

**RESEARCH TITLE**

**Unjust enrichment in Iraqi civil law**

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**Abstract**

This study aimed to identify the content of the rule of unjust enrichment, and what are its provisions and applications under the Iraqi civil law. the researcher used the descriptive approach, the study found that The principle of unjust enrichment is one of the involuntary sources of obligation in Iraqi civil law the study also found that one of the most important applications of the principle of unjust enrichment is in virtue and paying the undeserved, as .they are the two most prominent applications of this legal principle the study recommended that the Iraqi legislator establish a specific and clear definition of the theory of unjust enrichment in order to control its concept and define its features

## Introduction

Sources of commitment are divided into voluntary sources and involuntary sources. Perhaps the most prominent source of involuntary commitment is unjustified enrichment. What is meant by commitment according to this framework is the legal duty imposed by the law on both parties of any relationship that arises between individuals and is regulated by civil law. On this basis, enrichment is Without cause is the reason that led to the legal obligation of one of the parties to this previous relationship to perform work or pay certain monetary compensation.

On this basis, unjustified enrichment is the enrichment that affects the financial liability of one individual as a result of the beneficial work carried out by another individual without a commission or request from the first. On this basis, the individual whose financial liability is enriched is obligated to compensate the employer of the beneficial work within the limits of this work.

It should be noted that unjust enrichment does not only lead to the wealth acquired by one person, but in parallel it leads to the lack of financial liability of another person without any of the obligations imposed by the law that justify both wealth and poverty.

The truth is that the original source of the idea of unjust enrichment is the moral rules, meaning that morality is basically what justifies compensation for the person whose responsibility has become poor, and on this basis this idea can be returned to the rules of justice and natural law, and the above is not a general rule as it is not assumed in the rules. The law must always be moral, meaning that the relationship between morality and the rules of law is inversely proportional.

Perhaps the most prominent applications of unjust enrichment in civil law are virtue and paying the undeserved, and on this advanced basis, we will discuss the study of unjust enrichment and its applications in Iraqi civil law, to explain what the Iraqi legislator has followed in this regard, and to explain the subjective and objective reasons that called for the adoption of this rule in Iraqi civil legislation and an explanation of its social basis in the first rule concerned with the texts of the law, which is Iraqi society.

**The importance of the research:** In fact, the rule of unjust enrichment is one of the highest legal rules that affects Iraqi society in particular, and Arab societies in general, and this is due to the qualities of authenticity, chivalry, generosity and other good qualities that distinguish an Arab from others. For example, a neighbor cannot He leaves the traveler's house vulnerable to demolition due to its cracks without doing anything about this matter, given what the Arab's morals dictate to him. On this basis, the reward for benevolence is nothing but benevolence. Perhaps this rule demonstrates the necessity of regulating social customs and customs within the framework of the texts of legislation, so that it becomes the rule. Legality is the product of society and is directed to it. Perhaps the best rules of law are those that society dictates to itself, and here lies the importance of research.

**Research problem:** The problem of this research lies in a main question from which many sub-questions are branched that we answer in this research.

The main question: What is the content of the rule of unjust enrichment, and what are its provisions and applications under the Iraqi civil law?

The sub-questions are as follows:

1. How did the Iraqi legislator organize the rule of unjust enrichment in the Iraqi civil law?

2. What is the meaning of unjust enrichment, poverty, and paying the undeserved?
3. Has the rule of unjust enrichment achieved its desired goal or not in Iraqi legislation?

### **Research Methodology:**

In studying the rule of unjust enrichment in Iraqi law, the researcher relied on the descriptive approach, as he followed the legal texts that deal with this rule, and studied and researched them to explain the basis on which the Iraqi legislator dealt with the rule of unjust enrichment.

However, the researcher did not stop at the advanced level, as he also resorted to the analytical method, and he dealt with the legal texts related to the subject of the research with analysis and criticism in order to develop these rules to appear in the highest form that achieves justice and contributes to the progress and development of Iraqi society.

### **Research plan:**

In studying his research, the researcher relied on a binary division, as he divided the research into two requirements, and divided each requirement into two sections. The title of the first section was the content of the rule of unjust enrichment, and the title of the first section was the concept of unjust enrichment. The title of the second section was the pillars of unjust enrichment. a reason.

As for the second requirement, its title was Applications of Unjust Enrichment in the Iraqi Civil Law, where the title of the first section was virtue, and the title of the second section was payment of the undeserved.

### **The first requirement:**

#### **Guaranteed unjust enrichment rule**

The rule of unjust enrichment is one of the rules of civil law that has been adopted by most modern civil legislation. The Iraqi legislator has adopted it like other statutory laws. He has singled out the fourth chapter of it and is included in Articles 233 through Article 244. The Iraqi legislator has called this rule In particular, he set it apart from other laws, so he called it "earning without cause," although it was customary to call this rule "enrichment without cause" in comparative positive laws and in the jurisprudential explanations that dealt with it.

In fact, we see that the name given by the Iraqi legislator to this rule is broad and vague and does not express its true content, as the necessity of achieving enrichment in the debtor's debt is one of the pillars of this rule, as will become clear next, and the word "gain" does not necessarily indicate the achievement of this desired enrichment.

Hence, we address this requirement by examining the following two sections as follows:

#### **First branch**

##### **The concept of unjust enrichment**

It is true that the Iraqi legislator did not know this rule other than the legislative approach he followed in the civil law, as he knew and clarified the legal theories that he adopted therein, and this is observed by reviewing the Iraqi civil law, as he began the fourth chapter directly with the first section under the title of the unjustly paid, and the truth is Although the legal texts included in this chapter explain and clarify the content of this rule, defining this rule and stating its limits is a must in civil legislation in order to prevent this rule from being burdened with something that it cannot bear, as this would lead to deviating from the legislator's intent.<sup>1</sup>

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<sup>1</sup>Please review Chapter Four of the Iraqi Civil Code

Enrichment in this context means: “Every material or moral benefit that the debtor obtains whenever it can be valued with money, as it adds an increase to his financial liability such as a new acquisition of movables or real estate, or even just to benefit from them for a specific time, or an increase in security or the avoidance of a specific loss. <sup>2</sup>”.

On this advanced basis, the basis of the rule of unjust enrichment is the financial increase achieved in the debtor’s financial liability, and thus the reason for the obligation is this increase, and the obligation in this context is an obligation to return, even if the financial liability remains as it is, or this increase obtained in it. It was in return for a previously agreed-upon consideration, which was subject to the application of the rule of unjust enrichment because the obligation had not arisen in the first place.

The enrichment in the debt of the debtor who is obligated to repay is equivalent to the lack in the creditor’s debt. In this context, what is meant by deficiency is: “the loss that befalls the creditor or the benefit that he loses due to a decrease in the total contents of his financial liability, whatever the cause of this deficiency, whether by the act of the poor person, or by the act of the enriched person, or by the act of the enricher.” others or acts of nature.<sup>3</sup>

In fact, unjustified enrichment has several forms, which we describe as follows:

### **First - Positive enrichment and negative enrichment**

Enrichment is positive if the creditor’s action leads to an increase in the debtor’s financial liability without a legitimate legal reason. An example of this is someone who makes fundamental improvements to the property that falls on the lessor and after that the lessor cancels the lease contract, or like someone who builds a house on his neighbor’s land. Or he plants trees in it and its financial value increases.<sup>4</sup>

As for negative enrichment, it occurs by preventing the debtor from losing his financial liability by preventing loss from him. Loss in this context takes a broad concept, so it does not mean loss in the conventional sense. Every act that leads to the possibility of sparing the debtor from removing a financial value from his liability is considered to avoid falling into a loss, such as someone who pays. One religion over another <sup>5</sup>.

**Second - Direct enrichment and indirect enrichment:** Enrichment is direct when the relationship is direct between the poor and the enriched without an intermediary or without a third person entering between the two parties of this relationship. An example of this is someone who pays the debt of others. The benefit of the enriched person or the debtor in this case is direct, or as someone who pays a bill. Phone, water, etc. from his neighbor.

As for indirect enrichment, it occurs through an action carried out by a person foreign to the enriched person and the poor person. This action leads to the transfer of the financial value from the liability of the poor person to the liability of the enriched person. An example of this is someone who buys a property burdened with a mortgage note, as the mortgage holder led by this action to transfer the increase from the liability of the enriched person. The seller is entitled to the debt of the buyer who lacks without a legitimate reason for this increase, unless the seller’s liability is occupied by a mortgage to the foreign person. Unless the buyer accepts the mortgage note and it is deducted from the price of the property, then here there is no room

<sup>2</sup>Adeed Izzat Hamad and others, unjustified enrichment in Iraqi civil law, Algerian Journal of Political Science and International Relations, Volume 13, Issue 19, 2022, p. 63

<sup>3</sup>Ahmed Heshmat Abu Steit, The Theory of Commitment in the New Civil Law, Sources of Commitment, 2nd edition, - .Misr Press, Cairo, without date of publication, 516 pages

<sup>4</sup>Ahmed Hashmat Abu Steit, previous reference, p. 517 -

<sup>5</sup>Ahmed Heshmat Abu Steit, previous reference, p. 517

for applying the rule of unjust enrichment because it was not achieved in the first place <sup>6</sup>.

**Third - Material enrichment and moral enrichment:** It should be noted that the basis of the rule of unjustified enrichment is that the enrichment be material. Therefore, one of the conditions of this rule, as stated in its previous definition, is that the enrichment be among the actions that affect the financial liability and can be evaluated with money, and the truth is that All of the previous examples in the first item are an aspect of material enrichment <sup>7</sup>.

As for moral enrichment, it is worth mentioning that it has met with great opposition on the part of jurisprudence, as most jurisprudence still opposes this type of enrichment, to the point that most of the positive legislation did not take into account moral enrichment, including the Iraqi legislator who did not take it at all, and the proponents of this theory give justification for adopting the idea. Moral enrichment: Compensation for moral damage in tort liability has become a reality and is accepted. They measure the idea of moral enrichment on this basis, and give examples to justify the idea of moral enrichment: the accused who obtains acquittal or the patient who recovers after the doctor treats him obtains a moral benefit through acquittal or recovery. The student is also enriched academically by his teacher <sup>8</sup>.

The truth is that we see that the idea of moral enrichment is a kind of fantasy, and it cannot even be imagined within the framework of the law, nor can it be used as compensation for moral damage in the context of tort liability, because moral damage in tort is damage that is actually caused and existing and can be measured and has a legal basis. Such as someone who is rumored to have a sum of money owed by a merchant who is known for his honesty and the performance of his rights, but he refuses to pay it, and this becomes widespread in the market, which harms the reputation of this merchant. As for the example of the lawyer, the doctor, and the teacher, the principle of each of them is their obligation to be careful, not to achieve a result, and they are rewarded for this diligence. If the desired result is achieved through acquittal, recovery, or learning, it is a natural outcome of the care paid in advance and cannot be considered unjust enrichment.

It is worth noting in this context that the Iraqi legislator distinguished between the enricher in good faith and the enricher in bad faith, as the former is obligated to return what he received only, and the latter is obligated to return, compensate and guarantee if the thing received by him was subject to destruction and was destroyed by his hand, as stipulated in Article 233, paragraph The second is that: "If the person who receives what is not due is in bad faith at the time of receipt or after, then he is also obligated to return everything he benefited from or was able to benefit from the thing from the day he received what was not due, or from the day on which he became in bad faith, and in all cases He is obligated to return everything that he benefited from or was able to benefit from from the day the lawsuit was filed, and he is obligated to provide guarantees from the time he became in bad faith if the thing was destroyed or lost, even without transgression on his part <sup>9</sup>.

However, the Iraqi legislator excluded the minor from the previous provisions of bad faith, as Article 234 stipulates that: "If the person who receives the undeserved thing lacks legal <sup>10</sup>".capacity, then he is only obligated to return what he earned, even if he was in bad faith

From this, we can define unjustified enrichment from our point of view as: a source of involuntary obligation in which the enriched debtor is obligated to return everything he has earned without a legitimate reason to the poor creditor, provided that the earning is something that can be made with money.

<sup>6</sup>Samir Abdel Sayed Tanago, Sources of Commitment, Mansha'at Al Maaref, Alexandria, 2000, p. 313 -

<sup>7</sup>Samir Abdel Sayed Tanago, previous reference, p. 313

<sup>8</sup>Samir Abdel Sayed Tanago, op. cit., p. 313

<sup>9</sup>Article 233 of the Iraqi Civil Code

<sup>10</sup>Article 234 of the Iraqi Civil Code

## Second section

### Pillars of unjust enrichment

The theory of unjust enrichment is like other theories of civil law in particular, and theories of law in general, in that it has pillars that can only be achieved. After defining unjust enrichment, these pillars became clear, as unjust enrichment is based on three pillars, the first of which is the necessity of Enrichment is achieved on behalf of the debtor, the second is the necessity of achieving deficiency on the creditor's behalf, and third is the absence of a legal reason for enrichment.

We explain these pillars in detail as follows:

**Firstly, the necessity of achieving enrichment in the debtor's debt:** Unjustified enrichment is based on the fact that the financial liability of the enriched debtor results in an increase over the financial liability of the poor debtor without a legitimate legal reason, and on this basis, this financial increase in the debt of the enriched person must be real, actual, and material. The obligation that arises from the enriched person as a result of applying the rule of unjust enrichment is based on the fact that the financial increase is obtained on the one hand and that it must be returned on the other hand. However, if unjust enrichment is not achieved, there is no room for the obligation to return it in the first place <sup>11</sup>.

Perhaps the most famous example that can explain this situation in a more simple way is: a person fulfilled the debt of another person, only for it to become clear later that this debt had already been fulfilled by its owner or that it did not exist in the first place. Here, there is no room for applying the rule of unjust enrichment and recourse. On the holder of the fictitious debt because enrichment was not achieved in the first place. Therefore, it can be said that is the criterion for achieving enrichment. If the debtor benefits from the beneficial <sup>12</sup> benefit act, enrichment is achieved and the obligation to return is fulfilled. However, if benefit is not achieved, enrichment is not achieved and the obligation is not established, and benefit here takes In a broad sense, it does not mean merely benefiting from beneficial work by using it or utilizing it. Rather, merely increasing the financial liability of the enriched person is considered benefit and gain.

**Second - The necessity of verifying the deficiency in the creditor's liability:** The rule of unjustified enrichment is one of the reciprocal rules, or two-sided rules, as the enrichment of the debtor's financial liability is offset by the lack of the debtor's financial liability, and on this basis, the obligation of restitution and compensation, if the compensation has a reason, only exists in In the event that the creditor's financial liability is lacking, even if the enriched debtor benefits from the action carried out by the creditor, if the enrichment is achieved while there is no lack of financial liability of the creditor, there is no place for applying the rule of unjust enrichment <sup>13</sup>.

An example of the above is that a person paved the dirt road that leads to his house with asphalt, and his neighbor benefits from it. In this case, there is no room for applying the rule of unjust enrichment, because the person who paved the road did not pave it for himself and reaped this full benefit, regardless of whether that was easy. Reaching his home or increasing its financial value. If this paving increases the value of neighboring homes, and makes it easier for the neighbors to reach their homes using this road, then this is considered an enrichment of their financial liabilities, but it is not offset by a lack of liability for the one

<sup>11</sup>Abd al-Razzaq al-Sanhouri, *Al-Muwasiat fi Explanation of the New Civil Law, Volume Two, The Theory of - .Commitment in General, Sources of Commitment, Al-Halabi Legal Publications, 3rd edition, Beirut, 1998, p. 336*

<sup>12</sup>Abd al-Razzaq al-Sanhouri, *Al-Wasit fi Sharh al-New Civil Law, op. cit., p. 338*

<sup>13</sup>Abd al-Razzaq al-Sanhouri, *the mediator in explaining the new civil law, 338*

who paved the road because he reaped the full fruits of his work.

Likewise, someone who digs a well on his land and water comes out automatically from this well without any means of energy by which the water is extracted, and it flows to the land of the neighbors who are irrigating it from it, is not considered poor, even if the financial liabilities of the neighbors are affected, because he has benefited absolutely from his work, and he is not compensated. Enriching the financial liabilities of the neighbour, a lack of financial liability.

It should be noted in this context that poverty takes the same forms as enrichment, so impoverishment may be material or moral, direct or indirect, negative or positive.

**Third - The absence of a legitimate reason for enrichment:** The obligation is not based on the existence of a legitimate reason, and therefore it is assumed that the obligation arising from unjust enrichment is based on a legitimate reason. If enrichment is stripped of the reason that justifies it, it cannot be said that the theory of unjust enrichment has been achieved. Therefore The judicial claim arising from unjust enrichment will be futile and will be rejected<sup>14</sup>.

It should be noted that legal jurisprudence differed in defining the meaning of the reason that justifies unjust enrichment, in several directions, which we explain as follows:

The moral meaning of the reason for enrichment: The pioneer of this trend is the jurist - 1 Ripert, who explained in his famous book *Al-Qaeda Al-Adabiya* that what is meant by the reason is a literary meaning and not a material meaning, since enrichment is based on a legitimate reason. If it is just, the enriched person does not return to the poor the increase he owes. Finance, and on this basis he calls unjust enrichment unjust enrichment<sup>15</sup>.

In fact, we see that this trend is far from the correct legal interpretation because it gives the reason a metaphorical meaning that cannot be obtained at the same time by all judges, given that the judge is the one who decides whether this reason exists or not, which contradicts sound legal logic, and leads to issuing... Contradictory rulings governed by whims and the level of understanding that differ from one judge to another, in addition to the fact that this trend contradicts itself in itself, as it applies the moral meaning of justice to verifying the reason for enrichment in order to judge its legitimacy, and then returns and calls it unjust enrichment. Is it logical that applying the rules of justice leads to a result? Unfair, this is nothing but incoherence, so we exclude this trend from determining the meaning of the reason for enrichment.

**The legal economic meaning:** The supporters of this trend go to define the meaning of - 2 the reason as compensation for enrichment. When the enrichment obtained on behalf of the enriched person is compensated by compensation on behalf of the poor person, there is no room for the theory of commitment to be achieved for the legitimate reason for enrichment to exist. Other than the supporters of this trend, they returned to disagreeing among themselves about the meaning of compensation, Some believed that compensation was the equivalent, while others believed that compensation was the alternative or counterpart<sup>16</sup>.

The truth is that even though we tend toward this direction, we do not tend toward it at all and do not take it in its entirety, because the reason for the obligation is to enrich without reason, even if it carries an economic meaning, but this meaning is limited in itself to explaining the meaning of the reason in this type of obligations.

<sup>14</sup>Maurice Nakhleh, *Al-Kamil in Explanation of Civil Law, A Comparative Study*, Al-Halabi Legal Publications, Beirut, - p. 158, 2001

<sup>15</sup>Ibid., p. 160 -

<sup>16</sup>Maurice Nakhleh, *Al-Kamil in Explanation of Civil Law, A Comparative Study*, previous reference, p. 164 -

**The legislative meaning:** This trend is considered the simplest and closest to the right - 3 trend, and we lean towards it and support it, as this trend is based on the basis that the reason for the obligation to enrich is the clear and clear legal source that gives the enriched person the right to obtain the enrichment and not return it.

The truth is that if this trend were combined with the economic meaning of the reason with regard to the theory of unjust enrichment, we would have the true and actual meaning of the reason for unjust enrichment, without, of course, entering into the jurisprudential maze of the meaning of compensation.

The Iraqi legislator took the legislative meaning of the reason in the texts of the Civil Code, and this is extracted from the text of Article 243 of it, where it states: “Every person, even if he is not discerning, who obtains a gain without a legitimate reason and at the expense of another person, is obligated, within the limits of what he earned, to compensate those who suffered harm because of this gain. This obligation remains in effect even if his earnings therein cease to exist <sup>17</sup>” .

Article 245 also stipulates that: “Obligations that arise directly from the law alone are subject to the legal texts that created them <sup>18</sup>” .

As for the position of the Iraqi legislator on defining the elements of unjust enrichment, he did not stipulate them clearly and explicitly, although they can be extracted from the legal texts that govern the theory of unjust enrichment in civil law , as Article 233, second paragraph, stipulates: “And if it is If someone receives what is not due in bad faith at the time of receipt or after, he is also obligated to return everything he benefited from or was able to benefit from the thing, starting from the day he received what was not due, or from the day he became in bad faith. In all cases, he is obligated to return everything he benefited or could have benefited from. That he benefits from the day the lawsuit is filed, and he is obligated to guarantee from the time he became in bad faith if the thing was lost or lost, even if he did not transgress on his part <sup>19</sup>” .

## **The second requirement**

### **Applications of unjust enrichment in Iraqi civil law**

In fact, there are many applications for unjust enrichment in the Iraqi civil law, as the one who follows this rule in the texts of the civil law can notice this with all ease. Perhaps among these applications are building and planting on someone else’s land, ownership by attachment, and others, but the most famous applications of unjust enrichment are In the Iraqi Civil Code, which all other applications can fall under are Al-Fadala and the payment of what is not due.

The importance of virtue and paying the undeserved comes from the fact that the Iraqi legislator explicitly stipulated each of them in its fourth chapter, which relates to earning without reason. As for the rest of the other applications, they are stipulated in a separate form, so they have their own rules, even if they are forced to earn without reason.

What distinguishes undue payment from credit is that in the former, the value of the gain is necessarily equal to the value of the loss, but in credit, the compensation is equal to the amount of the loss, even if the gain is greater than the loss, except in the case of bad faith, which the Iraqi legislator explicitly stipulates, where the creditor is obligated to do bad. Intention, in addition to recovering the value of the loss with compensation and guarantee.

<sup>17</sup>Review of Article 243 of the Iraqi Civil Code

<sup>18</sup>Review of Article 245 of the Iraqi Civil Code

<sup>19</sup>Article 233 of the Iraqi Civil Code

Accordingly, we will discuss compensation and payment of what is not due in the following two sections, as follows

## First branch

### Excrement

The Iraqi legislator did not address the definition of virtue in particular, especially in this regard in the case of unjust enrichment, for which he did not provide a special definition. It should be noted that virtue assumes the existence of two persons, the first of whose own accord manages the affairs of the second person, knowingly, without his authorization, and thus the person is called The one who carried out the work is called the employer. As for the person for whose benefit the work was done, the employer is called the employer. On this basis, the misdeed is a legal act, meaning that it is considered a source of obligation in general, and a source of involuntary obligation in particular. An example of this is someone who repairs his neighbor's cracked house without doing so. No authorization from this neighbor<sup>20</sup>.

The Egyptian legislator defined fraud in Article 188 of it as: "Violence is when a person intentionally undertakes an urgent matter on behalf of another person without being obligated to do so<sup>21</sup>".

The Syrian legislator also defined it in the Syrian Civil Code as: "Virtue is when a person intentionally undertakes to undertake an urgent matter on behalf of another person without being obligated to do so." It is the same definition in Egyptian law, and this is due to the common roots of both Egyptian Civil Law and Syrian Civil Law<sup>22</sup>.

As defined by the first paragraph of Article 149 of the Lebanese Obligations and Contracts Law, it means: "Work is considered voluntary when a person, on his own initiative, manages the affairs of others, knowingly and without authorization, with the intention of working for others<sup>23</sup>".

It should be noted that the commentators of the Iraqi civil law were divided regarding the Iraqi legislator's position on virtue into two directions:

The first trend is based on the fact that the Iraqi legislator did not stipulate the provisions - 1 of virtue or its definition because he does not want to take it as a source of obligation, as supporters of this opinion go to include the work of the curious among the provisions of gift or donation<sup>24</sup>.

As for the proponents of the second trend, they argue that the Iraqi legislator stipulated a - 2 form of the rulings on virtue, under which all other actions of the curious fall under it. The proponents of this direction mean the text of Article 239, which stipulated a form of virtue, which is paying the debt of others without his permission. Professor Munir Al-Qadi goes on to say that Virtue is one of the most important applications of the Iraqi Civil Law, which falls under the theory of unjust enrichment: "It is despite the will of the overwhelming majority of the project's drafters who went on to consider virtuousness as an irrevocable dependency on the beneficiary." He adds that it came disguised under the guise of Article 243, where it stipulates However: "Every person, even if he is not discerning, who obtains an unlawful gain at the expense of another person, is obligated, within the limits of his gain, to compensate

<sup>20</sup>op. cit., p. 72 , Adeed Ezzat Hamad and others, unjust enrichment in Iraqi civil law

<sup>21</sup>Review of Article 188 of the Egyptian Civil Code

<sup>22</sup>In this regard, review the Syrian Civil Code

<sup>23</sup>Review of Article 149 of the Lebanese Obligations and Contracts Law

<sup>24</sup>Adeed Ezzat Hamad and others, unjustified enrichment in Iraqi civil law, p. 73

anyone who suffers harm because of this gain, and this obligation remains in effect even if his gain is removed <sup>25</sup>”

The truth is that, in this context, we go to support the supporters of the second trend. Although the provisions of virtue are ambiguous in Iraqi law, it is clear from reading the previous article that the Iraqi legislator saw no alternative to adopting the provisions of virtue, even if the will of the drafters of the legislation was otherwise, since compensation in The compensation is equal to the loss without regard to the gain, and although the Iraqi legislator was not successful in drafting the text of Article 243 when it stipulated that the compensation be equal to the gain, the text that compensation remains in effect even after the loss of the gain indicates that the goal is to compensate for the loss of the person who performed a deed. Acts of virtue.

It should be noted that the system of virtue in civil law is based on three pillars: a material pillar, a moral pillar, and a legal pillar, which we explain successively as follows:

### **The material element of virtue -1**

This element is based on the legal action that the curious person carries out on behalf of another person in one of his urgent affairs that cannot tolerate delay. The truth is that this action may be a type of legal action for which the law requires special conditions, such as someone who buys... A house for another because the latter was looking for a house with certain specifications, and the inquisitive person found these characteristics that if the real person had been present, he would have bought the house immediately. This act is considered a legal act because it requires the will, capacity, and a full-fledged contract with the owner of the house, meaning that the legal act is the act. Legally regulated according to clear and explicit special conditions <sup>26</sup>.

As for material work within the framework of virtue, it is useful work that the law is silent about, such as someone who puts out a fire in his neighbor's house, or renovates it, or builds a house on his land in good faith <sup>27</sup>.

On this basis, the most important condition for the material element in the framework of virtue is that the work that the inquisitive person performs on behalf of others, whether this work is financial or legal, is characterized by haste in the work, which means that it is not possible to wait to take the opinion of the employer because the benefit obtained may disappear at any moment.

### **The moral pillar of virtue-2**

Faisal The moral pillar of virtue is represented by the intention of the inquisitive person at the moment he does the work. The intention of the inquisitive person must be directed towards doing the work for the benefit of the employer. If his intention is to do the work for his personal benefit or if someone other than the employer benefits from this work, then he is not The material pillar of waste does not exist in the first place <sup>28</sup>.

For example, whoever plants his neighbor's land with fruit trees in the belief that he is planting these trees on his land, then his behavior is not considered the behavior of a virtuous person. The criterion for the moral pillar of virtue is firstly the intention, which must be directed towards working for the benefit of the employer, and secondly, the benefit, which must be This benefit is accrued to the benefit of the employer.

<sup>25</sup>.Adeed Ezzat Hamad and others, unjustified enrichment in Iraqi civil law, p. 74 -

<sup>26</sup> ,Ammar Ghazal, Al-Fadala, research published on the Arab Encyclopedia website - <https://arab-ency.com>

<sup>27</sup> ,Ammar Ghazal, Al-Fadala, research published on the Arab Encyclopedia website - <https://arab-ency.com>

<sup>28</sup> ,Ammar Ghazal, Al-Fadala, research published on the Arab Encyclopedia website <https://arab-ency.com>

### The legal element of virtuousness-3

The actions of the virtuous person must be spontaneous and voluntary for the benefit of the employer, meaning that in order for virtuousness to be achieved, the virtuous person must not be legally bound to do the work for the employer. Legal obligation in this context includes the contract and agreement, the obligation of the judicial ruling, and the texts of the law themselves. The agent's behavior is not considered a virtuous act because he is legally obligated to carry out the agency's work, just as the contracting party's behavior for the benefit of the other party is not considered a virtuous act because the contract obliges him to do so <sup>29</sup>.

What is meant by commitment in this case is legal commitment, as we mentioned above, and therefore the presence of a moral, moral, or ethical obligation to do work for another person does not negate virtue. Rather, in most cases, moral or moral commitment may be the basis for establishing virtue, such as someone who takes care of the garden of his neighbor's house. the passenger.

It should be noted that it is the responsibility of the inquisitive person, whenever he begins an act of virtue, to continue it until its completion, and to inform the employer of this action whenever he is able to do so, and he must exercise the usual care of a man while he is at work, so it is not permissible for him to be lax or neglectful, let alone that he may fall. It is the responsibility of the inquisitive person to submit an account of the financial costs to the employer, and in return it is the responsibility of the employer to implement all the obligations that the inquisitive person entered into on his behalf, and to compensate the inquisitive person for these works that he performed on his behalf. The employer is also obligated to reimburse the expenses necessary for the work and to pay A reward for someone who is curious about doing something for his benefit <sup>30</sup>.

### Second section

#### Payment not due

Paying what is not due is an application of the theory of unjust enrichment, and in this context it means: "a person performing what is not his duty, and he has no intention of fulfilling a debt owed by another person, and this results in the creation of an obligation that burdens the payee to return what he owes." He took it unjustly." On this basis, the fundamental distinction between being virtuous and paying what is not due, lies in the fact that the person disposing of the payment of what is not due is directed towards discharging his personal liability, while the intention of the virtuous person is directed towards performing work for the benefit of the employer <sup>31</sup>.

Payment of what is not due is achieved in the Iraqi Civil Law in two cases. The first case is the payment of a debt whose cause has not been determined. This case was stipulated in the first paragraph of Article 235 of the Iraqi Debtor Law, which states: "If the debtor fulfills an obligation whose due date has not yet come, thinking that it has come due." He has the right to recover what he paid." As for the second case, it is the repayment of a debt for which the cause did not exist in the first place, or the cause for which it existed and disappeared. This case is stipulated in Article 233, the first paragraph of it, which states: "Whoever pays something thinking that it was obligatory for him and it turns out that it was not obligatory, then he has the right to recover what he paid." Return it to the person who seized it unlawfully <sup>32</sup>."

It should be noted in the context of this matter that the rule of paying what is not due is considered a personal rule, meaning that the lawsuit brought by the payer against the payee is considered a personal lawsuit and not a real lawsuit. This is due to the origin of this rule in Roman law, as it appeared within the framework of a contract. The loan is used by the lender

<sup>29</sup> ,Ammar Ghazal, Al-Fadala, research published on the Arab Encyclopedia website <https://arab-ency.com>

<sup>30</sup> Fawaz Saleh, Civil Law, Sources of Commitment, Syrian Virtual University Publications, electronic copy, 2009, p. 147

<sup>31</sup> ,Fawaz Saleh, Paying the Undeserved, research published on the Arab Encyclopedia website - <https://arab-ency.com>

<sup>32</sup> Revision of Articles 233 and 235 of the Iraqi Civil Code -

in the event that the lawsuit in rem is unable to recover the loan amount<sup>33</sup>

It should be noted that applying the rule of paying what is not due has conditions, and that these conditions differ depending on the payment situation from among the two cases mentioned above, and we explain these conditions as follows:

### **First: Conditions for repaying an undue debt:**

#### **That there be fulfillment**

Fulfillment is one of the legal acts in which the payer's intention is to discharge his financial liability by paying a fixed debt in this liability. On this basis, fulfillment is required by the legal rules that govern dispositions in civil law, and the payer must also have legal capacity, fulfillment may be the result of a lawful act or an unlawful act, as in the case in which a person resorts to fulfilling a debt incurred in his financial liability as a result of a loan contract, or as in the case in which the payer resorts to paying the amount of compensation to the person harmed as a result of his unlawful act<sup>34</sup>.

The principle is that the subject of payment should be money, except that there is nothing in the rules of the law that prevents the object of payment from being movable or real estate. However, in the case where the object of payment is real estate, the payer has, in addition to the claim for recovery resulting from paying what is not due, another claim, which is a claim. The entitlement is in kind, and the burden of proving fulfillment falls on the payer, i.e. the plaintiff, in either case<sup>35</sup>.

#### **That the debt is not due for payment at the time it is paid-2 -**

This means that the payer pays a debt that is not due to his financial liability at all on the date of its payment, or because the debt does not exist in the first place, as in the case where a person pays a debt that he had previously paid with a guarantee. That he did not pay it in advance, or in the case where the heir pays a debt on the estate that his legatee had previously paid during his lifetime.

Or the debt may exist and be owed by the payer, but the maturity date has not yet come, either because the debt is contingent on a suspensive condition and this condition has not yet been fulfilled, or because the maturity date is fixed on a specific date that has not yet arrived<sup>36</sup>.

**That the fulfillment is tainted by a defect that makes it voidable -3** This defect that afflicts the fulfillment is represented by a mistake or error, and it is the illusion that afflicts the payer on the date of fulfillment that he must release his financial liability on the faulty date of payment, as if he were fulfilling an obligation that did not exist in the first place<sup>37</sup>.

Legal jurisprudence has differed on the issue of whether or not the payer committed an error, and they divided into two directions. The proponents of this direction believe that the error does not need to be proven at all because it is presumed and does not accept proof of the opposite. What the payer must prove is that the payment was not due on its date. To return to the payee what he paid unjustly, except that the assumption of error is a simple fact that accepts proof of the opposite. The debtor can prove the maturity of the debt on the disputed date of payment to prove that the payer was not in error in the first place, while those of the second approach see the impossibility. Assuming an error in payment, the payer must prove that he made the error by proving that he paid what he was not entitled to, or that he paid what

<sup>33</sup>Fawaz Saleh, *Paying the Undue*, op. cit

<sup>34</sup>Fawaz Saleh, *Paying the Undue*, op. cit

<sup>35</sup>Fawaz Saleh, *Paying the Undue*, op. cit

<sup>36</sup>Fawaz Saleh, *Paying the Undue*, op. cit

<sup>37</sup>Tawfiq Hassan Farag, *The General Theory of Commitment*, University Press, Egypt, without date of publication, p. - .256

he was not obligated to pay in the first place <sup>38</sup>.

As for the conditions related to the payment of a debt that was due at the time of payment and then became unpayable, they are:

### **That there is a debt due for payment-1**

This means that the date of payment of an actual and real debt that burdens the payer comes, so he immediately takes the initiative to discharge his financial liability from this debt that burdens it on the date of payment. On this basis, the payment is correct and not tainted by any error, as it is in the first case. An example of this situation is someone who pays a debt due to be paid that is conditional on a voidable condition that has not been fulfilled, or the debtor fulfills the contractual obligations of a voidable contract, but the person entitled to void it has not exercised his right to it, so the fulfillment in this case is valid and results in all its legal effects <sup>39</sup>.

### **The absence of a reason for the debt and its disappearance after-2 fulfillment**

as if the voiding condition arises after fulfillment and it is decided to cancel the contract that produced the debt, or as if the person with the right to nullify exercises his right to nullify the contract and it is invalidated, and on this basis, annulment or invalidation leads to the extinguishment of the contract that produced the debt retroactively, which is the matter that The reason for the debt disappears and it becomes unpayable. On this basis, the payer has the right to recover what he paid rightfully after the reason for the debt has disappeared. It should be noted that the debt does not become unpayable except from the date of the reason for the disappearance of the entitlement, and not from the date of discharge, because This acquittal was based on a valid reason to begin with, and then this reason was removed <sup>40</sup>.

It should be noted in the context of this matter that a question arises about the amount of restitution owed to the payee. The Iraqi legislator has distinguished in several cases regarding the amount of restitution, which we explain as follows:

### **payee was in good faith**

In this case, the payee shall return only the amount of what was paid to him. He is not obligated to compensate or return the gain resulting from the payment, and this is due to his good faith, as the Iraqi legislator explicitly stipulated that in the first paragraph of Article 233, which stipulates that: “Whoever pays something assuming that it was obligatory for him and it turns out that it is not obligatory, he has the right to take it back against the one who seized it unlawfully <sup>41</sup>”.

### **In the event that the payee is in bad faith :**

The issue of bad faith is considered one of the non-presumptive issues, meaning that it requires proof. The burden of proof in this case falls on the payer or payer. However, bad faith is considered presumed from the date of filing the recovery lawsuit. However, this The assumption is simple and can be proven to the contrary. In general, this issue is subject to the discretion of the judiciary on a case-by-case basis according to its circumstances and circumstances. Whoever receives what is not due, in addition to the value of the debt, shall be refunded the gain resulting from this payment and is obligated to guarantee from the date of the bad faith he received, and this has been stipulated. The Iraqi legislator, in Article 233, the second paragraph, stipulates that: “If the person who receives what is not due is in bad faith at

<sup>38</sup>Tawfiq Hassan Faraj, *The General Theory of Commitment*, previous reference, p. 257

<sup>39</sup>Fawaz Saleh, *Paying the Undeserved*, previous reference

<sup>40</sup>Fawaz Saleh, *Paying the Undeserved*, previous reference

<sup>41</sup>Article 233 of the Iraqi Civil Code

the time of receipt or after, he is also obligated to return everything he benefited from or was able to benefit from the thing, starting from the day he received what was not due or from today.” Who has become in bad faith, and in all cases he is obligated to return what he benefited or was able to benefit from from the day the lawsuit was filed, and he is obligated to provide insurance from the time he became in bad faith if the thing is lost or destroyed, even without transgression on his part <sup>42</sup>”.

### **In the event that the person who received what was not due was a minor:**

The Iraqi legislator took into account the limitation of eligibility in the event that the person who received what was not due was a minor, as the minor is only obligated to return what he earned as a result of this payment, even if he was in bad faith, and this is stipulated in Article where it is stated. “If the person who receives something that is not due to him lacks ,234 legal capacity, then he is only obligated to return what he earned, even if he was in bad faith <sup>43</sup>”.

### **Conclusion**

The principle of unjust enrichment is an important principle of civil law that aims to preserve rights and establish justice among individuals, by controlling their financial dealings and legal actions in accordance with specific, clear and explicit legal rules.

The Iraqi legislator sought to adopt this principle, which is based on moral foundations that the legislator framed within explicit legal rules. However, the Iraqi legislator did not succeed in framing this theory within the rules of Iraqi civil law, and this is not due to the ineffectiveness of the legal texts that stipulated this principle in legislation. The reason for this is the lack of legal rules that stipulate this principle. The Iraqi legislator did not single out special provisions for virtue, nor did he define the principle of unjust enrichment, similar to other laws.

In fact, the above contradicts the approach taken by the Iraqi legislator in the civil law as a whole, as the follower of the Iraqi civil law notices the accuracy of the codification, description, and stipulation of legal principles and theories, to the extent that the legislator reached the point of presenting examples in the texts of the law itself to make it easy, understandable, and unambiguous. vagueness.

Accordingly, through this research, we have reached a set of results and recommendations, which we explain as follows”

### **Results:**

1. The principle of unjust enrichment is one of the involuntary sources of obligation in Iraqi civil law.
2. One of the most important applications of the principle of unjust enrichment is in virtue and paying the undeserved, as they are the two most prominent applications of this legal principle.
3. The purpose of the theory of unjust enrichment and its applications in Iraqi civil law is to achieve justice and restore rights to their owners, as well as to control the legal and material actions resulting from the obligations imposed by the law.
4. Unjust enrichment is achieved when the financial liability of one party to the obligation is enriched at the expense of the lack of financial liability of the other party.

<sup>42</sup>Article 233 of the Iraqi Civil Code

<sup>43</sup>Article 234 of the Iraqi Civil Code

5. The penalty for unjust enrichment in the Iraqi Civil Law is restitution in the case of good faith, and restitution, compensation and guarantee in the case of bad faith, and the provisions of bad faith do not apply to the minor.

### **: Recommendations**

1. We recommend that the Iraqi legislator establish a specific and clear definition of the theory of unjust enrichment in order to control its concept and define its feature.
2. We recommend that the Iraqi legislator adopt the Al-Fadalah system and explicitly stipulate it as an application of unjust enrichment, and state its provisions in the Iraqi Civil Code.
3. We recommend that the Iraqi legislator expand the legal texts that govern unjustified enrichment and not limit them to the applications of paying what is undeserved and settling the debt of others.
4. We recommend that the Iraqi legislator stipulate more precisely the principles of assessing enrichment and the principles of response, especially in the event of economic deterioration, because the theory of unjust enrichment does not aim to restore the situation to what it was nominally, but rather in an actual and real way.

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