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Contractual integrity at risk: The legal impact of violating preventive clauses

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Abstract: In the intricate realm of contractual law, the condition precluding action serves as a critical safeguard, ensuring that specific legitimate interests are protected within contracts and wills. This research examines this condition's validity when based on a legitimate motive and for a reasonable duration. The study highlights a case involving an owner who violates this condition by engaging in acts such as sale or gift, raising important questions regarding the legal penalties associated with such violations. The primary objective of this research is to provide a comprehensive understanding of the legal consequences of breaching preventive clauses and to analyze how Egyptian, French, and Palestinian laws protect the interests of the stakeholders involved. The methodology adopted in this study is comparative in nature, involving a thorough analysis of the legal texts from Egyptian, French, and Palestinian laws. This involves a review of legal scholars' opinions and relevant judicial rulings to highlight the differences in penalties and applications associated with preventive clauses. The findings reveal that both Egyptian and French laws advocate for the invalidity of actions carried out in violation of these preventive conditions. However, there is a divergence among scholars regarding the nature of this invalidity, with some arguing for absolute invalidity while others suggest relative invalidity. Conversely, the Palestinian legal framework prescribes specific penalties, indicating a variance in legislative approaches. The research concludes that the current legislative treatment of preventive conditions is insufficient and requires reform to ensure effective legal protection for affected parties. This leads to policy implications emphasizing the need to strengthen legal frameworks and enhance the clarity of legislative intentions in formulating laws related to preventive clauses. By doing so, the study aims to facilitate the achievement of legitimate interests for parties involved and ensure the enforcement of preventive conditions in a manner that upholds contractual integrity.

Keywords: preventive clauses; legal penalty; contract law; comparative study; legitimate motive; invalidity

1. Introduction

The condition precluding action is a stipulation set forth by the actor in a contract or will (Savchenko and Maydanyk, 2024), designed to prevent the actor from taking specific actions concerning the object of the action. For this condition to be deemed valid, it must be based on a legitimate interest of one of the parties involved (Alqodsi and Gura, 2023). When the condition preventing action is properly established in a contract or will (Sarhan, 2024), grounded in a legitimate motive, and specified for a reasonable period, it is considered valid. Consequently, actions concerning the

object—prohibited from being acted upon—are deemed inadmissible, along with any attempts to seize it. The research problem centers on the violation by the owner, identified as the actor, of the preventive condition by acting regarding the object in ways that are explicitly forbidden, including sale, gift, or other actions that contravene the prohibition clause. Legislation and juristic opinions have diverged regarding the penalties applicable in cases of violation of this condition (Watts and Wallman, 2024). The significance of this research lies in the necessity of considering the purpose behind the law’s empowerment to modify the ordinary system of property when determining penalties for violating the preventive clause. This purpose is to uphold the legitimate special interests intended by the prevention, and penalties must be assessed in direct relation to this purpose and the extent necessary to achieve it. This study employs a comparative methodology, systematically analyzing the legal frameworks of French, Egyptian, and Palestinian law. The selection of these legal systems is driven by their distinctive approaches to preventive clauses and their penalties for violations. French law provides a robust framework for understanding the concept of invalidity in relation to preventive conditions. Egyptian law offers significant insights into the legal interpretation of such clauses within the context of civil law. Palestinian law, while influenced by both French and Egyptian systems, has unique provisions regarding the enforcement of preventive conditions that warrant examination. By incorporating these diverse legal perspectives (Mallet and Nassar, 2024), the research seeks to highlight the nuances and commonalities among these jurisdictions.

Furthermore, the study involves a comprehensive literature review that incorporates the opinions and scholarly commentaries on the subject, along with relevant judicial rulings. This approach ensures a well-rounded examination of the topic, providing a foundation for the findings and conclusions presented.

Based on the above, we will discuss the legal penalty for violating the condition through this research as follows:

1.1. Penalty for violating the condition preventing action of Egyptian law

Jurisprudence and the judiciary remained reluctant to do so between the invalidity of the infringing conduct, or the annulment of the original action, until the issuance of the new civil code and the resolution of this dispute and the text of article 824 of the Egyptian Civil Code stated that “if the condition of prevention from acting contained in the contract or will is valid in accordance with the provisions of the previous article, then any conduct contrary to it is void” (Veblen, 1898), thus the Egyptian legislator has resolved a matter about which much controversy has arisen in France, and under the law The former Egyptian civil as there was no text governing this order.

Some have thought by the promulgation of this text that it has resolved the dispute in this matter, but although the dispute regarding the determination of the penalty, which is invalidity, is resolved, but the disagreement between the jurists still exists and continues on the nature of this invalidity, is it a relative invalidity or absolute invalidity or is it a special invalidity consistent with the purpose of the prevention decision, which is to protect a legitimate private interest of a person, and who requests the invalidity of the contrary conduct? These questions necessitate determining the

nature of the invalidity contained in the text and then determining the holder of the capacity to invoke it in Egyptian law.

1.2. Nature of invalidity

Justifications for absolute invalidity:

Part of the Egyptian jurisprudence has argued that the invalidity to which the Egyptian legislator refers is absolute invalidity since the Egyptian legislator always expresses absolute invalidity in the words of invalidity, while relative invalidity is always expressed in the form of avoidability as in the case of article 143 thereof, which states that “if the contract in part is void or avoidable...”, and article 144 of the same codification which states that: “If the contract is void or avoidable...” The text of article 824 Madani, which described conduct contrary to the preventive clause as “invalid”, meant absolute invalidity and not relative invalidity, and they also support this view in the travaux préparatoires relating to this article, which states that “if the two previous conditions mentioned above are met, the condition preventing the conduct from acting is correct, then Kholif was the contrary conduct absolutely invalid, because of the inalienable nature of the money, and the draft resolution with this provision settled a dispute on this issue, since the judiciary was Hesitant between the invalidity of the offending conduct, or the avoidance of the original conduct...” (Hill, 1988).

In this regard, Dr. Sanhoury states that “the Egyptian codification has chosen the second adaptation, rendering the object itself inalienable and consequently null and void any conduct that is contrary to the condition preventing the act of acting in absolute invalidity, which is a logical consequence but an obvious consequence of making the object itself inalienable (Bechor, 2007). “According to Dr. Mohamed Ali Arafa, “Accordingly, the actor may always request the invalidity of the offending conduct even if the prevention is conditional on the protection of the administrator, and the creditors of the dispossant also have the right to seek invalidity if they have an interest, as well as the action or third party if the condition preventing the action is to protect the interest of either of them and also the creditors of each of them if they have an interest in bringing the action” (Jadalhaq and El Maknouzi, 2019).

They also invalidate any conduct by the administrator that violates this requirement, even if the second administrator is acting in bona fide, and they make no distinction between whether it is contained on real estate or movable, because the latter may not invoke that possession in the transferee is the title deed, because they consider the invalid contract to be absolutely invalid and cannot be a valid bond (Bechor, 2007).

They also say that it is not possible to refer to the first assignee (who is required to do so) by the second administrator, since his conduct is absolutely null and void and is not suitable as a basis for security, Dr. Mohamed Ali Arafa states that “the invalidity of all these infringing acts does not entail recourse to the actable by guarantee, because the obligation of security does not arise from a contract (Dahiyat, 2007) that is absolutely invalid” (AlQodsi et al., 2024).

Those who hold this view also believe that deciding the absolute invalidity in the event of a violation of the condition preventing the act encounters a defect in which the French judiciary has decided the invalidity of the offending act as relative invalidity, as we will see later, as the absolute invalidity allows the original

administrator and everyone with an interest to request it even if the condition was It may be decided in the interest of the recipient alone, and this invalidity allows the last actor to adhere to the invalidity. Dr. Al-Sanhouri says, “The absolute invalidity can be adhered to by everyone who has an interest, and even the one who received the action that violates the condition adheres to it, and he is the one who contracted with the actor of it. Whenever the actor issued an action against the condition preventing a certain person, each of the two parties to the action that violates the condition adheres to the invalidity (Hill, 1988)”.

Dr. Sanhouri adds, “The buyer of his actor is the other party to the invalid conduct and has the right, as we have submitted, to request invalidity as well, and this is not unusual in the logic of absolute invalidity, and it is not without benefit to the buyer as he can initiate an application for invalidity and does not claim the price if he has not paid it or recovering it if he has paid it” (Muris, 1980).

They also consider that it is not permissible to invoke against the administrator who acted contrary to this condition by the rule of “whoever seeks to revoke what has been done on his part and seeks to return it”, says Dr. Abdel Fattah Abdel Baqi, “and the actor who is prevented from acting may invoke the invalidity of the acts prevented by the condition, even if he is the one who carried them out, and it is not correct to object to this provision by the basic rule that it is not justifiable for a person to seek for himself to revoke what has been done at his hands, since Nothing has been done on his hands because absolute invalidity is non-existent, and whoever acts in absolute nullity is considered to have done nothing” (Islam, 1998).

Critique of the idea of absolute invalidity:

A large part of the jurists went to the view that the rulings of absolute invalidity with the results it leads are not compatible with the intended purpose of the condition preventing the act. On its own, it does not accept the authorization, but these results contradict the intended purpose of permitting this precluded condition, which is to protect the legitimate interests of individuals, which requires that the right to adhere to the invalidity be for them alone, and it also requires that they have the right to waive this invalidity by permission of such actions (Alchian, 1989), and Dr. Hassan Kira says, “Determining the absolute nullity of the act concluded by the owner in contravention of the condition preventing the action is not commensurate with the purpose of the prevention decision, which is to protect a legitimate private interest of a person, which necessitates the necessity of limiting the claim for this protection or waiver of it to the owner interest alone” (Hodgson, 2015).

Regarding what was stated in the explanatory memorandum of the Egyptian Civil Law, which stated that the intended invalidity as a penalty for violating the condition preventing action is absolute invalidity. On the part of its author, and it is a diligence that may be mistaken by conciliation” (Waldron, 2004), and Dr. Hassan Kira says, “What is contained in the likes of this memorandum or the preparatory work in general has no binding protection, especially in view of what is clear from the necessity of adopting the opposite” (Merrill, 2009).

1.3. Relative invalidity

The Egyptian Court of Cassation ruled that this invalidity is proportional by saying that “the penalty for violating the condition preventing the action is the relative invalidity of the violation of the condition that prevents the action from acting is the relative invalidity of the violating conduct without the need to terminate the original conduct in accordance with article 824 of the Egyptian Civil Code, and the invocation of this invalidity is limited to the owner of the invalidity and the court does not have to judge it on its own”(Al-Billeh, 2022). However, this view has also not been spared criticism, since in the case where this requirement has been established to protect the interest of a third party, that third party has the right to request the invalidity of the offending conduct at a time when that third party was not a party to it (Debs, 2010; Ziadeh, 1977).

Proponents of those who arrange relative invalidity as a penalty for violating this condition defend by saying that it is a given that the condition preventing the act is a departure from the general rules and it is an undesirable condition that doesn't meet satisfaction” (Muhammad, 2024), and as long as it is so, why then do those who advocate the idea of absolute nullity insist on implementing it at a time when the holder of the interest that is protected by this condition may see that his interest is to authorize this violating behavior and Dr. It was found to protect a private interest, and therefore the appropriate penalty is relative invalidity so that the opportunity for those who found the condition in his interest to appreciate this interest may be achieved by acts of the violating act instead of invalidating it, and this result is commensurate with considering the preclude condition an undesirable restriction, limiting the owner's authority to act, and from Then reducing its severity is better because it returns to the natural state in the truth, and it is the authority of its owner to act of it” (Attoh, 2011).

Critique of relative invalidity:

Despite all that has been said about the fact that this invalidity should be considered relatively invalid, this trend has failed to respond to the criticism levelled at him, namely how it is permissible for a person who is not a party to a contract to request its annulment or leave, when this condition protects the interest of the administrator or third parties, since these are third parties to the subsequent conduct that is contrary to the prevention clause from acting. Also, in the case where the prevention against acting protects the interest of the addressee, he may not seek invalidity, since such conduct has been carried out on his part, he cannot seek to revoke it.

In the face of the criticism of the two previous ideas, it has been said that the invalidity of conduct contrary to the inhibitor clause is of a special nature whose provisions revolve around the idea of its intended purpose: that it is invalid of a special kind, neither is it absolute invalidity, nor is it a relative invalidity, and Dr. Mustafa Al-Jamal says that “the invalidity provided for in Article (824) is a special invalidity that departs from the general provisions of invalidity, This invalidity is limited to the right to request and to waive it by leave to the condition or third party if the prevention from acting is established in the interest of either of them, but if it is determined in the interest of the person who is prevented from acting the same, the right to invoke the invalidity or the right to leave shall not be his, but shall be for the condition itself on

the basis of his moral interest in protecting the interest of the person prevented from acting” (Clarke and Kohler, 2005), but this view is not fully consistent with what is stated in the explanatory memorandum The Egyptian Civil Code, which also gives the administrator the right to seek annulment, states in this memorandum that “the one who requests the invalidity of the offending conduct is the actor as he always has an interest in doing so, as well as the actable or third party if the condition preventing the action is intended to protect the legitimate interest of either of them.” (Hill, 1988).

The position of the Egyptian judiciary on the three opinions:

The rulings of the Egyptian Court of Cassation tended to support the opinion of relative invalidity, saying in one of its rulings, “The invalidity established in article 824 of the Civil Code for violating the condition of prevention from acting and on what happened to the judiciary of this court is not absolute invalidity, but is an invalidity consistent with the purpose of the determination of the prevention, which is the protection of a legitimate private interest of a person, and therefore it is imperative that the claim for this protection or waiver be limited to the interested party alone and the court refrains from ruling on the court by it on its own .”

“The provision in articles 16 of the Agrarian Reform Law 178 of 1952 and the fourth of Law 3 of 1986 on the liquidation of certain conditions resulting from the agrarian reform laws indicates that the Board of Directors of the General Authority for Agrarian Reform may consider the effects of conduct committed in contravention of the text of article 16 of Law 178 of 1952, which is necessary that the invalidity of the violation of the prevention clause is not absolute, but is invalid in accordance with the purpose of the prevention decision, which is to protect the interest. The General Authority for Agrarian Reform was established to sponsor it and therefore it is imperative that the claim for this protection be limited or waived to the Authority alone. The beneficiary or his heirs, when sold in contravention of this provision, shall not invoke the invalidity (Ziadeh, 1977).

The Egyptian Court of Cassation has resolved the dispute over the nature of the invalidity attached to conduct contrary to the prevention clause, and has also identified the persons who have the right to invoke this invalidity, determining that this invalidity is consistent with the purpose of the inhibiting clause, ruling in its judgment of 31 December 1975 that: “The provision in Article 824 thereof (the new Civil Code) that if the condition of prevention from acting contained in the contract or will is valid in accordance with the provisions of the preceding article, then any conduct contrary to it shall be null and void. It states that the legislator, as disclosed in the explanatory memorandum, has codified what jurisprudence and the judiciary have already established and has added nothing new except to resolve the dispute between the judiciary’s reluctance to rule that the offending conduct is invalid or that the original conduct is avoided when the inhibiting clause is violated. As for the type of sanction, it has been retained and is not absolute invalid, but rather an invalidity consistent with the purpose of the prevention report, which is to protect a legitimate private interest of a person, which is stated in the explanatory memorandum as I indicated earlier. Invalidity is that it is “absolute invalidity for the inalienable nature of the money”, because it departed from the clear correct meaning of the text, which was limited to stating the nature of the penalty, which is invalidity, without its type, which is determined by its meaning, taking into account the purpose that the legislator has

omitted from it, which is to protect the enactment private interest and not the public interest” (Appeal 1987).

It also issued a judgment on 24 March 1983, affirming that “the invalidity established in Article 824 is civil for violating the condition preventing acting, and on the basis of the judgment of this wisdom, is not absolute invalidity, but is an invalidity consistent with the determination of prevention, which is the protection of a legitimate private interest of a person, and therefore it is imperative that the claim for such protection, or its waiver, be limited to the interested party alone, and the court shall refrain from ruling on it on its own” (Awad, 2024).

In the same vein, its judgment of 27/4/2009 “It is settled - in the case of the Court of Cassation—that the invalidity provided for in article 824 of the Civil Code for violating the condition preventing the action has decided to protect a legitimate private interest of a person, and therefore it is imperative that the claim for invalidity be limited to the owner of the cassation only and that the request of the other person shall be withheld from others or that the court shall rule on its own” (Awad, 2024).

2. Penalty for violating the condition preventing action in France

As for the penalty for violating the requirement preventing action in the French Civil Code, the legislator has not been directly exposed to it, leaving this matter to the jurisprudence and the judiciary to see its opinion on it. The French judiciary had previously determined that the actor r the requirement had the right to bring an action for avoidance of the original conduct that accompanied the requirement of prevention from action, in the event that the actor had done something contrary to that requirement (Debs, 2010), but in view of this sanction, it had been found that avoidance of the original conduct was not the intention of the administrator (the requirement) and not the purpose of the actor (the requirement) (Dahiyat, 2011), nor did it achieve the purpose of the requirement of this condition, which was aimed at preserving the money. On the contrary, avoidance of the original action necessarily entails the removal of the money to which this condition is received from the liability of the actor and its return to the actor of the action, and avoidance is only in the acts binding on both sides, whereas this condition may appear in the contracts of voluntary contributions (Youngs, 2012).

“If the French judiciary had limited itself to the application of general rules, as long as there was no special provision (prior to the promulgation of the law of 3 July 1971 (Crabb, 1977)), it would have ordered the annulment of the original conduct that included the preventive clause on the grounds that the actor had not fulfilled his obligation to refrain from acting in the object¹, Sanhoury says”.

In view of this, the French judiciary has shifted from this direction and has become the right to file a lawsuit against the person to whom he is prevented from acting in contravention of the provisions of the condition, as Al-Badrawi says, “The French judiciary has settled that violating the condition preventing the act will result in the emergence of a lawsuit to invalidate the violating act and not to the person who received the money despite his inability to act, he should not be harmed by this invalidity, since the contract or legal act that is attached to this condition is supposed to have been registered and he was able to know about it.” (Waldron, 2004) The French

jurist *Bartin* went to justify the case by basing it on the text of Article (1143) of the French Civil Code, corresponding to Article 212 of the Egyptian Civil Code, which permits the creditor in the obligation to refrain from an action to request in a lawsuit he files before the judiciary the annulment of what he did in violation of this obligation as long as his occurrence. It is not impossible after the violation.

However, it was said in response to this justification that article 1146 is French and article 212 is Egyptian talking about physical removal, not the annulment of legal acts, as evidenced by the fact that the second part of this article states that “the creditor may request the judiciary to remove the violation at an expense to which the debtor is bound” which benefits physical removal and not legal removal.

French courts have therefore tended to consider that the penalty for violating the prevention clause is that conduct in contravention of the requirement to act is relatively null and void (*Scalise*, 2013).

The relative invalidity on which the French judiciary has established requires that the right to seek annulment be limited to the interested party alone.

The French Court of Cassation held that if the party in the application for annulment was the actor of the claim, its creditors were not entitled to initiate proceedings in his place (*Oudin*, 2015).

But the problem arises here if the condition protects the interest of the administrator who acted contrary to this condition, here if we say in accordance with the previous rule that the stakeholder alone has the right to institute this lawsuit, the second assignee will pay in the face of him two payments that prevent the return of the money to his liability, the first of which is that he requests a refund of the price he received from him, otherwise the buyer may hold the money under his hand until he meets the price, and the second is that whoever seeks to revoke something For his part, his quest was rewarded for it, depriving the preventing clause of its value (*Martin*, 1993) so they said that the holder of the right to bring the suit in this case is the original actor since he always has a moral interest in preventing the actor from acting contrary to the provisions of the preventive clause .

The French judiciary maintained its position that the penalty for violating the inhibitory clause was relative invalidity even after the promulgation of the law of 3 July 1971.

As mentioned earlier, relative invalidity is taken as a penalty for violating the condition preventing action—in accordance with this rule—that it is determined in the interest of one contractor, but not the other in the avoidable action, whereas the preventive clause may be established to protect the legitimate private interest of the requirement, or third party, which is not a party to the infringing conduct (*Alqodsi et al.*, 2024).

The grounds for avoidability (relative invalidity) in accordance with the general rules are also specified, exclusively, as they are due either to a lack of capacity or to a defect in consent, and therefore the parties to the legal conduct may not make acting in contravention of the prevention clause another ground for avoidability (*Van der Merwe and Van Huyssteen*, 1995) without a legal provision to that effect.

Since the requirement precluding conduct, which arose in the arms of the judiciary, was the result of practical considerations that led it to establish its legality under certain conditions, for legitimate special purposes, and since the requirement

preventing conduct arose for the purpose of protecting a person's legitimate private interest, it is natural that its effects—including the provisions for the invalidity of conduct contrary to the preventive clause—should be determined for that intended purpose, without the need to attempt to return it to the general rules of invalidity² (Merrill, 2009).

In conclusion, therefore, in Egyptian and French law, the invalidity of conduct contrary to the prevention clause is a relative invalidity whose provisions are determined in the light of the purpose of the clause, which is the legitimate protection of a particular person, and to the extent necessary to achieve it³.

Since the penalty for the invalidity of the condition precluding conduct is proportional invalidity, the person in whose interest the invalidity is decided to be invoked has the right to invoke it. If the condition has been decided to protect its legitimate interest, it has the right to invoke the invalidity of conduct contrary to the inhibiting clause, but if the condition has been decided in the interest of another person—the condition or third party—he also has a moral interest in respecting the prevention clause, and he may invoke the invalidity. A third party or the person required to do so, if the preventive clause has been decided in the interest of either of them, shall have the right to invoke invalidity when the prevention clause is violated, but the court shall not rule on the invalidity on its own. Whoever has stipulated the prevention in his interest has the right to waive the request for annulment and authorize the offending conduct, and there are no problems to grant this right to the stipulator and others, as for the condition that is prevented from acting⁴, Dr. Ramzi Mabrouk says in this regard: “We see that if he is not granted this right, he immunizes his conduct against invalidity in need of his leave, since the act of the person required of him in contravention of the prevention clause indicates that he has acknowledged it, and therefore it would be absurd to grant him the right to leave him again” (AlQodsi; 2024).

On the other hand, this means that the implementation of the prevention clause depends on its own free will which is not legally upright⁵, and it does not in our opinion impair the argument that the authorization of the offending conduct in cases where the prevention clause is determined in the interest of the requirement prevented from acting must be issued by both the stipulator and the requirement” (Terré and Simler, 1992).

It should be noted that the French Court of Cassation rejected the idea of compensation as a penalty for violating the inalienable clause, ruling in one of its rulings that “a breach of the inalienable clause entails a judicial claim for the invalidity of the conduct”.

3. Penalty in the Palestinian Civil Code

Article 948 of the Palestinian Civil Code stipulates the penalty for violating the condition preventing action by stating that “any conduct that violates the condition of prevention from acting contained in the donation contracts or the will shall be suspended if the condition is valid in accordance with the provisions of the previous article unless it is authorized by the person who decides on the condition in his interest”.

The explanatory memorandum to the Palestinian Civil Code states in article 960: “In order to further restrict the validity of the condition preventing conduct, the Palestinian legislator did not take into account in this article what the Egyptian legislator adopted in article 824 by an Egyptian civil servant by nullifying the conduct contrary to the condition preventing acting, but rather making him suspended on the leave of the person in whose interest the condition was decided....” (Amayreh et al., 2021).

A suspended contract is a valid non-enforceable contract, that is, whose effect is not produced by reason of its issuance by those who have no jurisdiction over the contract (Jadalhaq and El Maknouzi, 2019).

The concept of a suspended contract is often regarded as superior to that of avoidance because it prioritizes the protection of stakeholders’ interests by allowing contracts to remain suspended until they are permissible, rather than automatically invalidated (Abed, 2024). This idea has its roots in Islamic jurisprudence, which has influenced various Arab legislations, including the UAE Civil Transactions Law, the Omani Civil Transactions Law, and the Jordanian Civil Code. In contrast, the Palestinian Civil Code does not explicitly regulate the notion of a suspended contract; its provisions are derived from Latin jurisprudence, which traditionally does not recognize this concept (Banaba et al., 2024). Nevertheless, the Palestinian legislator has established the penalty for violating a condition preventing action as the cessation of the contract. This indicates an awareness of the importance and effectiveness of contract suspension, validating the suitability of this approach for the circumstances at hand. We commend the Palestinian legislator for recognizing the significance of these principles and do not see any issue in adopting ideas from another jurisprudential school, especially one as robust as Islamic law, provided that these ideas enhance the protection of stakeholder interests and align with the fundamental goals of logic and justice in legal practices. Understanding the legal implications of violating preventive clauses necessitates a nuanced comparative analysis. Although the overarching principle of safeguarding legitimate interests is prevalent across jurisdictions, the mechanisms and interpretations are markedly different. **Table 1** compares the legal frameworks, judicial interpretations, and scholarly debates in France, Egypt, and Palestine, shedding light on key differences, including:

Table 1. Legal differences in handling suspended contracts: A comparative study of France, Egypt, and Palestine.

Aspect	France	Egypt	Palestine
Legal Framework	Civil Code provisions on conditional agreements	Civil Code provisions for conditional clauses	Civil Code provisions for prevention clauses
Validity of Preventive Clause	Valid if based on legitimate interest and reasonable duration	Valid if based on legitimate interest and reasonable duration	Valid if based on legitimate interest and reasonable duration
Penalty for Violation	Invalidates the act, with debate on absolute vs. relative invalidity	Invalidates the act, with debate on nature of invalidity	Suspending the act instead of invalidation
Nature of Invalidity	Divided opinions: absolute vs. relative invalidity	Subject to debate; clarification needed in legal texts	Special kind of invalidity determined by intended purpose
Judicial Interpretation Issues	Confusion due to lack of specificity in provisions	Confusion due to varying interpretations of invalidity	Clearer provision for suspension, yet lacks specified duration
Legislative Recommendations	Need to clarify invalidity types for better judicial consistency	Suggested clearer provisions on invalidity by the legislator	Suggested specification of suspension period (e.g., one year)

Key Controversies:

Interpretation of Invalidity: There is significant division among jurists over whether the nature of invalidity is absolute or relative. This disagreement can lead to inconsistencies in judicial rulings.

Judicial Discretion: The absence of clear guidelines for judges introduces variability in the outcomes based on individual interpretations, rather than adhering to a consistent legal standard.

Duration of Suspension: The lack of a specified period for suspension in Palestinian law may result in extended uncertainty in transactions, highlighting the need for more definitive regulations.

This comparative analysis underscores the diversity of legal responses across jurisdictions and the ongoing evolution in interpreting these critical contractual provisions. By systematically assessing these approaches, we can better appreciate the complexities and nuances inherent in the legal treatment of suspended contracts and the protection of stakeholders' interests.

We therefore believe that conduct contrary to the requirement preventing conduct should be suspended and not invalid. We base this on the following:

1) It is generally not for a person to act of his property if the right of a third party is attached to it if such conduct is harmful to the right of others, unless, of course, he obtains the permission of the right holder, and the authorization must be prior or subsequent to the approval and authorization of the action. The right of third parties sometimes if the prevention clause has been established to protect for the benefit of such a third party, and therefore the owner may not act of his property subject to prevention except after obtaining the permission of the person to whom his right is attached, whether before or after the action of his leave.

If the owner acts of his property despite the attachment of the right of others to him without obtaining his consent, his conduct is suspended on the leave of the 8 others than the one whose right is attached to his property.

2) The general rule in Islamic jurisprudence for the action of the property of others in general or in a property to which the right of others is attached is to consider the action suspended on the leave of the real owner or the person whose right to it is attached, and in application of this general principle it is not permissible to mortgage the property of others unless the real owner authorizes it with a notarized deed, and also if a person sells the property of another without his permission, his sale is concluded suspended on the owner's leave, and the solution that we see to be adopted in case of violation of the condition The inhibition from acting is only an affirmation of this rule .

3) Considering conduct contrary to the prevention clause to be suspended is a sufficient sanction to protect the interests to be realized from behind the prevention clause and at the same time the door remains open to the interested party to waive this protection if he deems it so, by authorizing the conduct contrary to the condition.

It is therefore in terms of considerations of appropriateness preferable to invalidity and avoidance, as the stakeholders that decide to prevent the action to protect them shall have the same persons who are entitled to invoke the invalidity of conduct made in contravention of the condition preventing action, or to authorize it to waive

the right to invoke invalidity and refer this to what was previously mentioned in the sanction in Egyptian and French law.

Thus, the Palestinian legislator brings this article to what such a condition should have been, as it maintained its exceptional character and its proximity to the origin of such restrictions, which is the prevention.

Based on the foregoing, we believe that there should be an integrated legal regulation of the suspended contract in the Palestinian Civil Code that faces cases in which the action is concluded by a person who has no jurisdiction over his contract, such as the act of the curious over the property of another, the action of an owner on his property to which the right of others is attached, the conduct issued by the incapacitated and those of the like (the conduct between benefit and harm) and the conduct contrary to the clause preventing the action so as to include the provisions of the suspended contract relating to its cases. The methods of its leave and the duration of the suspension of the contract.

We note that when the Palestinian legislator stipulated the penalty for the suspension of conduct contrary to the condition preventing action, he did not specify a specific period for the suspension of the contract, and we believe in this regard that a certain period of suspension should be specified, where it does not make sense for the contract to remain suspended without a limit for that, and we propose that this period be a year, and this period is appropriate, neither long nor short, and allows those who decide to stop in their interest to state their position, where it does not make sense for the contract to remain suspended without a limit for that as it requires stability Transactions restricting the stay to a certain period.

Kuwaiti law has considered—that the act in violation of the condition preventing the act is voidable, it is permissible for each of the stipulated and for whom the condition was decided in his favour to claim its invalidation, and the act is valid if approved by the conditional or third parties, and in this sense Article 816 Civil stipulates that “1: If: The condition preventing or restricting the act is valid, and the conditional acted in violation of the condition, it is permissible for both the stipulated person and the person in whose favour the condition is decided to invalidate the act, 2: However, the act in violation of the condition is valid if approved by the conditional, unless the condition was decided in the interest of others, and it is noted that the Kuwaiti Civil Code does not take the suspended contract, which the UAE law has taken as an alternative to the voidable contract, as a relative nullity.

4. The preponderant opinion on the penalty for conduct contrary to the prevention clause

After reviewing the position of each of the positive legislations in determining the penalty for conduct contrary to the prevention of conduct, we conclude that Islamic law has praised us with a lofty statement in the regulation of civil transactions, which pushes the legislator to refer to its provisions despite following the legal thought of the Latin school as an origin, as the confusion of jurisprudence and the judiciary with regard to the penalty for conduct contrary to the prevention clause raises doubts about this penalty, some of them said that it is absolute invalid, some of them said that it is relative and some of them said that it is relative. It is a special invalidity of a kind, and

it has become clear to us how the jurisprudential opinions have differed as the legislators differed in determining a specific penalty for violating the condition did not succeed in reaching a decisive sanction that meets the purpose of this condition, what works in the case of what we find inappropriate in the case where the intention of the requirement of this condition changes, where some of them argued that the penalty for violating the condition varies according to the legal adaptation as we have already explained and some of them linked the penalty With the intended purpose of this clause, we have seen how criticism has been directed at each individual team.

I am surprised here by the position of the Jordanian legislator, who did not provide for a specific penalty for those who violate the condition preventing them from acting and justifying this as stated in Islamic jurisprudence as well as the principles of Islamic law in not specifying a specific penalty for violating this condition, where Dr. Ghazi Thunaibat says “...Whereas, Islamic jurisprudence as well as the principles of Islamic law have not provided for a specific penalty for violating this requirement....” (AlQodsi et al., 2024)

Dr. Ghazi Abu Orabi also says in this regard, “As for the silence of the Jordanian legislator on the determination of a particular penalty, it is necessary to refer to the general rules in this law When the text is silent, the court must refer to the provisions of Islamic jurisprudence that are most compatible with the provisions of the Civil Code, if it does not exist, then to the general principles of Islamic law, then to custom, and then to the rules of justice, and since Islamic jurisprudence such as the general principles of Islamic law did not impose a specific penalty for violating the condition preventing action..” Unfortunately, this is a statement of shame as we have pointed out that Islamic jurists have touched on determining the penalty that can be imposed on the assignee who ignored the condition associated with the act, or acted otherwise.

This penalty has varied from the elimination of the original conduct, whether by invalidity or avoidance as a result of non-compliance with the condition, to the elimination of security against the assignee if he violates the condition and has an irreparable consequence.

We also appreciate the position of the Palestinian legislator for his singularity in providing for the definition of a penalty for conduct contrary to the condition preventing action, namely the suspension of the contract, in accordance with the aforementioned justifications, which leads us to the conclusion that the Palestinian legislator is aware of the importance and effectiveness of the penalty for the suspension of the contract and its suitability for the situation in question.

5. Conclusion

The condition precluding action is a stipulation set forth by the actor in a contract or will, designed to prevent the actor from taking specific actions concerning the object of the action. For this condition to be deemed valid, it must be based on a legitimate interest of one of the parties involved. When the condition preventing action is properly established in a contract or will, grounded in a legitimate motive, and specified for a reasonable period, it is considered valid. Consequently, actions concerning the object—prohibited from being acted upon—are deemed inadmissible, along with any attempts to seize it. The research problem centers on the violation by

the owner, identified as the actor, of the preventive condition by acting regarding the object in ways that are explicitly forbidden, including sale, gift, or other actions that contravene the prohibition clause. Legislation and juristic opinions have diverged regarding the penalties applicable in cases of violation of this condition. The significance of this research lies in the necessity of considering the purpose behind the law's empowerment to modify the ordinary system of property when determining penalties for violating the preventive clause. This purpose is to uphold the legitimate special interests intended by the prevention, and penalties must be assessed in direct relation to this purpose and the extent necessary to achieve it. This study employs a comparative methodology, systematically analyzing the legal frameworks of French, Egyptian, and Palestinian law. The selection of these legal systems is driven by their distinctive approaches to preventive clauses and their penalties for violations. French law provides a robust framework for understanding the concept of invalidity in relation to preventive conditions. Egyptian law offers significant insights into the legal interpretation of such clauses within the context of civil law. Palestinian law, while influenced by both French and Egyptian systems, has unique provisions regarding the enforcement of preventive conditions that warrant examination. By incorporating these diverse legal perspectives, the research seeks to highlight the nuances and commonalities among these jurisdictions.

Furthermore, the study involves a comprehensive literature review that incorporates the opinions and scholarly commentaries on the subject, along with relevant judicial rulings. This approach ensures a well-rounded examination of the topic, providing a foundation for the findings and conclusions presented.

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Notes

- ¹ In this regard, the ruling of the Egyptian Court of Cassation issued on 20 January 1974, Set of Legal Rules-Quarter Qarn Group) Part 1, p. 1991, No. 4. It states: "If the paper issued to the mother. From her children it includes their acknowledgment that their mother purchased from her own money the house in dispute issued at the time of the sale contract from the owner in the names of the children at a later date for that paper, and that she gave it up by way of gift to her children, those who pledged not to dispose of it until after her death, and they also pledged to give her a monthly alimony. The amount of which is two hundred piasters, so the court considered this declaration as a paper against revealing what the sales contract issued after that concealed that the children are not actually the buyers, rather the buyer is the mother, and that she intended by concealing her name to shorten the path and procedures, so she does not buy with one contract and then gives with another, rather the two things are done with one contract. This is what the court obtained is justified by what was stated in the acknowledgment. And the court, if the said contract of sale is defined as a gift from the mother to her children, was issued in the form of a sale from

the seller to the gifted to them, in which the name of the purchaser and donor did not appear. who acted for them in the donated and the gift is rescinded (the original act that included the precluded condition), because of their failure to act, she did not make a mistake, rather she correctly applied the provisions of the fictitious and indirect gift, so it is not valid to appeal against the ruling from this aspect...” Then the Supreme Court added “and from Then the condition (the condition preventing the disposition) was valid and implemented, and it is permissible for the one for whose benefit (the mother) to request the rescission of the gift if he violates it without the need for an explicit text on the right of rescission. And also, Civil Cassation 27 June 1968, Collection of Cassation Provisions, Q. 19, p. 1223, and No. 183, as it was stated: “Article 824 of the Civil Code, even if it stipulates the invalidity of the act in violation of the condition preventing the act and not subject to the original contract contained in this condition, However, this does not prevent the contracting party who stipulated this condition from requesting the termination of this contract based on the general provisions stipulated for rescission in contracts binding on both parties, whenever the condition that prevents action is one of the basic conditions of the contract without which it would not have taken place, as the violation of the other contracting party is in this The case is in breach of one of his essential obligations, which allows the contracting party to request termination of the contract in accordance with Article 157/1 of the Egyptian Civil Code.

² where he also says, “The difficulty arises in determining the provisions of this invalidity, and it was stated in the explanatory note that if the condition was violated, the act was Absolutely void due to the inability of the money to be disposed of..., and these results are not consistent with the intended purpose of the condition... But this does not mean that the provisions of relative invalidity are fully applicable...”.

³ The Egyptian Court of Cassation indicated in one of its rulings that relative invalidity is what jurisprudence and the judiciary have settled in Egypt and France even under the old civil law. From the act and the penalty for violating it - provided that this condition is not valid if it is necessary and it is intended to protect a serious legitimate interest. And the text in the new Civil Code in Article 823 states that “1-If the contract or will includes a condition that prevents the disposal of money, this condition is not valid unless it is based on a legitimate motive and is limited to a reasonable period. 2-The motive is legitimate whenever it is What is meant by the prevention of disposition is to protect the legitimate interest of the disposer, the disposer, or others.” And the text in Article 824 of it that “if the condition of preventing the disposition contained in the contract or will is valid in accordance with the provisions of the previous article, then every disposition in contravention of it is void,” indicating that the legislator And as the explanatory memorandum disclosed—may It codified what the jurisprudence and the judiciary had previously settled on and did not add anything new except to resolve the dispute between the judiciary’s hesitation in ruling the invalidity of the violating act or the annulment of the original act when the precluded condition is violated. The type of penalty has been retained, and it is not absolutely invalid, rather it is invalid in accordance with the purpose of deciding the ban, which is to protect a legitimate private interest of a person, which is what the explanatory memorandum declared by saying, “The one who requests the invalidity of the violating behaviour is the disposer, as he always has an interest in that.” It is also requested by the disposer or by third parties if the precluded condition is intended to protect a legitimate interest for one of them.” Hence, it is imperative that the claim for this protection or waiver of this protection be made to the person with the interest alone, and the court refrains from ruling the invalidity of its own accord, and there is no place after that. To challenge what was stated in the issue of the explanatory memorandum of defining the type of this invalidity as “absolute invalidity due to the inability of the money to be disposed of” because it deviates from the correct and clear meaning of the text that was limited to a statement of the nature of the penalty, which is invalidity without its type, which is determined by its meaning, taking the purpose for which, it is intended. The legislator removed it from him, which is to protect the legitimate private interest, not the public interest.

⁴ The conditional one) and the one who violated the condition should request invalidity, because absolute invalidity does not prevent the one from whose side the invalidity came from holding on to invalidity.”, *Insurances in Kind in the Kuwaiti Civil Law*, vol. 1, first edition 85/1986.

⁵ Margin Commenting on this ruling, the French jurist François Terry and Semmler say, “The statement that the donor or testator requires compensation as a penalty for violating the condition preventing action represents an explicit violation of the will of the benefactor or testator.

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