



THE LEGAL BASIS OF THE ADDRESSEE'S RIGHT ON RECEIPT OF THE GOODS

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Received: 8 th August 2024 Accepted: 6 th September 2024	The principle, according to the general rules in contracts, is that whoever concludes a contract is bound by it based on the principle of the relative effect of contracts. The contract only binds its two parties and does not generate obligations and rights for others according to the principle, as agreements have no effect except between the contracting parties, and this means that the one who concludes the contract is He is bound by it, but there is a case in which the person who concludes the contract is not bound by it
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THE INTRODUCTION

The principle, according to the general rules in contracts, is that whoever concludes a contract is bound by it based on the principle of the relative effect of contracts. The contract only binds its two parties and does not generate obligations and rights for others according to the principle, as agreements have no effect except between the contracting parties⁽¹⁾, and this means that the one who concludes the contract is He is bound by it, but there is a case in which the person who concludes the contract is not bound by it. The representative who concludes the contract is not bound by it even though he concluded it according to what was stipulated in Article (1165) of the French Civil Code, which states: "The agreements shall have no effect." Unless the contracting parties have made it clear, it does not harm or benefit non-contracting parties...⁽²⁾ Hence, it can be said that in addition to the concept of the contracting party, there is another concept, which is the concept of the party, so there is A person concludes a contract and receives its effect, another concludes a contract but does not receive its effect, and there is a third party who does not enter into a contract but receives its effect, and the latter is the one who concerns us in this study, as the latter is a party to the contract but is not a contracting party, except that he is a party to the contract, and the party to the contract is The principal, meaning that the provisions of the contract apply to this principal, both positively and negatively.⁽³⁾

The term "contractor" applies to every person who participates in concluding the contract, whether in person or through his representative⁽⁴⁾, so the effects of the contract apply to him as determined by the agreement between them. The focus of our research is the party who was not a contracting party, but rather the effects of the concluded contract were directed to him, which is the addressee. The latter is considered other than the contract, and you must define the concept of a third party before you define the concept of the addressee. The third party can either be real or arbitrary⁽⁵⁾. The unreal refers to all persons who have no direct connection to one of the parties to the contractual relationship or a direct interest in that relationship, and therefore they are completely foreign to the contract and the contracting parties and there is no legal connection between them.() As for the judicious third parties, they are the ordinary creditors and the special successors⁽⁶⁾. These have a legal relationship, whatever it may be, with the parties to

(2) Muhammad Abdel-Wahhab, *The Graduation of Contractual Rules: A Study in the Standardization of Contracts (Comparative Study)*, PhD thesis, College of Law, University of Baghdad, 2016, p. 54

(3) Previous reference, p. 55

(4) Dr. Hilmi Bahjat Badawi, *The Origins of Obligations*, Book One, Contract Theory, Nouri Press, Cairo, 1943, pp. 288-889, also Dr. Sabri Muhammad Fater, *The Other than the Contract, a Comparative Study*, PhD thesis, College of Law, University of Baghdad, 1992, 18 et seq

(5) Dr. Jamil Al-Sharqawi, *The General Theory of Commitment*, Book One, Sources of Commitment, no place of publication, 1974, paragraph 62, p. 321.

(6) Khalil Ahmed Hassan Qarada, *Al-Wajeez fi Sharh Algerian Civil Law*, Part One, Sources of Commitment, Office of University Publications, Algeria, 2nd edition, 2005, p. 115

(7) Muhammad Nour Shehata, *The Concept of Others in Arbitration, An Analytical and Applied Comparative Study*, Dar Al-Nahda Al-Arabiya, Cairo, 1st edition, 1996, p. 25

the existing contractual relationship and therefore have a stake in the contract. Among these are the consignees in the contract of carriage. In other words, they are the third parties who have an interest in the concluded contract. (The addressee, as defined in Article (11/1) of the Hamburg Convention of 1978⁽¹⁾, regarding free transport: "The addressee is the person who is entitled to receive the goods under the contract of carriage, the transport document, or the electronic transport record"⁽²⁾. From jurisprudence, it is known to the addressee that: "He is the third party with an interest who can benefit from the enforcement of the contract as a legal fact. He has the right to demand that any other person respect his interest, and one of the parties to the contractual relationship can demand that the addressee fulfill an obligation related to the interest of this party, just as In the event that the carrier requires the consignee to pay the transportation fee if it is payable upon unloading."⁽³⁾

From jurisprudence, it is known to the addressee that: "He is the third party with an interest who can benefit from the enforcement of the contract as a legal fact. He has the right to demand that any other person respect his interest, and one of the parties to the contractual relationship can demand that the addressee fulfill an obligation related to the interest of this party, just as In the event that the carrier requires the consignee to pay the transportation fee if it is payable upon unloading"⁽⁴⁾.

What we notice about the above definition of the addressee, even though it includes the rights and obligations of the addressee, is that it is swamped with details, as it defines the addressee of the obligations and rights that fall to him and upon him, while the definition must be limited to the essence of the thing and its elements without extending to its effects and conditions.

There is no definition of the addressee within the provisions of the Iraqi Civil Law No. (40) of 1951, nor in the Iraqi Transport Law No. (80) of 1983, but we can deduce a definition of the addressee by extrapolating the text of Article (72)⁽⁵⁾, of the Transport Law Iraqi No. (80) of 1983. According to what is stipulated in the above-mentioned article, the addressee is the person who has the right to receive the thing that is the subject of the transport contract and bears the obligations resulting from this contract, through his possession of the transport document. Whatever the difference in the definition of the consignee, this is not an important thing. What is important in this regard is that the consignee is not a party to the contract of carriage concluded between the shipper and the carrier, but he acquires some rights and bears some obligations arising from this contract, such as the right to The carrier's demand to deliver the goods and the right to sue him if the goods are lost, damaged, or delayed, and his obligation to pay the transportation fare, if there is an agreement between the sender and the carrier to pay the fare at the place of arrival. Therefore, a dispute arose in jurisprudence regarding the legal basis for the rights and obligations of the addressee. As a result, several theories emerged in jurisprudence to discuss this issue, trying to find a legal basis for the addressee's right. These theories removed the status of third party from the addressee and included him as a party in the contractual relationship between the shipper and the carrier. We will undertake the research. All these theories are appreciated Therefore, a dispute arose in jurisprudence regarding the legal basis for the rights and obligations of the addressee. As a result, several theories emerged in jurisprudence to discuss this issue, trying to find a legal basis for the addressee's right.

These theories removed the status of third party from the addressee and included him as a party in the contractual relationship between the shipper and the carrier. We will undertake the research. These theories are evaluated separately, trying to reach the correct basis on which the rights and obligations of the addressee are based. Therefore, it requires us to distribute this study into five sections, according to the following details:

The first section: The theory of conditioning for the benefit of others.

The second section: The theory of incomplete prosecution.

The third topic: The theory of the special successor.

Fourth section: The theory of symbolic possession of goods.

The fifth section: The theory of will.

THE FIRST TOPIC

Conditioning Theory For The Benefit Of Others

To study this theory, we need to present it in the first requirement and then single out the second requirement to evaluate it.

The First Requirement

(2) Muhammad Abdel Fattah Tarak, *Maritime Transport Contract*, New University House, Alexandria, 1st edition, 2005, p. 163.

(3) Abbas Mustafa Al-Masry, *The Legal Status of the Consignee in the Maritime Transport Contract*, New University House, Alexandria, 2002, p. 82.

(4) The Hamburg Convention relating to the carriage of goods by sea, effective on (March 31, 1978).

(5) Basaid Murad, *Contract for the Maritime Carriage of Goods in accordance with Algerian Maritime Law and International Agreements*, PhD thesis, Faculty of Law, Abu Bakr Belkaid University, Algeria, 2012, p. 208

(6) Article (72) of the Iraqi Transport Law stipulates: "The transport document is a document proving the contract of transport and is considered evidence that the carrier has received the thing to be transported in the condition stated in it, and gives its legally authorized bearer the right to receive the thing".

Presentation Of Conditioning Theory For The Benefit Of Others

If the principle of the contract is that it does not grant a right to others, then the principle of it is also that it does not create an obligation for others, meaning that whoever is not a party to the contract or a general successor to one of its parties does not acquire a right from the contract directly, and this is a general rule established by legislation⁽¹⁾. As stipulated in Article (1119) of the French Civil Code, which states: "A person cannot, in general, commit to or contract in his personal name except for his own benefit".

As well as Article (152) of the Egyptian Civil Law No. (131) of 1948, which states: "The contract does not create an obligation for a third party, but it may create a right for him." However, the above-mentioned rule is not absolute, as there are exceptions to it, including a stipulation for the benefit of others. A non-legal stipulation is a legal act that takes place between two people, but its implementation depends on With three people, the stipulation for the benefit of others includes one contract, then between the stipulator and the contractor, and the beneficiary only gains his right from this particular contract, that is, from a contract to which he was not a party⁽²⁾.

Articles (152-153-154) of the Iraqi Civil Code regulate the provisions of the stipulation for the benefit of others⁽³⁾, and by extrapolating the above articles it becomes clear that the legislator stipulated three conditions that must be met for the stipulation to be in the interest of others, which are the following:⁽⁴⁾

First: The stipulator must contract in his name, meaning that the stipulator must contract in his own name, and therefore the beneficiary is not a party to this contract.

Second: The result of the will of the stipulator and the contractor is to create a direct right for the beneficiary that is derived directly from the contract concluded between the two parties above.

Third: The stipulator must have a personal interest, whether financial or moral, provided that it does not violate public order and morals.

After the previous presentation of the idea of stipulation for the benefit of others, it is jurisprudence⁽⁵⁾ who went to say that the legal basis for the rights and obligations of the consignee lies in the stipulation for the benefit of others. This means that when the shipper concludes a contract of carriage with the carrier, this contract includes a stipulation for the benefit of others, as the shipper stipulates that The carrier transports the goods and then delivers them to the consignee at the port of arrival.⁽⁶⁾

There are jurists⁽⁷⁾ who believe that what prevails in jurisprudence and space is to consider the sender as a contracting party for the benefit of the addressee, and this is only a case of stipulation for the benefit of others. The addressee is a beneficiary and his right does not become final unless he accepts to benefit from the pact concluded in his favor, and then from His receipt of the bill of transport (contract of carriage or bill of lading), without returning it, is tantamount to acceptance⁽⁸⁾ confirming his direct right against the carrier, and it follows that before this acceptance⁽⁹⁾ (i.e. before the addressee receives the bill of lading), the stipulator (sender) may The charterparty⁽¹⁰⁾, is reduced, as the order is issued to the carrier to return the goods to him or send them to another person. This theory has been supported by many judicial rulings, whether in France or Egypt⁽¹¹⁾. The prevailing opinion in jurisprudence and judiciary⁽¹²⁾, is to consider the sender as a contracting party for the benefit of the carrier. However, this theory, although it is closest to explaining the rights of the addressee, is not free from the criticisms directed at it, which we will present in the following section.

The Second Requirement Estimating Conditioning Theory For The Benefit Of Others

(2) For more details, see: Dr. Abdel-Hay Hijazi, Considerations on Stipulation for the Interest of Others, research published in the Journal of Legal and Economic Sciences, first issue, fifth year, 1963, pp. 138 et seq

(3) There is no equivalent for these texts within the provisions of the Iraqi Civil Code

(4) Dr. Abdul Majeed Al-Hakim Abdul Baqi Al-Bakri, Muhammad Taha Al-Bashir, Al-Wajeez in the Theory of Commitment

(5) Dr. Al-Sanhouri, the mediator in explaining the new civil law, Part One, Volume One, Theory of Commitment in General, Sources of Commitment, Al-Halabi Legal Publications, Lebanon, 3rd edition, 2000, p. 628.

(6) Jossieranal, Les, Transport, Op.Cit., No.383, Thaller, et percerou, Op. Cit., No.1163, Marais Credit Documentair, Op. Cit., No.54, et 5, Ly on, Caen et Renault, Op. Cit., T.5, N.750, Danjon, Op. Cit., T.3, No.983, Smeesterset Winkelnoten, Op. Cit., No.444. Dr. indicated. Aziz Abdul Amir Al-Ukaili, The Role of the Bill of Lading in Implementing the "K" or "S" Sales Contract, Dar Al-Nahda Al-Arabiya, Cairo, 1971, p. 242, footnote No. (1).

(7) Dr. Muhammad Farid Al-Arini, Air Law (Air Transport), University Printing and Publishing House, Beirut, without year of publication, p. 81

(8) Dr. Mohsen Shafiq, Commercial Contracts, Clause (123), quoted by Dr. Ali Al-Baroudi, Contracts and Commercial Bank Operations, Mansha'at Al-Ma'arif, Alexandria, 1968, p. 168

(9) Dr. Muhammad Farid Al-Arini, previous reference, p. 81

(10) Article (153/1) of the Iraqi Civil Code

(11) Dr. Ali Al-Baroudi, previous source, p. 168

(12) French Cassation May 20, 1912, International Review 28-326, April 12/198, Seri 1948, 1-115, February 3, 1948, Quarterly Review of Commercial Law, Mixed Appeal, April 8, 36B 48-276, referred to by Dr. Aziz Abdul Amir Al-Ukaili, previous source, p. 242, footnote No. (2).

(13) Dr. Bassem Muhammad Saleh, Commercial Law, General Theory, Al-Atak Book, Cairo, without year of publication, p. 202

Jurisprudence resorted to rooting the rights and obligations of the addressee, to the theory of stipulation for the benefit of others. However, even though this theory explained the rights of the addressee, it was unable to explain other matters that can be summarized as follows:

He can defend it against the stipulator, and then by applying this to the contract of carriage, the carrier can cling before the consignee to the defenses that he was permitted to direct to the shipper himself and derived from the contract of carriage, and this result in itself is sufficient to weaken the confidence that must be given to the bill of lading⁽¹⁾. As it represents the goods⁽²⁾, and enables the bearer to deal with the goods while they are in transit, and therefore the bill of lading is considered a commercial paper with a credit value that allows it to be traded and obtained through it to obtain credit, and therefore it is inconceivable that the bill of lading would perform this function (credit) in the event that it is possible to invoke defenses against the addressee and bearer of this document⁽³⁾. The rule of purification of defenses means the transfer of the right from the endorser to the endorser, free of defects that may mar the legal relationship between the previous signatories of the document, so that the bearer can be reassured of good faith and not be surprised by any defense arising from a legal relationship that he does not know.⁽⁴⁾

Third: The rule of stipulating for the benefit of others assumes the presence of the intention of stipulating for the benefit of others, meaning that the result of the will of the stipulator and contractor is to create a special right for the beneficiary that he derives directly from the contract⁽⁵⁾, which is clear from this that this case is not covered under this theory if the bill of lading is issued for authorization. Or to the bearer, as the shipper may not have contracted to sell or mortgage the goods when signing the bill of lading. In other words, the provisions of the stipulation for the benefit of third parties do not apply if the stipulator stipulated the right for himself and then transferred it to the beneficiary⁽⁶⁾, as the parties to the contractual relationship did not. Their intention is to stipulate any right for the benefit of others, and then it becomes clear that the idea of stipulating for the benefit of others cannot be a legal basis to justify a direct return between the addressee and the carrier, which makes it necessary to search for another legal basis away from this traditional idea.

The beneficiary⁽⁷⁾, as the parties to the contractual relationship did not intend to stipulate any right for the benefit of others, and therefore it becomes clear that the idea of stipulating for the benefit of others cannot be a legal basis to justify direct recourse between the addressee and the carrier, which makes it necessary to search for another legal basis. Away from this traditional idea.

Fourth: One of the conditions for the rule of stipulating for the benefit of others is that there be a personal interest for the stipulator in the stipulation⁽⁸⁾, and that such an interest does not exist in the contract of transport, because this contract in reality only includes one condition, which is the transport of the goods⁽⁹⁾, except that this statement is rejected, as it cannot be accepted because the stipulator, who is the shipper, has an interest in implementing the contract of carriage. The shipper, in most cases, is none other than the seller who concluded the carriage contract with the carrier, and that the contract stipulated on the latter an obligation to transport the goods and deliver them to the buyer, who is the consignee, and then the implementation of the carriage contract achieves an undoubted personal interest for the stipulator⁽¹⁰⁾.

THE SECOND TOPIC

The Theory Of Incomplete Prosecution

To address this theory, we need to distribute it into two requirements, dedicating the first to its presentation and complicating the second to evaluate it.

The First Requirement

Presentation Of The Theory Of Incomplete Prosecution

To create a direct relationship between the addressee and the parties to the contract of carriage, before the existence of an implicit agency between the addressee and one of the parties to the contract of carriage⁽¹¹⁾, the idea of

(2) Dr. Al-Sanhouri, a previous source, p. 635, as well as Dr. Abdul Majeed Al-Hakim, Muhammad Taha Al-Bashir, Id Al-Baqi Al-Bakri, previous source, p. 148

(3) Abbas Mustafa Al-Masry, previous source, p. 96

(4) Dr. Ali Al-Baroudi, Contracts and Commercial Bank Operations, previous source, p. 169, footnote No. (2).

(5) Our professor Dr. Ali Fawzi Al-Musawi, Al-Wajeez fi Commercial Papers, Nour Al-Ain Office, Baghdad, without year of publication, p. 66.

(6) Dr. Fawzi Muhammad Sami, Dr. Faiq Mahmoud Al-Shamaa, Commercial Law, Commercial Papers, Al-Atak Book Industry, Cairo, 1st edition, 2011, pp. 151 et seq.

(7) Dr. Al-Sanhouri, previous source, p. 646

(8) Dr. Suleiman Markus, The Theory of the Contract, Arab Renaissance House, Cairo, 1956, pp. 395 et seq

(9) Article (152) Iraqi civilian

(10) Ripert, p. 548. Referred to as Saeed Murad, previous source, p. 215

(11) Dr. Mustafa Kamal Taha, Al-Wajeez fi Maritime Law, Modern Egyptian Office for Printing and Publishing, Alexandria, 1971, p. 249.

(12) Dr. Mustafa Kamal Taha, Al-Wajeez fi Maritime Law, previous source, p. 278, also Dr. Latif Jabr Komani, The Responsibility of the Maritime Carrier, Dar Al-Ilmiyyah International for Publishing and Distribution, Amman, 1st edition, 2001, p. 164, footnote No. (1)

incomplete representation means that the person is someone other than himself when concluding the contract without being so when implementing it, because in the last case (execution), the idea of being a party to the original contractual relationship appears through the idea of implicit representation⁽¹⁾, and then the possibility of obliging others (the addressee) to fulfill the contractual obligations that arose in the original contractual relationship, given that one of the parties to this relationship is considered a representative of the addressee.

This theory was supported by a section of jurisprudence⁽²⁾, and they went on to justify the obligation of the addressee to pay the transportation fee is based on the idea of incomplete representation

(Delegation *Impar fait*), and in accordance with this The idea is that whoever contracts with the permission and on behalf of another is considered a representative of that third party, and then the effects of the contract go to the latter as the principal, and the representative remains responsible for implementing the obligations stipulated in the contract, just like the principal, and therefore the shipper remains committed to fulfilling the transportation fee, like the principal to whom it goes. Effects of the contract concluded by the agent in accordance with the provisions of the prosecution. ⁽³⁾

In other words, the direct right of the consignee to confront the carrier is due to the shipper being considered a representative of the consignee when he contracts with the carrier. However, this representation is an incomplete representation, as the shipper (the sender) remains a party to the contract of carriage at the time when the consignee is a party to this contract in accordance with the provisions of the deficient prosecution which stipulates that the effects of the contract be transferred to the principal.⁽⁴⁾

The Second Requirement Estimating The Theory Of Imperfect Prosecution

A trend in jurisprudence⁽⁵⁾ went to support the idea of incomplete representation, as this theory explains the carrier's right to have recourse against the shipper if the addressee refuses to receive the goods, considering that the shipper is a party to the contract, in addition to it explains the obligation of the addressee to pay the fare if the carrier demands that he deliver the goods. In application of the provisions of the transportation contract, transportation means that the consignee may not receive the goods except after paying the transportation fare and other expenses⁽⁶⁾.

However, even though this theory explains the obligation of the addressee to pay the transportation fee and explains the carrier's right to have recourse against the carrier, it is not free from criticism as the following criticisms have been directed at it:

First: This theory is based on a hypothetical intention⁽⁷⁾, by making the consignee a party to the contract of carriage, despite his being other than this contract⁽⁸⁾. When the shipper concludes the contract of carriage with the carrier, his intention is not limited to having two qualities: his capacity as principal and his capacity as deputy. On behalf of the consignee, the latter did not intend to be a party to the contract of carriage, nor for the shipper to be his representative, as it is difficult to assume this⁽⁹⁾.

Second: Adopting this theory makes the consignee bound to the contract of carriage, not from the time the bill of lading reaches him, but rather from the time the contract is concluded between the sender and the carrier, because the assumption here is that the shipper is considered in this contract as a representative of the consignee⁽¹⁰⁾. Third: Adopting the logic of this theory hinders the possibility of trading the bill of lading and transferring it between more than one beneficiary⁽¹¹⁾, and then adopting the idea of incomplete representation results in the inability of the shipper

(2) Muhammad Abdel Fattah Turk, *Maritime Transport Contract*, previous source, p. 182, also Abbas Mustafa Al-Masry, previous source, p. 98

(3) Ripert, *Droit, Maritime*, T.2, Paris, 1952, P.548

(4) He referred to him as Saeed Murad, previous reference, p. 215, as well as Dr. Mahmoud Samir Al-Sharqawi, *Contract for the Transport of Goods*, previous reference, p. 852

(5) Dr. Aziz Abdul Amir Al-Ukaili, previous source, p. 244.

(6) Dr. Abdul Hay Hijazi, *Commercial Contracts*, previous source, p. 99. Also Dr. Ali Al-Baroudi, *Contracts and Commercial Operations*, previous source, p. 130

(7) Dr. Mustafa Kamal Taha, *Al-Wajeez fi Maritime Law*, previous source, p. 249, also Dr. Muhammad Abdel Fattah Al-Turk, *Free Transport Contract*, previous source, p. 182, Abbas Mustafa Al-Masry, previous source, p. 98, Dr. Mahmoud Samir Al-Sharqawi, *Contract for the Transport of Goods by Sea*, previous source, p. 852

(8) Dr. Hussein Abdullah Abdul Redha, previous source, p

(9) Dr. Ali Al-Baroudi, *Contracts and Commercial Bank Operations*, previous source, p. 130, also Dr. Mustafa Kamal Taha, previous source, p. 345, also Dr. Abdel-Hay Hejzi, *Commercial Contracts*, previous source, p. 199

(10) Dr. Ali Al-Baroudi, previous source, p. 167.

(11) . Dr. Aziz Abdul Amir Al-Ukaili, previous source, 246, also Dr. Muhammad Abdel Fattah Al-Thar, previous source, p. 182.

(12) . Dr. Aktham Amin Al-Khouli, previous source, p. 272

to change the beneficiary of the bill of lading, because the rights of the consignee and his obligations in the contract are determined from the moment the contract is concluded ⁽¹⁾, as the transfer of possession of the bill of lading from the shipper to the consignee does not have any special effect in this regard.

Fourth: This theory does not explain how the rule of the possibility of invoking defenses (the rule of purging defenses) can be justified in the face of the good faith addressee that may exist between the carrier and the shipper

The best of the saying, and based on the criticisms directed at this theory, it is noted that it completely contradicts the established rules that govern the effects of the contract of carriage with respect to the addressee, and therefore it is not suitable for interpreting the rights and obligations of the addressee.

The Third Topic Special Successor Theory

This theory should be divided into two requirements: we single out the first to present the theory and hold the second to evaluate it

First View View Your Successor Theory

The special successor is the one who succeeds his predecessor in a particular property in person or a real right over it, such as the buyer succeeds the seller in the sold item, the legatee succeeds in an item in the estate in which the testator succeeds, and the beneficiary succeeds the owner in the right of usufruct⁽²⁾.

Or he is the one who receives from others the ownership of a specific thing in person or a right in rem over this thing, such as the buyer and the donee⁽³⁾, so that Article (142/2)⁽⁴⁾ of the Iraqi Civil Code stipulates that: "If the contract creates personal obligations and rights related to a thing, it is transferred From thereafter to a special successor, these obligations and rights are transferred to this successor at the time the thing is transferred if they are one of his requirements and the special successor knew about them at the time the thing was transferred to him". From extrapolating the text of the above article, it becomes clear to us that the transfer of the effect of the contract to the private successor can only be done under conditions, which are:

1- That the rights and obligations are necessary for the thing.

2- Successor knowledge of these rights and obligations.

After we presented the concept of the traditional special successor, we find that some jurists⁽⁵⁾, went on to say that the shipper chooses the addressee, and the latter becomes a capacity in the process of receiving the goods upon arrival, and since the addressee announces that he intends to use this capacity (the successor Special for the shipper), as it replaces the shipper in everything related to the transportation process, and then all legal relationship between the shipper and the carrier ends once the addressee accepts the bill of lading⁽⁶⁾.

The Second Requirement Estimate The Theory Of Private Successors

Although this theory has support in jurisprudence, it falls short of explaining the rights and obligations of the addressee for the following reasons:

First: Article (142/2) of the Iraqi Civil Code stipulated for the transfer of rights and obligations to private creation that the latter be among the requirements of the thing and the knowledge of its successor, and if we know that the requirements of the thing are the rights complementary to the thing and the obligations specified for it⁽⁷⁾, and if The obligation that is transferred to the specific successor does not transfer with the thing to the latter⁽⁸⁾, because whoever has a personal right owed by another person is not a specific successor to him, but rather a creditor⁽⁹⁾, and then how can this theory explain the obligation of the addressee to pay the rent? Since everything arranged by the predecessor is a person's obligation (payment of the rent), it is not transferred to the private successor except based on a text in the law or a special agreement between the successor and the predecessor as stipulated in the law with regard to the lease or employment contract ⁽¹⁰⁾.

(2) Dr. Samir Al-Sharqawi, The Center of the Addressee in the Bill of Lading, research published in the Journal of Law and Economics, First Issue, Year 38, 1976, p. 81

(3) Dr. Al-Sanhouri, previous source, p. 596.

(4) Dr. Abd al-Majid al-Hakim Muhammad Taha al-Bashir Abd al-Baqi al-Bakri, previous source, p. 132

(5) Article (1122) corresponds to a French civil, and Article (146) corresponds to an Egyptian civil.

(6) For more details, see: Dr. Al-Sanhouri, a previous source, p. 608 et seq.

(7) Dr. Aktham Amin Al-Khouli, previous source, p. 309.

(8) Dr. Ali Al-Baroudi, previous source, p. 168

(9) Dr. Al-Sanhouri, previous source, p. 608.

(10) Previous reference, p. 606.

(11) Ibid., p. 612

Second: The idea of succession involves the meaning of transfer, and the latter in turn involves the meaning of discharging the predecessor⁽¹⁾, and if we apply this word to the contract of transfer, this results in the predecessor (the holder) being discharged from his obligations towards his creditor (the transferor), so the successor (the sender) is replaced. To him, replaces the predecessor so that he alone becomes the creditor and then the identity of the predecessor disappears from this relationship⁽²⁾, and this is what contradicts the tripartite relationship in the contract of carriage, as the carrier can It is up to the shipper to claim the transportation fee if the addressee does not pay it. The carrier also has the right to claim back from the shipper (the sender) everything granted to him by the original relationship between them⁽³⁾.

Third: The principle is that the debtor has the right to adhere to all defenses that the debtor can invoke against the predecessor, against the successor, and this contradicts what is decreed with regard to the right of the consignee to confront the carrier⁽⁴⁾, because custom has been established in this regard in order to facilitate the negotiation of the shipping age and enable it. From performing its fiduciary function by not applying the rule of invoking defenses towards the bearer in good faith⁽⁵⁾, as is the case with commercial papers, and therefore the bill of lading is a commercial paper, as stated clearly in Article (185/First)⁽⁶⁾ of the Iraqi Trade Law No. 30) of 1984, and it follows that the Iraqi legislator is keen through this to give the commercial paper broad guarantees and special care to encourage dealing with and circulation of it⁽⁷⁾. This does not happen if we say that the debtor can insist on confronting the particular successor (the sender) due to the defenses he has against the predecessor (the shipper).⁽⁸⁾

The Fourth Section

The Theory Of Symbolic Possession Of Goods

In order to examine this theory, it is necessary to divide this study into two questions, dedicating the first to the purpose of the theory and singling out the second to evaluate it.

The First Requirement

Presentation Of The Theory Of Symbolic Possession Of Goods

Among the opinions that have been said to justify the right of the direct addressee before the carrier is that the addressee is considered a party to the contract of carriage that the shipper concludes with the carrier and that the contract of carriage is three-party⁽⁹⁾, and therefore the right of the direct addressee is derived from the contract of carriage to which he is considered a party⁽¹⁰⁾. Through his possession of the bill of lading, the latter has had a great development from being merely a receipt proving the carrier's receipt of the goods to a tool for proving the contract of carriage and proving its conditions until it finally became a document representing the shipped goods that are traded with it and represents its delivery for delivery⁽¹¹⁾.

The bill of lading has two functions: a physical function, as it represents the shipped goods, and a personal function, as it allows those in possession of it the right to demand receipt of the goods⁽¹²⁾.

(2) Dr. Abdul Majeed Al-Hakim, Muhammad Taha Al-Bashir, Abdul Baqi Al-Bakri, previous reference, pp. 130-131

(3) See: Article (778) Egyptian Civilian (.Dr. Ali Al-Baroudi, previous source, p. 168

(4) Atef Muhammad Khairy, Others in Egyptian Civil Law, doctoral thesis, Faculty of Law , Alexandria, 1976, pp. 186 et seq

(5) Abbas Mustafa Al-Masry, previous source, p. 107

(6) The law also prevents the debtor in all cases from protesting against the holder of a commercial paper with defenses based on their personal relationships, and this is what is stated in the fourth paragraph of Article (185) of the Iraqi Trade Law No. (30) of 1984.

(7) **Dr. Aziz Abdul Amir Al-Ukaili, The Role of the Bill of Lading in Executing the Sale (CAF), Doctoral Dissertation, College of Law, University of Baghdad, 1971, pp. 386 et seq.**

(8) Article (185/First) of the Iraqi Trade Law stipulates that: "If a paper is created on the occasion of a commercial transaction and its subject is the payment of a sum of money or the delivery of goods, this paper may be circulated by endorsement if it is to the creditor's order and by handling if it is in full".

(9) Dr. Ali Fawzi Al-Musawi, previous source, p. 13

(10) Dr. Hussein Abdullah, previous reference, p. 94.

(11) Dr. Mahmoud Mukhtar Bariri, Dr. Omar Fouad Omar, previous source, p. 184, Dr. Muhammad Farid Al-Arini, previous source, p. 81.

(12) Dr. Ali Taher Al-Bayati, Maritime Commercial Arbitration, A Comparative Study, Dar Al-Thaqafa for Publishing and Distribution, Amman, 1st edition, 2006, p. 21.

(13) Dr. Wahib Al-Asir, Maritime Law, Modern Book Foundation, Lebanon, 1st edition, 2008, pp. 180-181

Quite a bit of jurisprudence⁽¹⁾, went to interpret the right of the addressee through the theory of symbolic possession, considering that the right of the addressee against the carrier is based on the bill of lading, which gives its legal bearer an intrinsic right that is independent of the original contract of carriage concluded between the carrier and the shipper⁽²⁾, so the bill of lading itself is the basis of the right and limits of the addressee's obligations.

The implication of this is that the basis of the right of the direct addressee before the carrier is that he is a party to the bill of lading, and then his rights and obligations are determined in the light of the data included in the bill of lading that he carries⁽³⁾, which results in his obligation to pay the transportation fees, if what is stated in the bill of lading states that

Non-payment by the shipper, as well as all obligations imposed on him by the bill of lading as a party to it⁽⁴⁾. He also has the right to demand that the carrier deliver the goods to him in the condition shown in the bill of lading. The consignee derives his rights from his possession of the bill of lading, whether or not he owns the goods. However, some Jurisprudence⁽⁵⁾, distinguishes between two assumptions, whether the bill of lading is nominal, then the basis of the consignee's right is the stipulation for the benefit of others, while his obligation to pay the freight is merely a restriction on his right, and if the bill of lading is promissory or for the bearer, then the rights and obligations of the consignee are derived. From his possession of the bill of lading itself⁽⁶⁾.

Adopting this theory results in the following results:

First: The addressee of good faith gives the bill of lading a special right according to the data of this bill, and therefore it does not adhere to the relations between the carrier and the shipper or the previous holders of the bill of lading, and therefore the carrier cannot invoke before the addressee the defenses that he can invoke before him. Charger.⁽⁷⁾

Second: The rights of the holder of the bill of lading are determined according to the data of this bill, and therefore the addressee adheres to the conditions stated in the bill of lading and pays the transportation fee if the shipper had not paid it⁽⁸⁾, and he is also committed to the conditions contained therein, because the bill of lading has an indivisible unit, so the sender cannot He may adhere to the rights arising from him and escape from the obligations imposed against him⁽⁹⁾.

Third: If the addressee refuses to receive the goods, the carrier does not lose his right established in the bond, but rather he has the right to exercise the right of seizure or lien on the goods⁽¹⁰⁾, without losing his right to have recourse against the shipper as a party to the contract of carriage⁽¹¹⁾

This is the content of the theory of symbolic possession of the goods, which means possession of the bill of lading⁽¹²⁾. The French Court of Cassation adopted this theory, as it issued more than one ruling in which it indicated that the addressee files his claim against the carrier according to an intrinsic right that he derives from his being the holder of the bill. Shipping.⁽¹³⁾

The Second Requirement Estimating The Theory Of Symbolic Possession Of Goods

The implication of this theory is that the basis of the right of the direct recipient vis-à-vis the carrier is that he is a party to the bill of lading, and then his rights and obligations are determined according to the data included in the bill of lading he carries, so he is obligated to pay the transportation fee if there is evidence in the bill of lading indicating

(2) Dr. Muhammad Samir Al-Sharqawi, Maritime Law, previous source, p. 328, Dr. Aktham Al-Khouli, previous source, p. 272, Dr. Ali Jamal al-Din Awad, Maritime Law, previous source, p. 603. Dr.. Ali Al-Baroudi, previous source, p. 130

(3) Dr. Mahmoud Farid Al-Arini, previous source, p. 81

(4) Dr. Samir Al-Sharqawi, Addressee Center in the Bill of Lading, previous source, p. 67

(5) Dr. Aktham Al-Khouli, previous source, p. 313

(6) Dr. Ali Jamal al-Din Awad, previous source, p. 161

(7) Dr. Ali Al-Baroudi, previous source, p. 169, footnote No. (1)

(8) Abbas Mustafa Al-Masry, previous source, p. 116.

(9) Dr. Samir Al-Sharqawi, Maritime Jurist, previous source, p. 243.

(10) Dr. Aziz Abdul Amir Al-Ukaili, The Role of the Bill of Lading, previous source, p. 250.

(11) by Saeed Murad, previous source, p. 221

(12) French cassation, November 4, 1930, session 24-293, referred to by Dr. Aziz Abdul Amir Al-Ukaili, previous source, p. 251

(13) Cass, Com 31 May 1996, DMF, 1986, P. 531, "The contract of transportation is implemented by nature, by nature, it is due to the destination of the previous entry of the intervention into the transpoteur maritime and chargeur with the fins of Replacement of the merchandise He referred to him as Saeed Murad, previous source, p. 221, footnote No. (3).

(14) Dr. Aziz Abdul Amir Al-Ukaili, previous source, p. 251.

that it was not paid by the shipper, as well as all the obligations imposed by him. He has the bill of lading as a party to it, but the following observations are taken into account on this theory:

First: If we accept that the consignee is a party to the bill of lading⁽¹⁾, in such a case the carrier can be allowed to prove contrary to the information contained in the bill against the consignee, given that the latter is a party to the bill of lading⁽²⁾, because such proof is permissible between the parties. However, this assumption is not consistent with what is settled in jurisprudence and jurisprudence⁽³⁾, recently in considering the bill of lading as a representative of the shipped goods and a legal tool for its possession.⁽⁴⁾

In trading, it is in its place, so that conducting all legal transactions, whether selling or mortgaging the goods, is carried out according to this document, and then considering the consignee as a party to the bill of lading violates the fiduciary function of the bond, and therefore the most likely opinion tends not to consider the consignee as a party to the bill of lading. Rather, it is considered from a third party to support the credit function of the bond and to stabilize transactions, as the bill of lading now represents possession of the goods and trades in their place. Therefore, the carrier cannot prove other than the data stated in the bond in confronting the addressee as a third party, but rather is obligated to deliver it to him according to its descriptions stated in the bond. Shipping.

Second: This theory is incomplete in explaining the rights and obligations of the consignee in the case of transportation that takes place without the issuance of a bill of lading⁽⁵⁾. So how can this theory cover the case if a bill of lading is issued (or a direct bill of lading), as it is known that the bill of lading is only issued After the goods are shipped on the means of transport, practical necessity may require that the carrier receives the goods either on the dock or in his warehouses, and then what is known as the shipping fee bond emerged, which is a phrase in connection with the delivery of the goods on the dock or in the warehouses in order to ship them, and from Then, this bond cannot play the role or function of possession of the goods like a bill of lading, but rather it depends on the bill of lading whether it specifies the goods sufficiently first.() Second: This theory is incomplete in explaining the rights and obligations of the consignee in the case of transportation that takes place without the issuance of a bill of lading⁽⁶⁾. So how can this theory cover the case if a bill of lading is issued (or a direct bill of lading), as it is known that the bill of lading is only issued After the goods are shipped on the means of transport, practical necessity may require that the carrier receives the goods either on the dock or in his warehouses, and then what is known as the shipping fee bond emerged, which is a phrase in connection with the delivery of the goods on the dock or in the warehouses in order to ship them, and from Then, this bond cannot play the role or function of possession of the goods like a bill of lading, but rather it depends on the bill of lading whether it specifies the goods sufficiently first⁽⁷⁾.

Third: To say that the bill of lading is a representative of the goods that are traded and that its possession represents the goods is something that is not without an assumption necessitated by practical necessities, as it does not constitute a legal basis⁽⁸⁾. It is a report, not an authentication, as the question remains open about the legal basis for the addressee's right.⁽⁹⁾

(2) Muhammad Farid Al-Arini, previous source, p. 81

(3) Muhammad Abdel Fattah Turk, previous source, p. 185

(4) Dr. Hussein Abdullah, previous source, p. 94

(5) It was stated in the ruling of the Egyptian Court of Cassation dated December 14, 1965. Collection of Cassation Rulings Year 16-1249: "Even though proving the opposite of the data of the bill of lading for the goods is permissible in the relationship between the carrier and the shipper, it is not permissible in the case of other than them, such as the addressee, since the bill of lading is absolutely authentic." In proving in his favor with regard to these data, the carrier does not have the right to prove the opposite of what they contain." Referred to by Dr. Aziz Abdul Amir Al-Ukaili, previous source, p. 249, footnote No. (1).

(6) The bill of lading is issued for the freight, in the event that the carrier receives the goods from the shipper but does not ship them by means of transport for one reason or another. In lieu of the bill of lading, a bill of lading is issued, covering cases where the ship does not arrive at the old port and despite that the carrier receives the goods from The sender deposits it in his warehouse. For more see: Dr. Ali Taher Al-Bayati, previous source, p. 30

(7) A direct bill of lading is in terms of a liability claim, as this bond is issued when it is necessary for the goods to travel on more than one ship due to the absence of a direct shipping line, or when transportation requires the goods to travel a river or land distance in addition to the sea journey. Dr.. Majeed Hamid Al-Anbaki, Bills of Lading and the Development of Maritime Transport Methods, Journal of Legal Sciences, College of Law, University of Baghdad, Volume Seven, Issue 1, 2, 1988, p. 50

(8) Dr. Ali Taher Al-Bayati, previous source, p. 31.

(9) P. Bonnassies, DMF, 1955, M.209, P.214.

He referred to him as Saeed Murad, previous source, p. 222, footnote No. (2)

(10) Dr. Aziz Abdul Amir Al-Ukaili, previous source, p. 251

Fourth: Adopting this theory (considering the consignee a party to the contract of carriage based on his possession of the freight payment) contradicts the real intention of the consignee. There is no doubt that he did not intend to be bound by the contract of carriage, but rather aimed to merely receive the goods upon their arrival and pay the fare to the carrier. In exchange for this receipt, the effects of such an assumed agreement cannot be similar to the known effects because such an agreement leads to the sender and the carrier having to share responsibility towards the addressee, while it is agreed that the carrier alone bears this responsibility.⁽¹⁾

The Fifth Section The Theory Of Single Will

We will detail this theory through two requirements. We will present it in the first requirement and devote the second requirement to its estimation.

The First Requirement Presentation Of The Theory Of Single Will

We knew from the above that the consignee's possession of the bill of lading is the basis of his rights and obligations contained in this bill and the basis of his direct right vis-à-vis the shipper and the carrier, and we knew that according to the theory of symbolic possession, the basis of the consignee's rights and obligations is based on his possession of the bill of lading, and the latter's possession is tantamount to possession of the goods and possession is a presumption. On ownership.

However, this result reached by jurisprudence, in considering the bill of lading as the basis of the rights and obligations of the consignee before the shipper or carrier, was reached by the French judiciary⁽²⁾, but not on the basis of the consignee's possession of the bill of lading, but rather on the basis of the theory of unilateral will, and not on the basis Ownership of the consignee of the goods. In the late twentieth century, the French Council of Cassation adopted the idea that the consent of the consignee is the basis for his joining the maritime transport contract. In a decision of the civil division issued on (May 20, 1912) it was considered that if the consignee receives the goods, he accepts the contract as it is. It is, that is, the same as what was concluded, as all its conditions, especially the obligation associated with the contract of carriage itself, which is the payment of the carriage fee.⁽³⁾ At an advanced stage, the French Court of Cassation embraced the idea that the addressee is included in the maritime carriage contract, as the French judiciary considered the addressee to be included in the contract of carriage. However, the Court of Cassation did not clarify the meaning of the word adhesion, and for this reason jurisprudence worked hard.

In doing so, the Frenchman, Professor Tosi⁽⁴⁾, argued that the addressee joins the contract of carriage and becomes a party to it with his consent (acceptance), meaning that the joining mechanism is necessary for the addressee to participate in the contract, and if previous jurisprudential theories have The addressee was either a party to the contract of carriage or a third party. However, Professor Tosi considered the addressee in the first stage (concluding) to be a third party and then in the second stage (execution) he becomes a party, that is, the element of laxity becomes inevitable⁽⁵⁾.

Based on the above opinion, the carriage contract is not a three-party contract by nature, but rather becomes so only when the consignor joins it, and therefore the latter becomes a party to the contract once he accepts it, and therefore the carriage contract is a successive or successive contract in terms of its formation⁽⁶⁾.

However, Professor Floren Petit⁽⁷⁾, rejected the justification provided by Professor (Tosi), because taking the latter's opinion leads to dividing the contract of carriage into two contracts, a first contract concluded between the shipper and the carrier and a second contract concluded between the carrier and the consignee in the event that It was accepted by the carrier.

From the above, it is clear to us that Professor (Petit) put forward two ideas, the first related to the formation of the contract of carriage in that it is successive and sequential, in addition to his idea of the consignee joining the contract of carriage by his own will⁽⁸⁾.

(2) Dr. Ali Al-Baroudi, previous source, p. 166.

(3) Civ, May 20, 1920, Dp, 1913, 1,459, If this contract is accepted, the contract will be entered and all clauses of his son's profit will be paid, with all other options available.

He referred to him as Saeed Murad, previous source, p. 223, footnote No. (1).

(4) Roder, Part 2, item 579, p. 213, referred to by Dr. Ali Al-Baroudi, previous source, p. 166, footnote No. (1).

(5) J. Ptosì, art, Press, P.177. He referred to him as Saeed Murad, previous source, p. 225.

(6) by Saeed Murad, previous source, p. 224.

(7) J.P. Tosi, P.177. He referred to him as Saeed Murad, previous source, p. 225.

(8) F, Petit, the Vacation au Tripartisme du contrat de transport de merchandise, These, Caen, 2005.

He referred to him as Saeed Murad, previous source, p. 225.

(9)F. Petit, These, Pree, P.97. Previous reference, p. 225.

The jurist focused on the idea of will and its role in expanding the effects of the contract with respect to others, because the addressee is considered not bound to a contract that was previously concluded between the carrier and the shipper.⁽¹⁾

Therefore, this will does not interfere in establishing the contract of carriage, but it does lead to the consignee joining a previous contract, even if the latter results from the consensus of the wills of the shipper and the carrier, and after Therefore, we see that the theory that Professor Tosi came up with in justifying the rights and obligations of the addressee based on the offer and acceptance is a theory that is incapable of explaining this topic.⁽²⁾

Accordingly, Professor (Petit) went on to say that the consignee's accession to the contract of carriage can only take place through the actions of two conditions, the first of which is joining, and the latter means in this field the convergence of the wills of all (the shipper, the carrier, the consignee), and the extension and expansion of the effects of the contract of carriage. which has been previously concluded to the addressee.⁽³⁾

Professor Petit suggested renewing the concept of agreement of the two wills before applying it to the contract of carriage, considering that if the subject of the agreement of the two wills is mostly the creation of new contracts, there are cases in which the contract has already been concluded, and the offer is made by offering others to participate in the agreement. By giving him his acceptance, so joining requires, firstly, the existence of a contract concluded according to the general rules of contracting⁽⁴⁾, then secondly, a collective offer to join followed by the acceptance of this third party, and then the original contracting parties are required to propose to the addressee to join their contract, so this collective offer must It fulfills all the conditions required to be conclusive and specific.

From French jurisprudence⁽⁵⁾, whoever takes this theory, the basis of the addressee's obligation is his unilateral will, which he announced by his signature on the bill of lading, because with this signature he reveals his intention to be committed.

Part of Arab jurisprudence⁽⁶⁾ has said that this theory can be accepted to explain the rights and obligations of the addressee in light of the texts of French civil law, but it cannot be accepted in light of the Iraqi and Egyptian civil laws in particular, because these The jurists did not take the system of the individual will as a general source of obligations, but rather stipulated applications for them, and among these applications was not the recipient's acceptance of the bill of lading.

However, although the above opinion is correct according to the provisions of the Iraqi Civil Law, it is not so based on the provisions of the Iraqi Transport Law No. (80) of (1983), as the owner of this opinion missed the knowledge of what the provisions of this law stated, as the person contemplating it A basis for this theory is found in its provisions, through the text of Article (65) of the above-mentioned law, which states: "First: The rights arising from the contract of carriage are not established for the consignee and he is not responsible for the obligations resulting from it unless he accepts these rights and obligations explicitly or implicitly. Secondly: In particular, it is considered an implicit acceptance by the addressee to receive the transport document or the thing to be transported, or to request its delivery or to issue instructions regarding it. What is clear from the above text is that the basis of the rights and obligations of the consignee lies in his will through his explicit or implicit acceptance, by signing the bill of lading, handing over the thing to be transported, demanding its receipt, or issuing instructions regarding it.

In addition to the above, the draft Iraqi maritime law⁽⁷⁾ has explicitly stated in Article (186/1) that the bill of lading establishes a direct legal relationship between the carrier and the consignee when the above article stipulates that: "The bill of lading determines the legal ties between the carrier of the goods and the consignor." mechanism."...

Based on the above, we, in turn, agree with what was stated in the above theory in establishing the rights and obligations of the addressee based on his individual will, supporting our opinion with what was stated within the provisions of the Iraqi Transport Law and the draft Iraqi maritime law, in that the addressee does not have rights established and does not bear the obligations except In terms of his expression of his desire or from the time of his acceptance, acceptance here is not imposed on him, but rather an acceptance of his unilateral will, of the offer addressed to him by the shipper and carrier.

The Second Requirement Estimating The Theory Of Single Will

This theory, which is not new as it was brought by French jurisprudence, conforms to the judicial approach in France, and also agrees with the nature of the contract of carriage. It is compatible with the nature of the contract of carriage in itself, as it explains the sequential and sequential formation of this contract, as well as its interpretation of

(2) I bid, No. 198, p.118. He referred to him as Saeed Murad, previous source, p. 266.

(3) F, Petit, p.127 He referred to him as Saeed Murad, previous source, p. 226

(4) Professor Baltter, referred to by Dr. Aziz Abdul Amir Al-Ukaili, previous source, p. 252 et seq.

(5) Ibid, p.138. He referred to him as Saeed Murad, previous sources, p. 227

(6) Rita Herro, Vente et Transport, Op.Cit., p.74.

He referred to him as Saeed Murad, previous source, p. 233

(7) Dr. Salman Markus, Explanation of Civil Law, Part Two, on Obligations, p. 551. Also Dr. Saad al-Din al-Sharif, Explanation of the Iraqi Civil Law, Part 1, Sources of Commitment, p. 361. Dr. referred to them. Aziz Abdul Amir Al-Ukaili, previous source, p. 254, footnote No. (1).

(8) Draft Law No. () of ().

the will of the addressee, as it is the basis for his joining the contract. With regard to the contract of carriage, the addressee is from the group of third parties, during the convergence of the wills of the shipper and the carrier, and then both the shipper and the carrier present the offer to the addressee, who in turn accepts it of his own will, and his acceptance results in proving that he has the right to dispose of the goods, and this is what it is stipulated in Article (67)⁽¹⁾ of the Iraqi Transport Law, and the right to dispose of is called in the Rotterdam Rules⁽²⁾, the right to control or direct, as the agreement mentioned in Article (1/12) defined it as: "The right to control goods means what is required by a contract Transport has the right to direct instructions to the carrier regarding the goods in accordance with the provisions of this chapter"⁽³⁾.

Likewise, Article (13/1) defines the controlling party as: "meaning the person who has the right, in accordance with Article (51)⁽⁴⁾ to exercise the right of control." The shipper is considered the primary beneficiary of this right as he is the interested party in the transportation process unless he assigns it to

Likewise, Article (13/1) defines the controlling party as: "meaning the person who has the right, in accordance with Article (51)⁽⁵⁾ to exercise the right of control." The shipper is considered the first beneficiary of this right as the interested party in the transportation process unless he assigns it to the addressee. Once the right of control is transferred to another person, he has all the rights when the transferor informs him of this.

However, despite the validity of this theory in explaining the rights and obligations of the addressee, it was not free from criticism, as the following criticisms were directed at it:

First: Part of French jurisprudence⁽⁶⁾, said that the theory of unilateral will is not based on a foundation of law, because the sources of obligation are defined by civil law and unilateral will is not among them. However, we can respond to this criticism by relying on the text of Article (65)⁽⁷⁾ of the aforementioned Iraqi Transport Law, which traces the basis of the obligations and rights of the consignee to his unilateral will through his explicit or implicit acceptance of the bill of lading.

Second: Some jurists believe that for the emergence of voluntary obligation, two wills must agree to conclude the contract, and that the individual will is incapable of creating it, and is not considered one of its sources. However, this criticism is rejected, by saying that the enumeration of the sources of obligation in civil law is not They are provided exclusively, and there is no text in the law that conflicts with accepting the individual will as a source of obligation.

Third: An opinion in jurisprudence⁽⁸⁾ said that this theory cannot be accepted in light of the Egyptian and Iraqi civil laws because these two laws did not take the theory of the individual will as a general source of obligations, but rather stipulated applications for it, and none of these

Applications The signature of the consignee on the bill of lading. However, although this opinion was correct according to the provisions of the Egyptian and Iraqi civil laws, it missed the provisions of the Iraqi Transport Law, which clearly established this theory through the text of Article (65) thereof.

CONCLUSION

After we have reached the end of this research, we must record the most important results that we have reached, in addition to the proposals that we deem appropriate in this regard, and we will present them in turn:

- (2) Dr. Samir Al-Sharqawi, International Commercial Contracts, a special study of the contract for the international sale of goods, Dar Al-Nahda Al-Arabiya, Cairo, 1992, pp. 38 et seq.
- (3) Article (67) of the Iraqi Transport Law stipulates that: "The consignee has the right to issue instructions related to the thing being transported as soon as he receives the transport document, and he must present the document to the carrier in which he records the new instructions signed by the consignee. Otherwise, the carrier may refrain from implementing them
- (4) United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partially by Sea, 2008, also called the Rotterdam Rules 2007
- (5) Article (51) of the Convention stipulates that: "The shipper shall be the controlling party unless the shipper, upon concluding the contract of carriage, designates the consignee, the documentary shipper, or another person to be the controlling party".
- (6) Article (50) of the above agreement stated the rights of the controlling party, which are:
 - Giving or amending instructions regarding the goods.
 - Receiving the goods at the port of call.
 - Replacing the addressee with another person.
- (7) Ballter, Op. Cit., P.46, Caputant, les, obligation, P.427. Demogue, les, obligation, T.2, No.19. Dr. referred to them. Aziz Abdul Amir Al-Ukaili, previous source, p. 253, footnote No. (1) and (2)
- (8) Rita Herro, Vente et transport, Op. Cit., p.73. Referred to by Saeed Murad, previous source, p. 232
- (8) Dr. Suleiman Markus, Dr. Saad Al-Din Al-Sharif, referred to by Dr. Aziz Abdul Amir Al-Ukaili, previous source, p. 24, footnote No. (1.(

A- RESULTS:

- 1- Jurisprudence presented several theories to examine the legal basis for the rights and obligations of the addressee, some of which considered the addressee to be a party to the contract of carriage, and some of which considered him to be stubborn about the contract of carriage and the effect of this contract extends to him as an exception.
- 2- Jurisprudence came with the theory of stipulation for the benefit of others to establish the rights and obligations of the addressee according to this theory, but we found that although this theory explains the rights of the addressee, it is incapable of explaining his obligations. It is known that the rules of stipulation for the benefit of others grant the beneficiary a right without burdening him with obligations.
- 3- The theory of stipulation for the benefit of third parties was not successful in explaining the obligations of the addressee, which prompted a part of jurisprudence to resort to the theory of incomplete representation, to explain these obligations. However, this theory in turn was not welcomed by a large part of jurisprudence for several reasons, the most important of which is what it causes. Adopting this theory would hinder the circulation of the bill of lading.
- 4- Another aspect of jurisprudence went to establishing the rights and obligations of the addressee based on the theory of special successors, which in turn failed to explain the basis from which the addressee derives his rights if we know that one of the conditions for the transfer of rights from predecessor to successor is that these rights be among the requirements of the thing. .
- 5- Some have resorted to the theory of symbolic possession of the goods (possession of the bill of lading) to explain the rights and obligations of the consignee, and adopting this theory by making the consignee a party to the bill of lading, which results in the possibility of the carrier to prove to the consignee other than the data contained in the bill of lading. .
- 6- Part of French jurisprudence and judiciary went to establish the rights and obligations of the addressee, based on the theory of unilateral will, and we found reasons that prompted us to support this theory, and we found a basis for this theory within the provisions of the Iraqi transport law, as the Iraqi legislator and Hasan did within the provisions of the law Iraqi transport has such a basis, as well as its regulation of the right to control goods, which most maritime laws lack.

B- PROPOSALS:

- 1- We call on the Iraqi legislator to legislate a maritime law that regulates all matters related to transportation, as well as the international transport of goods, or to ratify the draft Iraqi maritime law.
- 2- We call on the Iraqi legislator to ratify all international agreements related to international transport and international sale of goods due to the importance of such agreements at the present time, in which our country is witnessing commercial openness to the world.
- 3- We call on the Iraqi legislator to devote a special chapter within the provisions of the Iraqi Transport Law or the Iraqi Trade Law to address bills of lading, both in terms of their definition, types, and authenticity, because of their great importance in commercial dealings.

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