

A NEW ROLE OF CAUSATION THEORY FOR ACHIEVING ECONOMIC CONTRACTUAL EQUILIBRIUM: MONITORING THE ECONOMIC EQUILIBRIUM OF THE CONTRACT

Osama Ismail Mohammad Amayreh,* Izura Masdina Mohamed Zakri,* Pardis Moslemzadeh Tehrani,* Yousef Mohammad Shandi,**

* Faculty of Law, University of Malaya, ** Faculty of Law, Arab American University

Article Info

Received: 10 July 2019 | Received in Revised Form: 14 August 2019 | Accepted: 20 August 2019

Corresponding author's email: adv-osama@outlook.com

Abstract

The phrase “who says contractual, says justice” or “qui dit contractuel dit juste” does not fully express the truth of our present reality, where the phrase itself falls into doubt, since a contract does not always result in fair obligations because it is often an expression of unequal wills. When the French judiciary realized that the absence of justice in a contract might arise as a result of the contractual freedom afforded to the contracting parties, they developed the idea of Commutative Justice based on ideas such as Piller’s decision, for which Commutative Justice is one of its most important applications. However, the causation theory in the Palestinian Civil Code Draft and the Indonesian Civil Code was limited to monitoring the existence of the corresponding obligation, whatever it was. In this context, this paper seeks to prove that the provisions of the causation theory in the Palestinian Civil Code Draft and the Indonesian Civil Code can be used as a means to monitor the economic contractual equilibrium of a contract. To do so, the legal provisions of the causation theory should be analysed using a comparative analytical approach with the French judicial decisions to illustrate the Palestinian and Indonesian legislative deficiencies and the need to adopt the French judicial approach.

Keywords: causation theory, piller’s decision, economic contractual equilibrium, contractual justice, palestinian civil code draft, indonesian civil code, monitoring the contract.

Abstrak

Ungkapan “yang menyatakan kontrak, maka menyatakan keadilan.” “qui dit contractuel dit juste” tidak sepenuhnya menggambarkan hakekat realita kita saat ini, di mana ungkapan tersebut diragukan, sebab kontrak tidak selalu membuahkan kewajiban yang adil, seakan kontrak adalah bentuk kehendak yang seringnya tidak setara. Berkenaan dengan hal ini, pengadilan Prancis menyadari bahwa tidak adanya keadilan dalam kontrak mungkin timbul sebagai akibat dari kebebasan kontraktual yang diberikan kepada pihak-pihak penyelenggara kontrak, maka dari itu mereka mengembangkan gagasan Keadilan Komutatif dalam kontrak, seperti ketetapan Piller, yang dianggap sebagai salah satu penerapan terpentingnya. Meski begitu, teori sebab akibat yang terdapat pada rancangan KUH Perdata Palestina dan KUH Perdata Indonesia terbatas untuk memantau perihal keberadaan kewajiban yang sesuai bagaimanapun bentuknya. Dalam konteks tersebut, makalah ini berupaya membuktikan bahwa ketetapan teori sebab-akibat dalam rancangan KUH Perdata Palestina dan KUH Perdata Indonesia dapat digunakan sebagai alat pemantau keseimbangan kontrak ekonomi dari kontrak tersebut. Untuk melakukan hal itu, ketetapan hukum dari teori sebab-akibat harus dianalisis menggunakan pendekatan analitik komparatif terhadap keputusan yudisial Prancis untuk menggambarkan kekurangan legislatif Palestina dan Indonesia serta kebutuhan untuk mengadopsi pendekatan yudisial Prancis.

Kata kunci: teori sebab-akibat, ketetapan piller, keseimbangan kontrak ekonomi, keadilan kontraktual, kuhperdata palestina, kuhperdata indonesia, pemantauan kontrak.

I. INTRODUCTION

The theory of cause is one of the most complex and mysterious theories of civil code,¹ and even the idea of the cause itself has been the subject of debate as to its usefulness and existence.² On this matter, legal jurists split into two groups: a team headed by the French jurist Henri Capitant, who defended the existence of causation theory, known as the causalistes,³ and the other team headed by the French jurist Planiol, who rejects it as useless; they are referred to as the anti-causalistes.⁴ Nevertheless, this division only increases the ambiguity of this theory in jurists' explanations. In fact, some modern civil codes such as those of the Polish, German, and Swiss are considered under the anti-causalistes⁵ opinion, while the French legislature adopted causation theory in the French Civil Code of 1804 as an essential element of forming a contract.⁶

¹ Charles R. Calleros, "U.S. Unconscionability and Article 1171 of the New French Civil Code: Achieving Balance in Statutory Regulation and Judicial Intervention," *Georgia Journal of International and Comparative Law* 45, No. 2 (2017): 265; Liviu Pop, "General Considerations on the Reform of the Right of Obligations in the French Civil Code," *Romanian Review of Private Law* 2018, No. 1 (2018): 276; Charles Calleros, "Cause, Consideration, Promissory Estoppel, and Promises under Deed: What Our Students Should Know about Enforcement of Promises in a Historical and International Context," *Chicago-Kent Journal of International and Comparative Law* 13, No. 2 (Spring 2013): 90-101; Alex M. Jr. Johnson, "Contracts and the Requirement of Consideration: Posting a Unified Normative Theory of Contracts, Inter Vivos and Testamentary Gift Transfers," *North Dakota Law Review* 91, No. 3 (2015): 549.

² However, this research will not emphasize or analyze the philosophical emergence and historical developments of the causation theory in the Roman law or the jurisprudence of the canon or even the provisions of the causality in the Islamic jurisprudence. Hence, it will be limited to the requisite elements of contract equilibrium. For the philosophical emergence and historical developments of the causation theory see Abd Al-Razzaq Al-Sanhuri, *Illustration of Updated Civil Law* (Beirut: Al-Halabi Legal Publications, 1998), pp. 413-486; Mohammad Abdaa, *Theory of Causality in Civil Law, A Comparative Study* (Beirut: Al-Halabi Legal Publications, 2004), pp. 270-324; Jacques Ghestin, *Traité de droit civil, Les obligations, La formation du contrat* (Paris: Librairie L.G.D.J., 1993), pp. 822-830; Christian Larroumet, *Droit Civil: Les Obligations. Le Contrat* (Paris: Économica, 1996), pp. 416-433; Mihai David, "The Cause of the Obligation and the Legal Formalism - Study of Comparative Law," *Romanian Review of Private Law* 2014, No. 2 (2014): 52-90.

³ See Michel Sejean, "The French Reform of Contracts: An Opportunity to Tie Together the Community of Civil Lawyers," *Louisiana Law Review* 76, No. 4 (Summer 2016): 1157; Christine Chappuis, "Le Renoncement à la Cause et la Consideration Dans L'Avant-Projet D'Acte Unifrome OHADA Sur le Droit des Contrats," *Uniform Law Review* 13, Issues 1 and 2 (2008): 253-260. Florence G'sell, "Causation, Counterfactuals and Probabilities in Philosophy and Legal Thinking," *Chicago-Kent Law Review* 91, No. 2 (2016): 514.

⁴ See Nikolaos A. Davrados, "Demystifying Enrichment without Cause," *Louisiana Law Review* 78, No. 4 (Spring 2018): 1280-1287.

⁵ Ivan Siklosi, "Some Thoughts on the Inexistence, Invalidity and Ineffectiveness of Juridical Acts in Roman Law and in its Subsequent Fate," *Journal on European History of Law* 8, No. 1 (2017): 95; Ronald J. Jr. Scalise, "Classifying and Clarifying Contracts," *Louisiana Law Review* 76, No. 4 (Summer 2016): 1090.

⁶ Article 1108 of the French Civil Code of 1804 states: "four conditions are essential to the validity of an agreement: 1- the consent of the party who binds himself; 2- his capacity to contract; 3- a certain object forming the matter of the contract; 4- a lawful cause in the bond". Besides that, Article 1131 of the same code states: "an obligation without a cause, or upon a false cause, or upon an unlawful cause, can have no effect". While Articles 1132 and 1133 respectively state: "the agreement is not less valid although the cause be not expressed therein", "the cause is unlawful when it is prohibited by the law, when it is contrary to good morals or to the public order." See Francesco Delfini, "Instances of Civil Law in North American Common Law Tradition: Cause and Consideration in Quebec and Louisiana Civil Codes," *Italian Law Journal* 2, No. 1 (2016): 90; Jorge Padilla, Natalia Rueda and Malory Zafra Sierra, "Labor Creadora de la Jurisprudencia de la Corte de Oro - Los Ejemplos de la Causa del Contrato, el Error de Derecho y la Responsabilidad por Actividades Peligrosas," *Revista de Derecho Privado* 26 (2014): 127; Agustin Luna Serrano, "Towards the Abandonment of the Mention of the Cause in the Defining Conformation of the Contract," *Cuadernos de Derecho Transnacional* 2, No. 2 (October 2010): 140.

Likewise, the Palestinian Civil Code Draft (PDCC)⁷ adopted causation theory in Articles (135, 136, 137 and 138),⁸ as did the Indonesian Civil Code April 1847 (ICC)⁹ in Article 1320¹⁰ as an essential element for a contract's conclusion to be valid. Nevertheless, causation theory in this scope has two requisite functions: the equivalence of rights and obligations and the interdependence of obligations.¹¹ However, in the later part of the last century, the French judiciary has shown an effective role for the theory of causation in the protection of a contract itself by using causation as a supportive means to protect the economic contractual equilibrium of the contract, whenever necessary, such as in the decision issued on 03 July 1996 by the French Court of Cassation in Piller's case.¹² All of this will be analysed within the framework of the causation theory provisions in the PDCC and ICC to ensure that this mechanism performs its legal function, which requires determining the content of the causation theory in the beginning.

II. THE CONTENT OF CAUSATION THEORY IN THE PDCC AND ICC

To determine something's cause, it is enough to entertain a simple question: With what did a party commit to something? Though this question is simple, the answer is vague; in fact, when we search for an act's purpose and its justification in the obligor's psyche, we realize how difficult it is to reach this end. For example, if a person purchases a house, he is obliged to pay the price; in this case, it is easy to identify the subject of his obligation. That is, it is the price he committed to pay. Therefore, this subject of the obligation is the answer to the question: With what did he commit to something?

Similarly, why did the purchaser commit? The answer to this question leads us to one of the most complicated matters of law. The closest answer is that the purchaser committed to pay the price because the seller committed to transfer ownership of the house to him. But we should go beyond this and ask why the purchaser wants to obtain the seller's obligation. It is obvious that the purchaser does not want the seller to commit only to transfer of ownership but also to implementation of the obligation. Subsequently, perhaps the next question is why did the purchaser want to buy this house? In this case, multiple answers are possible based on multiple purchasers; perhaps the purchase is for housing, trading or donation. Therefrom, we can inquire further by asking about the purpose of this donation, and so on. The most important question in all of this is where should this cycle of questions stop?¹³

In view of this, the PDCC and the ICC state that an obligation without cause does

⁷ (Hereinafter 'PDCC').

⁸ See the Official Explanatory of the Palestinian Civil Code Draft (hereinafter 'OEPDCC'), unpublished manuscript, pp. 169-172.

⁹ (Hereinafter 'ICC').

¹⁰ Article 1320 of the ICC states: "*in order to be valid, an agreement must satisfy the following four conditions: 1- there must be consent of the individuals who are bound thereby; 2- there must be capacity to conclude an agreement; 3- there must be a specific subject; 4- there must be an admissible cause.*"

¹¹ See François Terré *et al.*, *Droit civil, Les obligations* (Paris: Dalloz, 2013), p. 270.

¹² Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 1, public sitting of Wednesday 3 July 1996, no of appeal: 94-14800," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000007036953&fastReqId=934404352&fastPos=18>, accessed 16 January 2019.

¹³ Marieve Lacroix, "Relativite Aquilienne en Droit de la Responsabilitie Civile - Analyse Comparee des Systemes Germanique, Canadien et Quebecois, La," *McGill Law Journal* 59, No. 2 (2013): 435.

not arise, and as such, the contract is null.¹⁴ Thus, it seems that the PDCC and ICC adopt final cause (cause finale) only¹⁵ in determining the concept of causation theory. In other words, this means that the final cause is the abstract direct purpose that the obligor wants to achieve by obliging himself. This definition is referred to by many terms such as *direct cause*, *abstract cause*, and *objective cause*;¹⁶ nevertheless, the term *cause of obligation* is the term that is commonly used nowadays. Article 135 of the PDCC clearly represents this. Meanwhile, in Article 137 of the PDCC, the Palestinian legislature stated: "1- a contract is considered null if its cause is illegitimate; 2- a contract's cause is considered illegitimate if its motive is against the public order or morals."

Therefrom, it is clear that the Palestinian legislature adopted the term *impulsive cause* in determining the concept of causation theory as the personal motive that leads the contracting party to conclude the contract.¹⁷ Thus, the Palestinian legislature adopted concepts from both conventional and modernistic theories in determining the content of causation theory.¹⁸ That is, the Palestinian legislature adopted the idea of ambivalent cause in determining the content of causation theory.¹⁹ This definition (impulsive cause) has been referred to by many other terms such as concrete cause (cause concrète), subjective cause (cause subjective), and indirect cause (cause lointaine); nonetheless, the term *cause of a contract* (*cause du contrat*) is the term that is commonly used nowadays. Article 137 of the PDCC also represents this clearly.²⁰ However, even if the ICC did not represent clearly that it adopted impulsive cause in determining the concept of causation theory, this can be inferred from the text of Article 1337 of the ICC, which states: "a cause is not permissible if it is prohibited by law, or if it violates good conduct, or public order." In fact, according to the conventional content of the causation theory, i.e. the cause of the obligation, the cause cannot be illegitimate.

The origins of the conventional theory stem from the foundations laid down by the legal jurist Domat, who was influenced by the principles of Roman law and who opposed the vision of the jurisprudence of the canon of granting the judge broad freedom in investigating the psychological motives for contracting.²¹ This vision was

¹⁴ See Article 135 of the PDCC and Article 1335 of the ICC.

¹⁵ The conventional theory distinguishes between several meanings of the cause: the efficient cause (cause efficiente), the final cause (cause finale), and the impulsive cause (cause impulsive). The first refers to the act causing the obligation, namely, the source that created the obligation. Based on this, the sources of the obligation are known to be the contracts, unilateral undertakings, unlawful acts, enrichment without a just cause and the law. Therefore, the cause in this meaning goes beyond the scope of our research as it relates to the sources of obligations. While the second is the above mentioned in the text, which was taken by the Palestinian legislature, whereas the third meaning is the motive that led the contracting party to conclude the contract. See Oana Benta, "Sur le Role de la Cause et de la Morale en Droit," *Studia Universitatis Babeş-Bolyai Jurisprudentia* 2007, No. 1 (2007): 89; Sejean, *loc.cit.*; Al-sanhuri, *op.cit.*, pp. 437-438.

¹⁶ Ibrahim Ashmawi, *Causation Theory and Contractual Justice* (Cairo: Dar Alnahdah Alearabiah, 2008), pp. 22-26.

¹⁷ *Ibid.* It should be noted that this theory did not replace conventional theory, but was added to it, dedicated to the ambivalence concept of cause, which was supported by French jurists, among them, Josseland, Ripert and Boulanger. See Jacques Flour *et al.*, *Droit Civil. Les Obligations: 1. L'acte juridique. Sirey* (Paris: Dalloz, 2013), p. 189; Ghestin, *op.cit.*, pp. 829-830.

¹⁸ This Trend is commonly used in most of Arabian countries civil codes, for example, see Articles (194-201) of the Lebanese Civil Code, Articles (165-166) of the Jordanian Civil Code, Articles (176-177) of the Kuwaiti Civil Law and Articles (136-137) of the Egyptian Civil Code. See Abdaa, *op.cit.*, p. 104.

¹⁹ See both Articles 135 and 137 of the PDCC.

²⁰ See the OEPDCC, *op.cit.*, p. 170.

²¹ James Visick, "The Intellectual Influences on the Code Civil," *UCL Jurisprudence Review* 15 (2009): 218.

completed in its legal frame by the legal jurist Pothier to be adopted by the first civil law in France in 1804,²² whilst the origins of the modernistic theory stem from the foundations laid down by the Canonists.²³

Thence, and in light of what the PDCC and ICC mention in Articles 135, 137, 1320, 1335, and 1337, one of the most important descriptions of the cause of obligation is that it is identical to and does not differ from one contracting party to another for a given type of contract.²⁴ In addition, the cause of obligation is an essential element of the obligation and failure to obtain it will result in the invalidity of the contract.²⁵ Since the cause of obligation has an objective nature, it may not be affected by the contracting party's intentions or his psychological contractual motives.²⁶ Thus, according to this approach, the cause for each party's commitment lies in the contract itself; that is, the benefit or purpose that the contracting party intended in its economic dimension.²⁷ Moreover, there is also the cause of contract (the personal motive for contracting), which varies from one person to another. However, the Palestinian legislature was interested in legislating this provision in order to subject civil and commercial transactions to the rules of morals and public order; therefrom, if the motive for the contract is contrary to morals and the public order, the contract is null.²⁸

III. THE CONDITIONS OF CAUSATION THEORY IN THE PDCC AND ICC

The proponents of the conventional content of causation theory believe that for the cause of the obligation to materialise, three conditions must be met: the existence of the cause, the validity of the cause, and the legitimacy of the cause. This was adopted by the French Civil Code of 1804 in Article 1131, which states that: "an obligation without a cause, or upon a false cause, or upon an unlawful cause, can have no effect".²⁹ However, this was followed by the text of Articles 135 and 137 of the

²² Italo Birocchi, "Cause and Definition of Contract in XVI Century Law Theory (Materials for a Monograph)," *DIREITO GV Law Review* 2, No. 1 (January-June 2006): 76; Andenas, Mads, and Kåre Lilleholt, "Remedies and Substantive Law-European Dimensions of Economic and Private Law," *European Business Law Review* 23, No. 6 (2012): 869; Basil Markesinis, "Two Hundred Years of a Famous Code: What Should We Be Celebrating," *Texas International Law Journal* 39, No. 4 (Summer 2004): 566.

²³ See Larroumet, *op.cit.*, p. 421; Al-sanhuri, *op.cit.*, p. 465; Henri Mazeaud *et al.*, *Leçons de droit civil, tom II, premier volume, les obligations* (Paris: Montchrestien Delta, 2000), pp. 263-264; Anwar Sultan, *Sources of Commitment in Civil Code, A Comparative with Islamic Jurisprudence* (Amman: Dar Al-Thaqafa for Publishing and Distribution, 2011), p. 117.

²⁴ See Article 135 of the PDCC.

²⁵ See Sas Niksic, "The Obligation Cause and Related Institutes in Comparative Law," *Zbornik Pravnog Fakulteta u Zagrebu* 56, no. 4 (2006): 1066. Dmitry Poldnikov, "Origins of General Concept of Contract in Western European Legal Science," *Journal on European History of Law* 7, no. 2 (2016): 56.

²⁶ Dimitar Stoyanov, "Causa and Consideration - A Comparative Overview," *Lex ET Scientia International Journal* 23, no. 1 (2016): 19.

²⁷ See Gilles Pillet, "The Reform of French Contract Law and of the General Rules on Obligations: The Civil Code Faces the Challenges of the Market," *International Business Law Journal* 2016, No. 3 (2016): 245-246; Eric Fokou, "La Notion d'Economie du Contrat en Droit Francais et Quebecois," *Revue Generale de Droit* 46, No. 2 (2016): 718.

²⁸ See the OEPDCC, p. 171.

²⁹ The original text in French "*L'obligation sans cause, ou sur une fausse cause, ou sur une cause illicite, ne peut avoir aucun effet*".

PDCC³⁰ and Article 1335 of the ICC.³¹

A. The Existence of Cause

The conventional content of causation theory requires the existence of the cause,³² or otherwise the contract would be void for the absence of cause, as stated in the text of Article 135 of the PDCC and Article 1335 of the ICC. These articles state that an obligation does not arise if it does not have a cause and as such, the contract is null. Therefore, if a person is forced to sign a debt bond when he is not indebted or commits to pay an amount to another person for work imposed by law, that obligation is void for the absence of cause. Besides that, in an agreement under which a person undertakes to pay an amount of money to another person in compensation for damages for which he believes he is liable, the contract would be null if it is found that this person is not liable for the damages. Furthermore, the intention to donate must exist in donation contracts; otherwise, it will be void.³³ Eventually, in unilateral contracts, for example, the cause of the borrower's obligation to repay the loan is that he has already received it.³⁴

Undoubtedly, the requirement that cause must exist for the creation of an obligation is beneficial for the contracting parties, since it prevents them from committing to an obligation without cause.³⁵ Furthermore, it should be noted that the condition of the existence of the cause in the conventional content of causation theory is a requirement in both implementing and concluding the contract. Thus, it should continue to exist until the execution of the obligation; otherwise, the obligation is void.³⁶

Moreover, imposing the existence of a cause as an essential condition is the only way to invalidate abstract civil acts (*les actes civils abstraits*),³⁷ where as a general rule, the absence of the causality invalidates civil acts, except where the law provides for special provisions. For example, in a surety contract, where the surety is obliged to perform his obligation for the creditor despite the absence of cause in the relationship between them, the surety cannot invoke the absence of cause of his obligation to null the contract.³⁸ Meanwhile, outside of cases excluded by the text of the law, each civil contract is subject to causation theory, thus nullifying any contract that does not have a cause.³⁹

B. The Validity of Cause

³⁰ Articles 135 and 137 of the PDCC state respectively: "*an obligation does not rise if it does not have a cause and as such the contract is null*", "*1- a contract is considered null if its cause is illegitimate; 2- a contract's cause is considered illegitimate if its motive is against the public order or morals*".

³¹ Article 1335 of the ICC states: "*any agreement without a cause, or concluded pursuant to a fraudulent or implausible cause, shall not be enforceable*".

³² David, *op.cit.*, p. 167; Calleros, *op.cit.*, pp. 91-92.

³³ See the OEPDCC, *op.cit.*, p. 169.

³⁴ *Ibid.*

³⁵ See Al-sanhuri, *op.cit.*, p. 440.

³⁶ See Liviu Pop, "The Main Content of the Reform of Common Law Contracts in the French Civil Code," *Romanian Review of Private Law 2018, No. 2* (2018): 280.

³⁷ The abstract act means an act the validity of which does not depend on the existence of the cause; that is, it is not effected by the absence of the cause or its illegitimacy or validity. See Hamdi Abdel Rahman, *Alwasit in the General Theory of Obligations, the Will Sources of the Obligation, Contract and Unilateral Undertakings* (Cairo: Dar Alnahdah Alearabiah, 2010), p. 272.

³⁸ The Article 908 of the PDCC and Article 1820 of the ICC defined a suretyship contract as: "*a contract whereby a person guarantees the performance of an obligation by giving an undertaking to the creditors to fulfil such obligation should the debtor fail to do so*".

³⁹ The OEPDCC, p. 169.

According to the conventional content of causation theory, the cause is required to be valid. However, there are two cases in which the cause may be invalid: the simulated cause (la cause simulée) and the erroneous cause (la cause erronée or la cause fausse). Article 136 of the PDCC states:

1-every obligation is supposed to have a real cause, even if it is not mentioned; 2- It is, also, supposed that the mentioned cause for the contract is the real cause unless proven otherwise

Furthermore, Article 1335 of the ICC states: “any agreement without a cause, or concluded pursuant to a fraudulent or implausible cause, shall not be enforceable.”

Hence, a simulated cause is assimilated in the case of both contracting parties knowing of the real cause but hiding it under the guise of another cause; for example, if the contracting parties conceal a gift contract in the form of a sales contract. Here, the simulated cause itself does not constitute grounds for annulment of the contract unless the purpose of it is to hide illegal issues,⁴⁰ compared to the case of a person who undertakes to pay a debt in the form of a loan contract, while in fact the debt is a gambling debt. Here, the contract is void not for the apparent simulated cause, but because of the illegitimacy of the real cause.⁴¹

An erroneous cause is a belief or illusion in the contracting party’s mind that the cause exists, but in reality, it does not exist;⁴² for example, in the case of two persons who agreed to sell something, but who then discover after their agreement that the thing was demolished before the contract was concluded. In this case, the seller’s obligation is not created for the absence of the contract’s subject; in addition, the purchaser is not obligated to anything because the cause of the obligation was an erroneous cause.⁴³ Another example is if an heir endorses a debt over the inheritance, but then the creditor clearly fulfils his debt directly from the inheriting person. In these examples and other similar cases, erroneous cause does not create an obligation, as endorsed in Article 136 of the PDCC and Article 1335 of the ICC.⁴⁴

C. The Legitimacy of Cause

⁴⁰ See Légifrance, le service public de la diffusion du droit, “French Court of Cassation, civil room 1, public sitting of Tuesday 7 April 1992, no of appeal: 90-19620,” <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000007028134&fastReqId=79183410&fastPos=1>, accessed 01 January 2019.

⁴¹ Gambling acts are illegal and violates the public order in Palestine. see Articles 395-398 of the Penal Code No 16 of 1960. In this regard, Article 1788 of the ICC clearly states: “the law shall not admit any legal claim with respect to a debt resulting from games or gambling”.

⁴² See Jalal. Ibrahim, *Sources of the Obligation* (Cairo: Dar Alnahdah Alearabiah, 2011), p. 136; Padilla, Rueda, and Sierra, *loc.cit.*

⁴³ For other cases, see Légifrance, le service public de la diffusion du droit, “French Court of Cassation, civil room 3, public sitting of Wednesday 20 October 2010, no of appeal: 09-66113,” <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000022946030&fastReqId=860674041&fastPos=7>, accessed 1 January 2019; Légifrance, le service public de la diffusion du droit, “French Court of Cassation, civil room 1, public sitting of Wednesday 10 July 2013, no of appeal: 12-17407,” <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000027704553&fastReqId=377085741&fastPos=5>, accessed 1 January 2019.

⁴⁴ See Légifrance, le service public de la diffusion du droit, “French Court of Cassation, civil room 1, public sitting of Wednesday 6 September 2017, no of appeal: 16-15331,” <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000035535345&fastReqId=1339938794&fastPos=22>, accessed 1 January 2019; Légifrance, le service public de la diffusion du droit, “French Court of Cassation, commercial room, public sitting of Wednesday 25 October 2017, no of appeal: 16-16839,” <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000035925323&fastReqId=1339938794&fastPos=21>, accessed 1 January 2019.

The final condition according to the conventional content of causation theory is that the cause is required to be a legitimate cause; a cause is considered legitimate if it does not violate the public order or ethics and does not contradict an explicit prohibition of law. Nevertheless, the conventional content of causation theory distinguishes between the legitimacy of a cause and the legitimacy of the subject of a contract. For example, if a person pledges to commit a crime on another person's behalf for a sum of money, the promisor's obligation to commit the crime is void due to the absence of the legitimacy of the contract subject. While the other party's obligation to pay the sum of money is legitimate in itself, the obligation does not arise and the contract is annulled for the illegality of the cause.⁴⁵

Indeed, if we analyse the example above, we find that in this case the contract was annulled for the legitimacy of the subject of the first party's obligation, which was the commission of a crime; therefore, opponents of the conventional content of causation theory denied its usefulness from this point of view.⁴⁶ In fact, according to the conventional content of causation theory, i.e. the cause of the obligation, the cause cannot be illegitimate. In a sales contract, the purchaser's obligation to pay the price and the seller's obligation to deliver the sale can only be legitimate, unless the cause is taken in the sense of the motive in contracting, which is excluded by the conventional content of causation theory that maintains the idea of a final cause (*cause finale*).⁴⁷

In light of the above, in the second paragraph of Article 137 of the PDCC, the Palestinian legislature states "a contract's cause is considered illegitimate if its motive is against the public order or morals," which is also indicated in Article 1337 and Article 1335 of the ICC.⁴⁸ That is, the PDCC and ICC adopted the cause of the contract (impulsive cause), which is the personal motivation that led the contracting parties to conclude the contract, in order to say whether this contract cause is legitimate or not. However, to illustrate this, the Official Explanatory of the Palestinian Civil Code Draft offered this example:

who donates to a woman to establish an illegal relationship with her, the donation is considered void since the cause of the donation is illegitimate, while in contrast, if he donated for the woman due to his desire to terminate the illicit relationship

⁴⁵ See Sultan, *op.cit.*, p. 122.

"il résulte de l'article 1131 du code civil que toute obligation est présumée avoir une cause réelle et licite..." See Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 1, public sitting of Wednesday 2 October 2013, no of appeal: 12-22846 12-22948," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000028038975&fastReqId=1057857571&fastPos=14>, accessed 2 January 2019; Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 1, public sitting of Wednesday 26 September 2012, no of appeal: 11-12945," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000026432007&fastReqId=783224280&fastPos=17>, accessed 2 January 2019; Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 1, public sitting of Wednesday 29 June 2011, no of appeal: 10-12018," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000024295488&fastReqId=2006027488&fastPos=27>, accessed 2 January 2019.

⁴⁶ See Amjad Mansour, *The General Theory of Obligations, Sources of Commitment, A Study in the Jordanian, Egyptian and French Civil Codes, the AL-Majallah AL-Ahkam AL-Adliyyah and Islamic Jurisprudence with the Judicial Applications of the Cassation Courts* (Amman: Dar Al-Thaqafa for Publishing and Distribution, 2009), p. 139.

⁴⁷ Mazeaud, *op.cit.*, p. 280.

⁴⁸ Article 1337 of the ICC states: "a cause is not permissible if it is prohibited by law, or if it violates good conduct, or public order".

between them, the donation is valid since it has a legitimate cause.⁴⁹

Thus, it is not a secret that the requirement of the legitimacy of the cause is to ensure the safety of the community from illegal motives that could harm the owner and the community as a whole.⁵⁰ In light of this, and to protect the contract stability and ensure that they are not ruined by a contracting party who does not like a contract's results, the person who seeks to revoke the contract because of his illegal personal motivation to contract cannot invoke the nullity of the contract unless the other party is aware of such an illegitimate motive.⁵¹ For example, whoever buys an apartment from another person and then wants to revoke the purchase contract because he bought it only to use it in business of gambling only has an acceptable claim if the other party is aware of such an illegitimate motive.⁵²

However, if the request to annul a contract is based on an illegitimate motive of contracting in advance by a contracting party who did not have an illegitimate motive, he is not required to have prior knowledge of the illegal motive that pushed the other party to conclude the contract.⁵³ Therefore, it is permissible for a vendor who knows that the purchaser's motive in purchasing the apartment was for amoral public acts to invoke the nullity of the contract because of the illegality of the contract's cause, regardless of whether he was aware of the illegitimate motive at the time of the contract's conclusion.⁵⁴ Meanwhile, for donation contracts, whether a contract is concluded by the conjugation of two wills, such as a gift contract, or by a single will, such as a testament, it is not required that the other party is aware of an illegitimate motive to annul a contract that has an illegitimate motive.⁵⁵

The French judiciary placed another restriction, which is that the judge shall investigate the main motive that led the party to contract, to find out whether it is

⁴⁹ See the OEPDCC, p. 171.

⁵⁰ Ashmawi, *op.cit.*, pp. 39-40.

⁵¹ See Article 138 of the PDCC which states: "1- every contract is supposed to have a legitimate cause even if the cause for the contract is not mentioned; however, if it has been proved that the cause is illegitimate then, the contract in question is considered null; 2- Nonetheless, in bilateral contracts, it is not permissible for a contracting party, who has an illegitimate motive, to invoke the nullity of the contract unless the other party is aware of such an illegitimate motive".

⁵² See Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 1, public sitting of Wednesday 14 May 2014, no of appeal: 13-16102," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000028945068&fastReqId=755549784&astPos=19>, accessed 3 January 2019; Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 1, public sitting of Thursday 13 November 2014, no of appeal: 13-25550," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000029767557&fastReqId=1790128920&astPos=17>, accessed 3 January 2019; Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 1, public sitting of Thursday 15 January 2015, no of appeal: 13-13565," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000030114118&fastReqId=722004103&astPos=16>, accessed 3 January 2019.

⁵³ See Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 1, public sitting of Thursday 1 December 2011, no of appeal: 09-15779," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000024916439&fastReqId=1287568081&astPos=23>, accessed 3 January 2019.

Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 1, public sitting of Thursday 4 November 2010, no of appeal: 07-21303," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000023012500&fastReqId=1287568081&astPos=26>, accessed 3 January 2019.

⁵⁴ See Sultan, *op.cit.*, p. 129.

⁵⁵ See the OEPDCC, p. 171.

legitimate or not,⁵⁶ while other secondary motives that may exist alongside the main motive are not subject to judiciary concerns, even if they are legitimate motives, since they have no effect on the will. In light of this, the French Court of Cassation ruled in a famous decision on 12/7/1989 that:

if the purchaser's obligation was due to the transfer of ownership and the delivery of the sold item; in contrast, the cause for the contract of sale is resembled in the decisive motive, and the proceedings show that the decisive motive of this contract was to practice the profession of guesswork and prediction (*métier de deviner et de pronostic*), a profession that constitutes a violation of the Penal Code. According to this condition, all secondary motives, which have an impact on the will, must be excluded, since it is not considered the main motive for concluding the contract.⁵⁷

Therefore, the first restriction is clearly represented in Article 138 of PDCC; however, the two restrictions do not exist in the ICC. In fact, the Palestinian judiciary should take the second restriction into account in determining the illegitimate cause of the contract, since the respective position of the Palestinian legislature is not clear, in order to protect contract stability, while the Indonesian legislature should amend Article 1337 of the ICC, taking into account the restrictions determined by the French judiciary, in order to protect contract stability.

IV. CAUSATION THEORY AS A MEANS OF MONITORING THE ECONOMIC CONTRACTUAL EQUILIBRIUM OF A CONTRACT

A contract, which is "an agreement between two or more persons creating rights and duties, which is enforceable by law"⁵⁸ embodies a significant legal process in contemporary society; namely, exchange (*l'échange*).⁵⁹ In fact, exchange carries with it the peril of a situation of imbalance between the obligations of the contracting parties due to the disparity of power between the contracting wills that establish the obligations.⁶⁰

Subsequently, there is no doubt that addressing these potential perils to the imbalance between contracting party obligations is a necessary and primary need of the law, since the contractual imbalance is about to lose its economic and social

⁵⁶ See Stéphanie. Porchy-Simon, *Droit civil 2e année, les obligations* (Paris: Dalloz, 2017), p. 107.

⁵⁷ See Frédéric-Jérôme, Pansier and Robert Wintgen, *Cinquante commentaires d'arrêts en droit des obligations: des classiques aux modernes* (Paris: édition Ellipses, 2000), pp. 40-41. See Also in the same context, Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 3, public sitting of Tuesday 8 June 2010, no of appeal: 09-15166,"

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000022342474&fastReqId=100197999&fastPos=3>, accessed 3 January 2019; Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 3, public sitting of Wednesday 1 March 2000, no of appeal: 98-16836," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000007041680&fastReqId=204395887&fastPos=4>, accessed 3 January 2019.

⁵⁸ See Nabil Saleh, "Definition and Formation of Contract under Islamic and Arab Laws," *Arab Law Quarterly* 5, No. 2 (May 1990): 105-110. Furthermore, Article 1313 of the ICC states: "an agreement is an act pursuant to which one or more individuals commit themselves to one another".

⁵⁹ Carl J. Circo, "The Evolving Role of Relational Contract in Construction Law," *Construction Lawyer* 32, No. 4 (Fall 2012): 19; Nancy S. Kim, "Relative Consent and Contract Law," *Nevada Law Journal* 18, No. 1 (Fall 2017): 219.

⁶⁰ Leon E. Trakman, "Public Responsibilities Beyond Consent: Rethinking Contract Theory," *Hofstra Law Review* 45, No. 1 (Fall 2016): 217-262.

significance and the reason for its *existence*.⁶¹ Even if the balance does not come from the nature of the contract itself, guaranteeing the minimum scale of justice for the contracting parties protects them from the effects of the imbalance of disparity in the contract in full accordance with the substance of the law itself.⁶²

In view of this, the legislatures tried to establish certain rules that precede any contractual relationship between different categories of individuals to protect contracted parties, such as *consumer protection regulations, labor codes, and insurance codes*. However, these special concepts of class notion, which is related to the protection of a particular category individual, led to a fragmentation of the law.⁶³ However, the establishment of legal rules representing the minimum requirements of contractual justice under the general theory of contracts is no less important than the protection of certain categories of contracting parties by special laws.

In this regard, the Canonists added the cause to the contractual field, making it a condition for agreement validity. In other words, will is no longer sufficient to establish obligation, but there must be a cause for each obligation.⁶⁴ The Canonists believe that contracts are based on a promise, and a contract is not binding unless there a minimum of contractual justice and balance between the obligations exists.⁶⁵ However, this stems from the desire to protect all of the contracting parties, not only one of them.⁶⁶ Consequently, Domat and Pothier developed their causation theory by adding an objective nature to its concept,⁶⁷ which enabled them to conclude an important rule: that obligation arising from bilateral contracts in favor of one of the parties always finds its cause in the obligation of the other party, and the obligation is null if in fact it does not have a cause,⁶⁸ that is, if there is no corresponding obligation.

However, despite the criticism of the anti-causalistes, modern legal jurisprudence indicates that the *corresponding obligation should not be trivial*,⁶⁹ but must have value and importance. Moreover, in an economic sense, a contract is defined as an exchange of values as much as it is the exchange of satisfaction.⁷⁰ More clearly, the basis of the binding force of a contract should not be sought in the principle of will autonomy,

⁶¹ See Orit Gan, "The Many Faces of Contractual Consent," *Drake Law Review* 65, no. 3 (2017): 619; Shahram Aryan and Bagher Mirabbasi, "The Good Faith Principle and Its Consequences in Pre-Contractual Period: A Comparative Study on English and French Law," *Journal of Politics and Law* 9, No. 2 (April 2016): 237.

⁶² See Severine Dusollier, "EU Contractual Protection of Creator: Blind Spots and Shortcomings," *Columbia Journal of Law & the Arts* 41, No. 3 (2018): 453; Hila Keren, "Undermining Justice: The Two Rises of Freedom of Contract and the Fall of Equity," *Canadian Journal of Comparative and Contemporary Law* 2, No. 1 (2016): 394-399.

⁶³ See Thomas Kadner Graziano, "L'Europeisation du Droit Prive et de la Methode Comparative - Etude de Cas," *Swiss Review of International and European Law* 14, No. 3 (2004): 237-238.

⁶⁴ See Poldnikov, *op.cit.*, p. 56; Stoyanov, *op.cit.*, pp. 18-19.

⁶⁵ See Warren Swain, "Contract as Promise: The Role of Promising in the Law of Contract - An Historical Account," *Edinburgh Law Review* 17, No. 1 (2013): 7.

⁶⁶ See Terré, *op.cit.*, pp. 269-270.

⁶⁷ Herve Magloire Moneboulou Minkada, "Question de la Definition du Contrat en Droit Prive: Essai d'Une Theorie Institutionnelle, La," *Juridical Tribune* 4, No. 1 (June 2014): 122; Jean-Michel Marmayou, "Disappearance of the Cause in the Individual Sponsorship Deal," *Romanian Review of Private Law* 2011, No. 2 (2011): 263.

⁶⁸ See Stoyanov, *op.cit.*, p. 19; Charlotte Deslauriers-Goulet, "Obligation Essentielle dans le Contrat," *Cahiers de Droit* 55, No. 4 (December 2014): 938.

⁶⁹ See Ashmawi, *op.cit.*, p. 97.

⁷⁰ See Sabine Tsuruda, "Contract, Power, and the Value of Donative Promises," *South Carolina Law Review* 69, No. 2 (Winter 2017): 480; David Sandomierski, "Tension and Reconciliation in Canadian Con-

but in the notion of contractual justice (la justice contractuelle), which stipulates that

tract Law Casebooks," *Osgoode Hall Law Journal* 54, No. 4 (2017): 1214; Chapin F. Cimino, "Doing Deals with Aristotle - Today," *Seattle University Law Review* 41, No. 1 (Fall 2017): 235.

only agreements that are free of obvious imbalance between corresponding rights and obligations are legally valid.⁷¹

In this sense, the decision issued on 03 July 1996 by the French Court of Cassation in the Piller case strongly expresses the significance of *la justice contractuelle*, and is closely associated with a judicial trend which lately has shown particular interest in the idea of economic contractual imbalance of a contract.⁷² However, this trend was welcomed by a majority of French legal jurisprudence, especially in view of the fact that the French Court of Cassation, in its aforementioned provisions, was careful not to allow a party to go beyond the use of its economic power by imposing unfair conditions on the other party.⁷³ In addition, these provisions relate to the concept that contracts are based on the idea of Commutative Justice.⁷⁴ Thus, it can be argued that the basis of justice in contracts is the actual equality and the real and fair equivalence between the performances of the contracting parties.⁷⁵

Although the Palestinian legislature has inserted the cause of obligation into the very idea of a contract itself, the study of the contemporary development of causation theory shows that the Palestinian legislature's statement is both minor and contradictory at the same time. It is minor to the extent that the cause's essential role as a means of achieving contractual justice under the general theory of contracts is excluded.⁷⁶ It is contradictory in that, by continually reviewing the general development of contract law to regularly access special mechanisms (private laws),⁷⁷ it is trying to provide the minimum contractual justice requirements without yet resorting to legislate the contractual justice mechanisms on which the cause of the obligation is based.⁷⁸ However, the French judiciary has recently shown the importance of causation theory as a legal means to protect the contract itself, not only to protect the contracting parties.⁷⁹ Therefore, and in order to achieve the purpose of

⁷¹ See Todd D. Rakoff, "The Five Justices of Contract Law," *Wisconsin Law Review* 2016, No. 4 (2016): 740-741. Poldnikov, *op.cit.*, p. 58; Robin Kar, "Contract as Empowerment," *University of Chicago Law Review* 83, No. 2 (Spring 2016): 815.

⁷² See Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 1, public sitting of Wednesday 3 July 1996, no of appeal: 94-14800," <https://www.legifrance.gouv.fr/af-fichJurijudi.do?oldAction=rechExpJurijudi&idTexte=JURITEXT000007036953&fastReqId=934404352&fastPos=18>, accessed 16 January 2019.

⁷³ See Yann Aubin and Tim Portwood, "Les Clauses Reciproques D'Abandon De Recours et Garanties Contre Les Recours des Tiers," *International Business Law Journal* 2001, No. 6 (2001): 684.

⁷⁴ See Luanda Hawthorne, "Equality and the Law of Contract: The Possible Impact of Aristotle's Theory of Commutative Justice," *Studia Universitatis Babes-Bolyai Jurisprudentia* 2015, No. 3 (July-September 2015): 11.

⁷⁵ "le juste dans les contrats consiste en une certaine égalité". See Carlos Pizarro Wilson, "Notas Criticas sobre el Fundamento de la Fuerza Obligatoria del Contrato - Fuentes e Interpretacion del Articulo 1545 delCodigo Civil Chileno," *Revista Chilena de Derecho* 31, No. 2 (May-August 2004): 227.

⁷⁶ See Al-sanhuri, *op.cit.*, pp. 229-230; Brigitte Lefebvre, "Le Contrat d'Adhesion," *Revue du Notariat* 105, No. 2 (September 2003): 443.

⁷⁷ Such as the Palestinian Labour Law No. 7 of 2000, the Palestinian Law of Insurance No. 20 of 2005, the Palestinian Law of Concerning Consumer Protection No. 21 of 2005, etc., while the Palestinian Civil Code, which is the general theory of contract law, is still a draft.

⁷⁸ In addition, the judiciary, law and jurisprudence are implicitly aware that the assumption assumed by the authors of the Civil Code that the contracting parties are equal and free to contract is merely an illusion. See Marc Mignot, "De la solidarité en général, et du solidarisme contractuel en particulier ou Le solidarisme contractuel a-t-il un rapport avec la solidarité?," *Revue de la Recherche Juridique-Droit prospectif* 4 (2004): 2153-2197.

⁷⁹ See Fokou, *op.cit.*, p. 350.

this section, we will analyse the segments of the famous French decision as follows.

A. The Facts of the Piller Decision

The Civil Room 1 of the French Court of Cassation ruling on 3 July 1996 summarized the Piller decision as follows: a person rented a set of cassettes with the intention of establishing a video cassettes club in his village for a certain amount. When the landlord demanded payment of the rental fees, the lessee argued that the contract was void based on the absence of cause of the obligation. That is, he could not distribute the cassettes due to the limited number of people in the village. The Civil Room 1 of the French Court of Cassation agreed, declaring that paying rental fees was considered abstract from the cause for the absence of the corresponding obligation, as long as the commercial exploitation of the project seemed impossible.⁸⁰

B. The Role of Piller Decision in Achieving Economic Monitoring of the Contract

The decision by Civil Room 1 of the French Court of Cassation cause wide controversy among legal jurists regarding the adoption of ruling on a concept of cause beyond the traditional division,⁸¹ and the question asked was what cause did the judges intend to protect? The cause of the obligation is was certainly not justification for the annulment of the contract,⁸² since the agreement was based on the cassette set rental for a certain amount of money. Thus, both obligations exist, and at the same time, each one is a cause for the corresponding obligation.⁸³

Moreover, the cause intended by the judges of the court cannot be the cause of the contract, which is the business process intended by the tenant (the distribution of cassettes in the village). In estimating the tenant's motive, we find that it is not included in the contractual field, and it cannot be considered a cause, since it is not a combined cause to both contracting parties.⁸⁴

However, Civil Room 1 of the French Court of Cassation introduced a previously unknown understanding of causation theory in relation to the question of the existence of causation for an agreement's validity. Civil Room 1 of the French Court of Cassation did not estimate the absence of cause in an abstract way as is the case in the cause of the obligation, but rather based on the idea of the economic balance desired by the contracting parties.⁸⁵ Here, it can be said that Civil Room 1 of the French Court of Cassation used the cause of the obligation but through a subjective

⁸⁰ *"mais attendu qu'ayant relevé que, s'agissant de la location de cassettes vidéo pour l'exploitation d'un commerce, l'exécution du contrat selon l'économie voulue par les parties était impossible, la cour d'appel en a exactement déduit que le contrat était dépourvu de cause, dès lors qu'était ainsi constaté le défaut de toute contrepartie réelle à l'obligation de payer le prix de location des cassettes..."* Légifrance, le service public de la diffusion du droit, "French Court of Cassation, civil room 1, public sitting of Wednesday 3 July 1996, no of appeal: 94-14800," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000007036953&fastReqId=934404352&fastPos=18>, accessed 21 January 2019.

⁸¹ Which is the concept of both conventional and modernistic theory in determining the content of causation theory.

⁸² The Palestinian and Indonesian legislatures, like the French legislature, have decided that the question of the existence or absence of causation for the validity of an agreement is due to the cause of the obligation, and accordingly the cause for the obligation exists in such a case (Piller case). See Article 1335 of the ICC and the OEPDCC, pp. 169-170.

⁸³ See Sultan, *op.cit.*, p. 120.

⁸⁴ See Pansier, *op.cit.*, p. 61.

⁸⁵ See Porchy-Simon, *op.cit.*, p. 116.

concept,⁸⁶ or that it used the contract's cause to monitor the matter of the existence of cause, not to verify the legality of the cause.⁸⁷ Thus, Civil Room 1 of the French Court of Cassation decided that it was impossible to distribute the cassettes due to the limited population, which made the contract useless to the contracting party and therefore without cause.

Nevertheless, the decision by Civil Room 1 of the French Court of Cassation has been criticized by some French legal jurists who believed that the court could apply the idea of an error in the existence of cause instead of coming up with a new concept of causality.⁸⁸ Therewith, the Civil Room 1 of the French Court of Cassation ruling represents an innovative role established to monitor the equivalence of the obligations, which is devoted to the contracting parties' real satisfaction.⁸⁹ Thus, causation theory became one of the most effective legal means to ensure economic contractual equilibrium, as well as to maintain the contract and transaction stability.⁹⁰

Referring back to the PDCC and ICC, we find that the Palestinian and the Indonesian judiciaries cannot rely on the provisions of Articles 135, 137, 1335, and 1337 to establish economic contractual equilibrium. This is similar to what the French Court of Cassation ruled in the case of Piller, where both legislations defined the concept of cause of obligation as: "the abstract direct purpose that the obligor wants to achieve by obliging himself (objective cause)." Furthermore, they defined the concept of cause of the contract as a personal motive that leads the contracting party to conclude the contract.

Moreover, the PDCC and ICC also determined that the court may estimate the absence of cause in an abstract way for cause of obligation, and that the court role would be limited to only verifying the legality of cause of contract. In other words, in a case similar to Piller's, the Palestinian and Indonesian judiciary cannot rely on causation theory to reach the same decision as the French Court of Cassation, because both the Palestinian and Indonesian judges cannot use a subjective concept of the cause of obligation.⁹¹ In addition, they cannot use the cause of the contract to monitor the existence of the cause.⁹²

V. CONCLUSION

Causation theory is a legal theory most known for inciting magnificent jurisprudential controversy over the development of legal thought. Regardless of the jurisprudence (the anti-causalistes) who called for the need to dispense with the idea of cause, the French judiciary has continued to develop it. This development essentially expanded the traditional concept of causation theory by adding a new role for it; namely, to achieve contractual justice through economic monitoring of the contract, all in order to ensure commutative justice between the contracting parties.

⁸⁶ The subjective concept is the personal motive that led the contracting party to conclude the contract. See page No 4.

⁸⁷ See Sultan, *op.cit.*, p. 129.

⁸⁸ See Jean. Carbonnier, *Droit Civil, Les Obligations. IV* (Paris: Quadrige, 2017), p. 133.

⁸⁹ See Or'ara Assali, "The Contractual Balance at the Conclusion of the Contract" (PhD diss., University of Algeria 1, 2015), p. 150.

⁹⁰ See Porchy-Simon, *op.cit.*, p. 105.

⁹¹ The Palestinian judiciary must use the objective concept in determining the matter of the existence or absence of the cause of the obligation. See the OEPDCC, *op.cit.*, pp. 169-170.

⁹² See *Ibid.*, pp. 170-172.

However, the Palestinian and Indonesian legislative regulations with the provisions of causation theory in Articles 135, 137, 1335 and 1337 ignore the remarkable modernistic role of this theory in achieving economic contractual equilibrium. The Palestinian and Indonesian legislatures determined a way that the court can estimate the absence of cause in an abstract way for the cause of obligation and limited the court's role to only verifying the legality of the cause of the contract. In other words, in a case similar to Piller's, the Palestinian and Indonesian judiciary could not rely on causation theory to reach the same decision as the French Court of Cassation, because the Palestinian and Indonesian judges cannot use a subjective cause of obligation. Neither can they use the cause of the contract to monitor the matter of existence of cause. Thirdly, the idea of an invalid cause in the Palestinian Civil Code Draft is limited to two cases: the simulated cause (*la cause simulée*) and the erroneous cause (*la cause erronée* or *la cause fausse*), while the content of the idea of invalid cause exceeds the limitations of what the Palestinian and Indonesian legislatures mention.

Thus, the Palestinian and Indonesian legislatures should amend the legislative articles of causation theory in the PDCC and ICC, similar to what the French legislature did, in order to achieve contractual security and justice, and to resolve any judicial dispute in applying the provisions of causation theory in a way that is incompatible with the specificity of the Palestinian and Indonesian realities, since they lack the legal rules that guarantee justice and contractual security as noted above.

Bibliography

Legal Documents

French Civil Code of 1804.

Indonesian Civil Code, April 1847 (ICC).

Official Explanatory of the Palestinian Civil Code Draft (OEPDCC).

Palestinian Civil Code Draft (PDCC).

Books

Abdaa, Mohammad. *Theory of Causality in Civil Law, A Comparative Study*. Beirut: Al-Halabi Legal Publications, 2004.

Abdel Rahman, Hamdi. *Alwasit in the General Theory of Obligations, the Will Sources of the Obligation, Contract and Unilateral Undertakings*. Cairo: Dar Alnahdah Alearabiah, 2010.

Al-Sanhuri, Abd Al-Razzaq. *Illustration of Updated Civil Law*. Beirut: Al-Halabi Legal Publications, 1998.

Ashmawi, Ibrahim. *Causation Theory and Contractual Justice*. Cairo: Dar Alnahdah Alearabiah, 2008.

Aubin, Yann and Tim Portwood. "Les Clauses Réciproques D'Abandon De Recours et Garanties Contre Les Recours Des Tiers." *International Business Law Journal* 2001, No. 6 (2001): 671-698.

Carbonnier, Jean. *Droit Civil, Les Obligations. IV*. Paris: Quadrige, 2017.

Flour, Jacques. *et al. Droit Civil. Les Obligations: 1. L'acte juridique*. Sirey. Paris: Dalloz, 2013.

Ghestin, Jacques. *Traité de droit civil, Les obligations, La formation du contrat*. Paris: Librairie L.G.D.J, 1993.

Ibrahim, Jalal. *Sources of the Obligation*. Cairo: Dar Alnahdah Alearabiah, 2011.

Larroumet, Christian. *Droit civil: Les Obligations. Le Contrat*. Paris: Économica, 1996.

Mansour, Amjad. *The General Theory of Obligations, Sources of Commitment, A Study in the Jordanian, Egyptian and French Civil Codes, the AL-Majallah AL- Ahkam AL- Adliyyah and Islamic Jurisprudence with the Judicial Applications of the Cassation Courts*. Amman: Dar Al-Thaqafa for Publishing and Distribution, 2009.

Mazeaud, Henri. *et al. Leçons de droit civil, tom II, premier volume, les obligations*. Paris: Montchrestien Delta, 2000.

Pansier, Frédéric-Jérôme and Robert Wintgen. *Cinquante commentaires d'arrêts en droit des obligations: des classiques aux modernes*. Paris: édition Ellipses, 2000.

Porchy-Simon, Stéphanie. *Droit civil 2e année, les obligations*. Paris: Dalloz, 2017.

Sultan, Anwar. *Sources of Commitment in Civil Code, A Comparative with Islamic Jurisprudence*. Amman: Dar Al-Thaqafa for Publishing and Distribution, 2011.

Terré, François. *et al. Droit civil, Les obligations*. Paris: Dalloz, 2013.

Articles

Alex M. Jr. Johnson, "Contracts and the Requirement of Consideration: Posting a Unified Normative Theory of Contracts, Inter Vivos and Testamentary Gift Transfers." *North Dakota Law Review* 91, no. 3 (2015): 547-610.

Andenas, Mads, and Kåre Lilleholt. "Remedies and Substantive Law-European Dimensions of Economic and Private Law." *European Business Law Review* 23, No. 6 (2012): 861-912.

- Aryan, Shahram and Bagher Mirabbasi. "The Good Faith Principle and Its Consequences in Pre-Contractual Period: A Comparative Study on English and French Law." *Journal of Politics and Law* 9, No. 2 (April 2016): 232-245.
- Basil Markesinis, "Two Hundred Years of a Famous Code: What Should We Be Celebrating." *Texas International Law Journal* 39, No. 4 (Summer 2004): 561-580.
- Benta, Oana. "Sur le Role de la Cause et de la Morale en Droit." *Studia Universitatis Babes-Bolyai Jurisprudentia* 2007, No. 1 (2007): 85-105.
- Birocchi, Italo. "Cause and Definition of Contract in XVI Century Law Theory (Materials for a Monograph)." *DIREITO GV Law Review* 2, No. 1 (January-June 2006): 65-88.
- Brigitte Lefebvre, "Le Contrat d'Adhesion." *Revue du Notariat* 105, No. 2 (September 2003): 439-490.
- Calleros, Charles. "Cause, Consideration, Promissory Estoppel, and Promises under Deed: What Our Students Should Know about Enforcement of Promises in a Historical and International Context." *Chicago-Kent Journal of International and Comparative Law* 13, No. 2 (Spring 2013): 83-121.
- . "U.S. Unconscionability and Article 1171 of the New French Civil Code: Achieving Balance in Statutory Regulation and Judicial Intervention." *Georgia Journal of International and Comparative Law* 45, No. 2 (2017): 259-298.
- Cimino, Chapin F. "Doing Deals with Aristotle – Today." *Seattle University Law Review* 41, No. 1 (Fall 2017): 209-248.
- Circo, Carl J. "The Evolving Role of Relational Contract in Construction Law." *Construction Lawyer* 32, No. 4 (Fall 2012): 16-47.
- Chappuis, Christine. "Le Renoncement a la Cause et a la Consideration Dans L'Avant-Projet D'Acte Unifrome OHADA Sur le Droit des Contrats." *Uniform Law Review* 13, No. Issues 1 and 2 (2008): 253-292.
- David, Mihai. "The Cause of the Obligation and the Legal Formalism - Study of Comparative Law." *Romanian Review of Private Law* 2014, No. 2 (2014): 52-90.
- Davrados, Nikolaos A. "Demystifying Enrichment without Cause." *Louisiana Law Review* 78, No. 4 (Spring 2018): 1223-1288.
- Delfini, Francesco. "Instances of Civil Law in North American Common Law Tradition: Cause and Consideration in Quebec and Louisiana Civil Codes." *Italian Law Journal* 2, No. 1 (2016): 87-104.
- Deslauriers-Goulet, Charlotte. "Obligation Essentielle dans le Contrat." *Cahiers de Droit* 55, No. 4 (December 2014): 923-950.
- Dusollier, Severine. "EU Contractual Protection of Creator: Blind Spots and Shortcomings." *Columbia Journal of Law & the Arts* 41, No. 3 (2018): 435-458.
- Fokou, Eric. "La Notion d'Economie du Contrat en Droit Francais et Quebecois." *Revue Generale de Droit* 46, No. 2 (2016): 343-378.
- G'sell, Florence. "Causation, Counterfactuals and Probabilities in Philosophy and Legal Thinking." *Chicago-Kent Law Review* 91, No. 2 (2016): 503-526.
- Gan, Orit. "The Many Faces of Contractual Consent." *Drake Law Review* 65, No. 3 (2017): 615-662.
- Graziano Thomas Kadner. "L'Europeanisation du Droit Prive et de la Methode Comparative - Etude de Cas." *Swiss Review of International and European Law* 14, No. 3 (2004): 233-254.
- Hawthorne, Luanda. "Equality and the Law of Contract: The Possible Impact of Aristotle's Theory of Commutative Justice." *Studia Universitatis Babes-Bolyai Jurisprudentia* 2015, No. 3 (July-September 2015): 5-22.

- Kar, Robin. "Contract as Empowerment." *University of Chicago Law Review* 83, No. 2 (Spring 2016): 759-834.
- Keren, Hila. "Undermining Justice: The Two Rises of Freedom of Contract and the Fall of Equity." *Canadian Journal of Comparative and Contemporary Law* 2, No. 1 (2016): 339-[x].
- Kim, Nancy S. "Relative Consent and Contract Law." *Nevada Law Journal* 18, No. 1 (Fall 2017): 165-220.
- Lacroix, Marieve. "Relativite Aquilienne en Droit de la Responsabilite Civile - Analyse Comparee des Systemes Germanique, Canadien et Quebecois, La." *McGill Law Journal* 59, No. 2 (2013): 425-476.
- Marmayou, Jean-Michel. "Disappearance of the Cause in the Individual Sponsorship Deal." *Romanian Review of Private Law* 2011, No. 2 (2011): 253-273.
- Mignot, Marc. "De la solidarite en general, et du solidarisme contractuel en particulier ou Le solidarisme contractuel a-t-il un rapport avec la solidarite?." *Revue de la Recherche Juridique-Droit prospectif* 4 (2004): 2153-2197.
- Minkada, Herve Magloire Moneboulou. "Question de la Definition du Contrat en Droit Prive: Essai d'Une Theorie Institutionnelle, La." *Juridical Tribune* 4, No. 1 (June 2014): 88-128.
- Niksic, Sas. "The Obligation Cause and Related Institutes in Comparative Law." *Zbornik Pravnog Fakulteta u Zagrebu* 56, No. 4 (2006): 1057-1102.
- Or'ara, Assali. "The Contractual Balance at the Conclusion of the Contract." PhD diss., University of Algeria 1, 2015.
- Padilla, Jorge, Natalia Rueda and Malory Zafra Sierra, "Labor Creadora de la Jurisprudencia de la Corte de Oro - Los Ejemplos de la Causa del Contrato, el Error de Derecho y la Responsabilidad por Actividades Peligrosas." *Revista de Derecho Privado* 26 (2014): 105-158.
- Pillet, Gilles. "The Reform of French Contract Law and of the General Rules on Obligations: The Civil Code Faces the Challenges of the Market." *International Business Law Journal* 2016, No. 3 (2016): 235-254.
- Poldnikov, Dmitri. "Origins of General Concept of Contract in Western European Legal Science." *Journal on European History of Law* 7, No. 2 (2016): 53-59.
- Pop, Liviu. "General Considerations on the Reform of the Right of Obligations in the French Civil Code." *Romanian Review of Private Law* 2018, No. 1 (2018): 273-289.
- . "The Main Content of the Reform of Common Law Contracts in the French Civil Code." *Romanian Review of Private Law* 2018, No. 2 (2018): 260-322.
- Rakoff, Todd D. "The Five Justices of Contract Law," *Wisconsin Law Review* 2016, no. 4 (2016): 733-796.
- Saleh, Nabil. "Definition and Formation of Contract under Islamic and Arab Laws." *Arab Law Quarterly* 5, No. 2 (May 1990): 101-116.
- Sandomierski, David. "Tension and Reconciliation in Canadian Contract Law Casebooks." *Osgoode Hall Law Journal* 54, No. 4 (2017): 1181-1244.
- Scalise, Ronald J. Jr. "Classifying and Clarifying Contracts." *Louisiana Law Review* 76, No. 4 (Summer 2016): 1063-1108.
- Sejean, Michel. "The French Reform of Contracts: An Opportunity to Tie Together the Community of Civil Lawyers." *Louisiana Law Review* 76, No. 4 (Summer 2016): 1151-1162.
- Serrano, Agustin Luna. "Towards the Abandonment of the Mention of the Cause in the Defining Conformation of the Contract." *Cuadernos de Derecho Transnacional* 2, No. 2 (October 2010): 140-148.

- Siklosi, Ivan. "Some Thoughts on the Inexistence, Invalidity and Ineffectiveness of Juridical Acts in Roman Law and in Its Subsequent Fate." *Journal on European History of Law* 8, No. 1 (2017): 90-97.
- Stoyanov, Dimitar. "Causa and Consideration - A Comparative Overview." *Lex ET Scientia International Journal* 23, No. 1 (2016): 14-33.
- Swain, Warren. "Contract as Promise: The Role of Promising in the Law of Contract - An Historical Account." *Edinburgh Law Review* 17, No. 1 (2013): 1-21
- Trakman, Leon E. "Public Responsibilities beyond Consent: Rethinking Contract Theory." *Hofstra Law Review* 45, No. 1 (Fall 2016): 217-262.
- Tsuruda, Sabine. "Contract, Power, and the Value of Donative Promises." *South Carolina Law Review* 69, No. 2 (Winter 2017): 479-[vi].
- Visick, James. "The Intellectual Influences on the Code Civil." *UCL Jurisprudence Review* 15 (2009): 198-221.
- Wilson, Carlos Pizarro. "Notas Criticas sobre el Fundamento de la Fuerza Obligatoria del Contrato - Fuentes e Interpretacion del Articulo 1545 del Codigo Civil Chileno," *Revista Chilena de Derecho* 31, No. 2 (May-August 2004): 225-238.

Websites

- Légifrance, le service public de la diffusion du droit. "French Court of Cassation, civil room 1, public sitting of Wednesday 3 July 1996, no of appeal: 94-14800." <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000007036953&fastReqId=934404352&fastPos=18>. Accessed 16 January 2019.
- . "French Court of Cassation, civil room 1, public sitting of Tuesday 7 April 1992, no of appeal: 90-19620," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000007028134&fastReqId=79183410&fastPos=1>, accessed 1 January 2019.
- . "French Court of Cassation, civil room 3, public sitting of Wednesday 20 October 2010, no of appeal: 09-66113." <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT0000022946030&fastReqId=860674041&fastPos=7>. Accessed 1 January 2019.
- . "French Court of Cassation, civil room 1, public sitting of Wednesday 10 July 2013, no of appeal: 12-17407," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000027704553&fastReqId=377085741&fastPos=5>, accessed 1 January 2019.
- . "French Court of Cassation, civil room 1, public sitting of Wednesday 6 September 2017, no of appeal: 16-15331." <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000035535345&fastReqId=1339938794&fastPos=22>. Accessed 1 January 2019.
- . "French Court of Cassation, commercial room, public sitting of Wednesday 25 October 2017, no of appeal: 16-16839." <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000035925323&fastReqId=1339938794&fastPos=21>. Accessed 1 January 2019.
- . "French Court of Cassation, civil room 1, public sitting of Wednesday 2 October 2013, no of appeal: 12-22846 12-22948." <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000028038975&fastReqId=1057857571&fastPos=14>. Accessed 2 January 2019.
- . "French Court of Cassation, civil room 1, public sitting of Wednesday 26 September 2012, no of appeal: 11-12945." <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000026432007&fastReqId>

- =783224280&fastPos=17. Accessed 2 January 2019.
- . "French Court of Cassation, civil room 1, public sitting of Wednesday 29 June 2011, no of appeal: 10-12018," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000024295488&fastReqId=2006027488&fastPos=27>. Accessed 2 January 2019.
- . "French Court of Cassation, civil room 1, public sitting of Wednesday 14 May 2014, no of appeal: 13-16102," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000028945068&fastReqId=755549784&fastPos=19>. Accessed 3 January 2019.
- . "French Court of Cassation, civil room 1, public sitting of Thursday 13 November 2014, no of appeal: 13-25550," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000029767557&fastReqId=1790128920&fastPos=17>. Accessed 3 January 2019.
- . "French Court of Cassation, civil room 1, public sitting of Thursday 15 January 2015, no of appeal: 13-13565," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000030114118&fastReqId=722004103&fastPos=16>. Accessed 3 January 2019.
- . "French Court of Cassation, civil room 3, public sitting of Tuesday 8 June 2010, no of appeal: 09-15166," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000022342474&fastReqId=100197999&fastPos=3>. Accessed 3 January 2019.
- . "French Court of Cassation, civil room 3, public sitting of Wednesday 1 March 2000, no of appeal: 98-16836," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000007041680&fastReqId=204395887&fastPos=4>. Accessed 3 January 2019.
- . "French Court of Cassation, civil room 1, public sitting of Thursday 1 December 2011, no of appeal: 09-15779," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000024916439&fastReqId=1287568081&fastPos=23>. Accessed 3 January 2019.
- . "French Court of Cassation, civil room 1, public sitting of Thursday 4 November 2010, no of appeal: 07-21303," <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000023012500&fastReqId=1287568081&fastPos=26>. Accessed 3 January 2019.