



The Theory of Nullity in Islamic Jurisprudence: A Comparative Approach Through the Lens of Disposing of Another's Property

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Abstract: This article aims to conduct a comparative analysis of contract cancellation theories in the Jordanian and French legal systems, focusing on contracts involving the illegal transfer of another party's property. This study examines the fundamental differences between the concepts of absolute and relative nullity in French law and the Jordanian legal approach rooted in Islamic jurisprudence, particularly through the concepts of “suspension” and “non-binding contracts.” The method used is normative legal research with a philosophical-comparative approach. The analysis was conducted on the main provisions of Jordanian legislation and legislative and judicial practices in France, accompanied by a doctrinal study of the theories of cancellation and protection of third-party rights in both legal systems. The findings of the study show that French law makes a clear distinction between absolute and relative nullity, while Jordanian law rejects the concept of relative nullity and replaces it with a suspension mechanism. The theory of suspension, inspired by Islamic law, is considered more flexible and equitable, especially in protecting the property rights of third parties, including vulnerable persons, and more adaptive to the complexity of modern transactions. The practical contribution of this research is a recommendation for legislative reform in Jordan to expand the subjects entitled to cancel suspended contracts, as well as an encouragement for civil law systems to consider adopting the theory of suspension as an alternative to relative nullity. The integration of this concept is believed to increase legal certainty and the protection of individual rights in complex contract disputes.

Keywords: Nullity theory; right protection; contracts; vulnerable persons.

Abstrak: Artikel ini bertujuan menganalisis secara komparatif teori-teori pembatalan kontrak dalam sistem hukum Yordania dan Prancis, dengan fokus pada kontrak yang melibatkan pengalihan harta benda milik pihak lain secara

ilegal. Penelitian ini menguji perbedaan mendasar antara konsep pembatalan mutlak dan relatif dalam hukum Prancis dengan pendekatan hukum Yordania yang berakar pada yurisprudensi Islam, khususnya melalui konsep “penangguhan” (*suspension*) dan “kontrak tidak mengikat”. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan filosofis-komparatif. Analisis dilakukan terhadap ketentuan perundang-undangan utama di Yordania dan praktik legislatif serta yudisial di Prancis, disertai kajian doktrinal terhadap teori-teori pembatalan dan perlindungan hak pihak ketiga dalam kedua sistem hukum. Temuan penelitian menunjukkan bahwa hukum Prancis membedakan secara tegas antara pembatalan mutlak dan relatif, sementara hukum Yordania menolak konsep pembatalan relatif dan menggantinya dengan mekanisme penangguhan. Teori penangguhan yang terinspirasi oleh hukum Islam dinilai lebih fleksibel dan berkeadilan, terutama dalam melindungi hak properti pihak ketiga, termasuk kelompok rentan, serta lebih adaptif terhadap kompleksitas transaksi modern. Kontribusi praktis penelitian ini adalah rekomendasi reformasi legislatif di Yordania untuk memperluas subjek yang berhak membatalkan kontrak yang ditangguhkan, serta dorongan bagi sistem hukum sipil untuk mempertimbangkan adopsi teori penangguhan sebagai alternatif terhadap pembatalan relatif. Integrasi konsep ini diyakini dapat meningkatkan kepastian hukum dan perlindungan hak individu dalam sengketa kontrak yang kompleks.

Kata kunci: Teori ketiadaan; perlindungan hak; kontrak; pihak yang rentan.



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Introduction

The Jordanian civil code (JCC) no. (43) of 1976, the basis of contract law, establishes the general principles governing contractual relations, whether civil or commercial. It regulates fundamental aspects of contractual validity, including nullity.¹ As the JCC is mainly derived from Islamic law, it adopts the Islamic conception of nullity—specifically, absolute nullity—together with another form of invalidity, namely the fasid contract, an approach borrowed from Ḥanafī jurisprudence. Moreover, the JCC recognises several ranks of the valid contract to address defects that such a contract may contain, including the category of the non-binding or suspended contract. The French law, our model of civil law regime, introduces only two forms of nullity: absolute nullity and relative nullity. While absolute nullity is applicable if the violation of the

¹ Othman Nsour, “The Regulation of Change Orders in Jordanian Contract Law and Its Reform,” *Journal of Economics, Management and Trade* 31, no. 5 (April 2025): 16–31, <https://doi.org/10.9734/jemt/2025/v31i51285>.

law is fundamental,² Relative nullity is a means of protecting private interests. Therefore, unlike the French legal system, the JCC did not recognise the theory of relative nullity but instead substituted it with theories of non-bindingness and suspension.³

The non-bindingness of a contract under Islamic law is almost identical to the relative nullity of a contract under the French system. While some consent defects, such as fraud,⁴ lead to the relative nullity of the contract in French law,⁵ these defects render the contract non-binding under Islamic law,⁶ and by association under JCC. However, unlike French law, which treats contracts concluded by persons lacking capacity or under duress as relatively null, Islamic jurisprudence treats these contracts as valid yet suspended until the concerned person is validated.⁷ Meaning that the contract becomes valid if the minor, after reaching adulthood or the liberated victim of duress, ratifies it; otherwise, if rejected and invalidated, the contract is null.⁸ The French legal system does not distinguish between the non-binding nature and the suspension of a contract in these cases, hence combining them under the theory of relative nullity, which was known in Roman law as a remedy for the vulnerable party.⁹

The application of the suspension theory of Islamic law yields different legal outcomes than the relative nullity theory, which we argue provides better protection for vulnerable persons.¹⁰ Unfortunately, Islamic jurisprudence

² Article L-1179 of the French Civil Code.

³ Mohammad Saleh Mulfe Alqudah et al., "Consumer's Right of Withdrawal in E-Commerce Contracts: A Comparative Study of the Jordanian Civil Law," in *Pakistan Journal of Criminology*, no. 2, 2024, 16:1081-94, <https://doi.org/10.62271/pjc.16.2.1081.1094>; Mohmmad Husien Almajali et al., "Cases of Nullity of Administrative Contract Compared to Civil Contract under the Jordanian Legislation," *International Journal of Religion* 5, no. 1 (February 2024): 725-31, <https://doi.org/10.61707/hd5yz160>.

⁴ Muhammad Tahir Mansoori, "General Principles of Business Contracts in Islamic Law," in *Institutional Islamic Economics and Finance* (London: Routledge, 2022), <https://doi.org/10.4324/9781003227649>.

⁵ François Terré, Philippe Simler, and Yves Lequette, *Droit civil: les obligations* (Paris: Dalloz, 2013).

⁶ Mustafa Ahmad al-Zarqa, *Introduction to Islamic Jurisprudence: The General Fiqh Entry*, vol. 1 (Damascus: Dar Al-qalam, 2012).

⁷ Ahmad Ibrahim Alsharu, "Jordanian Legal Systems Regarding Refund and Replacement in Online Trade Contracts: A Comparative Analytical Study," *European Journal of Law and Political Science* 3, no. 3 (May 2024): 1-10, <https://doi.org/10.24018/ejpolitics.2024.3.3.145>.

⁸ Jadalhaq, "Duress and Its Impact on Contracts in the UAE Law on Civil Transactions."

⁹ Ronald J. Scalise Jr., *Rethinking the Doctrine of Nullity*, 74 (2014): 664-718.

¹⁰ Shaun Star and Divyangana Dhankar, "Major Differences in Minors' Contracts: A Comparative Analysis into the Validity of Contracts with Minors in the Sport and Entertainment Industry," *Liverpool Law Review* 43, no. 2 (August 2022): 203-35, <https://doi.org/10.1007/s10991-022-09308-4>.

scholars continue to focus primarily on the technical definition of the suspended contract, without adequately addressing the practical implications of adopting the theory of suspension in modern-day transactions.¹¹ It is necessary to elucidate the advantages of this theory and to clarify its concrete applications, to attain the status of a central legal thesis rather than remain a merely secondary jurisprudential construct lacking tangible practical impact. Therefore, our study aims to examine the advantages and limitations of these theories to appreciate them better.¹²

Our study adopts a descriptive and analytical approach to address the question at hand. It is a comparative study based on the model of Jordanian law, which represents a legal system derived from Islamic jurisprudence, and the model of French law, representing the relative nullity theory, civil law. Moreover, for our analysis, we focus on the disposal of others' property to determine which of these theories is more practical and better protects individuals' rights. We will start by exploring the nullity and suspension theories under the JCC, before tackling their counterparts in French law to evaluate both systems in terms of practicality critically.

The Nullity and Suspension Theories Under the Islamic Jurisprudence and the JCC

The Jordanian Civil Code (JCC) formally recognises only the concept of absolute nullity and does not use the term relative nullity as in the French Civil Code (FCC).¹³ Instead, Jordanian legislators developed two conceptual constructs, namely the theory of suspended contracts (*mawqūf*) and non-obligatory contracts.¹⁴ To understand these constructs, it is necessary to trace

¹¹ Ali Al-Fanahrah, Noor Mohd Noor, and Ahmad Abdul Ghani, *The Nullity of Contracts in Civil Law and Islamic Jurisprudence*, 11, no. 8 (2016): 1407–13, <https://doi.org/sscience.2016.1407.1413>.

¹² Nayel Al Omran and Tourkia Rebhi, "Constitutional Protections of Press and Media Freedoms in Jordan and Indonesia Amid Challenges from Artificial Intelligence and International Legal Frameworks," *Journal of Indonesian Legal Studies* 10, no. 2 (November 2025): 667–714, <https://doi.org/10.15294/jils.v10i2.11010>.

¹³ Abdelnaser Zeyad Ali Hayajneh, "Vanishing Borders: Can Human Rights Be a Subject of Private Law? Exploring Human Rights under Jordanian Civil Law," in *European Journal of Social Sciences*, no. 2, 2011, 23:277–87.

¹⁴ Ilias Bantekas, "Invalid and Defective Contracts in Islamic Legal Theory: The Rise of a Transnational Islamic Law," *UCLA Journal of Islamic and Near Eastern Law* 21, no. 1 (2024), <https://doi.org/10.5070/N421164410>.

their doctrinal roots in Islamic jurisprudence, particularly in the classification of contract validity in various schools of thought.¹⁵

In classical fiqh, the Ḥanafī school distinguishes between *bāṭil* (void), *fāsid* (defective), and *mawqūf* (suspended) contracts.¹⁶ A *bāṭil* contract has no legal effect because of a defect in its essential elements.¹⁷ A *fāsid* contract is essentially valid but contains certain defects that can be remedied by removing the cause of the defect. Meanwhile, a *mawqūf* contract has fulfilled its constituent elements. Still, its effectiveness depends on ratification by the competent authority, such as the rightful owner in the case of the sale of another person's property (*bay' mā lā yamlik*). In contrast, the Shāfi'ī and Ḥanbalī schools tend to use a binary valid–invalid framework without recognising the category of contingent contracts, while the Mālikī school has developed the concept of suspension more systematically.¹⁸ This structure shows that the theory of suspension in the JCC is strongly rooted in the Ḥanafī tradition, despite remaining within the diversity of fiqh doctrines.¹⁹

In the JCC, Article (168) regulates absolute nullity as a contract that, from the outset, violates the law in its essential elements, object, purpose, or form, so that it cannot be ratified and can be declared void by anyone with an interest.²⁰ As a functional equivalent of relative nullity in French law, the JCC does not use this terminology; rather, it regulates it through two mechanisms. First, a suspended contract (Article 171 JCC), in which the legal consequences of a legal act are suspended until ratification by the entitled party, for example, in a sale by an unauthorised party. Second, a non-binding contract (Article 176 JCC), which is a valid and enforceable contract, but can be annulled at the

¹⁵ Adnan Sarhan, *Options That Impair the Binding Effect of Contract and Their Role in Protecting Contractual Consent: An Analysis of How Arab Civil Laws Are Influenced by the Islamic Jurisprudence*, 20, no. 1 (2024): 50–68.

¹⁶ Hussein 'Azeemi Abdullah Thaidi et al., "Voidable Financial Contracts ('Uqud Fasidah) And The Rectification Mechanisms: A Fiqh Juristic Review," *Journal of Fatwa Management and Research* 29, no. 2 (May 2024): 58–78, <https://doi.org/10.33102/jfatwa.vol29no2.560>.

¹⁷ Abdulrazaq Farag, "The Suspended Contract Theory: A Comparative Study" (University of Cairo, 1968).

¹⁸ Shatha Ismaeel, Khalid Alammari, and Zinah Ghanim Younus, "Evidentiary Challenges in AI-Mediated E-Commerce Disputes: Comparative Perspectives from the EU, US, GCC, and Islamic Law," *Justicia Islamica* 23, no. 1 (January 2026): 85–118, <https://doi.org/10.21154/justicia.v23i1.11809>.

¹⁹ Hafiz Falak Shair Faizi and Hafiz Sfarish Ali, "The Core Principles of Islamic Jurisprudence within Legal Theory: A Comprehensive Analysis," *Online Journal of Research in Islamic Studies* 11, no. 2 (December 2024): 57–72, <https://doi.org/10.22452/ris.vol11no2.4>.

²⁰ Muhammad Pakarti et al., *Application Of Legal Maxims in Contract Law: Pacta Sunt Servanda and Islamic Rules on Promises*, 9, no. 1 (2025), <https://doi.org/10.15294/lslr/v9i1.20858>.

request of the aggrieved party, for example, due to a mistake. In French law, this condition is classified as relative nullity due to a defect of will.²¹

The fundamental difference between suspension and relative nullity lies in their legal consequences. In suspension, the contract does not give rise to enforceable obligations before ratification by the authorised party. Conversely, in relative nullity according to the FCC, the contract continues to produce legal consequences until the entitled party nullifies it. In the context of the sale of another person's property, suspension is considered more coherent because it prevents the main legal consequences from arising before the consent of the rightful owner, according to Article (171) of the JCC.

However, legislative practice in Jordan is not entirely consistent. In the regulation concerning the sale of another person's property (Article 551 JCC), the legislator allows the validation of transactions through ratification by the owner or through the seller's acquisition of ownership after the contract is made, an approach closer to the French construction.²² Even in cases involving objects encumbered by liens or leases, the JCC still recognises the validity of transactions while protecting the rights of third parties.²³ This shows that although the JCC is theoretically rooted in the doctrine of suspension in fiqh, in practice it tends to adopt the model of relative nullity in French civil law. Overall, the concept of selling someone else's property in the JCC is a synthesis between the tradition of fiqh, particularly the *mawqūf* construction in the Ḥanafī school of thought, and the influence of European civil law. This combination has resulted in a system that formally adopts the theory of

²¹ al-Zarqa, *Introduction to Islamic Jurisprudence: The General Fiqh Entry*, vol. 1; Islam, "Dissolution of Contract in Islamic Law," *Arab Law Quarterly* 13, no. 4 (January 1998): 336–68, <https://doi.org/10.1163/026805598125826184>; Hussein 'Azeemi Abdullah Thaidi et al., "Voidable Financial Contracts ('Uqud Fasidah) And The Rectification Mechanisms: A Fiqh Juristic Review," *Journal of Fatwa Management and Research* 29, no. 2 (May 2024): 58–78, <https://doi.org/10.33102/jfatwa.vol29no2.560>.

²² al-Zarqa, *Introduction to Islamic Jurisprudence: The General Fiqh Entry*, vol. 1; Ilias Bantekas, "Invalid and Defective Contracts in Islamic Legal Theory: The Rise of a Transnational Islamic Law," *UCLA Journal of Islamic and Near Eastern Law* 21, no. 1 (2024), <https://doi.org/10.5070/N421164410>.

²³ al-Zarqa, *Introduction to Islamic Jurisprudence: The General Fiqh Entry*, vol. 1; Ibrahim bin Issa bin Youssef Al Busaidi and Muhammad Said Almujaheed, "قاعدة: «الدليل إذا طرقت الاحتمال سقط به الاستدلال» (دراسة تأصيلية ar: «الدليل إذا طرقت الاحتمال سقط به الاستدلال» (دراسة تأصيلية) تطبيقية: The Principle: 'If Evidence is Subject to Doubt, Its Validity as Proof is Nullified' (A Foundational and Applied Study)," 59 *الدراسات الإسلامية*, no. 3 (November 2024), <https://doi.org/10.52541/adal.v59i3.3182>.

suspension but, in some aspects, functions closer to the mechanism of relative nullity.²⁴

The Application of the General Theory of Suspended Contracts in the Jordanian Civil Code

Selling others' property and selling rented objects are paradigmatic examples of suspended acts. According to Article (691) of the JCC, "If the leased property shall be sold without permission from the lessee, the sale shall be binding between the vendor and the purchaser, and it shall not affect the right of the lessee." The sale contract for a leased object must be effective according to the mentioned article, but suspended until the tenant's approval is obtained according to Article (171) of the JCC.²⁵ The transfer of property should not have any impact on the tenant's rights, however, the contract between the purchaser and the vendor remains valid and effective, but it does not affect the rights of the tenant as long as they do not waive their right by ratifying the contract, as the tenant is neither the owner of the leased subject nor a legal or judicial representative. So, the way out of this situation for the purchaser is to rescind the contract or wait until the lease expires, so they can receive the sold object.²⁶ If the purchaser does not intend to occupy the property personally or to lease it to another party, his obligations are limited to refraining from any actions that may infringe upon the tenants' rights established under the previous lease agreement. This suspension does not accurately reflect the general principle that governs the suspended contract.²⁷ The contract should have been ineffective even between the two parties. So it is a special kind of

²⁴ Amina Chouder and Besma Metabi, *The Provisions of the Sale of the Property of Others A Comparative Study between the Algerian Civil Law and Islamic Jurisprudence*, 5, no. 2 (2021): 1072–99; Rahimullah Serat and Abdulbasir Azizi, "The Consequences of Unlawful Coercion in the Contract of Sale from the Perspective of Islamic Jurisprudence," *Integrated Journal for Research in Arts and Humanities* 5, no. 1 (January 2025): 57–65, <https://doi.org/10.55544/ijrah.5.1.8>.

²⁵ Mona Munir Mohammed Ali Al-Sharida, "The Limits of Recompense in the Contractual Liability in Jordanian Civil Law," *Revista de Gestão Social e Ambiental* 18, no. 4 (May 2024), <https://doi.org/10.24857/rgsa.v18n4-111>.

²⁶ al-Zarqa, *Introduction to Islamic Jurisprudence: The General Fiqh Entry*, vol. 1; Tarek Gomaa Al-Sayed Rashid et al., "Legal Regulation of the Condition of Ownership/Possessions Inalienability: A Comparative Critical Analysis," *Journal of Posthumanism* 5, no. 5 (May 2025): 562–82, <https://doi.org/10.63332/joph.v5i5.1367>.

²⁷ Salma Seifelnasr, "Crossed Views on the Unforseeability Theory in Arab Countries Law and French Law," *HAL (Le Centre Pour La Communication Scientifique Directe)*, December 2020, <https://theses.hal.science/tel-03469601>.

suspended contract that is the equivalent of the non-opposability known in civil legal theory.²⁸

The JCC includes other cases applicable to the same kind of suspension. For instance, Article (1344) provides that: “1. The lease made by the mortgagor shall not be effective against the mortgagee unless it is proved to have been made before the mortgage. 2. But the subsequent lease which commences after the expiry of the preceding lease shall be absolutely ineffective against the mortgagee unless it is registered in the mortgage contract”.

Article (1335) provides another example: “The mortgagor may dispose of his immovable property under a security mortgage without the effect thereof on the rights of the mortgagee”. While the rights of the mortgagee are preserved, the owner of the immovable property has the latitude to dispose of it as they wish. Hence, their disposition is suspended upon the mortgagee’s approval when affecting their rights. Thus, the contract is valid and effective between its two parties, the vendor and the purchaser, but is ineffective in respect of the mortgagee; it is suspended in their regard if their rights are adversely affected.

It should be noted that the Jordanian legislator issued a law dedicated to immovable property, the Law of Immovable Property No. (13) of 2019, which does not apply the same principles as the JCC regarding the suspension of the contract. Article (168) of the Law of Immovable Property provides that: “The mortgagor can sell the mortgaged immovable property with the consent of the mortgagee to another person who agrees to acquire the property of the immovable property charged by mortgage while maintaining the registered mortgage in place”. The sale of an immovable property is suspended until the mortgagee’s approval is obtained. When selling immovable property without the mortgagee’s consent, the contract is concluded but remains suspended until the mortgagee’s approval is obtained. Once approval is obtained, the contract becomes effective in the regard of the vendor, purchaser, and mortgagee. It must be pointed out that the registration formalities applicable to the dispositions made over the immovable property serve as a guarantee of

²⁸ Sahib Al-Fatlawi and Derar Al-Daboubi, “Legal Features of the Provisions of Unjust Enrichment in Jordanian Civil Law and Comparative Law,” in *Arab Law Quarterly*, no. 4, 2023, 37:474–87, <https://doi.org/10.1163/15730255-bja10087>.

the mortgagee's consent. Therefore, in the absence of this consent, the disposition will not be carried out by the registrar.

The text indicates that the mortgagee's consent is a condition for the existence of the sale, not its effectiveness. It can therefore be inferred that the Jordanian legislator has departed from the general principles set out in Article (171) of the JCC, as well as from the specific rules governing mortgage provisions under Article (1335) of the JCC.²⁹ Accordingly, the registrar is obligated to refrain from completing the disposition until the mortgagee expressly provides consent to the sale contract. Consequently, if the registerer proceeds with such a disposition without obtaining the mortgagee's consent, the resulting sanction is the nullity of the disposition rather than merely its ineffectiveness regarding the mortgagee. Such an analysis becomes inevitable in this context because of the formal requirements involved.³⁰

Under the Jordanian Civil Code (JCC), the regulation of possessory pledge reflects a consistent application of the suspension theory. Article (1386) provides that the pledgor may not dispose of the pledged property through sale, lease, or gift without the pledgee's consent; if a sale occurs, the pledgee's right transfers to the price upon approval. Accordingly, a sale concluded without consent is validly formed between the parties but remains suspended pending the pledgee's ratification and may be rendered ineffective if the pledgee refuses approval.³¹ This demonstrates that the contract produces no legal effect until ratified, rather than being merely unenforceable against the pledgee.³² By contrast, French law, such as Article 595 of the French Civil Code concerning usufruct, treats the absence of required consent as giving rise to relative nullity or unenforceability *vis-à-vis* the protected party.³³ Although the JCC generally adheres to suspension, including retroactive validation upon

²⁹ Ahmad Abdul Karim Mousa Al-Sarayrah, "Responsibility of a Perpetrator and a Causer in Omani Civil Transactions Law a Comparative Study with Jordanian Civil Law and Islamic Jurisprudence," in *Edelweiss Applied Science and Technology*, no. 1, 2025, 9:846–55, <https://doi.org/10.55214/25768484.V9I1.4264>.

³⁰ Ayman Nasser, "The Sale of Another's Property in Positive Law and Islamic Jurisprudence" (National University of Najjah, 2006).

³¹ Bantekas, "Invalid and Defective Contracts in Islamic Legal Theory," 2024; Burhanuddin Susamto, "The Reconstruction of The Modern Advertising Concept: An Islamic Law Perspective," *Justicia Islamica* 17, no. 1 (June 2020): 128–47, <https://doi.org/10.21154/justicia.v17i1.1721>.

³² Terré, Simler et Lequette, *Droit civil*.

³³ Irina Cvetkova, "The Abolition of the Concept of 'Causa' in French Civil Law," *Białostockie Studia Prawnicze* 26, no. 5 (December 2021): 91–102, <https://doi.org/10.15290/bsp.2021.26.05.06>.

ratification (Article 175), certain provisions, most notably Article 550 on the sale of another's property, extend the right of ratification or rescission to the buyer,³⁴ reflecting Egyptian and Ḥanafī influence. This reveals that, while grounded in suspension theory,³⁵ the JCC contains internal inconsistencies regarding who holds the power of ratification, necessitating doctrinal refinement to preserve conceptual coherence.³⁶

The Specificity of the French Approach of Nullity

Article (1179) of the FCC provides that “Nullity is absolute where the rule that is violated has as its object the safeguard of the public interest. It is relative where the rule that is violated has as its sole object the safeguard of a private interest”.³⁷ The distinction between the two types of nullity is the key feature of the French legal system. Sometimes the boundary line between the public interest and the private one is evident, while in others it is ambiguous.³⁸ The absolute nullity does not spark considerable controversy, because this legal institution is known in legal systems saturated with Islamic jurisprudence. In contrast, the relative nullity has been the subject of various studies and comparative scholarship, being a foreign concept in Islamic jurisprudence.

One of the main issues that allows us to draw a constructive comparison between the two systems is the sale of another's property. The contract of sale is the most frequent transfer deed in practice, which is defined as “the deed by which a subject subtracts a right from his patrimony to add it to that of the purchaser”.³⁹ According to Roman law, selling someone else's thing was permissible; however, the purchaser had to return the thing when the owner claimed it. In this law, a contract of sale did not, in principle, entail the transfer

³⁴ Farag, “The Suspended Contract Theory: A Comparative Study.”

³⁵ Abdulrazzak Alsanhuri, *Sources of Right in Islamic Jurisprudence*, vol. 4 (Cairo: League of Arab nations, 1957).

³⁶ Farag, “The Suspended Contract Theory: A Comparative Study”; Mahmood Alaloosh, Govar Majed Ahmad, and Lara Adel Jabbar, “Adapting Iraqi Law to Smart Contracts: A Comparative Analysis Incorporating Islamic Law Principles and Consumer Protection in the Contemporary Digital Era,” *MILRev: Metro Islamic Law Review* 5, no. 1 (February 2026): 210–46, <https://doi.org/10.32332/milrev.v5i1.13031>.

³⁷ Mame Diatta, “The Judge and the Contract : Comparative Study of French and Senegalese Law,” HAL (*Le Centre Pour La Communication Scientifique Directe*), December 2022, <https://theses.hal.science/tel-04031382>.

³⁸ Terré, Simler, and Lequette, *Droit civil*.

³⁹ Marie Gayet, *L'Acquisition a non domino*, 2010, 17–59, <https://doi.org/10.3406/juro.2010.4133>.

of ownership to the vendor. Rather, its purpose was to enable the vendor to take possession of the property, make use of it, and enjoy peaceful possession. If the parties agreed to transfer ownership, they were required to follow the formalities prescribed by Roman law, such as attestation, judicial cession, delivery accompanied by the transfer of title, or acquisitive prescription. Thus, the seller was not bound to transfer ownership to the vendor; instead, he was obligated to grant the vendor peaceful possession and to enable him to enjoy the object sold.⁴⁰ Consequently, the seller was required not to interfere with the vendor's possession and to protect him against interference by third parties. This approach rendered the sale contract valid under Roman law, given the possibility that the true owner might not challenge the vendor's possession of the property once it was delivered to him.⁴¹

In a case where the vendor could not acquire the property and transfer it to the purchaser within the period between the sale and the performance of the required formality allowing this transfer, the sold object is resituated to the true owner.⁴² By enacting the Napoleonic Civil Code in France, such a process was declared prohibited, considering the sale null, since one does not have the right to sell a thing when one does not have the right to transfer ownership of it, as it is the object of the sale. This justification was expressly stated in the FCC's preparatory works.⁴³ Hence, it is argued that the underlying rationale of the provision in question is the impossibility of the object of the contract, and that this impossibility is a relative one; it should not prevent the contract from being formed.⁴⁴

Nowadays, Article (1599) of the FCC provides that "the sale of someone else's property is void. However, this can lead to a claim for damages if the vendor was unaware that the property belonged to someone else". We must

⁴⁰ Cvetkova, "The Abolition of the Concept of 'Causa' in French Civil Law."

⁴¹ Farag, "The Suspended Contract Theory: A Comparative Study"; Lutfi Chakim, Nur Hidayah, and Hasanudin Hasanudin, "Fatwa, Authority, and Digital Trade: A Critical Legal-Discursive Analysis of Dropshipping Rulings in Indonesia and Egypt," *Jurisdictie: Jurnal Hukum Dan Syariah* 16, no. 1 (July 2025): 124-65, <https://doi.org/10.18860/j.v16i1.31882>.

⁴² Gayet, *L'Acquisition a non domino*.

⁴³ Patrick Wéry, "La Vente de La Chose d'autrui et Les Obstacles à Son Annulation," *Revue Critique de Jurisprudence Belge* 65, no. 1 (2011): 13.

⁴⁴ Gayet, *L'Acquisition a non domino*; Veronica Tuturoong and Musleh Herry, "The Legal Protection Of Clickwrap Agreement In The Electronic Contract Of Electronic Commerce Transactions," *Jurisdictie: Jurnal Hukum dan Syariah* 12, no. 2 (2021): 190-210, <https://doi.org/10.18860/j.v12i2.12546>.

determine the *ratio legis* and the type of nullity intended. The *ratio legis* is the transfer of ownership, which is considered the very essence of the sale. This contract is tainted by an original defect that forms a cause of nullity. This marks a legislative shift, as some scholars argued that in the Civil Code, ‘sell’ means ‘alienate’; thus, we cannot sell something we do not own. Regarding the type of nullity, in Belgium and France, most doctrines and judicial opinions hold that nullity safeguards the purchaser’s private interest. Consequently, this nullity must be a relative one.⁴⁵

Article (1181) of the FCC provides that “Relative nullity may be claimed only by the party that the legislation intends to protect. It may be remedied by affirmation. Where more than one person has the right to bring an action for relative nullity, renunciation by one of them does not prevent the others from bringing proceedings.” The nullity in question can be invoked only by the purchaser, not by the vendor.⁴⁶ since the vendor knowingly sells the thing of another, as confirmed by the preparatory works of the Civil Code. The owner of the property does not have the right to invalidate the sale, since the principle of the relativity of contract effects opposes this. Moreover, the annulment of the sale eliminates, for the purchaser, any risk of restitution of the property.⁴⁷ In fact, “by allowing the purchaser to nullify the sale, the legislator offers him the possibility of removing the sword of Damocles that constitutes the action in restitution held by the true owner: the nullification of the sale eliminates any risk of eviction”⁴⁸

Articles (1599) and (1181) should be read together; therefore, the purchaser has the right to request the nullity of the sale, and, where appropriate, a court may award damages. Here, the purchaser can request a claim for damages against the vendor under the eviction guarantee. The judicial interpretation has radically changed the punitive nature of Article (1599), rendering it a protective measure for the purchaser, as a sort of complement to the theory of the guarantee.

⁴⁵ Wéry, “La Vente de La Chose d’autrui et Les Obstacles à Son Annulation.”

⁴⁶ Cassation civil, belge, 30 January 1941, Pasirisie belge, 1941, I, 24.

⁴⁷ Faustine Jacomino, “Objective Control of Contractual Balance. Between Contract Law and Restrictive Practices,” HAL (Le Centre Pour La Communication Scientifique Directe), July 2018, <https://theses.hal.science/tel-02426266>.

⁴⁸ Wéry, “La Vente de La Chose d’autrui et Les Obstacles à Son Annulation.”

The contract of sale involving the things of others is not condemned to extinction in all cases. *Prima facie*, the contract shall be considered as valid and having effect. Therefore, the contract benefits from a presumption of validity; for example, in other legal systems, the contract is entirely valid, as is the case in the German legal system. In the sales contract, the obligation remained purely mandatory: it requires the vendor to transfer the property without causing the transfer itself. This transfer occurs through a specific contract called the real contract.⁴⁹ If the request for annulment were made, it would be a matter for the court to reverse the presumption of validity attached to the sale. If the nullity is not pronounced, the sale takes effect between the contracting parties without affecting the owner's rights. Thus, the purchaser cannot release himself from the sale by his own will. In other terms, he needs the support of justice to evade his obligations by nullifying the contract. To reclaim the purchase price, the purchaser can request the annulment of the sale.⁵⁰ Moreover, to defeat a request for payment or an action for rescission brought by the other contracting party, the purchaser can also raise the exception of nullity.⁵¹

Even though the owner does not have the right to the nullity of the sale, he could take an action in restitution, thereby recovering possession of the property.⁵² This action is conferred on him because the sale is unopposable to him based on the principle of relativity of contract effects provided in Article 1199 of the FCC.⁵³ In contrast, the purchaser could benefit from the rule of "possession is title" under Article 2276 of the FCC, or from the appearance theory. Thus, in practice, the owner's action in restitution is often defeated by the theory of appearance or possession. Furthermore, the judicial jurisprudence held that the action of restitution should not be subordinated to

⁴⁹ Gayet, *L'Acquisition a non domino*.

⁵⁰ Anne-Sophie Milard-Laffitte, "Couples Right's Vis-à-Vis Church and State: A Comparative Study of the English, French and Italian Legal Systems," HAL (*Le Centre Pour La Communication Scientifique Directe*), June 2021, <https://theses.hal.science/tel-03514782>.

⁵¹ Wéry, "La Vente de La Chose d'autrui et Les Obstacles à Son Annulation"; Agus Sekarmadji, Regine Wiranata, and Oemar Moechthar, "Pre-Project Selling in a Property Business: The Perspective of Islamic Law," *Justicia Islamica* 18, no. 1 (February 2021): 19–38, <https://doi.org/10.21154/justicia.v18i1.2247>.

⁵² J. Mestre, E. Putman, and M. Biliau, *Traité de droit civil. Droit spécial des sûretés réelles, tome 2* (Paris: LGDJ, 1996).

⁵³ Gayet, *L'Acquisition a non domino*.

a prior nullification of the sale, given that the real action is not linked to the personal action. The Cassation Court stated that: “The annulment of the sale of another’s property is not a requirement for the true owner’s revendication action”.⁵⁴

However, the purchaser’s action for nullity would be very useful to the owner, as it would allow him to derogate from the rule that possession is title and thus protect his property. The relativity of nullity allows the purchaser to renounce the right to request the annulment of the act, which is corroborated by confirmation; the purchaser has discretionary power to activate the nullity or not during the prescription period. In other words, the exercise of the action for nullity is left to the discretion of the purchaser. The confirmation of the sale is subject to common law, which may be express or tacit. Sometimes the fate of this contract is not sealed due to lack of action from the purchaser; therefore, “this act, normally affected by a defect affecting its formation, will sometimes remain suspended, given the inability to take action likely to challenge its validity”.⁵⁵ The confirmation is interpreted as an obligation for action by the vendor without any transfer of ownership. So, if the purchaser chooses to maintain the contract, he can bind the vendor to fulfil his obligations, even if it is an alternative performance. Also, the purchaser can put the eviction guarantee into force in this legal context, resulting in the risk of rescission of the contract for non-performance within the framework of *inter partes* relations.⁵⁶

To maintain doctrinal consistency, French courts uphold the validity of sales of goods belonging to others if the rightful owner subsequently confirms or, in the terms of some doctrines,⁵⁷ “regularizes” the transaction, or if the seller ultimately obtains ownership of the object sold after the contract is made, thereby minimizing invalidity and protecting the buyer’s interests from the risk of eviction.⁵⁸ Under French law, the buyer’s right to nullify the sale of another person’s property is absolute, without requiring good faith, as the law does not make it a prerequisite. The same approach is applied to pawn

⁵⁴ Cassation 3em Civil, 22 May 1997, no. de pourvoi : 95-17, 480, Bulletin 1997 III no. 114, 76.

⁵⁵ Wéry, “La Vente de La Chose d’autrui et Les Obstacles à Son Annulation.”

⁵⁶ Gayet, *L’Acquisition a non domino*.

⁵⁷ Farag, “The Suspended Contract Theory: A Comparative Study.”

⁵⁸ Mestre, Putman, and Biliau, *Traité de droit civil. Droit spécial des sûretés réelles, tome 2*.

institutions under Article 2335 of the French Civil Code, which allows creditors to cancel pawns on other people's property if they did not know that the property did not belong to the pawn provider. This solution was previously developed through jurisprudence by analogy with the sale of other people's property. In the context of mortgages on immovable property, French law is in line with the Jordanian Civil Code, namely that the security interest remains attached to the property in the hands of the third-party purchaser, who remains liable for the secured debt within the limits of the registration, so that the creditor can execute the mortgaged property if the obligation is not fulfilled.⁵⁹

The Inevitability of Change of the French Approach of Nullity

As the nullity approach does not apply to the sale of others' property, it is argued that the nullity should be replaced with judicial recession. The French legislator may adopt another approach regarding the sale of the things of others, that "the absence of rights over the thing would not be an obstacle at the time of the formation of the contract, it would only be a problem linked to its execution. The situation of the vendor of someone else's thing would simply be assimilated to that of a vendor of a future thing, and the sale should not have been considered void but as valid, although subject to rescission".⁶⁰

The purchaser can demand the rescission of the contract if the vendor is unable to fulfil their obligation, the transfer of property, and any damages, if applicable. If the vendor acquires the property of the sold thing, he will be able to fulfil his obligation without resorting to the aforementioned judicial corrections. This will resolve multiple legal difficulties, mainly the risk of eviction and the vendor's contractual failure.⁶¹ If the owner agrees to the sale of his property, he will make the transfer possible for the vendor. It is worth noting that this practice was previously provided under French Law before the adoption of the Napoleonic Civil Code in 1804. Thus, the French legislator has replaced a better solution with a worse one by opting for nullity. In this regard, it was pointed out that "the nullity of the sale of another's thing is then itself likely to call for new nullities: the purchaser being never supposed to have been

⁵⁹ Mestre, Putman, and Biliau, *Traité de droit civil. Droit spécial des sûretés réelles*, tome 2.

⁶⁰ Gayet, *L'Acquisition a non domino*.

⁶¹ Wéry, "La Vente de La Chose d'autrui et Les Obstacles à Son Annulation."

the owner, if he resold his property to a sub-purchaser, this sale will also be a sale of another's thing and will also be void. We believe that the sanction introduced by Article (1599), initially intended to dissuade the vendor from disposing of someone else's thing and to limit the sources of conflict, in fact feeds this source of dispute by provoking challenges that cascade from the property. Indeed, through a domino effect that is difficult to control, the first sale that undergoes an annulment will bring down all subsequent sales, placing the sub-purchasers in a delicate situation".⁶²

From a comparative perspective, according to the Belgian legal system, which is quite similar to the French system, the judiciary has established the jurisprudence where "the sale of the thing of others is not null, but ineffective, for lack of transferring the property to the purchaser, yet this ineffectiveness is not necessarily definitive. If later, the vendor becomes the owner of the sold thing, nothing prevents, in terms of strict legal logic, the transfer of ownership which takes place automatically, by virtue of the prior sale."⁶³ Such a solution is closer to the Islamic jurisprudence than the French legislative position.⁶⁴ Another example of comparative practice is the Quebec Civil Code, Article 1714, which states that: "The true owner may apply for the annulment of the sale and revendicate the sold property from the vendor unless the sale was made under judicial authority or unless the vendor can set up acquisitive prescription". This approach is also closer to the Islamic perspective, as the solution depends on the owner's consent. We believe that the Islamic approach is legally correct, as it has no effect on the wholesale without the owner's consent. In addition, we believe that the theory of suspension is valid to replace the nullity theory in other contexts. Thus, the suspension theory is sufficient to meet the legal requirements derived from the minor's acts and the acts concluded under duress.

The suspended contract doctrine (*al- 'aqd al-mawqūf*) is "more Islamic" as it demonstrates the *Sharī'ah*'s commitment to maximising benefit and preventing harm through legal rules. By requiring the rightful owner's approval

⁶² Gayet, *L'Acquisition a non domino*.

⁶³ Wéry, "La Vente de La Chose d'autrui et Les Obstacles à Son Annulation"; Hosein Barkhi, "The Cases of Nullity of Suspended Obligation with Respect to Jurisprudence and Iranian Law," *Revista Publicando* 5, no. 15(2) (June 2018): 1271-78.

⁶⁴ Chouder and Metabi, *The Provisions of the Sale of the Property of Others A Comparative Study between the Algerian Civil Law and Islamic Jurisprudence*.

(*ijāzah*) for an unauthorised disposition (*taṣarruf fuḍūlī*), the suspended-contract model advances *ḥifẓ al-māl* by protecting the owner's wealth from involuntary transfer and protecting the transferee from binding obligations. Restitution mechanisms prevent unjust enrichment on both sides. Suspension promotes *ḥifẓ al-nafs* and *al-ʿird* by preventing ethical harm—coercion, reputational injury, and social conflict—in disputed transactions. The law does not validate unauthorised acts or humiliate parties through premature nullification, but rather holds the transaction in a dignified, reversible state until consent is clarified. The model follows *ḥifẓ al-dīn*, as the *Shari'ah* considers legal authority (*wilāyah*) and genuine consent (*riḍā*) as moral prerequisites for a lawful transfer. The suspended contract connects legal form with the religious virtues of fairness, trust (*amānah*), and avoidance of *ẓulm* by preventing legal effects until ethical criteria are met. Suspension is a legal tool that balances transactional efficiency with the *maqāṣid* responsibility to protect rights, avert harm, and promote ethical purity.⁶⁵

While relative nullity protects the disadvantaged or aggrieved party in a legal transaction, it can occasionally overextend that protection and create systemic costs. The theory may confuse third parties who rely on the validity of the agreement by enabling only one side to invoke nullity. This disparity can also lead to unnecessary litigation, as parties may invoke the protection mechanism after the transaction. While the theory protects justice, its imbalanced structure undermines efficiency, predictability, and trust in the legal system.

The suspended contract prohibits obligations from taking effect and protects all parties pre-emptively. For instance, it protects the genuine owner from the disposition of unconsented property. The vendor is also protected from being caught in a contract that may generate issues if the genuine owner does not approve it and from being lured into a maze of transactions involving the sold property after it enters circulation. After the genuine owner refuses to confirm the sale, the initial contract and any subsequent transactions based on it are void. The vendor is not compelled to satisfy the suspended commitments from the non-effective contract, protecting them. If the vendor

⁶⁵ Mansoori, "General Principles of Business Contracts in Islamic Law"; Hijrian Angga Prihantoro, "Examining Witness Interest: The Obstacles of Testimony in Islamic Jurisprudence and Positive Law," *Justicia Islamica* 21, no. 1 (June 2024): 1–22, <https://doi.org/10.21154/justicia.v21i1.8653>.

has completed them, he might recover his payment to prevent an award of unfair enrichment. For these reasons, we believe the French lawmaker will consider introducing the suspension hypothesis.⁶⁶

Critical Evaluation of Both Systems: Islamic vs Civil Law Principles

The fundamental difference between the doctrine of suspended contracts in the fiqh tradition and the concept of relative nullity in French civil law lies in the legal consequences that arise before ratification or cancellation. In the construction of suspended contracts, as developed in fiqh, particularly in the Ḥanafī school of thought, a contract made without authority has no legal consequences until it is ratified by the rightful party, such as the rightful owner. The contract is treated as ineffective until approval is granted. Conversely, under the French Civil Code, contracts classified as nullity of relative character remain valid and produce legal consequences until the protected party nullifies them.

This difference is rooted in the protective objectives to be achieved. The doctrine of suspension aims to protect property rights and prevent legal consequences that could harm the owner before the owner gives consent. There is no transfer of rights, no enforceable obligations, and no final legal consequences before ratification.⁶⁷ Meanwhile, relative nullity is designed to protect certain parties, for example, parties with defective intent or aggrieved owners, without immediately nullifying the contract. The contract remains in force but is subject to annulment.⁶⁸

In the context of selling someone else's property, the implications are significant. In the suspension system, if the owner refuses to ratify, the contract is void without ever producing legal consequences for the object being sold. There is no transfer of rights, and any control that arises does not

⁶⁶ Sébastien Fixot, "La Réception Des Contrats de La Finance Islamique En Droit Français," no. 2022ULILD016 (Theses, Université de Lille, 2022), <https://hal.science/tel-04514539>.

⁶⁷ Alsanhuri, *Sources of Right in Islamic Jurisprudence*, vol. 4; Ayman Saleh, "The Rules of Declaring the Nullification of Ruling for the Nullification of Its Purpose: A Critical Analytical Study," *Journal of Umm Al-Qura University for Sharia'h Sciences and Islamic Studies* 0, no. 97 (June 2024): 1–20, <https://doi.org/10.54940/si70463581>.

⁶⁸ Farag, "The Suspended Contract Theory: A Comparative Study"; Saba Habachy, "The System of Nullities in Muslim Law," *The American Journal of Comparative Law* 13, no. 1 (1964): 61, <https://doi.org/10.2307/838344>.

change the legal status of ownership.⁶⁹ Conversely, in the relative nullity system, the contract remains in effect until an act of annulment occurs. The buyer can demand annulment and compensation, but as long as there is no decision or agreement on annulment, the contract remains considered to create an obligatory relationship between the parties.⁷⁰ Thus, the French system allows for a period of “active uncertainty,” in which the contract remains in effect even though ownership cannot be transferred.

The theoretical advantage of the suspension doctrine lies in preventing premature legal effects on property rights.⁷¹ Since the contract is not effective before ratification, there is no risk of an unlawful transfer of rights. Even subsequent transfers by the buyer before ratification remain pending.⁷² If the owner ultimately ratifies, the ratification is retroactive and validates the original contract. If rejected, the entire series of transactions loses its legal basis. Conceptually, this model provides stronger protection for the owner.

However, the doctrine of suspension also has weaknesses. The absence of a clear time limit for the owner to ratify or reject can create prolonged uncertainty. The Ḥanafī school of thought gives the buyer the right of rescission to end the unstable status. In contrast, the Mālikī school imposes time limits and even considers the owner’s silence in certain circumstances as implicit ratification. This shows that even within the fiqh tradition itself, the doctrine of suspension requires corrective mechanisms to maintain legal certainty.⁷³

On the other hand, relative nullity in French law offers a clearer procedural structure. Contracts are considered valid until annulled, and annulment generally requires legal action or an agreement between the parties. French jurisprudence even limits annulment if the risk of loss has disappeared, for example, when the seller subsequently obtains ownership or the owner ratifies the transaction. Thus, this system seeks to balance the

⁶⁹ Fatima Assad, “The Theory of Suspended Contracts in Islamic Jurisprudence and Its Applications in Algerian Civil Law: A Comparative Study” (Mouloud Mammeri University, 2015).

⁷⁰ Farag, “The Suspended Contract Theory: A Comparative Study.”

⁷¹ Muhammed Alghayati, *The Doctrine of Selling Another’s Property in Civil Law and Islamic Jurisprudence* (Egypt: Library of Tanta University, 1986).

⁷² Cassation Com, 5 November 2002, pourvoi n° 00-14.885, Bull. IV, n° 159; Cassation Civil, 5 December, 2024, Pourvoi n° 21-18, 445.

⁷³ Farag, “The Suspended Contract Theory: A Comparative Study.”

protection of owners with the stability of transactions and the interests of buyers acting in good faith.

Compared with suspension, suspension provides stronger preventive protection of property rights because it prevents legal consequences from arising before ratification. Relative nullity, on the other hand, provides corrective protection through a mechanism of annulment after the contract is deemed valid. This difference reflects two paradigms: the fiqh system emphasises the prevention of legal effects without authorisation. In contrast, the French civil system emphasises the continuity of the contract until the intervention of annulment.⁷⁴

Thus, in the case of the sale of another person’s property, the doctrine of suspension is conceptually more consistent with the principle that no one can transfer rights that they do not possess. However, its effectiveness still depends on the existence of time-limiting mechanisms and procedural certainty, so that the owner’s protection does not become a prolonged source of uncertainty for the other parties. The differences between the doctrines of suspension and relative nullity, as outlined above, reveal fundamental differences in the approach to protecting rights and maintaining contract stability. To clarify this comparison systematically, the following Table 1 summarises the main aspects of the two legal systems.

Table 1. Suspended Contract vs Relative Nullity

Aspect	Suspended Contract (Islamic Law / JCC)	Relative Nullity (French Civil Law)
Legal Status of Contract Before Ratification	A contract exists but produces no legal effects until ratified	The contract is valid and produces legal effects until annulled
Transfer of Ownership	No transfer occurs before ratification	No ownership transfer, but contractual obligations arise
Protection Objective	Preventive protection of the owner’s proprietary rights	Corrective protection of the party whose interest is harmed
Effect on Obligations Between Parties	No enforceable obligations before ratification	Obligations exist and may be enforced unless annulled

⁷⁴ Alqudah et al., “Consumer’s Right of Withdrawal in E-Commerce Contracts: A Comparative Study of the Jordanian Civil Law.”

Role of Ratification	Ratification activates a contract retroactively (ex tunc)	Ratification confirms a voidable contract already producing effects
Effect of Refusal	Contract ceases to exist without producing legal consequences	The contract must be judicially annulled or rescinded
Position of Good-Faith Purchaser	No protection before ratification; status remains suspended	May claim annulment and damages if the contract is invalidated
Impact on Subsequent Transfers	Subsequent transfers remain suspended; validated only if the original is ratified.	Subsequent rights may be extinguished upon judicial annulment.
Judicial Intervention	Not required for suspension; required only if a dispute arises	Generally required to declare annulment
Time Limitation for Action	No explicit general deadline in classical doctrine (varies by interpretation)	Subject to statutory limitation periods
Underlying Philosophy	No one can transfer what he does not own; protection before effect	Contractual stability until challenged; protection through annulment
Nature of Protection	Preventive (no legal effect before consent)	Remedial (legal effect until annulment)

Source: Author's analysis of data, 2026

The table above highlights the fundamental difference between the doctrine of dependent contracts in Islamic jurisprudence, as adopted in the Jordanian Civil Code (JCC), and the doctrine of relative nullity in French Civil Law. In the JCC, rooted in Ḥanafī fiqh, a contract without authority, such as the sale of another person's property, is formally formed but does not give rise to any legal consequences until the rightful owner ratifies it; no obligation can be enforced, and no transfer of ownership occurs. If ratification is refused, the contract is void ab initio (ex tunc). Conversely, under French law, the contract is valid and effective from the outset as a voidable contract (relative nullity), giving rise to an obligatory relationship until it is annulled through legal mechanisms, even potentially affecting third parties before it is declared void. Thus, the JCC reflects preventive protection that emphasises the supremacy of property rights. At the same time, the French system applies corrective protection that maintains the contract's continuity until an intervention to nullify it.

Conclusion

This study shows that Jordanian civil law and French law construct the concept of contract nullity through fundamentally different doctrinal structures. French law uses a dual classification between absolute nullity and relative nullity. In contrast, Jordanian law, rooted in Islamic jurisprudence, replaces the concept of relative nullity with the doctrines of suspended contracts and non-binding contracts. This comparative analysis confirms that the theory of suspension in Islamic law is not merely a variation, but rather an autonomous model that is functionally more protective because it suspends legal consequences until ratification by the entitled party, thereby providing stronger preventive protection of property rights and vulnerable parties compared to relative nullity in French law, which continues to produce legal consequences until it is annulled. On the other hand, Islamic law still shows flexibility in maintaining the effectiveness of certain contractual relationships without sacrificing the protection of third parties. However, this study also found doctrinal inconsistencies in Jordanian law, which partially adopts elements of French relative nullity, particularly in the regulation of the sale of other people's property, thereby giving rise to conceptual ambiguity. Therefore, more decisive harmonisation is needed: French law could consider integrating the preventive elements of the theory of suspension. In contrast, Jordanian law needs to strengthen its consistency with the foundations of fiqh. These findings contribute to the development of contract theory in comparative law studies and open up space for the renewal of the doctrine of nullity in mixed legal systems.

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Ismaeel Alhadidi served as the lead author who formulated the conceptual framework, designed the comparative research, analysed Jordanian and French legal sources, and wrote the main draft of the article. Ghofran Hilal contributed to the collection and verification of legal data, doctrinal literature search, and assisted in comparative analysis and refinement of normative arguments. Thawab Hilal was involved in critically reviewing the substance of the article, strengthening the theoretical analysis, final editing of the manuscript, and ensuring consistency in methodology and citations. All authors approved the final version of the manuscript and declared that there were no conflicts of interest in the research or publication of this article.

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