

## CONDITIONS EXCUSES THE GOAL FROM HIM (STUDY COMPARISON)

### AS CONDIÇÕES JUSTIFICAM O GOL DELE (COMPARATIVO DE ESTUDOS)

Article received on: 12/19/2025

Article accepted on: 3/23/2026

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The authors declare that there is no conflict of interest

#### Abstract

It deals this Search system Excuses in the law Civilian As tool legal organize antiquities delay in to implement Obligations doctrinal. And aims to statement The role that He performs it Excuses in to set moment Standing Responsibility doctrinal and arrangement Antiquities Legal The resulting On it.as He directs light on importance Excuses in investigation Balance between an interest creditor in protection his right and interest debtor in He granted it an opportunity legal To fulfill. And he concludes Search to that Excuses It represents Guarantee Basic For stability Transactions Contractual and prevent arbitrariness in use Rights. This research examines the system of notice of default in civil law as a legal mechanism regulating the effects of delay in the performance of contractual obligations. It aims to clarify the role of notice in determining the moment at which contractual liability arises and the legal consequences that follow. The study also highlights the importance of notice in balancing the creditor's interest in protecting their rights with the debtor's interest in being granted a final legal opportunity to perform. The research concludes that notice of default constitutes a fundamental safeguard for contractual stability and the prevention of abuse of rights.

**Keywords:** Notice of Default. Contractual Liability. Civil Law. Delay in Performance. Contractual Obligations.

#### Resumo

*Este trabalho aborda o sistema de notificação de inadimplência no Direito Civil como ferramenta jurídica para regular os efeitos do atraso no cumprimento das obrigações contratuais. E visa destacar o papel que a notificação desempenha na definição do momento em que a responsabilidade contratual se concretiza e na organização das consequências jurídicas daí decorrentes. Além disso, o trabalho destaca a importância da notificação na busca do equilíbrio entre o interesse do credor em proteger seus direitos e o interesse do devedor em receber uma oportunidade legal para cumprir suas obrigações. E conclui que a notificação de inadimplência representa uma garantia básica para a estabilidade das transações contratuais e para a prevenção da arbitrariedade no exercício dos direitos. Esta pesquisa examina o sistema de notificação de inadimplência no direito civil como um mecanismo jurídico que regula os efeitos do atraso no cumprimento das obrigações contratuais. Tem como objetivo esclarecer o papel da notificação na determinação do momento em que surge a responsabilidade contratual e as consequências jurídicas que se seguem. O estudo também destaca a importância da notificação no equilíbrio entre o interesse do credor em proteger seus direitos e o interesse do devedor em receber uma última oportunidade legal para cumprir. A pesquisa conclui que a notificação de inadimplência constitui uma salvaguarda fundamental para a estabilidade contratual e a prevenção do abuso de direitos.*

**Palavras-chave:** Notificação de inadimplência. Responsabilidade contratual. Direito Civil.

*Atraso no cumprimento. Obrigações contratuais.*

## 1 INTRODUCTION

### 1.1 First: definition topic the study and a statement of its importance

Excuses he system legal essential within range Obligations Civil and responsibility Doctrinal, It represents The means that Expresses from During it creditor on His attachment Rightfully in to implement Commitment, He warns debtor to Loyalty By his commitment within framework Time Legal The specified one, with ranking Antiquities Legal The resulting on delay in Implementation.

Gain study Excuses Its importance from His being It forms basis Legal legitimacy Claim Judicial Implementation or cancellation or compensation And contributes in investigation Balance and justice between Parties The contractor And it is prohibited arbitrariness in use Rights as Enhances clarity procedures Legal Safety Applying it in Relations Civil And the doctrine.

### 1.2 Second: the problem of the study

It is problem Search in vagueness framework Legal The organizer Conditions Excuses And they differed Applications Jurisprudence and judicial about stir Legal.as It is raised Problem to set bezel adequacy Excuses in ranking Responsibility doctrinal Discrimination between His conditions Correct And those that no It is considered In it Legally.And it is added to that question around bezel investigation system Excuses For balance Required between protection right creditor Guarantee non harm At the center debtor Legal.

### 1.3 Third: study methodology

It depends This is amazing the study on Curriculum analytical Descriptive, from during analysis Texts Legal The organization For excuses in the law Civilian Iraqi Numbered40For the year1951The effective And the average, and statement Its conditions and its effects Legal.as Based to Curriculum inductive via Track Opinions Jurisprudence Legal And the efforts Judicial The The connection, With the aim extraction Rules public The ruler For this order.And it is completed that By the method Comparative when The requirement, from during comparison rulings Excuses with the law Civilian Egyptian Numbered131For the year1948and the law Civilian French Law No. 1804, in force as amended in 2016, And the signal to Applications Legislative Jurisprudence The The connection, In what Contributes in deepening Understanding and investigation Goals the study In style scientific My methodology.

### 1.4 Fourth, the structure of the study

We decided that the study structure should be as follows:

#### **First topic:Conditions for excuse**

- The requirement the first:delay debtor on Loyalty.
- The requirement the second:that He is right creditor Project.
- The requirement the third:that He is Religion due performance.

#### **Research the second: The goal from Excuses**

- The requirement the first:Interest Positivity For the creditor
- The requirement the second:surround debtor In a way official Not to implement His commitment.
- The requirement the third:grant debtor an opportunity Last To implement His commitment.

## 2 THEORETICAL REFERENTIA

### 2.1 Research the first-conditions for excuse

A formal notice of default is a legal instrument intended to compel a debtor to fulfill their obligation. It is a legal means of protecting the creditor's rights and ensuring the execution of contractual obligations. For a formal notice of default to be valid and enforceable, it must meet a set of fundamental legal requirements established by law and jurisprudence. In the first branch, it is due to the debtor's delay in payment. In the second branch, the condition for the excuse is that the creditor's right is legitimate and legal. In the third branch, the condition for the excuse is that the debt is estimated and due for payment. Understanding these conditions is key to understanding the responsibilities and rights of the parties, and to ensuring that the notice is applied in a legally sound manner, without harming the rights of either party or exceeding the bounds of judicial authority. This will be covered in the following sections, as follows:

- The requirement the first: The debtor was late in paying.
- The requirement the second: The creditor's right must be legitimate.
- The third requirement: that the debt be due and payable.

### 2.2 The requirement the first: the debtor was late in paying

The concept of default refers to the situation where a debtor fails to fulfill an obligation by the legally stipulated or agreed-upon deadline, with the delay being without legitimate cause or force majeure preventing performance. In this case, the debtor is considered in default and incurs legal obligations towards the creditor. However, if the delay arises from an external cause beyond the debtor's control, the law interprets it in their favor and considers them not in default. The concept of default also encompasses obligations related to the delivery of a specific sale, particularly if the sale is indivisible and belongs to several creditors. In such cases, delivery must be made to all creditors together according to their respective shares, and no creditor may receive the sale without the others. If force majeure prevents performance of the obligation, the obligation to

provide notice of default is waived, and the debtor has the right to raise this defense in court.<sup>1</sup>

For example, if the landlord is obligated to deliver a rented property to the tenant, and a fire happens to occur in the property before delivery, then the delay resulting from this fire is beyond the landlord's control. Therefore, excuses are ineffective, and the debtor can prove force majeure to be released from their obligation. The same principle applies to factories or projects destroyed by a flood, earthquake, or volcano, even if there are obligations to employ workers or fulfill employment contracts; the debtor is exempt from fulfilling these obligations as long as the cause is due to force majeure<sup>2</sup> and In Iraqi civil law For example Article 168 stipulates that "If it becomes impossible for the party bound by the contract to perform the obligation in kind, he shall be ordered to pay compensation for failure to fulfill his obligation, unless he proves that the impossibility of performance arose from an external cause beyond his control. The same shall apply if the party bound is late in performing his obligation."<sup>3</sup>

The Iraqi judiciary affirmed this principle in One resolution<sup>4</sup> Federal Court of Cassation Where the text "...It is established from the judicial investigations and the facts of the case that the two disputing parties concluded Contract No. 1620 on 11/6/2016 to participate in establishing a private hospital in Kirkuk named Dar Al-Salam Hospital, which was leased by the plaintiff/appellant from the Sunni Endowment Funds Management and Investment Authority in Kirkuk, on the condition that the appellant defendant would repair and add structures to the existing building as the owner of the capital, as well as equip the hospital with devices, equipment and beds according to the prepared designs. Since he failed to fulfill his contractual obligations despite being notified through the Kirkuk notary public, and his completion rate was zero according to the expert consulting engineer's report dated March 3, 2021, the lawsuit in this case has legal basis. This is because, in bilateral contracts, if one party fails to fulfill their

<sup>1</sup> See: Dr. Abdul Majeed Hakim, Provisions of Obligation in Iraqi Civil Law, Al-Ani Press, Baghdad, 1975, pp. 132–135.

<sup>2</sup> See: Dr. Abdul Razzaq Al-Sanhuri, The Mediator in Explaining Civil Law - The Theory of Obligation in General, Part One, Dar Al-Nahda Al-Arabiya, Cairo, 2004, p. 783.

<sup>3</sup> He looks: the law Civilian Iraqi numbered 40 For the year 1951, Materials (168,169/2,171,380,868,1268)

obligations, the other party, after giving notice, may request termination of the contract with compensation if warranted...<sup>4</sup>

We see Through this decision, the Federal Court of Cassation established an important judicial principle in determining the case of a debtor's delay in fulfillment, as it showed that the mere passing of the agreed period without the obligation being carried out, with proof of the legal notice, is considered sufficient evidence of the existence of a case of delay, as long as the debtor does not prove the existence of an external reason or force majeure that prevented the execution. This judicial trend is consistent with the spirit of Article (168) of the Iraqi Civil Code, which links contractual liability to the debtor's delay without a legitimate excuse, and with the provisions of Article (177/1), which permits termination after notification. However, the Iraqi legislator has not established a clear criterion for distinguishing justifiable delay from delay that gives rise to liability, nor has it specified the precise legal consequences of each case, thus leaving their assessment to the judge's discretion. Therefore, the decision under consideration contributes to filling this legislative gap and reinforces the principle that delay is not presumed merely upon the expiry of the deadline, but must be accompanied by proof of a valid excuse and the absence of a legitimate reason preventing performance. Hence, the need arises for legislative intervention that establishes a comprehensive legal framework for delays in fulfilling obligations, ensuring a balance between the creditor's interest in enforcement and the debtor's interest in being able to perform within reasonable limits.

Becomes A formal notice is required if the debtor is late without a legitimate reason. The obligation to give notice is waived if the delay is due to force majeure or an external cause beyond the debtor's control. Similarly, if the delay is due to the creditor himself, giving notice is not required, because the debtor cannot be held responsible for circumstances beyond his control, such as a fire in the rented property or a factory being destroyed by a flood or earthquake. In such cases, the debtor's legal obligation is waived and he is released from liability, even though the creditor may have given a formal notice.

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<sup>4</sup> See: Federal Court of Cassation Decision No. 5195/Civil Panel/2021 dated 14/12/2021 (unpublished),

### **2.3 The requirement the second: the creditor's right must be legitimate.**

For a valid excuse to be accepted, the creditor's right must be legitimate and legally established. There is no point in issuing a formal notice to claim a right that is illegal or not based on a legal ruling. This is evident in the case of a claim for a debt whose statutory limitation period has expired, or a claim for a debt arising from an illegal act such as gambling or the like. However, in the case of suspended contracts, a formal notice is valid unless the debtor insists on non-performance due to a lack of capacity, fraud, or deception. As for unfair advantage, it is not a valid reason for invalidating or rescinding a contract unless the unfair advantage is gross or minor. This distinction has been established in legal scholarship and jurisprudence.<sup>5</sup>

The Iraqi judiciary has established that the notice must be specific and detailed, as shown in Federal Court of Cassation Decision No. 204 dated 02/19/2008, where the court ruled that the lease contract could not be terminated due to the creditor's failure to properly specify the notice, as the notice was insufficient to demand that the debtor pay the outstanding rent. The plaintiff was required to issue a specific notice to settle the accumulated obligations before filing the lawsuit. If the debtor did not comply, the plaintiff had the right to file a lawsuit for termination due to the resulting damages.<sup>6</sup>

### **2.4 The requirement the third: the debt must be of a specific amount and due.**

The debt subject to the notice of default must be of a specific amount and known to the debtor with absolute certainty. If the debt is unknown or unspecified, the notice of default cannot be issued, as it presupposes a clear and established obligation that the debtor can be required to fulfill precisely. Furthermore, the debt must be due and payable. If it is contingent upon a suspensive condition that has not yet been fulfilled, the notice of default is invalid. Or subject to a resolutive condition that has been fulfilled, or an indefinite contingent debt. The creditor is prohibited from issuing a formal notice of default to the debtor, as the obligation does not become due before the condition is met. It is inconceivable to consider the debtor in a position of default before the right to claim

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<sup>5</sup> See: Article 121 of the Iraqi Civil Code No. 40 of 1951, as amended.

<sup>6</sup> See: Federal Court of Cassation Decision No. 204 dated 19/02/2008 is unpublished.

payment even arises. This ruling also applies to deferred debts; the debtor cannot be notified of the default before the due date, because such a notice would be issued for an obligation that is not yet due and would have no legal effect. The law stipulates that a formal notice of default can only be issued for an obligation that is actually due.<sup>7</sup>

In the decision of the Federal Court of Cassation, "...The debt owed by the defendant/appellant was established by virtue of the decision of the Diwaniyah Court of First Instance No. (4465/B/2022) dated (2/22/2023), which was issued in absentia against the defendant after he was notified through official newspapers, as he was unaware of it. By establishing the claim is that the transfer of ownership of his shares to the second defendant occurred on (19/12/2022). However, this transfer took place before the debt owed by the defendant became established and due, rendering the claim legally unfounded and requiring dismissal. This was the ruling of the initial court, upheld by the Court of Appeal in its distinguished judgment, which correctly applied the provisions of the law. Therefore, it was decided to uphold it."<sup>8</sup>

We see that this decision indicates that a debt is not due until the agreed-upon deadline has passed, and that any financial transactions or transfers of ownership before the debt's due date do not affect the legal basis of the claim. The decision also highlights the importance of the legally defined timeframe for a debt in regulating the rights and obligations between the parties, and ensuring that the debtor is not held liable before the legal conditions of the debt are met.

And In Egyptian civil law, the right to claim a debt is contingent upon the obligation being due and its limits being defined. Article 147 of the Egyptian Civil Code stipulates that the obligation must be valid and specific for the debtor to be required to perform it. Furthermore, the debt in question cannot be claimed before the agreed-upon due date or the fulfillment of a suspensive condition if the debt is conditional upon it. Consequently, any action taken by the debtor before the debt becomes due has no legal effect against the creditor, and a civil notice cannot be served in this regard, as such a notice presupposes the existence of an obligation that is already due. Egyptian court

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<sup>7</sup> He looks: d. Abbas Al-Aboudi, to explain rulings Commitment–Implementation Al-Jabri and implementation Optional, house Culture For publication And distribution, Oman, T1, p214–218.

<sup>8</sup> See: Decision court Discrimination Federalism, Authority Appeals drug, decision number 4217/2024, Issued on the date 11/11/2024 (Unpublished).

rulings also affirm that judicial procedures, such as default judgments and official notifications, establish the due date of the debt and the creditor's right to claim thereafter. Therefore, any financial transactions issued before the obligation became due are not considered valid.<sup>9</sup>

As for French Civil Code, Article 1231-1 of the French Civil Code states that "The debtor is obligated, where necessary, to pay compensation for damages, either due to non-performance of the obligation, or due to delay in performance if he does not justify that the non-performance was a result of force majeure."<sup>10</sup> An obligation must be due and payable for a creditor to demand its performance, and the amount of the debt must be specified or precisely determinable. If the obligation is contingent upon a suspensive condition that has not yet been fulfilled, or deferred to a specific date that has not yet arrived, any claim or notice to the debtor is ineffective. French jurisprudence emphasizes that specifying the due date and clearly defining the amount of the debt are essential conditions for placing the debtor in default through civil notice; otherwise, the procedure lacks its legal substance and becomes inadmissible in court. Furthermore, French courts maintain that any action taken by the debtor before the debt becomes due and payable cannot affect the creditors' legal rights until the conditions of the obligation are met.<sup>11</sup>

### 3 RESULTS AND DISCUSSION

#### 3.1 Second topic - the purpose of the excuse

Notice of default is one of the most important legal mechanisms established by the legislator to regulate the relationship between creditor and debtor after the obligation has fallen due. It embodies the principle of contractual justice by achieving a balance between the creditor's interest in immediate performance and the debtor's interest in obtaining a final opportunity to fulfill the obligation. Notice of default is not merely a formal procedure preceding legal action; rather, it is a legal instrument with substantive substance, aiming to transform the obligation from its original state to one of deferment,

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<sup>9</sup> See: Article 147 of the Egyptian Civil Code, and Article 219 of the Egyptian Civil Code.

<sup>10</sup> See: Article 1231-1 of the French Civil Code,

<sup>11</sup> See: Jean Carbonnier, *Civil Law, Obligations*, 10th ed., Paris, 2008, pp. 345–347

and to define the moment when the debtor transitions from a mere obligor to one legally responsible for the default.

The purpose of the notice is evident in that it is a procedure aimed at achieving multiple objectives, some of which relate to the rights of the creditor and some of which relate to the interest of the debtor. In this section, we will examine the purpose of the notice and its role in the creditor's will, as well as in determining the debtor's position. We will also see whether the notice has an informative role or function, and what its impact is on the contractual relationship between the contracting parties. Therefore, it can be said that the purpose of the notice is embodied in three main axes: protecting the positive interest of the creditor, enabling the debtor to have a final opportunity to fulfill his obligation, and formally informing him of his failure to fulfill what he committed to, and these are the purposes that will be explained in detail in the following sections.

- First requirement: The creditor's positive interest
- The second requirement: to formally inform the debtor of the non-performance of his obligation.
- Third requirement: Giving the debtor a final opportunity to fulfill his obligation.

### **3.2 First requirement - the creditor's positive interest**

The purpose of a formal notice is to inform the debtor of the creditor's serious intent to immediately fulfill the contract between them without any delay. If the due date arrives without the debtor fulfilling their obligation or paying their debt, and the creditor remains silent regarding the demand for payment, this could be interpreted as leniency or tacit acceptance of the postponement. It is generally assumed that the due date is set for the benefit of the debtor, not the creditor, and the mere arrival of the payment deadline does not automatically place the debtor in default.

Therefore, if the due date arrives without the creditor issuing a formal notice, the debtor may be misled into believing that the delay in payment does not harm the creditor or that the creditor has implicitly agreed to grant an extension. To avoid this misconception, the creditor must undertake a crucial formality by formally notifying the

debtor, clearly demonstrating their right to immediate performance and confirming that any delay will cause them compensable harm.<sup>12</sup>

In this case, the notice is considered conclusive legal evidence of the creditor's lack of tolerance and his insistence on his right. The Iraqi Civil Code stipulated this meaning in Article (256), which states:

"Compensation is only due after the debtor has been notified, unless the law stipulates otherwise."<sup>13</sup>

And Some of them went Jurisprudence Iraqi The notice of default represents a crucial stage between a simple obligation and a legally recognized state of delay; it is the means by which the debtor is transformed from merely obligated to perform to being held responsible for the delay., and The excuse your A procedure aimed at declaring the creditor's firm intention to execute the judgment, and placing the debtor in a position of responsibility for the delay should he fail to execute after being notified.<sup>14</sup>

And in the same direction, he went Another aspect of jurisprudence The notice is "a legal means that reveals the creditor's intention to perform and eliminates any doubt about his consent to the delay. In this sense, it is a procedure that is both substantive and formal, since compensation cannot be given without it."<sup>15</sup>

The Iraqi Federal Court of Cassation confirmed this concept in a ruling. at Yes, since it ruled that:

"...The notice served by the Karrada Notary Public, No. 41962, dated October 12, 2011, requesting a 20% price increase in Contract No. 42/2011 for the maintenance and paving of Road (S-T) in Governorate (N), does not meet the legal formalities required by Article 177/1 of the Civil Code. It failed to include a summons for the defendant to fulfill its contractual obligations within the period specified in the notice, rendering the lawsuit inadmissible. Since the Court of Appeal upheld the initial ruling dismissing the case, its appealed judgment is in accordance with the law, and therefore, it is hereby affirmed....."<sup>16</sup>

<sup>12</sup> He looks: d. slave Glorious The wise man And the professor slave the rest Al-Bakri And the professor Mohammed Taha Al-Bashir, the law Civilian–C2: rulings Commitment, institution house Books For printing And publishing, university Mosul, 1980m, p47.

<sup>13</sup> See: Article (256) of the Iraqi Civil Code No. (40) of 1951, in force and amended.

<sup>14</sup> See: Dr. Abdul Majeed Al-Hakim, Provisions of Obligation in Iraqi Civil Law, Baghdad, Al-Irshad Press, 1975, p. 145.

<sup>15</sup> See: Dr. Jalil Al-Saadi, Problems of Contracting via the Internet, Baghdad, 2008, p. 57.

<sup>16</sup> See: Federal Court of Cassation Decision No. (1357) dated 7/9/2012, unpublished.

Thus, it becomes clear that issuing a warning is not merely a formal procedure, but a legal means to protect the positive interest of the creditor, by placing the debtor in a state of delay and proving the seriousness of the demand for payment and the entitlement to compensation in case of breach.

The Egyptian legislator also included a similar provision in Article (219) of the Civil Code, which states:

"The debtor may be notified by giving him a warning or by something that serves as a warning. Notification may be given by mail in the manner specified in the Code of Civil Procedure, or it may be based on an agreement stipulating that the debtor shall be notified as soon as the due date arrives without the need for any further procedure."<sup>17</sup>

It indicates text Material to keen Civil Law Egyptian on protection creditor from delay debtor in Loyalty By committing, In what Investigates The goal Positivity For the creditor in Fulfillment his right.as It shows Text that Excuses maybe that It is In ways Multiple, whether directly or on road Mail or Under deal prior, In what Guarantees For the creditor Ways flexible and effective to practice his right Don Disable procedures.

It is clear from this that the Iraqi and Egyptian legislators considered the warning as an essential condition for the fulfillment of the obligation to implement and for the arrangement of its effects on the debtor's liability, so it is not possible to demand compensation or cancellation before it is given.

As for Egyptian jurisprudence He sees Part of it The excuse is "a necessary condition for the debtor to be found to be at fault if there is a delay in performance, as it is what transfers the obligation from its original state to a state of delay, and makes the debtor responsible for compensation"<sup>18</sup>

### **3.3 The requirement the second: officially notifying the debtor of their failure to fulfill their obligation**

The purpose of formal notice is to officially and unequivocally inform the debtor of their failure to fulfill their obligation and to demonstrate the extent to which they can

<sup>17</sup> See: Article (219) of the Egyptian Civil Code No. (131) of 1948, in force and amended.

<sup>18</sup> See: Dr. Abdul Razzaq Al-Sanhuri, *The Mediator in Explaining the New Civil Law - Provisions of Obligation: Effects of Obligation*, Cairo, Dar Al-Nahda Al-Arabiya, 1982, p. 263.

still perform what they have undertaken. It is a procedure that is both formal and substantive in nature, as it serves as a means of explicitly informing the debtor that the creditor is committed to the execution of the contract and that any delay in performance will constitute a breach warranting liability and compensation. The importance of this formal notification lies in the fact that it eliminates any doubt or belief the debtor may have regarding the creditor's leniency and legally places them in the position of a "defaulting debtor"<sup>19</sup>

The excuse may be viewed from two perspectives; the first is that it is a hardship on the part of the creditor by insisting on specific performance at the specified time, and the second is that it is compassion for the debtor, because it gives him one last chance to perform before resorting to forced performance or demanding compensation.<sup>20</sup>

From the perspective of the creditor's strictness, the notice of default is a clear declaration of intolerance or negligence in claiming the right, and proves that the debtor has become delinquent and late in fulfilling his obligation. From the perspective of leniency towards the debtor, it is considered a manifestation of contractual justice, as it gives the debtor prior knowledge that the delay is no longer acceptable, and allows him to fulfill his obligation voluntarily before legal consequences arise against him.<sup>21</sup>

The Iraqi legislator has mandated in Article (256) of the Civil Code that: "Compensation is not due unless the debtor has been notified, unless the law stipulates otherwise"<sup>22</sup>

The text of the article also stated (257) from the same law, confirming that:

"The debtor is notified by giving him a warning, and notification may be given by any other written request, and it may also be in accordance with an agreement stipulating that the debtor shall be notified as soon as the due date arrives without the need for a warning."<sup>23</sup>

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<sup>19</sup> See: Anwar Sultan, previous source, p. 367.

<sup>20</sup> See: Muhammad Shukri Surur, Summary of the General Provisions of Obligation, Dar Al-Nahda Al-Arabiya, Cairo, p. 44.

<sup>21</sup> See: Awj Emad Sabri Al-Obaidi, The Framework of Termination in Contractual Contracts: Between Theory and Judicial Application, First Edition, Al-Atik Book Manufacturing Company, Beirut, 2024, p. 224.

<sup>22</sup> See: Article 256 of the Iraqi Civil Code No. (40) of 1951, as amended.

<sup>23</sup> Material 257 From the Iraqi Civil Code No. (40) of 1951, as amended.

This was confirmed by the Federal Court of Cassation in one of its rulings, which stated: "...Whereas the notice served by the notary public in Karrada, No. 8984, dated 2/24/2008, indicated that the other contracting party had breached his obligation and must pay the amounts due under the contract, otherwise he would file a lawsuit to claim damages and terminate the contract, then what was stated in the aforementioned notice is sufficient as a condition for termination."<sup>24</sup>

We see thatThe decision is accurate in that it emphasizes the essence of the warning as a basic condition before demanding termination or compensation, and clarifies that the legislator did not stipulate a specific form for the warning as long as the legal purpose of it has been achieved, which is to officially inform the debtor of his breach of his obligation and give him a final opportunity to perform. The court's reasoning reveals that it established an important principle: the form of the notice is not the determining factor, but rather its content and legal effect. It suffices that the notice be addressed to the debtor in a manner that demonstrates their awareness of the breach and the grace period granted to rectify the situation before incurring the consequences of delay or termination. Furthermore, the court emphasized...TThe legality of a warning issued through a notary public.We see fromThis decision states that the formal notice represents a crucial stage between voluntary and compulsory enforcement, and serves as the final legal warning before the debtor assumes civil liability.This is consistent with the text of Article 257 mentioned above. It is also the position of the Egyptian legislator in Articles 218 and 219.

In contrast, Article (219) of the Egyptian Civil Code stipulates that:

"The debtor shall be notified by a warning or by something that serves as a warning. Notification may be done by mail in the manner specified in the Code of Civil Procedure, and it may also be based on an agreement stipulating that the debtor shall be notified as soon as the due date arrives without the need for any other procedure."<sup>25</sup>

Article (218) of the same law stipulates that:

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<sup>24</sup> See: Decision of the Federal Court of Cassation, Decision Type: Civil, Decision Number: 137/Adhar/2009, Decision Date: 2/25/2009.

<sup>25</sup> See: Article 219 of the Egyptian Civil Code No. (131) of 1948, as amended.

"Compensation is only due after the debtor has been notified, unless otherwise stipulated."<sup>26</sup>

It is evident from this that both the Iraqi and Egyptian legislators considered the excuse as a basic condition for entitlement to compensation. Expanding on that its scope includes both specific performance and performance by way of compensation, influenced in this by the position of the French Civil Code.<sup>27</sup>

and like that In essence, a formal notice of default is a legal act that creates a new status in the contractual relationship, transforming the debtor from an "ordinary debtor" to a "legally defaulting debtor." Its primary purpose is thus to establish the legal basis for holding the debtor accountable for the delay and enabling the creditor to claim compensation when necessary.<sup>28</sup>

Therefore, it is understood that formal notice does not, in itself, prove the debtor's fault, but rather establishes a legal delay in performance that opens the door to the consequences of contractual liability. Formal notice is not considered a means of proving fault, but rather a preliminary procedure that enables the creditor to move from the stage of amicable claims to the stage of judicial or compulsory enforcement.

In conclusion, we find that formal notice is an essential and indispensable procedure within the scope of contractual obligations, as compensation cannot be claimed without it, and the debtor cannot be considered in default except after being formally notified in accordance with what the law stipulates.

### **3.4 The requirement the third: the debtor was given a final opportunity to fulfill his obligation.**

The purpose of a formal notice is to give the debtor a final opportunity to fulfill their obligation to the creditor before legal consequences arise from delay or refusal to perform. It explicitly informs the debtor that the creditor insists on immediate performance and that any further delay will constitute a breach giving rise to

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<sup>26</sup> See: Article 218 of the Egyptian Civil Code No. (131) of 1948, as amended.

<sup>27</sup> See: Demoyo, *the law Civilian in France*, Part Sixth, p297.

<sup>28</sup> See: Salman Marqas, *Al-Wafi fi Sharh al-Qanun al-Madani - al-'Aqd wa al-Mas'uliyya al-Madaniyya*, Fifth Edition, 1988.

liability.,This objective is particularly achieved in cases where the debtor or one of their representatives is, in good faith, unaware of the due date or conditions of performance. In such instances, the formal notice of default serves to establish a clear and direct deadline for specific performance of the obligation. Therefore, the true purpose of the formal notice is to set a final deadline for performance, ensuring that the debtor's obligation is not left pending or subject to their personal discretion in determining the timing of performance.<sup>29</sup>

It represents Excuses A fundamental and important pillar in protection an interest creditor And gave an opportunity Last For the debtor To implement His commitment Eye or compensation.And in context very Excuses We explain in this Branch Importance Special for excuses And that Means To notify debtor Obligation Implementation Immediate and cut road Interpretations that may Grant debtor Yes Implicitly or as a mistaken belief, and it is directed job Excuses in this The shrine to situation end For confusion about date Loyalty and statement will creditor in Implementation Immediate.In Cases that He is In it debtor Hassan Intention no He knows on the date Loyalty leads Excuses an important role in stabilizing date Loyalty And the hand hand creditor on leniency implicit.Therefore becomes Excuses Means Spend By granting debtor an opportunity Last To implement Commitment Eye So stubbornness State or refrain debtor on Implementation despite Excuses It is right For the creditor to request cancellation The contract or compensation according to rulings Legal The The connection.<sup>30</sup>

As that Excuses It benefits in cases delay Implementation that no Attributed mistake to debtor so may Excuse me creditor city And it proves in the time same that delay did not It is mistake from debtor And with that makes Excuses The last a base To stand commitment debtor So did not Implement deserve For the creditor compensation with throw burden proof deny The mistake on Ateq The debtor.<sup>31</sup>

No It is forbidden Text Legal judge from that Grants time limit For the debtor until after to lift The lawsuit not that inhibitor that Exceeds debtor Deadline Specific So

<sup>29</sup> See: Muhammad Saeed Jaafar, *The Legal System of Excuses in Civil Contracts*, Dar Al-Jami'a Al-Jadeeda, Alexandria, 2018, p. 112.

<sup>30</sup> See: Mustafa Al-Awji, *the law Civilian–Part the second:Responsibility Civilian Publications Aleppo,2009*, p79gesticulate After that

<sup>31</sup> See: Mahmoud Cub,"Excuses in the law Civilian Egyptian», article publication,2006

the one who gives respite He should that He commits By fulfilling inside term The granted no It is permissible For the judge grant time limit Other.<sup>32</sup>

a summary Saying that Excuses when His goal in grant debtor an opportunity Last For implementation Forms element substantially in protection an interest creditor so It is clear date Loyalty Cut indication tolerance implicit And prepares basis Legal To claim By annulment or compensation Current Abstention on Implementation Therefore Commit Jurisprudence and the judiciary Necessity clarity content Alarm and excuses and matching it For requirements the law Civilian and procedures Proof

andThere are thoseHe seesFrom the juristsThe notice of default represents a fundamental guarantee for the debtor, as it informs him that the creditor will no longer tolerate delays and that he must fulfill his obligation immediately to avoid the legal consequences of breach of contract. Therefore, failure to issue the notice of default before filing a lawsuit constitutes a violation of the debtor's right to this guarantee and renders the creditor's legal claim premature.<sup>33</sup>

Thus, it becomes clear that the formal notice serves a dual function; on the one hand, it protects the creditor's interest in contract execution, and on the other hand, it grants the debtor a final grace period, preventing them from incurring legal liability for non-performance or delay. Hence, it is evident that the legislator did not legislate the formal notice arbitrarily, but rather considered it an essential prerequisite to any legal claim or enforcement action, emphasizing the principle of gradual enforcement and adherence to the contract before its termination or claims for compensation.,He also explains that the purpose of the notice is not only to enable the creditor to claim his right, but also "to achieve contractual justice between the two parties by giving the debtor a final opportunity to perform before holding him responsible for the delay"<sup>34</sup>

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<sup>32</sup> He looks:judge Shuan Muhyi Religion(Source the previous), p21gesticulate After that; And the material177from the law Civilian that organize antiquities Abstention after Excuses in Contracts The vizier For both sides

<sup>33</sup> See: Dze'i, Rozhan, Excuses in a contract Contracting in the law Civilian Iraqi:study comparison, Volume5, number1, year2024, p451-463.

<sup>34</sup> See: Abd al-Razzaq al-Sanhuri, The Mediator in Explaining Civil Law - The Theory of Obligation in General, Part One, Dar al-Nahda al-Arabiya, Cairo, p. 617.

## 4 CONCLUSION

In conclusion, this research confirms Importance The process legal For excuses As tool Organizational Adjust antiquities delay in to implement Obligations within framework from legitimacy and justice.so It is considered basis Legal that adoption attic health Claim Implementation or cancellation or compensation It determines accurately moment transmission Commitment to range Responsibility doctrinal.as Contributes in Consolidation stability Transactions Contractual and prevent arbitrariness in use Right, from during Budget between protection an interest creditor Guarantee non download debtor Effects legal before depletion means The scheduled Legally speaking, we arrive at the following key conclusions and recommendations:

- 1- that legislator Iraqi did not places standard clear To distinguish delay Justification on delay Positive For responsibility, And did not He specifies Antiquities Legal minute The resulting on all condition, Which Leaves Her appreciation For the authority Appreciation For the judge.
- 2- The debt is not due until the agreed-upon deadline has passed, and any financial transactions or transfers of ownership before the debt becomes due do not affect the legal basis for the claim..
- 3- The importance of the legal timing of a specific debt lies in regulating the rights and obligations between the parties, and ensuring that the debtor is not held liable before the legal conditions of the debt are met..
- 4- It is clear that issuing a warning is not merely a formal procedure, but a legal means to protect the positive interest of the creditor, by placing the debtor in a state of delay and proving the seriousness of the demand for payment and the entitlement to compensation in case of breach.
- 5- It is clear from that that legislators Iraqi And the Egyptian Consider Excuses condition substantially To verify Commitment Implementation and arrangement stir in liability The debtor, No maybe Claim compensation or cancellation before His guidance.

## 5 RECOMMENDATIONS

For all the above, There is a need for legislative intervention that establishes a comprehensive legal framework for delays in fulfilling obligations, ensuring a balance between the creditor's interest in enforcement and the debtor's interest in enabling enforcement within the framework of the limits of reason<sup>5</sup>.

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