

Intertextuality in Civil Law Texts: An Analytical Study

Tahsin Hamad Smael¹, Taha Hassan Rasul²

Soran University, Faculty of Law, Political Science and Management, Law Department,

DOI: <https://doi.org/10.31918/twejer.2584ELI.24>

Published:2/11/2025

Abstract

Intertextuality refers to the relationship between one text and another, or the reference of one text within the framework of another. It is based on the notion that no text exists in isolation, as every text is inherently connected to other texts, either through ideas, structures, or language. In this sense, every existing text is influenced by, or dependent on, prior texts. In Arabic, various terms are used to convey the concept of intertextuality, such as textualism, intertextuality, and textual interaction, all of which refer to the same fundamental idea. The term "intertextuality" was first fully articulated by the French-Bulgarian philosopher Julia Kristeva, who is regarded as the pioneer of this modern concept. Kristeva introduced this term in her works by linking it to the concept of idéologème, which refers to a synthetic unit within a text that contributes to its overall meaning and structure. According to Kristeva, intertextuality represents "the intersection within a text of expressions taken from other texts." Her definition of intertextuality, which highlights the mutual interaction and modification of elements from different texts, has since become widely accepted. It is worth mentioning that the issue lies in the fact that the presence of a large number of texts in the Iraqi Civil Code No. (41) of 1951 led to the existence of aggravation and inflation of legal provisions. Therefore, this research seeks to address this issue by employing intertextuality as a method or as a new critical approach in the field of law. It is noteworthy that previous researchers have not used this method to address legal issues, particularly the problem of the aggravation or inflation of civil texts, which is the issue of aggravation or inflation of civil texts. The effort focuses on tracing the roots of certain intertexts, recombining them, and modifying their content in a way that serves the Iraqi Civil Code and contributes to its rationalization.

Keyword: Intertextuality, Iraqi Civil Code, Provisions, Textualization

Intertextuality in Civil Law Texts: An Analytical Study

Assist. Prof. Dr. Tahsin Hamad Smael¹, Dr. Taha Hassan Rasul²

¹ Soran University, Faculty of Law, Political Science and Management, Law Department,

Email: tahsin.smael@soran.edu.iq

² Soran University, Faculty of Law, Political Science and Management, Law Department,

Email: taha.rasul@soran.edu.iq

1. Introduction

1.1. Introduction to the topic

Intertextuality refers to the relationship between one text and another, or the reference of one text within the framework of another. It is based on the notion that no text exists in isolation, as every text is inherently connected to other texts, either through ideas, structures, or language. In this sense, every existing text is influenced by, or dependent on, prior texts. In Arabic, various terms are used to convey the concept of intertextuality, such as textualism, intertextuality, and textual interaction, all of which refer to the same fundamental idea. The term “intertextuality” was first fully articulated by the French–Bulgarian philosopher Julia Kristeva, who is regarded as the pioneer of this modern concept. Kristeva introduced this term in her works by linking it to the concept of idéologème, which refers to a synthetic unit within a text that contributes to its overall meaning and structure. According to Kristeva, intertextuality represents “the intersection within

a text of expressions taken from other texts." Her definition of intertextuality, which highlights the mutual interaction and modification of elements from different texts, has since become widely accepted.

Textualization may be in form and content, where textualization at the level of form is related to linguistic structures and sentence structure in texts, while at the level of content it is concerned with the structure of the text, including metaphor and analogy, in addition to the different ideas that each legislator expresses in his own way; our focus in this research will be on textualization in terms of content between the texts of the Iraqi Civil Code No. (41) of 1951 in force.

12. Research significance

Intertextuality is considered as one of the fundamental methods that could help enrich meanings and expand the scope of understanding and interpretation within texts. Its significance also lies in adding diverse legal and cultural dimensions. Through Intertextuality, legislators are able to incorporate various cultural aspects into the text, enriching its content and deepening its meanings. Additionally, Intertextuality plays a critical role in enhancing understanding and communication. By borrowing words and concepts from different legal systems, it fosters cross-cultural interaction, allowing for greater recognition of other legal traditions and their integration with the legislator's own legal culture.

1.3. Statement of the problem

The issue lies in the abundance of provisions in the Iraqi Civil Code, which has led to the aggravation and inflation of legal texts. This article seeks to tackle this problem through Intertextuality, either as a way or as a new critical approach in the field of law. It is noteworthy that previous researchers have not employed this approach to resolve the issue of the inflation of civil texts. The effort of this research focuses on identifying and tracing the origins of shared texts, recomposing them, and modifying their content in a way that enhances the functionality of the Iraqi Civil Code and contributes to its rationalisation.

1.4. Research Aims

The article aims to critically analyse the legal text by examining intertextuality within the provisions of the Iraqi Civil Code of 1951. It seeks to highlight the extent to which the Iraqi civil provisions draw upon and interact with other civil law provisions, such as the Egyptian Civil Code, the French Civil Code, and the principles of Islamic jurisprudence as historical sources. Moreover, the research aims to reveal the mechanisms through which texts are recalled and to demonstrate the intersections between the Iraqi civil law provisions and other civil legal systems. It also seeks to explore the semantic and substantive dimensions of these texts, analysing the meanings attributed to them by the Egyptian and French legislators and by Muslim scholars, through a synthesis of legal principles.

1.5. Scope of the study

The scope of this research focuses on analysing the Iraqi Civil Code of 1951 and comparing it, in terms of intertextuality, with the Egyptian Civil Code of 1948 and the amended French Civil Code of 1804, and the provisions of Islamic jurisprudence. The aim is to explore the formation of intertextual relationships as a defining feature of legislative promulgation and to assess the effectiveness and vitality of intertextuality in the legislative process.

1.6. Literature Review

To the best of our knowledge, and after conducting extensive research from different sources, we were unable to find any studies, research, or other sources regarding intertextuality in civil and legal texts in general.

1.7. Research Methodology

This research relies on an analytical approach to examine Iraqi civil texts, aiming to identify the origin of the text and trace it back to its source. This can be achieved through an in-depth discussion designed to yield the most accurate results and practical proposals. Moreover, the research relies on an inductive approach to extrapolate and analyse the available texts and information, enabling us to draw conclusions and gain a deeper understanding of the topic under investigation.

2. The Concept and Characteristics of Intertextuality in Civil Texts

Since intertextuality is a modern term and somewhat foreign to the field of law, it is essential to explain its concept from the viewpoint of jurists, followed by an clarification of its characteristics and forms to ensure a comprehensive understanding. To achieve this, this research is divided into two sections. The first section addresses the concept of intertextuality and its relationship to legal texts, while the second chapter sheds light on the characteristics and types of intertextuality, as outlined below.

2.1. The Concept of Intertextuality and its Relevance to Civil Texts

The concept of Intertextuality is a new concept in the field of law and has not been previously addressed by jurists and scholars in this arena. Therefore, it is crucial to fully clarify its concept in a way that benefits the legal field in the first section. The second section focuses on Intertextuality in the Civil Code, as outlined below.

2.1.1. The Concept of Intertextuality in Legal Texts

After conducting an extensive research, it is found that jurists and legal researchers have not provided a definition of intertextuality. This is because the term textualism is one of the terms that have been widely used in the field of literature and literary criticism. Thus, many diverse definitions of the term exist within literary and critical scholarship. The research provides some of these

definitions as much as possible and then discuss its definition from a legal perspective.

The term intertextuality originated as a modern critical concept that appeared on the Western critical scene at the end of the last century. It falls within the realm of linguistic studies, and several names have been proposed for it, such as textualism, intertextuality and textual interaction. However, the term intertextuality most precisely reflects the interference and blending between modern texts, fusing them together to produce a generative text. The word intertextuality conveys an interaction between two texts that mutually benefit each other. This may elucidate why criticism has focused on revealing its aspects in both Arab and Western cultures, leading to the development of this term. The Russian scholar *Mikhail Bakhtin*, in his book "Philosophy of Language", clarified that the concept of intertextuality refers to identifying the interaction between texts as they recover or imitate parts of previous texts. He proved this concept theoretically, although he did not utilise the term intertextuality itself, choosing instead to refer to it as dialogue (Charbel Dagher, 1997: 127).

He provided an interpretation of the concept of intertextuality under the title of dialogism, as he was able to identify the nature of interaction in texts, particularly in their recovery or imitation of texts or parts of previous texts. He believed that intertextuality is generated when a text enters into dialogues and interactions with other texts. In the mid-1960s, *Kristeva* followed in his footsteps, expanding

upon the work her teacher *Bakhtin* began. *Kristeva* made procedural and applied uses of textualism in her study, defining it as textual interaction in a particular text (Charbel Dagher, 1997: 128). It is the relationship between texts and the interaction that happens between them, which *Kristeva* referred to by saying: "The text is a traveling of texts and the intersection of a text in the space of a particular text that intersects and contradicts many excerpts from other texts." She also said that it is "one of the basic characteristics of the text that refers to other texts, whether previous or contemporary to it, or the intersection within a text of expressions taken from other texts. Every text is an absorption or transformation of another text" (Saeed Alloush, 1985: 215). It is also a procedural concept that deconstructs texts and their references and relationships with previous texts, highlighting the intersection, overlap, dialogue, and interaction between these previous and subsequent texts. However, the extensions of the concept have not altered the foundational idea developed by *Kristeva*, which highlights the mutual influence between texts. This is reflected in the notion that "every text is a mosaic of quotations, and every text is an imbibing and transformation of texts" (Abdullah Al-Ghadhami, 2006: 290). This view is supported by a scholar's statement: "although most Westerners have defined the term as intertextuality, intertextualism, or textualism, it is clear from the Western literature that has reached us that scholars of textualism theory have not agreed on specific formats for concepts, forms, and mechanisms. Nor have they reached

a single, comprehensive definition of the text that would establish a general concept" (Hussein Jumaa, 2003: 89).

Roland Barthes elaborated on *Kristeva's* ideas and reinterpreted them, asserting that intertextuality occurs in every text, irrespective of its genre. He stated that the exchange of texts is an exchange of fragments of texts that revolve or orbit a text considered a centre and ultimately unite with it. Every text is nothing but a new fabric of previous citations" (Barthes et al., 1998: 49). Similarly, textualism has been defined as "every text that coexists in some way with other texts and thus becomes a text within a text" (Marc Angenot, 1987: 461).

On the other hand, Arab critics have also provided their interpretations and definitions of the term intertextuality. It is defined as when a literary text incorporates other texts or ideas that precede it, whether through quotation, implication, allusion, reference, or the like—derived from the writer's cultural reading, as a result these texts or ideas merge with the original text and integrate into it, forming one new, unified text (Ahmed Al-Zoubi, 2000: 11).

As for the concept of intertextuality in legal texts, as in literary texts, it contains the relationships between a text and other related texts that have happened within the framework of prior experience (Robert de Beaugrande & Dressler, 1981:103–105). This can be evaluated through several criteria concerned with the text itself, namely verbal cohesion and moral cohesion, as well as those related to the users of the text, both in terms of production and reception.

Furthermore, it consist of criteria related to intent and acceptance. The other three criteria which are the care of the situation, informativeness, and intertextuality relate to the material and cultural context surrounding the text. In spite of the significance of all these criteria in accomplishing textuality, the most prominent feature that differentiates a text from non-text is the strong coherence between its parts, so that the text seems as one cohesive whole, despite the ideas it involves. Thus, coherence, whether verbal or moral, is the master of all these criteria, with each contributing in one way or another to attaining this coherence. If the legislator's intention is vague, the goal of the text, and thus its importance (i.e., its moral coherence), will not be attained. Likewise, if the recipient does not accept the text or respond to it as a form of language, it will not resonate with the legislator's vision of a coherent text, nor with the external environment related to it. The context also impacts the significance of attaining the coherence of the text with its surrounding environment. This is similarly true of the content of the text whether the information or facts contained within it are expected or not. This expectation is tied to the novelty of the text. The response to the text is a manifestation of its coherence in both production and reception. Lastly, textualism recommends that a text does not exist in isolation but rather draws from a chain of other textual experiences, both previous and contemporary, thus forming coherence within the pillars of a single textual system (Said Ahmed Bayoumi, 2010: 42-43).

In conclusion, we can define intertextuality in civil texts as the formation of a legal text from prior texts or notions through quotation, allusion, implication, reference, or similar means, such that it enters into numerous intertwined relationships with them whether concealed or apparent through criteria related to the text itself, as it is the product of countless other texts.

2.1.2. Intertextuality in Civil Law

Civil law involves a set of rules regulating individual life and private relations, principally those governing financial transactions between individuals. It is considered as the oldest form of legal norms known to humanity, serving as the foundational framework from which other branches of law have arisen. The Iraqi Civil Code, an important example of civil law, was drafted by a committee of legal experts under the leadership of the renowned Egyptian jurist, Dr. AbdulRazzaq Ahmed Al-Sanhouri. Dr. Al-Sanhouri, who was also the chairman of the committee responsible for drafting the Egyptian Civil Code in 1943, brought his expertise to Iraq at the invitation of the Iraqi State. The committee held its meetings in Iraq under the auspices of the Iraqi government and was tasked with finalizing the Civil Code, relying on the Egyptian Civil Code as a model. The draft Civil Code was finalized and ratified on 8 September 1951, coming into force two years later, on 8 September 1953. Iraqi law is based on the Egyptian legal system in its legislative framework, embracing a middle path between Islamic jurisprudence and Western legal system, principally the French Civil Code.

Although it incorporates Islamic elements, it is mainly contingent on the general structure and content of the modern Civil Code. Subsequently, it shares common legal material and theory with other legal systems that follow this model, such as those of France, Egypt, Spain, Ethiopia, and Italy (Abdul Razzaq Al-Sanhouri, 1962: 9–10).

At its first meeting, the committee was tasked with codifying the Iraqi Civil Code decided to take Islamic law into consideration, particularly the Code of Judicial Provisions (*Majalla al-Ahkam al-Adliya*), as the foundation for the new law. foreign laws were only resorted to where there is no provision in Islamic law or where there is a provision that is not in line with modern development. The committee initiated by citing provisions from the Code of Judicial Provisions, making sure that most of the provisions they selected had a basis in Islamic law, which served as the foundation for their choices. As for the remaining provisions, which lack an obvious basis in Islamic law and are certainly rare, these were considered only if they were in compliance with Iraq's conditions and circumstances (Mohammed Hanoun Jaafar, 2022: 10).

It is worth mentioning that the actions of the Chairman of the Iraqi Civil Code Codification Committee in incorporating elements from the provisions of other laws into the Iraqi Civil Code denote a method of what is known in the field of textual linguistics as textual intertextuality. As aforementioned, textual intertextuality refers to the interaction between a text and earlier texts or the

relationship between two or more texts that shapes how the text is interpreted (i.e., how it is impacted). This concept highlights the echoes or influences of other texts within a given text (Mohammed Al-Ani, 1996: 46). For example, the Committee for developing Iraqi Civil Code directly took several provisions from *Majalla al-Ahkam al-Adliya* verbatim or with minor changes. This verbatim adoption affected the overall phrasing of the Iraqi Civil Code's provisions. Nevertheless, the legal provisions related to the chapter on obligations, for instance, were formulated using modern and clear legal language. These formulations are much closer to jurisprudential language in comparison to other legal provisions, such as those tackling liability for illegal acts (Mohammed Hanoun Jaafar, 2022: 14). Articles 186 to 191 of the Iraqi Civil Code were adopted from *Majalla al-Ahkam al-Adliya*, with some changes, including the incorporation of some practical examples. The *Majalla al-Ahkam al-Adliya* is a compilation of the views of *Hanafi* jurists, and it is customary in Islamic jurisprudence to elucidate legal topics through practical examples of judicial rulings. Consequently, *Majalla al-Ahkam al-Adliya* comprises of numerous practical examples to explain its provisions. The drafters of the current Civil Code similarly adopted this approach in the provisions derived from the Code, as can be noticed in Articles 187 and 188 of the current Civil Code.

With regard to the intertextuality of texts in the Iraqi Civil Code with foreign legal systems or Western jurisprudence, similar to Islamic jurisprudence, the Iraqi

legislator involved in intertextuality by incorporating elements from foreign laws into the Civil Code. For example, the Iraqi legislator borrowed the provisions on indirect action, stipulated in Articles 261 and 262 of the Civil Code, from Article 1166 of the French Civil Code before to the 2016 amendments. The French Civil Code hence serves as a historical source for the Iraqi Civil Code. It stipulates that 'creditors may exercise all of their debtor's rights and claims, apart from those that are inherently personal to the debtor.' Remarkably, there is a clear consistency and overlap between the texts of the two articles of the Iraqi Civil Code and the corresponding French provisions. It is evident from the above that paragraph (1) of Article (235) of the Civil Code reflects the Iraqi legislator's adoption of the subjective approach prevalent in Western jurisprudence. This approach emphasizes the payer's belief regarding their right to reclaim what they paid or fulfilled under an obligation due to a mistake. The legislator relies on the concept of "motivated mistake" as the criterion, which is inherently subjective (Qasim Ismail Ali, 2011: 63).

Moreover, it is worth mentioning that the Iraqi legislator tackled the issue of fulfilment in good faith prior to discharging obligation. Article 235(1) of the Iraqi Civil Code stipulates that "If the debtor fulfils an obligation that has not become due, believing that it has become due, he may ask for the recovery of what he has paid." This Article makes it obvious that a person who settles a debt before its due date pays something that is not yet owed. If such payment was made

because of a mistake, or under circumstances equal to a mistake, the debtor is entitled to recover the amount paid. The application of this Article necessitates that the debtor fulfilled the obligation without realizing that the due date had not yet reached, or that they were compelled to fulfil the obligation prematurely. Nonetheless, if the debtor fulfils the obligation despite his awareness about the due date not having arrived, this act is understood as a waiver of the due date (Farid Fetian, 1956, p. 358).

It can be construed from the above that Article 235 (1) of the Iraqi Civil Code reflects the Iraqi legislator's adoption of the subjective approach prevailing in Western legal system. This approach underlines the belief of the payer concerning their right to recover what they paid under an obligation as a result of an error. The legislator depends on the concept of "motivated mistake" as the criterion, that is inherently subjective (Qasim Ismail Ali, 2011: 63).

22. Characteristics and Types of Intertextuality in Civil Provisions

Although "Intertextuality" is not a straightforward term and despite its confident usage by many authors, researchers, and legislators the origins of ideas related to intertextuality are not without challenges. Its characteristics assist to simplify complexities and tackle issues. Intertextuality also manifests in various ways, differing based on its applications and its positive or negative roles.

To provide better understanding on the subject, this section is divided into two sub-sections: the first emphasizes on the characteristics of intertextuality, and the second examines its different sorts, as outlined below.

22.1. Characteristics of Intertextuality in Civil Texts

One of the key characteristics of intertextuality is the interaction between the provision enacted by the legislator and other provisions, building an intertextual relationship. Through this interaction, these texts or ideas combine with the original text to create a unified and integrated new text.

The characteristics of intertextuality involve enhancing the legislator's understanding and enriching their language and style within the text. At the same time, intertextuality stimulates the reader's intellect, motivating deeper analysis and inspiring curiosity to investigate the underlying meanings beyond the surface of the text.

The process of intertextuality also results in the revival of certain legal texts by imitating them and crafting new texts in their likeness. Moreover, intertextuality reflects the culture of jurists by drawing on different meanings and themes, adopting an exchange of human awareness between texts. Thus, it leads to the expansion of both the legislator's and the jurists' imaginations, enriching their understanding of other legal systems and the perspectives of other legislators. Particularly the impact of Sanhoury on the provisions of the Iraqi Civil Code, which integrated legal principles related to form and substance from other

modern codifications of the time, such as the principles concerning the judge's power to interpret the law, the theory of abuse of rights, and the theory of obligation. The power of the judge to supplement legislative deficiencies also becomes evident, as indicated by the Egyptian legislator's adoption of Article (1) from the Swiss Civil Code. This law combines precision and clarity in its provisions, stipulating that 'all subjects addressed by its provisions, whether in words or in spirit, are subject to the legislation. If no legal provision applies, the judge must rule based on customs, and if there is no customs, the judge must rule in accordance to the rules he would have legislated had he been the legislator, inspired by the principles recognized by jurisprudence and the judiciary.' Likewise, Article 1 of the Egyptian Civil Code follows suit, with a minor change after its citation, stipulating that 'legislative provision must apply to all matters covered by these provisions in word or substance. If no legislative provision could be applied, the judge has to rule according to the principles of Islamic law, and if not, according to the principles of natural law and the rules of justice.' (Said Ahmed Bayoumi, 2010: 65).

It is worth mentioning that the Iraqi Civil Code, in its first Article, follows the same approach as the Egyptian Civil Code, as the latter is amounted as the historical source of the Iraqi Civil Code. Nevertheless, there are modifications in wording and subject matter after the Iraqi Civil Code took from the Egyptian Civil Code. The Iraqi Civil Code states: 1. The legislative provisions must apply to all matters

that these provisions address in their words or content. 2. If there is no legislative provision that could be applied, the court must rule in accordance to custom, and if not, according to the principles of Islamic law that are most suitable to the provisions of this law without adherence to a particular doctrine, and if not, according to the rules of justice.'

It is evident that the Iraqi legislator borrowed the provision of Article 1 from the Egyptian Civil Code with minor changes. In paragraph (1) of both articles, there are no changes; the Iraqi legislator borrowed it directly from the Egyptian Civil Code without modifications in form or substance. Nonetheless, a modification was made in the second paragraph by adding the phrase 'without adherence to a particular sect' after 'the principles of Islamic law,' and the reference to 'the principles of natural law' was omitted, leaving only the 'rules of justice.'

Intertextuality also excludes the concept of the original legislator, shifting attribution to the new legislator, thereby affecting the legislator's approach to legislative writing and drafting. For example, the Iraqi legislator efficiently integrated the provisions relating to the claim of the ineffectiveness of an act from Western legal system, presenting a comprehensive and innovative solution of the issue. This idea was codified in Article 263 of the Iraqi Civil Code, which stipulates that 'any creditor whose right has become due and whose debtor has issued a disposition detrimental to him may demand that this disposition be rendered unenforceable against him if the disposition has reduced the debtor's

rights, increased his duties, and led to the debtor's insolvency or made his insolvency worse, if the conditions stated in the following article are met.' (Iraqi Civil Code, 1951: Articles 164–269). This Article serves as a vital protection for creditor rights, permitting them to preclude potential damage caused by the debtor's detrimental actions. Since the debtor's disposal of assets sometimes includes collusion with the transferee, this legal action functions as an indirect means of safeguarding the creditor from potential harm.

For instance, several inherited legal rules, cited from the *Majalla al-Ahkam al-Adliya* (which, in turn, borrowed from *Hanafi* jurisprudence), have been relied upon to interpret contracts. The Iraqi legislator fostered these rules and integrated them into the current Iraqi Civil Code. It is precise to say that some of the provisions in the *Majalla al-Ahkam al-Adliya* are framed as concise, overarching principles, each serving as a regulator and compiler of various issues. These rules include semantic principles that are valuable for constructing, analysing, and interpreting any legal provision recognized and considered within jurisprudential literature, they are often referenced as evidence for understanding legal issues and for grounding them in legal reasoning. Scholars, jurists, muftis, researchers, and judges frequently cite these rules as authoritative sources, utilising them as a foundation for their reasoning and efforts. In fact, these principles reflect the core tenets of Islamic law, which are binding on the positive legislator in every Islamic country (Mohammed Salim Al-Awa, 2006: 169–170).

Among these rules is the principle that, in contracts, meanings and intentions are more significant than structures and words. Nevertheless, when the literal meaning is not feasible, metaphor is utilised (Iraqi Civil Code, 1951: Article 155). Moreover, there is no consideration of the indication when a statement is obvious (Iraqi Civil Code, 1951: Article 157), and there is no space for jurisprudence when interpreting the text itself (Iraqi Civil Code, 1951: Article 3). If there is no possibility for the implementation of the literal wording, it must be disregarded (Iraqi Civil Code, 1951: Article 158). Furthermore, a description in the present is worthless, while one in the absent is taken into consideration (Iraqi Civil Code, 1951: Article 161). Customary knowledge is considered as equivalent to a conditional clause, and appointment by custom is treated the same as appointment by text. Customary practices between merchants are considered as binding as formal conditions between them, and what is commonly inhibited is regarded the same as what is expressly inhibited (Iraqi Civil Code, 1951: Article 163). These and other Articles from the *Majalla al-Ahkam al-Adliya* contribute to a consistent set of legal rules (Iraqi Civil Code, 1951: Articles 155–166).

2.2.2. Categories of Intertextuality in Civil Law Texts

There are different kinds of texts, the most significant of which, concerning civil law texts, involve the following:

First: Intertextuality in terms of form and content

This category concerns linguistic structures and sentence composition, where the legislator reproduces a text from a law without change. For instance, the legislator of the Iraqi Civil Code adopted the text of Article 25(1) of the Iraqi Civil Code, which states: "The law of the state in which the contracting parties have a common domicile shall be applicable to contractual obligations if they are united by domicile. If they have different domicile, the law of the state in which the contract was concluded shall be applicable, if the contracting parties do not agree otherwise or it is obvious from the circumstances that another law is intended to be applied." This provision was borrowed from the Egyptian Civil Code in Article 19 (1) which states that 'The law of the State in which the contracting parties have a common domicile shall be applicable to contractual duties if they share the same domicile. If they differ in domiciles, the law of the State in which the contract was concluded shall be applicable, if the contracting parties do not agree otherwise or it is clear from the circumstances that another law is intended to apply.' In essence, the provision tackle not only the legal framework but also the interpretation of the text, including the use of metaphors, similes, and the unique ideas each writer conveys in their own way.

For instance, Article (204) of the Iraqi Civil Code' stating that "Every assault which causes other than the injuries mentioned in the preceding Articles entails payment of compensation' is similar to Article (163) of the Egyptian Civil Code, stating that 'Any wrongdoing that causes harm to a third party obliges the

perpetrator to compensate, but they differ in underlying concepts. Under the Egyptian Civil Code, 'error' is established as the foundation for civil liability, while under the Iraqi Civil Code, after borrowing the Egyptian text, deviated in thought and omitted an explicit mention of 'error' as the basis of civil liability. This omission has resulted in differing opinions among jurists concerning the basis of civil liability. It is argued that "error" serves as the basis in both articles, however, there are arguments contend that the Iraqi legislator, unlike the Egyptian legislator, intended "damage" to be the foundation of civil liability (Muhammad Suleiman al-Ahmad, 2008: 25).

Second: Internal and External Intertextuality

Internal intertextuality refers to a writer's interconnection within his own works, whether within the same text or across various texts. For example, the repetition of a particular word in several of his texts could serve as a differentiating keyword. For instance, the repetition of the word "sale" in various articles of the Iraqi Civil Code (see Articles 506, 507, 508, 509, and so on) or the repetition of the word "rent" in multiple texts of the same code (see Articles 722, 723, 724, 725, 726, and so on). On the other hand, external intertextuality refers to similarities or parallels between texts produced by different authors or legislators (Ali Miteb Jassim, 2009: 10). For instance, there is a clear similarity between Article (320) of the Iraqi Civil Code, which stipulates that 'solidarity among debtors is not presumed but is based on an agreement or provision of the law,' and Article (279)

of the Egyptian Civil Code, which comprises an identical provision, stating that 'solidarity among debtors is not presumed but is based on an agreement or provision of the law.'

Third: Direct and Indirect Intertextuality

In this context, textualization refers to the incorporation of one text within another. Direct textualization occurs when the legislator quotes a text exactly as it is written, preserving the original language and meaning. This includes quoting sources such as Qur'anic verses, hadiths, legal principles, or other legal texts. It involves inserting a present (existing) text into an absent (new) text explicitly and without any modification, with both the legislator and the reader fully aware of this relationship (Ahmed Al-Zoghbi, 2000: 29 and following). For example, the Iraqi civil legislator directly quoted the Prophet's hadith, 'no ab initio or retaliatory injury,' and integrated it into Article 216 (1) of the Iraqi Civil Code without any modifications. The aforementioned Article states that 'no ab initio or retaliatory injury: the injury will not be eliminating by inflicting by a similar injury, a person who has suffered a grievance shall not inflict the same grievance as he had suffered on another person'.

Indirect intertextuality happens when the legislator infers, deduces, extrapolates, or even speculates about a connection from the text. It is a legislative phenomenon occurring when a provision comprises subtle connections to another provision without clearly referencing it (Ed. Josue Harari, 1979: 39). For

instance, Article (211) of the Iraqi Civil Code states that 'If a person established that the injury had arisen from a cause beyond his control, such as by an act of God a sudden accident, force majeure, the act of a third party, or the fault of the injured himself, shall not be liable on damages unless there is a provision (in the law) or agreement to the contrary.' This provision precludes the claimant from attaining compensation when the defendant establishes that a foreign cause was accountable for the damage. The act of the foreign cause results in the interruption of the causal relationship between the fault of the wrongdoer of the unlawful act and the damage caused to the injured party. The interruption of this causal relationship results in the absolution of the defendant of liability. Moreover, Article 211 discloses its implicit connection with other provisions of the Iraqi Civil Code, such as Articles (202, 203, 204, 206, 207, 216/F2, 231, and others), which reference it indirectly. These connections reflect the interconnected nature of legislative provisions, even if the relationship is not obviously stated.

3. Mechanisms and Negative Intent of Intertextuality in Civil Provisions

The process of intertextuality comprises of various mechanisms and tools upon which the legislator depends on. To explain this process and its tools, this article is divided into two sections. In the first section, the mechanisms of textualization in civil texts will be examined, while in the second section, the negative intent of textualization in civil texts will be investigated.

3.1. Mechanisms of Textualization in Civil Texts

Mechanisms are the means or methods through which intertextuality is carried out. These involve techniques such as quotation, references, allusions, and simulation. The mechanisms can differ considerably from one provision to another, necessitating a profound appreciation of the original provisions and how they could be creatively and effectively used. Intertextuality depends on particular mechanisms represented by the procedures and tools the legislator employs in this process. To explore this topic, this section is divided into three sub-sections. The first sub-section emphasises on rumination as a mechanism of intertextuality in civil provisions. The second sub-section investigates absorption as a mechanism of intertextuality in civil provisions. The final sub-section is devoted to dialogism as a mechanism of intertextuality in civil provisions.

3.1.1. Rumination as a Mechanism of Intertextuality in Civil Texts

Rumination as a mechanism of intertextuality in legal provisions refers to the process of reusing and reiterating prior legal provisions within new ones. This practice strengthens existing laws, giving them a character of stability and continuity. Legal provisions are characterized by their precision, accuracy and clarity, and employing rumination contributes to accomplishing legal cohesion. By revisiting and incorporating established legal provisions, rumination guarantees consistency and harmony across different legal provisions.

It is noteworthy that legal texts are among the types of texts relying greatly on intertextuality to attain coherence and continuity. Rumination as a mechanism of intertextuality is particularly noticeable in legal texts through the systematic reuse of prior legal materials whether legislation, judicial rulings, or legal interpretations. This practice ensures clarity and precision in the application of laws, contributes to the sustainability of the legal system, and provides a stable reference for legal interpretation (Mona Abdul Rahim Abdul Dayem, 2021: 95–96).

Rumination in legal texts as can be defined as the act of taking and repeating the borrowed text in its original form without interference, change, modification, or development. This is considered the simplest form of mechanism of intertextuality which reflects the intent of the legislator to preserve the integrity and objectivity of the borrowed text.

The significance of rumination in legal texts appears in attaining continuity, as rumination guarantees the continuity of the legal system by reiterating established legal principles and foundations, and boosts clarity in the texts, that assists in providing a clear and uniform interpretation of various laws, which leads to the reduction of conflicts and various interpretations, and permits ensuring precision by verifying that new legal texts are based on recognised and approved legal foundations, and contributes considerably to attaining stability, accomplishing effective communication between various legal texts and ensuring the cohesion of the legal system as a whole (Jamal Ali Shehab, 2016: 83).

Rumination is also significant as it is not exclusive to a particular law, but can be applicable in different fields of law, such as civil law, criminal law, administrative law, and so on.

The mechanisms that rely on rumination in legal texts are as follows:

First: Direct Quotation

This mechanism includes borrowing a prior legal text in its exact wording and integrating it into a new legal text. Direct quotation is employed to ensure consistency with previous legal texts by quoting a text from one law and placing it unchanged into another. For instance, Article 262 of the Iraqi Civil Code stipulates that 'in exercising the right of his debtor the creditor is deemed to be acting for him; every benefit resulting from the exercise of these rights will be included in the debtors patrimonium and service as security for all his creditor.' This text is directly and unchanged, both in wording and structure, ruminated from Article 236 of the Egyptian Civil Code.

Second: Repeated Interpretation

This mechanism happens when legislators and courts foster existed legal interpretations as the basis for new ones. This practice guarantees consistency in the application of laws. In this context, it is referred to a wide interpretation that draws from all sources of law, containing written laws, customs, and judicial rulings. When legal provisions is failed to provide clear guidance on emerging issues, it becomes essential to turn to the interpretation of other sources to derive

the legal judgment, which is informed by the underlying essence and wisdom of the legislation (Ali Mahmoud Hamid, 2024: 130). In most of its rulings and decisions, the Iraqi judiciary rationalizes its position by stressing the principles of good faith and the stability of transactions. The Iraqi judiciary stays consistent in the interpretation of decisions, especially concerning issues related to real estate. For instance, the Federal Court of Cassation stated in a decision that the withdrawal of a plot from a person to whom it was owned or allocated by the competent municipality, violating Article 139 of Registration Law No. 43 of 1971, does not preclude the court from addressing the grounds for the withdrawal's validity. If the cause for the withdrawal is valid, the claimant's claim shall be dismissed. Nevertheless, if the cause for the withdrawal is not valid, and the allocation to the claimant was legally made, the claimant is entitled to seek the invalidation of the real estate registration of the plot and its return. If the competent municipality has disposed of the plot, the claimant has the right to claim the value of the plot, rather than the invalidation of its registration, so as to safeguard the good faith of third parties and uphold the principle of stability in transactions (Iraqi Federal Court of Cassation, 2019: Decision No. 335).

Third: Repetitive Legislation:

This happens within the enactment of new laws, often based on the provisions of existed laws, with minor modifications to adapt them to the new context. This kind of legislation makes sure that the new laws are in line with existing legal

principles. For instance, the Iraqi Noise Control Law No. 41 of 2015 closely mirrors the Kurdistan Region's Noise Control Regulation No. 1 of 2011.

Fourth: Case Law:

Judicial precedents are a form of rumination, as courts sometimes rely on earlier decisions when making new decisions. This practice boosts the stability of the legal system and ensures consistency in the rulings. For instance, the judiciary in Iraq and the Kurdistan Region have established the same procedures and orientation concerning the ownership of real estate not registered with the Real Estate Registration Department. Nonetheless, the legislator encompassed an exception to this principle in Revolution Command Council (dissolved) Resolution No. 1198, on 11/2/1977, as amended by Resolution No. 1426 on 12/21/1978. Paragraph (B/First) states that 'if the pledgee has inhabited the property subject to the pledge, or modernized buildings or made other improvements or plantings without the written opposition of the pledgeor, this must be considered a valid cause permitting the pledgee to own the property or the right to dispose of it at the value specified in the pledge, or to claim compensation in the manner mentioned in paragraph (a) of this clause, plus the value of the improvements or plantings existing at the time of the repudiation of the pledge.' This decision demonstrates that the legislator approved the forcible execution in kind, after informing the pledgee of the requirement to fulfil their pledge, subject to the fulfilment of particular conditions outlined exclusively in the decision. Following

the issuance of this decision, the judiciary generally fostered this approach in its rulings regarding the ownership of real estate not registered with the Real Estate Registration Department. This is in spite of the fact that, under Iraqi Civil Code, the foundation for the sale of real estate is the registration of the contract of sale, which is required for the conclusion and transfer of ownership (Adel Kazem Al-Awadi, 2016: 87).

3.1.2. Absorption as a Mechanism of Intertextuality in Civil Texts

In the legal system, absorption is one of the vital textual mechanisms employed to ensure coherence and continuity between different legal texts. The Iraqi Civil Code No. 40 of 1951 obviously demonstrates how absorption, as a textual mechanism, contributes to the establishment of new legal texts based on existing ones, thereby guarantees legal harmony and stability.

In generally, absorption includes rewriting an absent text in alignment with the context of a new text, making it a continuation of the latter. This process works on a dynamic and transformative level, reproducing the absent text in a new form while maintaining its original features without negating them. When a legislator invokes an absent text, they employ it through this mechanism to craft a new text. Nonetheless, the original text is not cancelled but is instead incorporated into the new text, preserving its core features and characteristics (Mona Abdel-Daim, 2021: 102).

Absorption can be defined as the process of incorporating and integrating former legal texts or concepts into new legal texts, making these new texts an essential part of the current legal system. This process happens indirectly, as prior texts are not quoted verbatim; instead, their concepts and provisions are integrated and adapted to fit the new legal context.

The significance of absorption in legal texts lies in its capability to attain legal continuity. By assimilating older texts into new ones, absorption assists maintain the consistency and stability of the legal system. Moreover, it improves legal cohesion by ensuring harmony between new and old legal texts, thereby reducing conflicts and contradictions. Absorption also plays a considerable role in the advancement of laws, as it permits for the development of existing legal texts while building on established and recognized legal bases.

Manifestations of Absorption in the Iraqi Civil Code include the following:

First: Absorption of Basic Principles:

One of the main manifestations of absorption in the Iraqi Civil Code is the incorporation of fundamental legal principles into civil laws. For instance, principles associated with contracts, property, and obligations form part of the foundational structure of the Iraqi Civil Code and other civil laws, leads to an important similarity among these provisions.

A remarkable example is the absorption of concepts from Article 150 of the Egyptian Civil Code stating that: (1) If the words of the contract are clear, it is not permitted to deviate from them by interpretation to uncover the intent of the contracting parties. (2) If interpretation is necessary, the common intention of the contracting parties shall be sought without concentrating merely on the literal meaning of the words. Consideration shall be given to the nature of the transaction and the trust and confidence that shall exist between the parties, in addition to the customs of the transaction.

The Iraqi legislator integrated these principles into Article 150 of the Iraqi Civil Code stating that: (1) The contract shall be executed according to its terms and in a manner consistent with the requirements of good faith. (2) The contract does not merely obliges the contracting parties to the explicit terms, but also involves what is necessary according to law, custom, and justice based on the nature of the obligation.

This instance indicates how the Iraqi legislator absorbed and adapted established legal principles to guarantee continuity and stability within the legal system while aligning them with the local legal and cultural context.

Second: Adaptation of Legal Provisions:

This includes amending former legal texts to align with social, economic, and political changes. For instance, modifications to the provisions concerned with contracts and obligations reflect modern developments introduced by the French

legislator concerning the theory of contracts. Important modifications involve the removal of the 'cause' element in contracts. The concepts of "cause" and 'subject matter' were replaced by the broader notion of the 'content of the contract,' which now serves their function. These elements were excluded in the 2016 amendments, as they were deemed pointless especially since some official and unofficial laws, such as the Principles of European Contract Law (1998), do not comprise such theories but instead concentrate on the content of the contract. This mechanism also comprises the modification of provisions of force majeure, as outlined in Article 1195 of the French Civil Code. This article establishes three conditions for applying this mechanism. The first condition is that unexpected circumstances arise from the conclusion of the contract, and the party did not accept a clause that would allocate the risk. These circumstances shall make the performance of one party's obligations unduly costly. The article then specifies the steps that shall be followed to solve these effects. The aggrieved party shall initiate a request to renegotiate the contract with the other party. If the other party rejects or negotiations is failed, the two parties may decide to either terminate the contract or refer the matter to the judge with a joint request to qualify the contract as appropriate. If they are unable to agree on any resolution, one party might independently demand the judiciary to review the contract and either modify its content or terminate it.

It is obvious that the French legislator, in regulating force majeure, has given priority to amicable solutions, making judicial interference a last resort. The judge is then permitted, at the request of either or both parties, to interfere to the extent of terminating the contract, rather than merely amending it. This approach opposes the purpose of the theory of force majeure, as adopted by other legal systems, which aims to maintain the contract by amending burdensome obligations to a reasonable limit, rather than terminating the contract completely. Most significantly, the French legislator framed Article 1195 as a complementary provision, not a mandatory one, by permitting the parties to put specific conditions in the contract. This flexibility may undermine the whole mechanism, as such conditions may become standard clauses (Adnan Ibrahim Sarhan, 2022: 5). In spite of the criticisms of the adjustments to the theory of contract made by the French legislator, it signifies an important and necessary step that did not emerge in isolation but rather as a response to social, economic, and political transformations. Given that the theory of contract in the Iraqi Civil Code lacks in several aspects such as the failure to establish adequate legal rules for regulating contractual liability, provisions on limitations, and other related areas, it is urged that the Iraqi legislator to follow the example set by the French legislator. It is time to reorganize and modify the theory of contract to be in line with the demands of the modern era and technological advancements.

Third: Incorporating Case Law:

Although the Iraqi judiciary does not formally foster the principle of case law, the Federal Court of Cassation often follows its previous decisions and even cites them. In its efforts to stabilize transactions, the court has, for example, stated that the claimant did not have the right to similar wages as compensation for arrows that went astray onto a public road. The court directed the trial court to require the claimant whether they preferred a one-time compensation. If the plaintiff rejected the one-time compensation and insisted on asking for similar wages, the case would be dismissed in accordance with the Court of Cassation's established case law on the matter. In accordance with the decision, the court's examination revealed that the plaintiffs' claim centred on demanding a fee equal to their shares for the portion of the public road during the claimed period. Since the street in question was part of the basic design of Baghdad city, devoted to public benefit, and cannot be lifted or removed, and given the court's established case law concerning the calculation of one-time compensation in cases involving the Ministry of Electricity or the passage of water, sewage pipes, or sewage plants, the plaintiffs have the right to one-time compensation. Consequently, the claimants have the right to a one-time compensation, as no one can be deprived of their property except in situations prescribed by law and in the manner it dictates, in return for fair compensation paid in advance (Article 1050 of the Civil Code). Therefore, the court shall have required the plaintiffs whether they were

seeking one-time compensation. If they rejected and insisted on demanding similar wages without compensation, the case would be dismissed (Iraqi Federal Court of Cassation, 2020: 42/43).

Thus, absorption as a mechanism of intertextuality plays a vital role in developing legal provisions and guarantees their coherence and continuity. By incorporating and absorbing prior provisions, the Iraqi Civil Code could evolve to align with societal and economic changes, while simultaneously maintaining the stability of the legal system.

3.1.3. Dialogism as a Mechanism of Intertextuality in Civil Texts

Bakhtin is considered as the pioneer of the concept of dialogism. He views dialogism as an influential mechanism of intertextuality, one that boosts communication and intellectual enrichment within civil texts. Dialogism comprises the use of dialogue and interaction among different texts, establishing a dynamic communication that permits for multiple voices and ideas to coexist within a single text. It is regarded a key textual mechanism that enhances civil texts by adopting multivocal communication. Through dialogism, texts could interact and engage with one another, giving them depth and multiple layers of denotation. This process enriches the capacity of texts to communicate and interact with the audience in innovative and fruitful ways (Tzvetan Todorov, 1996: 121–126).

Dialogism could be defined as a textual mechanism that establishes a dialogic interaction between different texts. This interaction allows for a multiplicity of

voices within the text, enriching its complexity and enhancing it with diverse meanings and connotations. This process is integral to the authoring process in general, and particularly to legal authorship, where previous provisions are recalled and engaged with in new contexts.

The significance of dialogism in civil provisions lies in its capacity to promote understanding and communication. It eases effective interactions between texts and the public on one hand, and between texts, researchers, and scholars on the other. This interaction expands the understanding of shared messages and enriches the effect of legal texts in shaping and modernizing the law. Dialogism enhances meanings through the interaction between texts, permitting the reader to derive multiple interpretations, thereby adding greater depth to the content. Furthermore, dialogism motivates criticism and analysis by allowing readers, researchers, and legal experts to critically assess and discuss the ideas presented in the text, adopting intellectual and cultural engagement. The most noticeable manifestation of dialogue is the round table. The Legal Research Centre, affiliated with the Ministry of Justice of the Kurdistan Region, Iraq, held its third round table entitled 'Towards the Development of an Integrated System of Insurance in Its Various Forms, and the Legal Means to Support It' on Wednesday and Thursday, 4–5 October 2023, at the University of Dohuk, in cooperation with the Faculty of Law at the University of Dohuk. Moreover, the fourth round table, entitled 'Reviewing and Developing Teaching Curricula in the

Faculties of Law in Universities in the Region,' was held on Tuesday, 30 December 2024. At the office of the Ministry of Justice of the Kurdistan Region of Iraq, in cooperation with the Ministry of Higher Education and Scientific Research, dialogues between texts and legal figures are assimilated to establish a dynamic and expressive integration within the law. Dialogism is obvious through the use of prior legal texts, which are reinterpreted in new contexts, as well as through references to other legislative texts that are discussed in various ways. This process plays an important role in the development of the law, enabling it to respond to new developments.

Some of the most significant dialogic mechanisms in civil texts include:

First: Direct Dialogue

Direct dialogue between different characters or voices within the text can establish a dynamic, interactive exchange. For example, a dialogue between a judge and a lawyer, or even a judge's internal dialogue with himself, can be employed to clarify legal points in a conversational manner, assisting to simplify complex concepts. A remarkable example is the emergence of the modern theory of cause, which was invented by the French judiciary, encountered with practical challenges, the judiciary recognized the insufficiency of the traditional theory of cause in tackling all cases where a contract shall be deemed void (Abdulmajeed Al-Hakim et al., 2010: 104). This led legislators, after dialogue and discussion, to foster the modern theory in some civil provisions. For instance,

regarding the formality of contracts, the legislator fostered the modern theory, where the motive for contracting is regarded a reason for the formality of contracts. This is mirrored in Article (147) of the Iraqi Civil Code, which stipulates that (1) If a sham contract is made, the creditors of the contractors and the private successors, if in good faith, might adhere to the sham contract. They might also establish the sham contract that injured them and adhere to the hidden contract. (2) If the interests of the concerned parties conflict, and some adhere to the apparent contract while others adhere to the hidden contract, the former has to be given priority.

Second: Cross-referencing:

This mechanism includes utilising references to previous provisions or well-known figures to engage with them in the new text. It could also include referencing and interpreting previous legal provisions in the context of a new legal framework. For instance, in Article (186) of the Iraqi Civil Code, the legislator refers to Islamic jurisprudence concerning the damage caused by a person who wilfully or by trespassing directly or indirectly participated in actions. Although the civil legislator firstly borrowed this text from Islamic jurisprudence, it eventually deviates from the general trend of this jurisprudence. The traditional rule holds that the direct actor is liable even without intent, while the party who indirectly participated is only liable if intent is present. Moreover, if both the direct and caused actions are combined, the judgment typically favours the direct actor. The

first rule supports this view, the second rule is in line with the objective theory of liability (holding the direct actor liable for the damage if combined with the caused action), and the third rule further supports the objective theory by holding the direct actor liable. However, the Iraqi legislator departs from these traditional rules, attributing liability to the subjective theory, which necessitates intentionality or negligence. This clearly illustrates that non-contractual civil liability under Iraqi law is based on the element of fault (Mohammed Suleiman Al-Ahmad, 2005: 59–60).

Third: Cultural and Historical Allusions:

Dialogism also comprises references to famous historical or cultural events, establishing a dialog between different texts. For instance, historical events and their commentary could be woven into civil texts to strengthen the message being conveyed. An example of this can be noticed in Article (8) of the Iraqi Evidence Code of 1979, which stipulates that 'he judge might not judge based on his personal knowledge gained outside the court; however, he may take into consideration what he knows about public affairs that everyone shall be familiar with' (Iraqi Evidence Code, 1979). In the last paragraph of this provision, the judge is entitled to consider public knowledge of historical, geographical, scientific, cultural, and artistic events that are broadly known and famous. These events are assumed to be common knowledge and do not necessitate additional proof, as they are regarded established facts based on their notoriety. The judge is

anticipated to rely on this public knowledge in rendering decisions, as these well-known incidents are known to all people and cannot be unknown to the judge. Consequently, such knowledge is not deemed as personal information, which is inhibited by law. This provision mirrors a form of dialogue based on shared knowledge, which is passed through oral transmission and deeply embedded in public consciousness (Ayad Ahmad Al-Sari, 2020: 46).

Fourth: Philosophical and Intellectual Debates:

Philosophical and intellectual debates could be utilised to adopt a dialogue between different ideas and concepts. A noticeable example of this is the discussion of legal and philosophical principles through the dialogue between competing legal theories and their application in civil provisions. For example, the debate between supporters of the personal and materialist theories of obligation (Abdulmajid al-Hakim et al., 2010: 8–10), and the discussion of the personal versus objective theory of civil liability indicate such intellectual engagement (Jabbar Saber Taha, 1984: 80). Eventually, dialogism, as a mechanism of intertextuality, plays an essential role in enhancing civil provisions and enriching their capability to communicate and engage with the audience. Through dialogue and interaction between texts, a multiplicity of voices and meanings could emerge within the text, thereby increasing its intellectual and cultural importance.

3.2. The Negative Impact of Intertextuality in Civil Texts

As discussed above, intertextuality is the interconnection of texts and the borrowing of ideas and provisions from various sources and is a fundamental concept in legal texts. While there are several positive facets of intertextuality, which we will not delve into to avoid unnecessary length, it may also have negative implications in legal texts. One of the most noticeable disadvantage is that it can result in the inflation and complexity of legal texts within a single law. This can lead to unnecessary repetition and prolongation, or the creation of multiple provisions for circumstances that could be organised under a single rule. Subsequently, a law might become filled with excessive provisions, many of which might be redundant. This issue frequently arises when legislators borrow texts from other laws, as noted earlier, resulting in the overcomplication of texts, as noticed in the Iraqi Civil Code.

We support the view expressed by some scholars (Abdulkarim Saleh Abdulkarim, 2014: 148) concerning the phenomenon of the inflation and exacerbation of civil texts. There would be inflation in legal rules when there is a proliferation of legal texts within a single law, or across different laws that could be applied to the same issue. Nonetheless, the concept of inflation extends to all cases where the volume of legislation is unduly large, comprises many repetitive texts, or features provisions that are in conflict with one another, or a set of legislative exceptions that overwhelm the general rule of a given provision. In light of this, we can

identify the causes of the inflation of civil texts. The core cause is the phenomenon of intertextuality, which includes the diversity of sources employed in civil provision, the over-regulation of provisions, and the improper drafting of the texts. We will address these causes independently in the following sections.

3.2.1. Diversity of Sources of Civil Texts

One of the causes for the length and complexity of the Iraqi Civil Code is the diversity of its sources, that stem from the combination of Islamic jurisprudence and Western legislation, especiall the French Civil Code. The French Civil Code has served as the primary source for all Arab civil laws, including the Iraqi civil law.

The Iraqi Civil Code mirrors a historical evolution, inheriting from the Egyptian Civil Code, which in turn derived from the French Civil Code. Furthermore, the Iraqi legislator sought to draw heavily from Islamic jurisprudence, especially *Hanafi* jurisprudence, which was the principal school of thought at the time. This impact is apparent in the numerous legal provisions and topics integrated from Islamic jurisprudence (Ismat Abdul Majeed Bakr, 2014: 424). Nevertheless, this approach often resulted in an excessive reliance on and derivation of legal topics and texts. For example, the provisions on preemption (*shafa'ah*) were devoted an extensive seventeen articles (1128–1144), although the concept has little practical application today. It would have been more suitable to tackle it in two or three precise articles, aligning with the current needs and realities of society.

Due to the legislator's effort to blend and merge Latin jurisprudence, represented by the French Civil Code, with Islamic jurisprudence, the Iraqi Civil Code comprises provisions derived borrowed from Latin jurisprudence that are in conflict with, and are not harmonized with, Islamic jurisprudence, and vice versa. This is as a result of the inherent differences between these two jurisprudential traditions and the legislator's failure to thoroughly review the provisions of both when tackling particular subjects, resulting in inconsistencies within civil provisions (Mohammed Suleiman Al-Ahmad, 2009, p. 280).

By harmonization, it is meant that the provisions are compared with the intended purpose when stating a specific rule. More accurately, it refers to the process undertaken by the legislator to compare two sources of information for the purpose of legislating a provision in a legal rule, guarantying consistency and avoiding contradictions. Many examples of this lack of harmony is noticed in the Iraqi Civil Code. For instance, the presence of any defect in the cause of a contract influences the entirety of the contract as the defect affects one of its essential elements. Nonetheless, a defect in the validity of consent, rather than in its presence, does not result in the nullity of the contract but rather in its suspension. For example, a mistake in the characteristics of the object is different from a mistake in its identity, whether it relates to the contractor, the object of the contract, or the cause of the contract. The Iraqi legislator has been consistent in

this respect. Article 117 of the Civil Code stipulates that (1) If there is a mistake in the object of the contract that has been titled and referred to, and the category differs, it must be regarded void as a result of its absence. Nevertheless, if the category is the same but the description is different and the description is desirable, the contract must adhere to the referred object and must be concluded as a result of its presence, depending upon the contracting party's approval. However, the legislator is failed to differ between a mistake as a defect of consent, a mistake concerning the cause of the contract, or a mistake relating to the contracting party or their attributes. This difference shall be made between these scenarios. This lack of distinction is obvious in Article 118 of the Civil Code, which stipulates that (2) If there is a mistake in the identity of the contracting party or one of their attributes, and that identity or attribute was the only or main reason for the contract, the contract is regarded void. This illustrates a deficiency in the civil provisions. The civil judgment resulting from a mistake in the contractor's attribute shall differ from the judgment resulting from a mistake in the contractor's identity. Furthermore, if the mistake relates to the cause of the contract, where the mistake becomes the key motive for the contract, it would lead the contract to be void, not merely invalid. (Mohammed Suleiman Al Ahmad, 2009: 283–284). It is obvious from the above that the reliance of Iraqi legislator on multiple sources when deriving civil provisions has resulted in an inflation of civil provisions, in addition to inconsistencies and conflicts between different

provisions. This signifies a legislative flaw that shall be addressed. The measure of success or failure in borrowing provisions from different sources lies in the practical significance and application of these provisions. For example, the provisions on renewal in the Iraqi Civil Code are borrowed from Roman jurisprudence, which held great importance at the time ((Iraqi Civil Code, 1951: Articles 401–404). Nevertheless, this significance has importantly diminished with the advent of modern civil laws that regulate the assignment of debt and the assignment of rights. Thus, the concept of renewal has almost become obsolete in practical application (Abdulmajeed Al-Hakim, 2010: 425).

3.2.2. Overregulation of Interrelated Civil Texts

In the Iraqi Civil Code, numerous provisions illustrate that the legislator has overregulated some topics after taking them from different sources. This overregulation has resulted in contradictions with other legal texts or excessive drafting, often containing pointless phrases and sentences (Abdulkarim Saleh Abdulkarim, 2014). For example, Article 584 of the Iraqi Civil Code states that the expenses in relation to items sold in bulk shall be borne by the buyer: 'Things sold in bulk shall be borne by the buyer. For example, if the fruit of a vineyard is sold in bulk, the cost of cutting and harvesting that fruit shall be borne by the buyer unless there is an agreement or custom to the contrary.' On the other hand, Article 585 of the Civil Code stipulates that for items sold by carriage, the cost of transportation and delivery to the buyer's home should be determined by

agreement or custom.’ This indicates how overregulation and needless detail in drafting could establish overlapping or redundant provisions.

It is obvious that the insertion of Articles 584 and 585 in the Iraqi Civil Code is needless, given the existence of Article 587, which is succinct and sufficient to address the subject. Article 587 stipulates that ‘the expenses of delivering the sale should be borne by the buyer, if there is not an agreement or custom that states otherwise.’ This single provision efficiently removes the need for the redundant details found in Articles 584 and 585. The Iraqi legislator may have either relied merely on Article 587 or combined the provisions of Articles 584 and 585 into a more streamlined and unified text, such as ‘the expenses of delivering things vended in bulk or in transit shall be borne by the purchaser, if there is not an agreement or custom that states otherwise.’ This approach would lead to a concise, obvious, and efficient provision, avoiding unnecessary examples and ensuring consistency in the drafting of the Iraqi Civil Code.

Article 198 of the Iraqi Civil Code is redundant and can be avoided to inhibit repetition, as it states that (1). The usurper of a usurper has the same status as that of the latter: where any person has usurped the property usurped from the original usurper and damaged it, or where it sustained damage while in his possession, the usurpee (owner of the property) has the option if he so wishes to claim from the first usurper and the other part from the second usurper, the first usurper who has paid may claim from the second usurper, but the second

usurper may not, if he has paid, claim from the first usurper. (2). Similarly, where a third party has damaged the thing usurped which is in the possession of the usurper, the usurpee will have the option of either claiming from the usurper who may in return claim from the third party who did the damage, or he may claim from the third party who did the damage where the latter may not claim from the usurper.

It is noticed that the first paragraph of this article addresses the rules regulating the usurper. Nonetheless, the legislator has already addressed the rules of usurpation in Articles 192–201 of the Civil Code. Thus, repeating these provisions is redundant and contributes to the excessive expansion of civil provisions without justification. Regarding the second paragraph of this article, it governs the rules relating the destruction of usurped property. Nevertheless, the law has already outlined the provisions concerning destruction in Articles 186–191 of the Civil Code (Mohammed Suleiman Al-Ahmad, 2009: 415–416). This duplication and repetition of provisions are unnecessary (Munther Al-Fadl, 2006: 381).

Regarding to formality in real estate transactions, the Iraqi legislator has also overstated and reiterated provisions in Articles 91, 508, paragraph (2) of Article 508, paragraph (c) of Article 1134, and Article 1141 of the Iraqi Civil Code. It is believed that the phrases and paragraphs tackling formality in these articles are unnecessary, especially in light of Article 90 of the Iraqi Civil Code. This article builds a general rule for fulfilling formality, effectively superseding the provisions

in the aforementioned articles. Thus, the Iraqi legislator is urged to adjust these articles to remove redundant repetition and reduce textual inflation.

It is also unnecessary for an extensive number of provisions governing liability for animals (Articles 221–226), as these are now mainly out-dated and impractical in application. Conversely, the Egyptian legislature has tackled the issue of liability for animals in a single provision, Article 176, which stipulates that ‘the custodian of an animal, even if he does not own it, is liable for damage caused by the animal, even if the animal strays or escapes, unless the keeper establishes that the incident was caused by a foreign cause beyond his control.’ We hence urge the Iraqi legislature to foster a similar approach to streamline and modernize the legal framework.

3.2.3. Improper Drafting of Texts

Generally, legal drafting is the tool through which legal thinking is conveyed from the internal to the external domain (Ahmed Sharafuddin, 2008: 15). In simply terms, it is a method of articulating a latent idea and transforming it into a social reality to be tackled accordingly (Hassan Kaira, 2014: 26). It could also be construed as the process of transforming the values that create the essence of law into legal rules that can be applicable in practice (Ali Moussa, 2006: 66).

It is the set of means and rules employed to formulate legal ideas and legislative provisions in a manner that simplifies the practical application of the law. This includes capturing the complexities of life in verbal frameworks to accomplish the

objectives sought by legal policy (Issa Khalili Khairallah, 2010: 18–19). Alternatively, it can be defined as ‘the legal formulation of ideas that the legislator wishes to express in preparation for their issuance’ (Abdulkarim Saleh Abdulkarim, 2011: 61).

It seems that there is a lack of attention to the proper drafting of legal provisions after the Iraqi legislator engages in intertextuality. This lack of accuracy and precision has negatively influenced the appreciation and application of the provisions. Among the insufficiencies in legislative drafting (Haider Adham Abdulhadi, 2006: 96) are matters that have worsened and rendered some provisions defective:

First: Errors in Drafting and Language

An error in drafting or language is contrary to what is correct (Abdulhak Al-Katabi, 2013: 125) and contrary to what is right (Ismail bin Hamid Al-Jawhari, 2007: 302). It denotes to deviating from correctness, either out of ignorance (a mistake) or intentionally (a wrongdoing). An error relates to the will, which has a conceptual dimension, with both the will and the mind playing a role in it. Errors can be either material or legal in nature.

A material error happens if the phrasing of a legal text comprises an important mistake in its wording, rendering the intended meaning vague or incorrect unless the error is rectified (Adnan Jamous, 1985: 67). Such errors might involve typographical, clerical, spelling, grammatical, arithmetic, or translation mistakes.

For example, translation mistakes could occur when a legislator borrows a text from a language other than the original, resulting in inaccuracies. Material errors might also occur from the legislator's failure to draft the text appropriately, using language that does not sufficiently express the intended meaning. An example is the misappropriation of conjunctions, such as the improper utilisation of the conjunction "or," which implies an additional meaning, potentially distorting the text's clarity. Moreover, errors can arise in the numbering and sequencing of articles during the drafting stages of a legislative project. When later articles refer back to previous ones, it is vital to ensure consistency in article numbers, as stabilised during the drafting process. These mistakes often occur as a result of inadequate scrutiny during the drafting of legislative texts. To alleviate such issues, careful attention shall be paid to writing, and the texts shall undergo thorough review by a specialized committee after drafting (Mohammed Wassel, 2002: 13).

In terms of the legal error, it refers to an error made by the legislator due to failing to accurately and properly formulate the text after its citation, thus missing the intended meaning. Typically, this type of error is unintended but shall still be identified and rectified. Such errors might occur as a result of the inaccurate use of legal expressions and terminology, excessive wording within the text, or overly concise drafting (Abdul Qader Al-Sheikhli, 1995: 107).

An example of a mistake in terminology could be observed in Article 590 of the Iraqi Civil Code, which utilises the term ‘orphan.’ The provision stipulates that: (1) ‘the guardian selected by the father or grandfather might not sell his own property to the orphan....’. Nevertheless, it is possible for a selected guardian to exist for a person whose father is still alive. For example, if the grandfather is appointed as the guardian of a minor as a result of the incapacity of the father, and the grandfather subsequently becomes the selected guardian before his death, the term ‘orphan’ in this context becomes challenging. To tackle this, the Iraqi legislator shall adjust the wording of Article 590 of the Iraqi Civil Code by replacing the term orphan’ with expressions such as ‘those under his care’ or ‘ward’ (Haitham Ahmed Al-Masawra, 2011: 267).

Second: Ambiguity

The law is naturally complex, and for it to be accurately construed, it shall be thoroughly analysed to explain its meaning. The law involves two key elements: science and formulation. The element of science refers to the material that the mind derives from the nature of evolving social relationships. This material necessitates a framework or structure in which it could be expressed, making it applicable in practice, this is the element of formulation (Hamed Zaki, Second Year: 246).

Ambiguity occurs when a legal provision is in lack of clarity. This can happen when the legislator employs a word that does not obviously convey its intended

meaning, or if the phrase crafted by the legislator fails to attain the required meaning or conveys multiple interpretations. An ambiguous word or phrase leads to a lack of clarity in the text, as it does not directly or clearly designate the intended meaning in its given form. A legal provision is expected to communicate its intended meaning efficiently upon being read (Abbas Al-Saraf and others, 2008: 71–72).

One of the reasons of vagueness is the failure to obviously define the scope of application of the law's provisions in an accurate and controlled manner. This might involve the inclusion of superfluous words in the legal text or a lack of proper syntax in sentences and phrases, which ultimately hampers appreciation of the legal text (Esmat Abdul Majeed Bakr, 2014: 389–390). To tackle such vagueness, the legislator or the Shura Council might need to issue explanations to explain the text. Nevertheless, this adds complexity to the legal framework, demanding judges to review not only the original text but also the accompanying clarifications and explanations. consequently, the issue worsens the difficulty of interpreting civil law texts.

There are many provisions in the Iraqi Civil Code that are nebulous. For example, concerning the element of object, the Code devotes Articles 126–130 to its treatment. Nonetheless, upon reading these articles, one might observe that the legislator has tackled object as an element of the obligation rather than as an element of the contract. Article 126 states: 'Every obligation which have resulted

from the contract must have an object attached to it...'. Moreover, Article 127 states that 'If the object of the obligation is an absolute impossibility (something in itself impossible), the contract shall be null and void.' Article 128 also states that (1). 'The object of obligation must be designated in a manner which negates excessive ignorance....' Moreover, Article 129 stipulates that: 1. The object of the obligation may be non-existent at the time of contracting if it is obtainable in the future...' Article 130 also adds: '1. The object of the obligation must not be legally banned or must it be to the prejudice of public order or morals...'

This apparent emphasis on object as part of the obligation rather than the contract creates ambiguity and raises questions about the legislator's intent in structuring these provisions. If we scrutinize these provisions more carefully, it becomes clear that the Iraqi legislator has tackled object as an element of obligation. Nevertheless, the lack of precision in the legislator's intent has resulted in differing opinions among jurists, and this issue remains unsettled (Munther Al-Fadl, 2006: 156). Furthermore, there is no need for such an extensive number of articles on this issue, as their inclusion has inflated the Civil Code unnecessarily. These Articles could have been combined into a single Article comprising of several paragraphs. Moreover, confusion and nebulousness are clear in the legislator's approach to the distinction between the right to imprisonment and the defense of non-execution in Articles 280 and 282 of the Iraqi Civil Code (Saadi Al-Barzanji, 2007: 133–137). We also recommend deleting the paragraph in

Article 280 of the Civil Code that states: “A worker may withhold the thing on which he is working until he has received the wage due, regardless of whether or not his work has an effect on this thing.’ This is because the worker is effectively regarded a creditor in claiming their right, and citing specific examples in legal provisions is not advisable.

Similarly, Article 1 (2) of the Iraqi Civil Code states that ‘If there is no applicable legislative provision, the court is required to rule in compliance with custom, and if not, in compliance with the principles of Islamic law most appropriate to the provisions of this Code ...’ . This raises the question: what does the legislator mean by the phrase ‘most appropriate to the provisions of this Code’? The provisions of the Civil Code are not confined to one school ‘*madhhab*’ over another, as is obvious to anyone who reads the explanatory memorandum associated with it. How should this provision be interpreted? Should the judge refer to *Hanafi* jurisprudence or to other Islamic schools (*madhhabs*), from which the legislator has fostered certain provisions for specific topics and cases? This paragraph is nebulous and vague, making an obstacle that complicates matters for judges when tackling such cases.

Third: Conflict

Conflict can be defined as ‘the applicability of two provisions to a single fact, each of which opposes a provision required by the other,’ or as a contradiction in their meaning. The core of conflict lies in the divergence between two pieces

of evidence, whether the conflict is total or partial (Mohammed Sherif Ahmed, 1982: 136). For instance, Article (134) of the Iraqi Civil Code conflicts with Article (1163/1) of the same Code. Article (134) states that (1) 'If the contract is suspended due to prohibition, coercion, mistake, or deception, the contracting party might repeal the contract after the prohibition, coercion, mistake, or deception has ceased. He might also authorize it. If he repeals it, he might repeal the actions of the transferee and recover the property wherever he finds it, even if it has changed hands. If the property perishes in the hands of the transferee, the transferee should be liable for the value of the property'. It is construed from this Article that if a person vends an item owned by a third party, and the buyer subsequently vends it to another person, with successive sales happening until the item ultimately settles in the possession of someone whether in good faith or bad faith, the legal owner is entitled to repeal all transactions made on the item. The owner is also entitled to recover it wherever it is found, even if it has changed hands. The legislator's intention is to safeguard the rights of the owner, ensuring they are not lost irrespective of how many sales have taken place. While this protection serves justice by protecting the owner's rights, it is in conflict with Article (1163) of the Iraqi Civil Code, which states that: (1) 'Whoever possesses, in good faith, a movable item or bearer bond based on a valid cause, no claim of ownership should be heard against them from anyone. (2) Possession itself is

an assumption of good faith and the existence of a valid cause, unless evidence is presented to the contrary.'

This conflict raises the need to differentiate between the two rules to identify which serves as the general text and which as the special text. It is noteworthy that Article (134) is part of the general rules regulating the theory of obligations, including the theory of contracts, while Article (1163) tackling the general principle regulating possession and, therefore, constitutes an exception to the general rule (Mohammed Suleiman Al-Ahmad, 2009: 426).

Fourth: Contradiction

contradiction is defined as the difference between two statements by negation and affirmation, a difference that requires one of them being true and the other false' (Al-Kafawi, 2011: 255). It can also be defined as 'the difference between two cases by affirmation and negation, necessitating one to be true and the other false' (Al-Jurjani, 2013: 402). Contradiction in speech refers to disagreement, and its essence lies in the opposition of affirmation and negation concerning two cases. When two contradictory statements are presented, if one is true, the other shall inevitably be false. Contradictions cannot coexist nor can they both be absent, as exemplified by the statements: 'Zayd is standing' and 'Zayd is not standing,' presuming all other factors remain constant (Mustafa Al-Zalami, 2002: 373–375).

According to Mustafa Al-Zalami, contradictions occur under eight conditions: (unity of subject (the governed or the predicate); unity of time, unity of place, unity of condition, unity of addition or attribute, unity of force and action, unity of whole and part, unity of obligatory force.

The differences within contradictions arise from two factors:

1. Difference in quality, such as affirmative versus negative, valid versus invalid, or permissible versus prohibited.
2. Difference in quantity, where one is total and the other is partial.

Contradiction happens in the law between two different texts in two distinct legal rules. It is the act that renders the description opposite to the previous description, as it applies to the actual situation rather than the descriptive situation (Ahmed bin Yousef Abdel-Dim, 1996: 1, 2, 214). For instance, Article (68) of the Iraqi Civil Code states that '(1) The primary rights in rem are the right of ownership, the right of disposal, the right of realization, the right of benefit and use, and the right of long lease. There is no issue with classifying the rights listed in this article as rights in rem, except for the right of long lease. This raises the question: is the right of long lease truly one of the rights in rem?

Article (68) of the Civil Code explicitly regards the long lease as a right in rem. Nonetheless, the contradiction lies in the concept of distinguishing this right from a short lease, which does not fall within the ambit of in rem rights. This is because in rem rights are enumerated exclusively, not by way of example. The legislator

has regarded the right to a short lease as a personal right, highlighting the inconsistency in the Iraqi legislator's approach.

It is beyond dispute that there are important differences in the characteristics and features of personal rights and in rem rights. As stipulated in Article (67) of the Civil Code, an in rem right is defined as a direct authority over a particular thing granted by law to a particular person. Conversely, a personal right is a legal bond between two persons. What differentiates an in rem right from a personal right is that the previous grants direct authority over the object of the right, without any mediation by another person. This authority permits the holder to utilise, exploit, and dispose of the object of the right directly, without requiring permission or intervention from anyone else. As for the holder of a personal right, they cannot exercise their right except through the mediation of another person, as their right is not directly emphasised on a particular property. In other words, they lack authority over a specific property, unlike in rem rights. This highlights a fundamental dissimilarity in the characteristics of the two types of rights, rather than their duration. For example, a tenant's right is regarded as a personal right, irrespective of whether the rental period is short or long. Thus, the issue here is why the short rental is not considered a right in rem, although its essence is the same as that of a long rental, with the sole difference being the length of the period. While the distinction between in rem and personal rights is important where in rem rights are explicitly exclusive, and personal rights are not, there

seems to be a lack of logical consistency in treating the tenant's right in a long lease as an in rem right, while regarding the tenant's right in a short lease as a personal right.

In the light of the above, it is evident that the Iraqi legislator fell into a contradiction when he borrowed the text from its source, regarding the right of a long lease as an in rem right and the right of a short lease as a personal right. The difference in the duration of the lease does not signify a difference in the nature of the subject matter. The subject matter of the lease is the same in both cases, and a lease remains a lease whether the term is long or short. By making this difference, the legislator made confusion that needs to be tackled. Moreover, this has resulted in the inflation of Article (68) of the Iraqi Civil Code.

Fifth: Excess, Negative Repetition, and Unnecessary Detail

One of the most noticeable defects in the Iraqi Civil Code when borrowing texts from its various sources is the matter of excess and repetition. The Civil Code comprises redundant and incomplete provisions and topics. It is noticed that the direct and main reason of the overabundance in the provisions of the Iraqi Civil Code is the excess and repetition surrounding its provisions.

With regard to repetition, it is defined as 'the repetition of a legal text in more than one legal provision, whether within the same law or across two separate laws' (Sarkut Suleiman Omar, 2016: 41). Repetition also denotes the unnecessary reiteration of elements within a legal provision, which reduces the value of the

provision and may cause unwarranted confusion and fatigue, eventually resulting in the prolongation of the legal text.

The causes for the increase in civil provisions may stem from the legislator's wish to elucidate the meaning expressed in the text or the philosophy or rationale behind its enactment. It can also mirror the legislator's intent to underline a particular point, or it may result from the legislator's incompetence in drafting the text or from the transfer or translation of provisions from other laws (Haitham Ahmed Al-Masawra, 2011: 268).

The cause for the repetition might stem from the lack of obviousness in the legal provisions, which arises from omitting specific words from the essential phrases or presenting meanings in a way that makes the judgment vague without them. It might also result from the unsettled issue of competencies and powers, where their overlap in the legal provisions causes confusion, vagueness, and lack of clarity. Moreover, repetition might happen as a result of the use of phrases with broad meanings that can imply two or more interpretations, resulting in confusion in legal meanings and provisions (Raed Hashem Khalaf Al-Bahadli et al., 2010: 69).

Examples of this excess could be noticed throughout the provisions of the Iraqi Civil Code, such as in the provisions on preemption, for which the legislator allocated 17 articles (Articles 1128–1144). It is evident that there is no need for all these Articles to regulate the provisions of preemption, as they are no longer

applied in practice. It would be more effective to govern them again and combine them into one or two articles. Likewise, relating to animal liability, the legislator devoted Articles 221–226 of the Civil Code. This allocation is excessive, and it would be more efficient to follow the approach of the Egyptian legislator by consolidating and summarizing these provisions into a single article (see Egyptian Civil Code, 1948, Article 176). The Iraqi legislator shall also avoid excessive details and examples, as one of the key characteristics of a legal rule is that it should be general and abstract. Examples in this regard are many, including Article 227 of the Iraqi Civil Code, which states that: (1) Every person has the right of passage on the public road, provided that he observes the safety precautions so that he will not cause injury to a third party or himself in the cases where precautions may be taken.

(2) a porter will be liable if the load he was carrying fell from his back in circumstances that could have been avoided and injured a third party; when beating hot iron in his shop a spark flew out and hit the clothes of a passerby on the public road the blacksmith will be liable for the prices of the clothes of said passerby if it had been possible for the blacksmith to take precautions to prevent the flying of sparks. Furthermore, Article 228 of the Civil Code stipulates that: (1) No person may place anything on the public road without having obtained a license from the authority concerned, otherwise he will be liable for the injury that resulted from such act. (2) liability will accrue where has placed on a public road

stones or construction tools which caused the stumbling and injury of an animal or a person; similarly liability accrue where a person poured something slippery on the public road which caused the slipping of a man or animal.

These two articles are unnecessarily lengthy and contain details and examples that are flawed within the Civil Code, failing to meet modern-day requirements. Therefore, their presence is redundant and requires their deletion, especially given the existence of Article 186 of the Civil Code, which sufficiently tackles the same issues. Article 186 states that: '1. a person who wilfully or by trespassing directly or indirectly caused damages to or decreased the value of the property of another person is liable. 2. If the direct and indirect causes are combined, the individual who undertook the action or transgressed shall be held liable. If both are jointly responsible, they shall share joint liability.'

Article 205/1 of the Iraqi Civil Code comprises unnecessary examples. The Iraqi legislator should have shortened these descriptions to merely "freedom, honour, and consideration," as any damage to a person's honour, social status, or financial standing directly has effect on their dignity. Honour comprises all moral considerations that define a person's value and position in society, as determined by their behaviour and the resulting reactions of others (Salal Hussein Al-Jubouri, 2014: 309). Consequently, we propose that the Iraqi legislator adjust Article 205/1 of the Iraqi Civil Code to read as follows: 'The right to compensation comprises

moral damage. Any infringement on another's freedom, honour, or consideration makes the infringer liable for providing compensation.'

4. Conclusion

In conclusion we summarize the key findings, recommendations, and proposals reached during conducting research.

4.1. Findings

- intertextuality, as a modern critical approach in legal studies, could be used to interpret legal provisions, identify their flaws and weaknesses, and tackle legal issues. One such matter is the inflation or over-elaboration of civil provisions within the law. This approach could also be used to refine and streamline the content of certain provisions, making sure they are rooted in sound principles while rationalizing and enriching the Iraqi Civil Code.
- An advantages of intertextuality is that it permits the legislator to integrate various cultural dimensions from other legal systems into the text, enhancing its content and deepening its meaning. This method boosts understanding and communication between various cultures by borrowing language and concepts from various legal frameworks. Moreover, it adopts the development of analytical and critical thinking skills.
- This research has discovered that intertextuality in civil law refers to the creation of a legal text borrowed from previous texts or ideas through quotation, implication, allusion, reference, or similar methods. These new

texts form intricate, often hidden relationships with the original texts, based on criteria intrinsic to the texts themselves, which are products of countless influences.

- It was also found that many provisions of the Iraqi Civil Code are interwoven with and borrowed from other legal systems, including the Egyptian Civil Code, the French Civil Code, and the *Majallah al-Ahkam al-Adliyyah*, which mainly represents *Hanafi* jurisprudence.
- One of the benefits of the intertextuality process is that it takes part in the revival of certain legal provisions through imitation and subsequent writing. It also facilitates the manifestation of jurists' culture by inspiring different meanings and themes and adopting an exchange of human consciousness between texts. Hence, this process expands the imagination of legislators on one hand and that of jurists on the other by expanding their understanding of other legal systems and the perspectives of various legislators.
- One of the drawbacks of intertextuality is that it undermines the concept of the original legislator, attributes the new text to the new legislator, and influences the legislator's method to legislative writing and drafting.
- Rumination, as a mechanism of intertextuality in legal provisions, refers to the process of reutilising and repeating prior legal provisions in new ones. It is concluded that rumination in legal texts includes bringing and repeating

the derived provision in its original form without any interference, alteration, change, or development. This represents the most basic mechanism of intertextuality, characterized by minimal subjectivity or interference on the part of the legislator.

- The significance of rumination as a mechanism of intertextuality in legal provisions lies in its important contribution to accomplishing stability, adopting effective communication among various legal provisions, and ensuring the cohesion of the legal system as a whole. This mechanism is not limited to a specific field of law but can be applied across different areas, such as civil law, criminal law, and administrative law.
- Absorption, as a mechanism of intertextuality, contains reproducing the absent provision in a new form while protecting its original features without abolishing them. When the legislator invokes the absent text, they use it under this mechanism to form a new provision, keeping the features and characteristics of the original while incorporating them into the new composition.
- It is concluded that absorption is the process of incorporating and integrating prior legal provisions or concepts into new legal provisions, making these new provisions an essential part of the existing legal system. This is done indirectly, as prior provisions are not quoted verbatim; instead,

their concepts and provisions are absorbed and fostered to fit the new legal context.

- Dialogism, as a mechanism of intertextuality, forms a dialogic interaction between different provisions, allowing for the exchange of ideas and voices. This interaction introduces multiple voices within the provision, increasing its complexity and enhancing it with diverse meanings and connotations. This process is an integral part of authorship in general, and legal authorship especially, as it contains recalling and engaging with prior provisions in new contexts.
- The significance of dialogism in legal provisions, especially in civil law, lies in its capability to enrich understanding and communication. It adopts effective interaction between texts and the public, as well as between texts, researchers, and scholars. Dialogism strengthens the effect of texts on the development and modernization of the law, enhancing meanings through textual interaction. This deeper engagement stimulates criticism, analysis, and discussion of ideas presented in the text, which in turn adopts intellectual and cultural exchange, underlining flaws and shortcomings in laws and encouraging efforts to tackle and correct them in the future.

4.2. Recommendations

Based on our study of different research sources and our collaboration with researchers, as well as our support for their opinions and recommendations, we propose the following recommendations and suggestions to the Iraqi legislator:

1. As the theory of contract in the Iraqi Civil Code is lacking in several areas, such as the lack of sufficient legal provisions to govern contractual responsibility, the provisions of limitation, and other related matters, we urge the Iraqi legislator to follow the example of the French legislator. We recommend that the Iraqi legislator reorganize and amend the theory of contract to be in line with the desires of the current age and the developments in the field of technology.
2. When the legislator fostered the provisions of preemption from its source, they overregulated it, allocating seventeen articles (1128–1144) to its regulation. Such overregulation has rendered the concept almost out-dated in practice. Consequently, we recommend that the legislator reorganize and simplify these provisions into two or three articles at most, utilising a formula that aligns with the present circumstances and societal needs.
3. There is an important difference between a mistake in the character and a mistake in the essence, whether it relates to the contracting party, the subject matter, or the cause. As a result of the abundance of provisions addressing these issues, the Iraqi legislator has created confusion, as seen

in Articles 117 and 118 of the Civil Code. These articles do not succeed to clearly make distinction between a mistake as a defect of consent, a mistake in the cause of the contract, or a mistake concerning the contractor's identity or attributes. Thus, the differentiation between a mistake as a defect of satisfaction and a mistake concerning the cause of the contract is blurred.

We require the Iraqi legislator to make a clear differentiation between these scenarios. Particularly, the civil judgment arising from a mistake in the contractor's character shall differ from that arising from a mistake in the contract itself. Furthermore, when a mistake in the cause of the contract serves as the motive for the agreement, it shall result in the nullity of the contract rather than its invalidity. This clarification is essential to ensure consistency and fairness in legal interpretations and judgments.

4. The Iraqi legislator's reliance on various sources when quoting and borrowing civil provisions has led to the inflation of civil texts, inconsistencies, and conflicts among different provisions. This represents a legislative deficiency that shall be addressed. The success or failure in borrowing provisions from various sources depends on the significance and practical applicability of these provisions. For instance, the renewal provisions in the Civil Code, derived from Roman doctrine, were greatly important at the time of their adoption. Nevertheless, their significance has

diminished considerably in modern contexts, as contemporary civil laws now govern the provisions of debt assignment and right assignment more efficiently.

Therefore, we recommend that the legislator re-evaluate and revise these out-dated provisions to align with the present practical needs of society and ensure the coherence and effectiveness of the Civil Code.

5. To lessen the proliferation of legal provisions, we believe there is no need to maintain Articles 584 and 585 of the Civil Code, given the presence of Article 587, which is precise and renders the other two articles unnecessary. Alternatively, these provisions can be unified into a single, streamlined provision. We propose the following wording:

‘Things vended in bulk or carried shall be at the buyer’s risk unless an agreement or custom dictates otherwise.’

This revision provides a concise and efficient text, eliminating redundant examples and reducing verbosity while preserving clarity and practicality.

6. Regarding formality in real estate transactions, the Iraqi legislator has overstated its regulation by repeating alike provisions in Articles 91, 508, paragraph (2) of Article 508, paragraph (c) of Article 1134, and Article 1141. It is believed that these provisions and paragraphs are redundant, given the existence of Article 90 of the Iraqi Civil Code. Article 90 offers a general rule for the fulfilment of formality, which adequately contains the

requirements tackled in the aforementioned articles. Consequently, we urge the Iraqi legislator to adjust these articles and delete the unnecessary paragraphs highlighting real estate formality to avoid redundant repetition and overlap.

7. With regard to the provisions for animal liability borrowed from Islamic jurisprudence, the Iraqi legislator has regulated this liability across six articles (Articles 221–226). This extensive regulation is excessive, as these provisions have become out-dated and principally inapplicable in modern contexts. Conversely, the Egyptian legislator has consolidated the subject of animal liability into a single article (Article 176). We call on the Iraqi legislator to take the example of the Egyptian legislator into consideration by reducing the six articles into one, ensuring conciseness and practicality.
8. The Iraqi legislator has made mistakes in borrowing terms from other laws. For instance, Article 590 of the Iraqi Civil Code utilises the term ‘orphan’ improperly. It stipulates that ‘1. The guardian appointed by the father or grandfather may not vend his property to the orphan...’ Nevertheless, there may be cases where a chosen guardian is appointed for a person whose father is still alive. For example, if the grandfather serves as the guardian of a child as the father is incapacitated, the grandfather might appoint a chosen guardian before his death. Thus, the Iraqi legislator is required to adjust the text of Article 590 of the Iraqi Civil Code by replacing the term

“orphan” with more inclusive terms, such as “those under his care” or “ward,” to precisely reflect these situations.

9. We suggest the deletion of the paragraph: ‘The worker might seize the thing in which he works until the due wage is paid, whether or not his labour has an influence on this thing,’ from Article 280 of the Iraqi Civil Code. This is because the worker is already regarded a creditor in demanding their rights, making such a provision unnecessary. Furthermore, legal provisions shall avoid redundant repetition or borrowing specific examples, as this detracts from their coherence. The redundancy appears to stem from the intertextuality of these provisions with competing laws.
10. The Iraqi legislator has introduced a contradiction by differentiating between the rights related to long and short leases. Particularly, the legislator considers the right of a long lease as an in rem right and the right of a short lease as a personal right. However, the difference in the duration of the lease does not imply a distinction in the fundamental nature of the subject matter. In both cases, the subject matter of the lease remains the same: a lease is a lease, whether short or long. This inconsistency has resulted in confusion and redundancy complexity, which shall be addressed. Moreover, it has contributed to the inflation of Article 68 of the

Iraqi Civil Code. We suggest correcting this issue to ensure clarity and consistency in the legal framework.

11. The Iraqi legislator's inclusion of excessive details and examples from the *Majalla al-Ahkam al-Adliya* is redundant and undesirable. A remarkable example is found in Articles 227 and 228 of the Civil Code, which are overly long and comprise examples and details that are out of place in the Civil Code. These provisions are also obsolete and fail to align with the demands of modern times. Their presence serves no practical purpose, particularly considering the comprehensive guidance already provided by Article 186. Consequently, we urge the legislator to eliminate these articles and streamline the Civil Code by deleting unnecessary details and examples.
12. The Iraqi legislator introduced an excessive number of descriptions in paragraph (1) of Article 205 of the Civil Code. These descriptions can be efficiently condensed into three concise terms: 'freedom, honour, and consideration.' Any damage to a person's honour, social standing, or financial status eventually affects their honour, which encompasses all moral considerations that shape an individual's value and position in society, based on their conduct and the reactions it elicits from others. Simplifying these descriptions would enhance clarity and focus within the article

References

First: Dictionaries and language books

1. Al-Jarjani, A.H.A. (2013) Al-Darifat. Cairo: Dar al-Tala'iya for Publishing and Distribution.
2. Al-Jawhari, I.H. (2007) Maajam al-Sahah. 2nd edn. Beirut: Dar al-Maarifa for Printing, Publishing and Distribution.
3. Al-Katabi, A.H. (2012-2013) Maajam Al-Lujjjam Al-Arabiya. Beirut: Dar Al-Kutub Al-Alamiya.
4. Al-Kufi, A.B.A.A.M.A. (2011) Al-Kulayyat. 2nd edn. Al-Risala Foundation.
5. Bayoumi, S.A. (2010) The language of law in the light of the science of the language of text: A study in textual cohesion. Cairo: Dar Al-Kutub Al-Qanuniya.
6. Sheikh, A.Y.A. (1996) Umda al-Hafiz fi Tafsir al-Alwal. Beirut: Dar al-Kutub al-Alamiya.

Second: Books

1. Abdul Daim, M.A.R. (2021) Al-Tanasus in the Poetry of Ahmed Bakhit. 1st edn. Amman: Dar Fafaatat for Publishing and Distribution.
2. Abdul Hadi, H.A. (2009) The Basics of Legal Drafting. Amman: Dar Hamed for Publishing and Distribution.
3. Ahmad, M.S. (1982) Theory of Interpretation of Civil Texts. Baghdad: Ministry of Endowments and Religious Affairs Press.

4. Al-Ahmad, M.S. (2008) Error and the Truth of the Basis of Civil Liability in Iraqi Law. 1st edn. Erbil: Al-Tafsir Library for Publishing and Advertising.
5. Al-Ani, M. (1996) Modern Literary Terms: Study and Dictionary. Cairo: Egyptian International Publishing Company (Longman).
6. Al-Awa, M.S. (2006) Islamic Jurisprudence in the Path of Renewal. 3rd edn. Cairo: Safir International Publishing.
7. Al-Bahadli, R.K.H. and Al-Aboudi, O.S.G. (2010) Legislation between Formulation and Industry. 2nd edn. Beirut.
8. Al-Barzanji, S. (2007) Critical Notes on Civil Law. 1st edn. Erbil: Ministry of Agriculture Press, pp. 133–137.
9. Al-Fadl, M. (2006) Al-Wasit in Explaining the Civil Code. Erbil: Aras Printing and Publishing House.
10. Al-Ghadhami, A. (2006) Sin and Atonement. 6th edn. Beirut: Arab Cultural Center.
11. Al-Hakim, A. (2010) Al-Wujiz in the Explanation of the Civil Code: Part II, Provisions of Obligation. 4th edn. Cairo: Al-Aattak for Book Industry.
12. Al-Hakim, A., Al-Bakri, A., and Al-Bashir, M.T. (2010) Al-Wajeez in the Theory of Obligation in Civil Law: Part I, Sources of Obligation. 4th edn. Cairo: Al-Attak for Book Industry.
13. Al-Jabouri, S.H.A. (2014) Compensation of Moral Damage in Civil Liability. 1st edn. Alexandria: Dar Al-Fikr Al-Jami'i.

- 14.Alloush, S. (1985) Ma'jam al-Mujamal al-Musallim al-Aslobiya al-Madarah. Beirut: Dar al-Kutub al-Lubnaniya.
- 15.Al-Sari, A.A.S. (2020) Al-Shafi' fi al-law al-Ithbat: A detailed explanation of the question and answer method according to the latest amendments and reinforced with judicial rulings. 1st edn. Beirut: Al-Atak Company for Book Industry.
- 16.Al-Sarraf, A. and Hezboun, G. (2008) Introduction to the Science of Law. 1st edn. Jordan: Dar Al-Thaqafa for Publishing and Distribution.
- 17.Al-Sheikhli, A.Q. (1995) The Art of Legal Drafting: Legislation, Jurisprudence, and Judiciary. Amman: Dar Al-Thultaqafa for Publishing and Distribution.
- 18.Al-Zoghbi, A. (2000) Al-Tanasus: Theory and Practice. Amman: Ammon Foundation for Publishing and Distribution.
- 19.Al-Zoubi, A. (2000) Tanasus: Theory and Practice. 2nd edn. Jordan: Ammon Publishing Organization.
- 20.Bakr, I.A. (2014) Problems of Legislation. 1st edn. Beirut: Dar Al-Kutub Al-Alamiya, p. 424.
- 21.Boyer, O.F. (1991) Le silence et le contrat: approche comparée. Montréal: Université McGill. Available at: digitool.library.mcgill.ca/thesisfile.
- 22.de Beaugrande, R. and Dressler, W. (1981) Introduction to Text Linguistics. London: Longman.

23. Engeno, M. (1987) *In the Origins of the New Critical Discourse*. Translated by A. Al-Mudaini. Baghdad: Dar Al-Ahsa'a Al-Madini, Public Cultural Affairs.
24. Ferrier, V.N. (no date) *La Renforcement du Rôle du Juge dans la Détermination et la Révision du Contenu du Contrat*, in *Droit Comparé et Européen*, 20, *La Réforme du Droit des Obligations en France*.
25. Fitian, F. (1956) *Sources of Commitment: A Comparative Commentary on the Texts*. Baghdad: Al-Ani Press.
26. Harari, J. (1979) *Textual Strategies*. Ithaca, N.Y.: Cornell University Press.
27. Jamous, A. (1985) *Introduction to the Science of Law*. Damascus: Ibn Hayyan Press.
28. Juma'a, H. (2003) *The Probe in Literary Criticism*. 1st edn. Damascus: Arab Writers Union.
29. Kaira, H. (2014) *Introduction to Law*. 4th edn. Alexandria: Manshaat Al Maarif.
30. Khairallah, I.K. (2010) *The Spirit of Laws*. 1st edn. Erbil: Comparative Law Research Center, Shihab Press.
31. Roland, B. et al. (1998) *The Perspectives of Transcendentalism: Concept and Perspective*. 1st edn. Cairo: Egyptian General Book Organization.
32. Sharaf El-Din, A. (2008) *The Basics of Legal Drafting of the Contract*. Cairo: Arab Renaissance House.

- 33.Taha, J.S. (1984) Basing Civil Liability for Wrongful Act on the Element of Damage. Erbil: Salahuddin University Press.
- 34.Todorov, T. (1996) Mikhail Bakhtin: The Narrative Principle. Translated by F. Saleh. 2nd edn. Beirut: Arab Organization for Studies and Publishing.
- 35.Wasil, M. and Al-Bayat, M.H. (2002) Introduction to the Science of Law. Damascus: Damascus University Press.
- 36.Zalmi, M. (2002) The Origins of Jurisprudence in its New Fabric. Baghdad: Al-Khansa Company for Printing and Limited.

Third: Theses

1. Abdulkarim, A.S. (2011) The Theory of Weighting the Best Bond in a Conflict of Rights. PhD thesis. Faculty of Law and Politics, University of Sulaymaniyah.
2. Al-Awadi, A.K. (2016) Litigation in the Case of Pledging to Transfer the Ownership of a Property upon the Death of the Heir. PhD thesis. Faculty of Law, Al-Nahrain University, Iraq.
3. Ali, Q.I. (2011) Civil Policy in Iraqi Legislation. PhD thesis. Faculty of Law and Politics, University of Sulaymaniyah.
4. Hamid, A.M. (2024) The Permanence of the Text in the Iraqi Civil Code. Master's thesis. Faculty of Law, Karbala University, Iraq.
5. Omar, S.S. (2016) Evaluating the Legislative Formulation of Contract Theory. PhD thesis. Faculty of Law, University of Mosul.

6. Shihab, J.A. (2016) The Mechanism of Textualism in the Poetry of Saaduddin Shahin. Master's thesis. Faculty of Arts and Humanities, Alulbayt University.

Forth: Research Articles

1. Abdulkarim, A.S. and Hamid, A.F. (2014) The inflation of legal-legislative rules. Tikrit University Journal of Legal Sciences, 6(23), September.
2. Al-Ahmad, M.S. (2005) Multiple Causes in Civil Liability. Al-Rafidain Law Journal, 10(24). Faculty of Law, University of Mosul.
3. Al-Masawra, H.A. (2011) The Defects of Legislative Drafting. Research presented to the first scientific conference at the College of Law and Politics, University of Dohuk. Dohuk University Journal, Special Issue (2), 14, December.
4. Al-Sanhouri, A.R.A. (1936) From the Journal of Judicial Judgments to the Iraqi Civil Code and the Movement of Codification in Modern Times. Judicial Journal, 2(1-2), Safar 1355 AH – May.
5. Al-Sanhouri, A.R.A. (1962) Arab Civil Law. Judiciary Journal, 1 and 2, September, 20th Year.
6. Dagher, C. (1997) Textualism as a Way to Study the Poetic Text. Fawsal Magazine, 16(1), Cairo.
7. Jaafar, M.H. (2022) Iraqi Civil Code No. (40) of 1951 in light of its foundations. Maysan Journal of Comparative Legal Studies, 7(1), Iraq.

8. Jassim, A.M. (2009) Al-Tanasus: Its patterns and functions in the poetry of Muhammad Reda Al-Shabibi. Wasit Journal of Human Sciences, 5(10).
9. Moussa, A. (2006) The Legislative Process in Arab Countries: Comparative Experiences and Lessons Learned. Study published within the papers of the Arab Parliamentary Symposium Toward Developing Legislative Drafting for Arab Parliaments, Lebanese House of Representatives.
10. Sarhan, A.I. (2022) The Mechanism Used for Contingencies in the New French Contract Law. Journal of Sharia and Law: Emirates University Journal of Legal Research, (90), April.
11. Zaki, H. Reconciliation between law and reality. Journal of Law and Economics, 1(2), Second Year, Egypt.

Fifth: Cases

Iraqi Supreme Judicial Council (2024) Iraqi Supreme Judicial Council website. Available at: <https://sjc.iq> (Accessed: 29 December 2024).