

Special Education Contracts: Private Colleges as an Example

Yousif Saadoon Mohammed Al-Maamoori^a, ^aAl-Imam Al-Kadhun University College for Islamic Science, Email: yosifsaadoon@gmail.com

Students' need to learn results in him/her having a contract with special education as it relates to embodying a scientific renaissance for learning. It is known to everyone that the qualitative leap in the private sector related to universities, colleges, and private institutes became clear after 2003. This contract has become comparable to government education in its important position nowadays. It is necessary to organise this contract because of its great importance in terms of education in giving study opportunities for all and developing the scientific, cultural, and educational movement for everyone in society. This contract is defined as the legal relationship that links its parties to each other, based on the legislation on private higher education law and the instructions issued by the Ministry to organise the work of private colleges. The present study discusses characteristics that distinguish such contracts. The present study also tackles the effects of the contractual relationship of the parties on the private education contract by clarifying the obligations of each party and the relationship of the parties with the Ministry of Higher Education and Scientific Research represented by the Department of Private University Education.

Key words: *Private education contract, private colleges, model.*

Introduction

The present study deals with the legal definition of the contract and its divisions. The contract consists of two identical parts; offer and acceptance. The contract form corresponds to the affirmation issued by one of the two parties followed by an identical acceptance by the other party in a manner that shows its effect on the commitment of each of the parties to what is obligatory for the contractor.

In finding ways to create private education in comparison to government education, the present study aims at increasing the value and role of the National Education Law No. (25)

for the year 2016, in harmony with government education. It is possible to define the private education contract in private colleges as a contract whereby the private colleges are obligated to teach the student one of the cognitive sciences, whether scientific, human, or technical, or teach him/her a profession against a fee agreed upon between the two parties.

The Problem of Study

Private education has spread rapidly as a result of the scientific leap after 2003. This phenomenon should be legally studied. Private education contract should be examined in terms of the relationship between the private educational institution and the ministry represented by the private university education department. The legal relationship between the private educational institution and the student, whether contractual or organisational is given a great deal of interest.

The Significance of Study

In legal studies, the contract receives great care that no other legal system has attained, given the practical importance of a contract in reciprocal activity as it is not only an individual freedom. Rather, it is the basis of economic activity in the human community as a tool of exchange and a way of cooperation between human beings in the manner of legal obligation by adhering to all of its provisions.

The contract consists of two identical parts; offer and acceptance. The contract form corresponds to the affirmation issued by one of the two parties followed by a corresponding acceptance by the other party in a manner that shows its effect on the commitment of each of the parties to what is obligatory for the contractor.

A number of reasons have combined to lead to choose private education contract as a subject of study. This contract is worthy of research because of its importance in embodying a major scientific renaissance after 2003. The law of private education No. (13) for the year 1996 does not meet the ambition. It is free of Many legal articles that address an important joint of education in Iraq. The new law No. (25) was issued for the year 2016. It is clear to everyone that the qualitative leap in the field of education has become clear. This leap has led man to search for branches of science and knowledge. Man tries in various ways to obtain knowledge without being satisfied with what is available in formal educational institutions. Thus, private universities and colleges have become an important place at the present time. Education in the private sector has become equal to government education in terms of scientific sobriety to obtain knowledge. This sector has become available to all through the presence of private colleges in accordance with the controls that are no less important than

government colleges to provide education service to everyone who desires to obtain knowledge.

The Aims of Study

The present study is an attempt to find ways to create private education in comparison to government education.

-The present study aims at increasing the value and role of the National Education Law No. (25) for the year 2016, in harmony with government education. It is possible to define the private education contract in private colleges as a contract whereby the private colleges are obligated to teach the student one of the cognitive sciences, whether scientific, human, or technical, or teach him/her a profession, all against a fee agreed upon between the two parties.

The Study Plan

The present study discusses the topic by dividing it into two sections. In the first section, the concept of a special education contract is dealt with. Section two deals with the effects of a special education contract.

The Concept of a Special Education Contract

This section includes two subsections presenting the definition of the concept in the first and its characteristics in the second.

Definition of Private Education Contract

A Private education contract is a modern contract that emerged from the fact that society is passing towards the specialisation of its members in distinct fields on the basis that every person seeks to obtain knowledge distinguishing him/her from the uneducated and non-specialised members of the society. In light of this contract, learning has become simple and easy for everyone to obtain by joining private colleges, which, in 2018, numbered nearly sixty recognized private universities and private colleges in Iraq. This is comparable to the number of public universities.

Hence, legal jurisprudence does not fix a comprehensive definition defining this contract. The education contract, in general, is not encouraged in the context of civil law, nor is it specifically stipulated in the laws regulating private education. A particular definition of private education contract is not specifically mentioned. Whenever there is a definition, it

tackles the private education contract in general. A private education contract is defined as the contract between parents and educational institutes to educate their children (Muhammad, 2017: 30). It is also defined as an agreement that the first party is obligated to provide all the means of achieving the desired goals to the second party (Al-Hamdani, 2003: 3).

It is possible to define private education contract in private colleges as a contract whereby private colleges are obligated to provide students with one of the cognitive sciences, whether scientific, human, technical, or a profession against a fee agreed upon between the two parties.

It is clear that legal jurisprudence does not give a unified definition to this contract. The purpose of this contract is to provide the recipient with knowledge through private colleges according to conditions set by the ministry of Higher Education and Scientific Research. Through this contract, the student can learn.

Characteristics of a Private Education Contract

Private education contracts is a new form of contract for transferring knowledge. Hence, this contract has mutual general characteristics with other civil contracts in addition to some distinctive characteristics. These distinctive characteristics are a standard criterion for distinguishing it from other civil contracts. This contract is a consensual contract based upon the agreement of both parties. Yet, at the present time, the Ministry of Higher Education and Scientific Research in Department of Private University Education, adopts the admission mechanism via the electronic form, which raises the following question; Can this interference be considered as a formality and the contract is not concluded except by following the required formalism stipulated in the Iraqi civil law? Or, is this formality only for proof?

To answer this question, the properties of this contract need to be examined as follows;

First; Private education contract is a consensual contract that is sufficient to hold a positive correlation with acceptance in a legitimate manner. Hence, on the one hand, the contract between the student and the private college is held as soon as the parties agree without requiring certain procedures or formalities because the new Iraqi universities and colleges law No. (25) for the year 2016 does not require that. On the other hand, the origin in contracts is the consent. This principle is stipulated in Article (73) of the Iraqi Civil Law No. 40 of 1951 and its amendments. Some specialists believe that education is not a serious matter, but studying in private colleges is one of the important and decisive matters. This matter cannot be underestimated, but this does not negate the fact that the contract for learning is that it does not need certain formal matters regarding private colleges and registering students' names (Ke Reddy, 2009: 15). Referring to the Ministry's instructions, it is found that the

formalities requested by the Ministry are represented in the electronic form, as they are formal matters used for the purpose of proof so that the student is in a safer position (Nakhla, 2001).

Consensual contracts cannot be confused with the requirement for writing to conclude a contract. The law or the two parties may require writing the contract simply because it is proven not to be concluded otherwise. Therefore, the lack of writing does not prevent the contract from taking place, but rather only proves it (Muhammad, 2017: 36). What is worth noting in this regard is that private university education law does not refer in all of its articles to following a certain formality, but the electronic form, prepared by the private university education department within an electronic portal according to high technologies, places this contract in the formal contracts department, which the law requires registering with the competent department.

Private Education Contract is one of the Netting Contracts

Netting contracts are the contracts in which each of the contracting parties takes a fee. Since private education contract is concluded for a price, there is no doubt about the legal nature of private education contract as one of the netting contracts as the educational institution provides a benefit to all people in general and to the student in particular. This benefit is represented by education for which the student pays the fees determined by the educational institution (Nassif, 1995: 41). Usually, the study fees paid by the student are divided by the number of years. The student pays the fees annually or half annually. The Ministry, in accordance with the instructions, determines the school fees every new academic year according to the scientific departments. In return, these instructions are obligatory to be implemented by the college.

Private Education Contract is a Civil Contract

Private education contract is a civil contract. Then, the civil law and its provisions are applicable as long as the goal of the contract is to provide a service.

With regard to private education contract, the question arises as to whether this contract can be considered a commercial contract, especially as this contract is nowadays based on profit.

By referring to the text of Article (5) of the Iraqi Trade Law No. (30) for the year 1984, it is not possible to consider private education contract as a commercial contract. It is rather a civil contract. The provisions of the Iraqi civil law apply to this contract.

On the other hand, the legal jurisprudence excludes mental production from the scope of commercial activities because this product is not preceded by a purchase and does not include commodity trading. Private higher education has now become an important alternative to government university education. Thus, a private education contract does not primarily seek to be making a profit.

The Effects of Special Education Contract

This section includes two subsections tackling the obligations of the parties according to the special education contract in the first and the termination of the special education contract in the second subsection.

The Obligations of the Parties According to the Private Education Contract

The Obligations of the Private College towards the Student

It is the responsibility of the educational institution as in the private college is obligated to provide education. Education is a deliberate effort that helps the individual to learn. Thus, the education process is measured by the amount and quality of learning.

The commitments of a private college to implement the contract are as follows:

1. The private College is committed to inform the student before contracting.

The college is obliged to give the student, in the period before the conclusion of the contract, a document that includes information on all departments according to the outputs in force in the Ministry of Education, so that he/she can choose the department in which they wish to study. However, the private college, as a professional, specialises in many branches, and therefore it has a set of obligations other than the original commitment, because the professional obligations are many (Al-Jubouri, 2013: 190).

The obligation to inform is a general legal obligation prior to the contract in which the debtor is obligated, whether it is a party to the contract to be concluded by one or both of them or other third parties from this contract to inform the creditor, whether one of the parties to the contract or both in certain circumstances, a true and truthful notification of all the essential information related to in the contract to be concluded and which it is unable to overthrow by its own means to build upon its consent to the contract (Hassan, 1999: 82).

The stronger position contractor should inform the other contractor about all the data upon which the contract is based, which contributes to the formation of free and informed consent,

which enables the weak contractor to take the contract when it is concluded or dispose of it if they want to find a type of cooperation between the two parties to implement this contract (Al-Kaabi et al, 2012: 20).

Hence, the private college has the responsibility of committing to the private education contract to give the necessary data to the seeker of knowledge so that they can enter into this contract or not.

However, this commitment of the professional (private college) contractor - whether it is in the pre-contracting stage or in the stage of performing the contract, there is no basis for it except in the same professionalism. This indicates that the quality of professionalism is based on the experience. Consequently, a type of imbalance arises from the availability of this characteristic in the contractual centres of the parties to a single contract, resulting in inequality between the parties (Al-Mahdi, 2009: 52- 53).

The conclusion is that there are several possible ways imposed on the first party in a private education contract as the college can achieve its commitment to provide information to the student.

But the question that arises in this regard is: How to implement this commitment? To answer this question, there are several methods that can be summarised as follows:

1. Information provided orally by the National College is the most simple, fast, and most common method. This method is done through a dialogue between the student and the private college represented by the Registration Department. The student can obtain the information that interests him directly without delay or ambiguity (Abbasi, 2003: 299).
2. Information provided in writing by the private college. It is the common way of providing information to the other contractor. It is the most important and the most effective in terms of information reaching the student clearly and understandably so that he/she can make the decision to join this college or not, but this method has a lot of other positive things, including; clear information, lack of confusion, average price, outputs of the Ministry of higher Education, and the duration of the study.

The tasks of the College Council are defined as;

1. Proposing admission conditions according to the scientific departments and following up their implementation after they are approved.
2. The commitment of the private college to implement the contract in accordance with the instructions of the Ministry of Higher Education and Scientific Research.

The commitment of the private college to implement the contract in accordance with the instructions is considered one of the basic obligations that distinguish this contract from other contracts. For the necessary consent to be held for the contract to be available, a response must be issued from one of the contractors that meets acceptance, and the latter must be compatible with the positive response issued by the private college (Al-Alwani et al., 2003: 43).

Referring to the text of Article (150/1) of the Iraqi Civil Law, which focuses on the principle of good faith, which the Iraqi law considers to be one of the basic principles in the contract, the contract must be performed according to what is included in it, in a manner that is consistent with what is required in good faith.

In this way, both parties of the contract must respect the terms of the contract and implement them (Abdullah, no year: 123).

Among the requirements of this contract, the Ministry of Higher Education and Scientific Research has the right to supervise and evaluate according to Article (10 / First) of the National Higher Education Law.

On the other hand, the private College is obligated with the Ministry to provide it with minutes of the College Board, quarterly and annual reports on the scientific and educational process, and success, failures and dropout rates.

It is worth noting the absence of legislative texts of this law regarding disciplinary and administrative penalties for employees within the framework of private education. There are two types of professors working in private higher education institutions: the professors appointed by the Ministry of Higher Education and Scientific Research within the Iraqi government universities who hold scientific titles. They are supposed to apply the law of discipline of state employees and the public sector No. (14) for the year 1991 in force. And the professors, who hold scientific titles, who are not appointed by the Ministry of Higher Education and Scientific Research and who are contracting with private colleges.

Thus, it is evident that the private higher education law does not include in its articles penalties imposed on professors working in private colleges and referred those penalties to Labour Law No. (37) for the year 2015. The law gives private colleges financial and administrative powers in the establishment of private universities, colleges, or institutes that have a legal personality and that have financial and administrative independence, represented by the chancellor or the dean of the college that is not affiliated with the university or the dean of the institute.

However, private colleges are established by persons. Certainly, the private college remains subject to supervision and scientific supervision by the Ministry of Higher Education and Scientific research in both the scientific and pedagogical terms in determining the curricula and lessons that are delivered. If the college does not abide by the regulations and instructions in force from the Ministry of Higher Education and Scientific Research, the college is subject to warning and closure, upon recommendation by the Ministry to the Council of Ministers.

Private colleges remain affiliated in terms of money control to the Financial Supervision Bureau. The financial supervision report is an argument for everyone. Private colleges have moral personality and financial and administrative independence. The ministry remains supervising and monitoring in terms of scientific and educational terms.

The Student's Obligations towards the Private College

The student is obligated to pay the fee according to the method and the conditions agreed upon. It may be agreed that the academic instalment is paid in several instalments or as one payment.

1. The student's obligation to pay the annual fee.

The student does not pay the fee for the special education contract in one lot, whether at the time of concluding the contract or after starting the contract, as the student is obliged to pay in the form of periodic instalments determined by the college. The student must have completed the annual payment at the end of the school year. The student pays the fee periodically, the implementation of which takes a period of time, that is, part of this fee is paid during the academic year and the remaining part is paid at the end of the school year (Mark, 1987: 34).

The student's commitment is the fee he/she is obligated to pay to the private college in which he/she is required, as is required in any place, for the obligation to be present and appointed or subject to appointment and to be legitimate as well.

The fee paid to the private college are usually determined in accordance with the agreement between them and the student. If the fees are not specified in advance, the student must refer in setting them to the value of the benefit and the work expenses. This is not permissible in this contract. When the student contracts with the private college, the tuition cost is determined from the beginning. There are instructions issued by the Ministry of Higher Education and Scientific Research at the beginning of each year indicating that the academic tuition is limited to four academic years, with the possibility of increasing this premium by 10% during the school year.

2. The student's commitment to cooperate.

The commitment to cooperate is an important contractual commitment that embodies its basis in the principle of implementing the contract in a manner consistent with what is required in good faith. However, this commitment in the private education contract is strict between the college and university student, with the college committed to providing assistance and advice to the student party, and in return the latter must cooperate and commit to the full implementation of the contract (Al-Mahdi, 2009: 107).

As this commitment in the private education contract is considered a duty, it is obligated to be committed through the obligation of the student to cooperate with the college. There is no doubt that the contract will be the source of the commitment in this case, but in cases where the text of this commitment is not mentioned, the student is also bound by it, but here the source of the commitment is a duty of goodwill in concluding contracts and implementing them until reaching the purpose of this contract, the learning, for which the contract is made (Shenawa, 2007: 149).

Consequently, the student has to comply with and obey the laws, regulations, and instructions issued by the Ministry of Higher Education and Scientific Research regarding the organisation of the work of this institution that is administered by the Deanship of the College. The obligation by the student to cooperate includes all matters in order to complete this contract in full.

The Termination of the Contractual Relationship of Private Education Contract

The termination of the contractual relationship between the parties is not addressed within the standard rules and norms. The present study addresses it by referring to the general rules for the termination of other contracts, which is done for natural reasons and unnatural reasons.

The Natural Reasons for Terminating the Private Education Contract

If the private education contract is of a limited duration, the contract is terminated at the end of the specified period unless the two parties agree otherwise. This contract is terminated with the end of the prescribed study period according to the academic courses and the number of hours imposed on the student (Bishtawi, 2008: 10).

However, the private education contract in general is a time contract, where time is an essential element in it, through the type of study that is determined on the basis of academic units. In all cases, it is necessary to set a maximum period for the contract determined by the

Ministry of Higher Education and Scientific Research, in which conditions are taken into account for the period specified for this contract (Nassif, 2006: 281).

The Unnatural Reasons for Terminating the Private Education Contract

It is possible that the education contract may be terminated before the term specified in the contract. The private education contract obligates both parties (the college and the student) to implement their contractual obligations by referring to the text of Article (177/1) of the Iraqi Civil Law as stipulated in the contracts being binding on both sides. If one contractor has not fulfilled his obligation under the contract, the other contractor, after an apology, may request annulment with compensation if they have this as a requirement.

In civil contracts, all interests are for individuals who are of one class and are almost equal. For this reason, the administrative contract is distinguished from the civil contract in terms of implementation and implications. The administration may itself avoid performing contracts with privileges that violate the principle of equality between the contractors, such as stipulating the right of annulment without the need to resort to the judiciary, and without error on the part of the other contractor (Abdullah, 1999: 99).

Conclusion

Tackling the concept of the special education contract as one of the modern and vital contracts has led to some results and recommendations:

Results

1. The private education contract is described as a civil contract. Despite all the laws, it is not sufficient and is always limited to achieving contractual justice between the two parties.
2. Private education is defined as a contract whereby a private college is bound to teach the student one of the cognitive sciences, whether scientific, human or a profession, against a fee agreed upon between the two parties.
3. The education contract is terminated with the end of its period. But, this contract may be terminated before the end of the contract period for (un)natural reasons.

Recommendations

1. We hope for the Iraqi legislator and government agencies, related to the topic of higher education in Iraq, to look at the National Education Law No. (25) for the year (2016) in all its details.

2. We hope that the Iraqi legislator will pay attention to the overlap between the authorities and the lack of organisation of powers between the ministry (the Ministry of Higher Education and Scientific Research) and the private college represented by the dean of the college or the college council or the founding body.
3. We hope that the legislator will consider the absence of a provision for penalties, as we found that the National Education Law No. (25) for the year (2016) is free of penalties, and here it has become difficult to sanction teachers and administrators (employees) in the event of a defect or failure to perform the duty, as in, do we refer to the Law of Discipline of State and Public Sector Employees No. (14) for the year 1991, or do we refer to the Law of Labour and Social Security No. (37) for the year (2015)?
4. The legislator should pay attention to the paragraphs regarding the establishment of the private college, and open the way for the unemployed young, because the National Education Law No. (25) for the year (2016) does not allow for the holders of higher degrees from young people who have the title (assistant teacher) or (teacher Doctor) who have held positions in the scientific departments, and this calls us to resort to either the system of secondment or retirees.
5. We wish the legislator to pay attention to the section regarding replacement of a part of the academic staff of the institution in the event of death or for any other reason.



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