two parties selling together may be dismissed by their agreement. The third objection is also rejected, since the agent conducts the act according to his own will, not the will of the principal, and this will is implemented against the latter. Because he agreed to this in advance, and the fourth objection is also inaccurate, as the work of others is not a material work, because the full content of his authority is to complement the will of both the seller and the buyer, and to replace it by specifying part of the contract and an essential element in it, and therefore it is difficult to describe what the third party does. It is merely a physical act (Mark, 1980, p. 168. Qasim, 2005, pp. 205-206. Ajeel, 2008, pp. 248-249. Al-Sanhouri, 2009, p. 379).

The Egyptian Court of Cassation went in this direction in its decision issued on 5/8/1988, which stated: “In a sales contract, the two parties may leave the determination of the price to a foreigner that they agree upon at the time of the contract. In this case, the price is estimable by authorizing the foreigner to estimate it, and what this foreigner estimates as a price.” The sale is binding on both the seller and the buyer, as he is their agent, and this sale takes place from the time the two parties agreed on the authorized person. At that time, the sale was complete for all its elements and components, including the price” (Ajeel, 2008, p. 248, footnote 407). The French Court of Cassation also held that This trend also appears in several decisions, including the Chamber of Commerce decision issued on February 16, 2010, which indicated that Article (1592) of the Civil Code allows contracting parties to assign a joint agent to undertake the task of determining the sale price (Cass. Civ. 16 fév 2010, 09-11.586), and the decision of the Third Civil Chamber issued on October 19, 2017, which stated that the Civil Code in Article (1592) recognizes that the price can be determined not by the parties themselves but through a joint agent (Cass. Civ. 3, 19 oct 2017, 16-22.665), as well as the decision of the Chamber of Commerce issued on December 18, 2019, which indicated that the third party appointed under Article (1592) must carry out its mission as a joint agent of the parties and that the price determined by it will be binding. Unless he commits a serious error (Cass. Civ. 18 December 2019, 18-14.117).

Despite this, some French jurisprudence holds that it is not possible to subject the task of the third party who is responsible for determining the price to the provisions of the agency contract only. Rather, it is a combination between the agency and the contracting contract, and analyzes the task of the third party from two aspects: The first is the obligation of the third party’s decision for both parties, and this is subject to the provisions of the

agency contract. The second is the process of determining the price itself, and it is believed that this is a material act that is subject to the provisions of the contracting contract, especially since the agency requires concluding a contract with a third person for the benefit of the principal. However, here no contract is concluded, but rather merely performing a specific act is translated into a decision binding on the parties to the contract only. Beyond that, some have suggested subjecting it to the provisions of the contracting contract alone, because third-party are not responsible for concluding the sale contract, but rather the contract will be made directly between the parties and without any representation, and the task entrusted to third-party is of an intellectual nature, represented by identifying the thing offered for sale, and researching About the elements of comparison and evaluation, and performing calculations, to arrive at determining its price, and this situation is very close to traditional experience, which is a form of a contracting contract, with the exception of the obligation element, which is not present in the opinion of the expert, and is available in the opinion of the third party charged with determining the price, and thus This contract is a contracting contract close to experience (Rontchevsky, 2022, <https://www.affiches-moniteur.com/economy> Also, part of Egyptian jurisprudence holds that the contract under which the person authorized to determine the price undertakes is a contract if it is for a fee, otherwise it is an indefinite contract (Ghanem, 1958, p. 80. Markos, 1980, p. 168, footnote 2. Al-Ahwani, 1984, p. 99).

We do not agree with the opinions that limit the agency or contracting contract system alone to determine the nature of the work of others, because the first wastes the material work carried out by others, which is represented in the process of determining the price, and the second wastes the element of obligation that is present in the decision of the third party in charge of determining the price, and therefore we agree. With the opinion that it is a mixed contract of agency and contracting, but on the condition that the work of others is in exchange for wages; If it is free of charge, it is an indefinite contract. Because it cannot match any of the contracts organized by the legislator.

## **THE SECOND TOPIC**

### **The Effects of Third Party Intervention In Determining The Price On The Agreement Of The Parties**

After we have discussed the legal status of the third party intervening in determining the price, we must explain the effects that his intervention has on the agreement of the parties. We will divide the discussion into these effects into two requirements: We devote the first requirement to the legal nature of the contract associated with authorizing third-party to determine the price, and we devote the second requirement to explaining the binding force. The decision of an authorized third party to determine the price.

#### **The First Requirement**

##### **The Legal Nature of The Contract Associated With Authorizing Others To Determine The Price**

Legal jurisprudence differed in determining the legal nature of this contract. Part of the French and Egyptian jurisprudence held that the sale is not concluded and its effect is not established except from the time when the price is determined by the intervention of third-party. Therefore, the contract before the determination is not considered a sale, but rather an indefinite contract (or an indefinite contract). appointed according to the description of French jurisprudence) creates an obligation on the parties to appoint a third party to determine the price to complete the sales contract (Planiol et Ripert, 1952, p. 39), and the First Civil Chamber of the French Court of Cassation supported this opinion in its decision issued on November 24, 1965, indicating that if it was agreed that the price would be evaluated by experts appointed by the parties, The sale will not be concluded until the price is determined, and that the agreement to which the parties committed to appointing experts is valid and complete, and must produce its effects, and that failure to implement such a commitment leads to the cancellation of the contract with compensation, its cancellation with compensation for damages if it is necessary (Cass. Civ 1, 24 November 1965).

While the majority of French, Egyptian and Iraqi jurisprudence holds that the first opinion does not match the intention of the parties, which usually turns to the sale contract from the time it is agreed upon, so it is concluded based on a standing condition, which is that a third party determines the price. If a third party determines the price, the condition is fulfilled and the sale produces its effect from the time it is concluded, and if it is not fulfilled, the sale is considered as if it did not occur, and it should be noted that if the third party is not named in the sale contract itself, but rather is named in a subsequent agreement, then this final agreement is the one through which the contract is completed, because it is what makes the price determinable. If the third party specifies the price was determined retroactively from the time of this agreement subsequent to the original contract (Sultan, 1980, p. 126. Saleem, 1998, p. 54. Al-Sanhouri, 2009, pp. 378-380. Al-Amiri, 1974, p. 88. Taha, 1970, p. 192. Mubarak et al., 2018, p. 78. Ghanem, 1958, p. 80. Ajeel, 2008, p. 250), and the Egyptian Court of Cassation went with this trend in its decision issued on 5/8/1988 - previously mentioned - in which it stated, "...this sale shall be completed from the time agreed upon." In which both parties are responsible for the commissioner, as at that time the sale was complete with all its elements and components, including the price."

Some Egyptian jurists criticize this last opinion, and believe that a suspensive condition cannot be one of the pillars of the contract, and the contract cannot be considered dependent on a suspensive condition unless its conclusion is completed with all its components (Mark, 1980, p. 170). Despite the validity of this criticism, it is not compatible with the idea of a contract in which third-party are authorized to determine the price, as the sales contract here was completed when the parties agreed to authorize third-party to determine the price. This is because the legislator did not stipulate that the price should be determined in the beginning, but rather merely stated the foundations upon which the price would be determined later (Article 527/1 Iraqi civil, Article 423/1 Egyptian civil, and Article 1592 French civil), and therefore we return this opinion, and see that the contract associated with a mandate The third party in determining the price is a contract of sale contingent on a contingent condition, as its fulfillment or failure is left to a matter that has nothing to do with the will of the parties.

## **THE SECOND REQUIREMENT**

### **The Binding Force of The Decision Of An Authorized Third Party To Determine The Price**

The third party authorized to determine the price enjoys a great deal of freedom with regard to organizing its mission and how to determine the price or value of the shares, whether within the framework of Article (1592) or Article (1843-4) of the Civil Code (Rontchevsky, 2022, <https://www.affiches-moniteur.com/economie>), and thus the Chamber of Commerce of the French Court of Cassation ruled in its decision issued on April 19, 2005 - previously mentioned - that the experts appointed by the courts under Article (1843-4) of the Civil Code, they have complete freedom to determine the value of the shares according to the criteria they deem appropriate, and beyond that, the same chamber went to a court in its decision issued on December 4, 2007, that the company pledged to redeem the shares according to a price calculated on the basis of a certain rate of the nominal value. For shares that are determined annually by an expert, the expert's authority in determining the price of the shares cannot be restricted, as the latter's freedom is not subject to any contractual clause (Cass. Civ. 4 December 2007, 06-13.912), but it softened its position in accordance with the decision Issued on a date when it stated that the freedom of the expert in accordance with Article (1843-4) of the Civil Code could be excluded through the agreement of the company's shareholders on their own evaluation method (Cass. Civ. 11 mar 2014, 11-26.915).

However, after Article (1843-4) of the French Civil Code was amended by Decree No. 863 of 2014 (<https://www.legifrance.gouv.fr>) The legislator put an end to the complete freedom of third-party to determine the price, and gave priority to contractual freedom and the will of the parties, as this new article requires third-party to take into consideration, if any, the rules and procedures related to how to determine the value of shares. stipulated in the company's articles of association or under any agreement binding on the parties, and French jurisprudence holds that even within the framework of Article (1592) the parties can restrict the freedom of others to estimate the price (Rontchevsky, 2022, <https://www.affiches-moniteur.com/economie>).

The decision of a third party to determine the price is considered the law for the parties and for the judge as well (Tricot et d'autres, 2012, p.10), and the third party's decision derives its binding force from the agreement



of the parties itself. Since the contract is considered complete and binding as soon as the parties agree to authorize a third party to determine the price, it is logical that the third party's decision to determine the price has the same force as the contract. However, this binding force is conditional on the third party not deviating from the legal and contractual framework set for him in determining the price. Otherwise, his decision can be appealed according to the general rules, as if he made a fundamental mistake, committed fraud (deception) against one of the parties, or was a victim. Fraud committed by one of them or exceeding the limits of the powers granted to him. The French Court of Cassation has approved in its applications two cases in which the decision of an authorized third party to determine the price can be appealed: The first is exceeding the limits of authorization, as long as the French Court of Cassation has defined the nature of the third party's work as a joint agent for Therefore, the parties are obligated not to deviate from the powers granted to them, and otherwise it is possible to appeal the decision of others and cancel it, and this was confirmed in the decision of the Chamber of Commerce of the French Court of Cassation issued on January 20, 1970, when it went about selling a number of shares at a price to be paid in the form of four installments. stipulating the possibility of reviewing the agreed-upon price in the event of a significant change in the value of the currency by them and in the event of disagreement by experts, indicating that "the clause that allows experts to determine the selling price in the event of a change in the value of the franc does not, in any way, give them Authority to decide on payment terms." Therefore, the Court of Appeal's decision was considered invalid because it granted the experts more than their powers specified in the text (Cass. Com. 20 January 1970, 68-14.303).

As for the second case, it is when someone else commits a serious mistake when performing his task. The French jurist (Potier) defines a serious mistake as a mistake that is not committed by people with the least intelligence, caution, and insight (Al-Dhanoun, 2006, p. 160). However, the idea of a serious mistake is considered one of the traditional ideas. Ambiguous, as the French Court of Cassation did not define this concept, but rather left it subject to the court's discretion, and this was confirmed in the decision of the First Civil Chamber issued on December 9, 2010 when it said that determining the value of shares if it is done by an expert, then the judge has the right to The authority to verify the presence of serious error in the expert's work (Cass. Civ. 1, 9 December 2010, 09-10.141), and therefore we find that the court sometimes refuses to describe the error made by the third party authorized to determine the price as serious, and at other times accepts describing it as such. Among the decisions in which the court refused to describe the third party's error as serious is the decision of the Chamber of Commerce of the French Court of Cassation issued on 22 April 1976, when I argued that the expert's review of all basic documents, listening to the parties, and carrying out all the necessary investigations to conduct a full assessment of the value of the shares, despite his neglect of other criteria such as the family nature of the company, and the option granted to the company to acquire land in a specific industrial area, does not make him a perpetrator. for a serious error (Cass. Com. 22 avril 1976, 74-14.896), as well as its decision issued on April 4, 1995, in which it held that the expert appointed to determine the value of the company's shares did not commit a serious error when he determined the value of the shares according to the company's net profits on the day of the sale. , without taking the amount of corporate tax into account (Cassation, commerciale, du 4 avril 1995, 92-22.020).

As for the decisions that described the third party's error as serious, including the decision of the Third Civil Chamber issued on March 12, 2020, when it held that the expert appointed jointly by the parties to determine the rent amount for the renewed lease contract had committed a serious error that would lead to the invalidation of the rent determination when he relied on his evaluation. In a way that included, in addition to the built-up parts of the property, parking spaces as well as the undeveloped land thereof, which led to a doubling of the rent amount (Cass. Civ. 3, 12 March 2020, 19-10.244), and also the decision of the Chamber of Commerce issued on November 9, 2022 when it said that in the absence of contrary provisions in the company's articles of association, the expert must determine the value of the withdrawing partner's shares on the date closest to the date Payment, since the expert determined the value of the shares on the date on which the company accepted the withdrawal, he would have committed a serious error (Cass. Civ. 9 nov 2022, 20-20.830).

We support the position of the French legislator and the judiciary not to set a specific standard for a serious error, as limiting the court's authority to determine this would ensure greater justice. It should be emphasized that a minor error can also lead to an end to the binding force of a third party's decision, especially when it is

determined. The nature of the third party's work with the idea of agency, as any departure from the powers granted to him by the parties makes his decision ineffective against them, and therefore the fulfillment of any of the previous cases that make the third party's decision lose its binding force gives the parties to the contract the right to choose another person to carry out the task of determining The price unless they decide to abandon the contract.

In addition to ending the binding force of a third party's decision, these two cases may lead to the realization of his civil liability, when one of the parties suffers direct damage due to this mistake committed by a third party. There is no doubt that this type of liability is subject to the provisions of the general rules of contractual liability (Ajeel, 2020). , p. 48. Abdul-Jabbar, 2022, pp. 80-104. Nour and Nasser, 2021, pp. 5-18. Al-Ziyadi, 2018, pp. 418-427. Zahir, 2021, 317-328).

In view of the importance of third party intervention in determining the price, we call on the Iraqi legislator to explicitly regulate its provisions in the texts of civil law. The will of the parties should be given the freedom to determine the conditions or standards that third-party should take into account when carrying out the process of determining the price. However, in return, the judiciary should be given the authority to verify The fairness of these conditions and the possibility of wasting them in the event that they are arbitrary against one of the parties, as one of them may impose conditions on others and force the other party to accept them under any reason whatsoever, which ultimately leads to a violation of the idea of contractual justice that the legislator must ensure its achievement.

## **CONCLUSION**

After God Almighty has enabled us to complete our research entitled (Interference of others in determining the price - a comparative study), at the end we will explain the most important conclusions and recommendations we have reached, through the following two paragraphs:

### **First: Conclusions:**

- 1- The study concluded that taking into account the purpose of the contractual process as a whole can be the basis or basis for determining the concept of the party and the third party in the contract, and this purpose is represented by the effect of the contract. Whoever is guided by the effect of the contract, whether it grants him a right or imposes an obligation on him, or both, is a party to the contract. The effect of the contract does not apply to him, as he is a third party to the contract. From the above, we can define a third party as "any person to whom the effect of the contract does not apply."
- 2- Jurisprudential and judicial opinions differed in determining the nature of the work of third-party, and we concluded that it is not possible to limit ourselves to the agency or contracting system alone to determine the nature of the work of others, because the first wastes the material work carried out by others, which is represented by the process of determining the price, and the second wastes the element of obligation that is present in the decision. The third party is responsible for determining the price, and therefore his work is considered a mixture of agency and contracting, but on the condition that the third party's work is in exchange for a wage. If it is free of charge, it is an indefinite contract. Because it cannot match any of the contracts organized by the legislator.
- 3- The study concluded that the contract associated with authorizing others to determine the price is a sales contract contingent on a contingent condition, as its fulfillment or failure is left to a matter that has nothing to do with the will of the parties.
- 4- The study described the third party's decision to determine the price as the law for the parties and for the judge as well, and the third party's decision derives its binding force from the agreement of the parties itself. Since the contract is considered complete and binding as soon as the parties agree to authorize the third party to determine the price, it is logical that the third party's decision to determine the price has the same force. Contract, however, this binding force is conditional on the third party not deviating from the legal and contractual framework set for him in determining the price, and therefore it may be appealed when the third party exceeds the limits of his powers or commits a serious error.

## **Second: Recommendations:**

- 1- We call on the Iraqi legislator to add a third paragraph to the text of Article (527) of the Civil Code, which will be as follows: “However, the estimation of the price may be left to a third party upon which the parties agree, and if the third party does not wish to make the estimation or is unable to do so, it shall be invalid.” Counting, unless it is estimated by another third party.” We believe that this text is sufficient to be the legal basis for third-party’ intervention in determining the price, and at the same time it saves the contract from invalidation when a third party is unable or refuses to make the estimate, as the parties can choose Someone else to do the job.
- 2- We also call on the Iraqi legislator to stipulate in the civil law the application of the provisions of the agency and contracting contracts if the work of others is in exchange for a wage. However, if it is unpaid, then the provisions of the general theory in the contract are applied, or a special regulation is established for the nature of his work.
- 3- We call on the Iraqi judiciary to implement the provisions of the conditional condition on the contract associated with authorizing third-party to determine the price, especially since the text of the proposed article clearly indicates this.
- 4- We call on researchers and research centers to give this topic the importance it deserves from legal studies, in order to respond from the legislator to the recommendations made in this regard.

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