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THE INFLUENCE OF MALIKI JURISPRUDENCE ON THE FRENCH CIVIL LAW IN TERMS OF THE OPPOSABILITY OF THE RELATIVE EFFECT OF CONTRACT TO THIRD PARTIES: A COMPARATIVE STUDY

[i,*]Yassine Chami & [i]Maya Khater

[i]College of Law, Abu Dhabi University, Khalifa City, P.O. Box 59911, Abu Dhabi, United Arab Emirates

*(Corresponding author) e-mail: yassine.chami@adu.ac.ae

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ABSTRACT

This paper presents a comparative study of the stances of *Maliki* jurisprudence and French civil law regarding the opposability of the effects of contracts on non-contracting parties. The study focuses on three central claims that serve as exceptions to the principle of the relativity of contract effects: the indirect action, the Paulian action, and the action for declaration of simulation. This paper employs a qualitative methodology that combines analytical and inductive approaches. It draws on primary sources of *Maliki* jurisprudence, French legal codes, and contemporary legal studies to examine the historical trends and practical applications of these mechanisms in law. The paper demonstrates how *Maliki* jurisprudence, despite its origins in a distinct historical context, has offered a sophisticated approach to these issues through the application of flexible and comprehensive rules that fundamentally comply with the established tenets of modern French civil law, particularly in protecting creditors' rights and regulating the effects of contracts on third parties. The study highlights a significant convergence between *Maliki* jurisprudence and French civil law regarding sources, foundational principles, and legal structures. While *Maliki* jurisprudence relies on general and flexible principles, French civil law establishes more precise and codified rules. Despite these differences, their substantial overlap offers a valuable opportunity to integrate elements of *Maliki* jurisprudence into French civil laws. Such an integration could enhance transactional fairness and strengthen the protection of contracting parties' interests.

Introduction

In contemporary legal systems and Islamic jurisprudence, the contract is fundamentally recognised as the principal mechanism for regulating financial relationships among individuals. The principle of "the contract is the law binding the parties", or *pacta sunt servanda* is well established in legal doctrine, which typically confines its effects to the contracting parties, excluding third parties (Al-Zuhayli, 2020). However, the evolution of economic and social contexts, alongside the increasing complexity and interdependence of transactions, has necessitated deviations from this principle in specific instances. Such deviations allow for extending contractual effects to non-contracting parties, thereby serving legitimate interests recognised and protected by law (Carbonnier, 2020).

Herein lies the significance of studying these exceptions, elucidating their conditions and effects, particularly concerning creditors who may be adversely or positively impacted by the actions of their debtors (Hassan, 2019). The importance of this topic is further amplified when approached from a comparative perspective between two distinct legal systems with differing foundations and sources: the *Maliki* jurisprudence and the French civil law. The former exemplifies Islamic jurisprudence, characterised by its flexibility and adaptability to contemporary developments. At the same time, the latter serves as a model of modern statutory law that has influenced numerous civil legal systems (Al-Zarqa, 2018).

The French Civil Code of 1804 and its amendments have experienced notable advancements in regulating contractual relations and their implications, particularly in safeguarding creditors against detrimental actions by their debtors. This is accomplished by providing various legal remedies, most prominently the indirect action, the Paulian action, and the action for declaration of simulation (Terré & Simler, 2020).

Particularly noteworthy in this context is the significant alignment between the principles articulated by *Maliki* jurisprudence centuries ago and those enshrined in the contemporary French Civil Code. This convergence underscores the depth and authenticity of Islamic jurisprudence and its capacity to devise equitable and balanced solutions to myriad legal challenges.

Accordingly, this research aims to examine the extension of contractual effects to third parties within both *Maliki* jurisprudence and French civil law, focusing on the position of creditors and the mechanisms for protecting their rights against harmful actions by debtors. The study raises a fundamental issue: It defines the scope of the principle of relativity of contractual effects and the exceptions thereto, as well as how to balance the interests of contracting parties in exercising their freedom of action with the interests of third parties, particularly creditors, in protecting their rights.

This central issue engenders a series of inquiries pertaining to the conditions and effects of the indirect action, the Paulian action, and the action for declaration of simulation, as well as their efficacy in attaining the intended equilibrium between competing interests. Furthermore, it analyses the similarities and divergences between French civil law and *Maliki* jurisprudence in their approach to these critical legal issues. The preliminary investigation of the subject demonstrates that *Maliki* jurisprudence, despite its historical roots, has established sophisticated principles governing the effects of contracts and the protection of creditors, which align in numerous respects with the doctrines of contemporary French civil law. For instance, *Maliki* jurisprudence has delineated a framework for the interdiction *"Hajr"* of bankrupt debtors and the restriction of their actions to safeguard creditors' rights. Moreover, it has recognised various applications of simulation in contractual agreements and their associated legal judgments, reflecting similar provisions within French law (Planiol & Ripert, 2020).

Nonetheless, significant divergences exist between French civil law and *Maliki* jurisprudence regarding the peculiarities of judicial rulings and enforcement mechanisms. Such distinctions underscore the utility of a comparative analysis, which may yield insights beneficial for advancing and refining both legal frameworks.

Among the most significant characteristics distinguishing *Maliki* jurisprudence in this domain is its reliance on flexible general principles and its ability to adapt to modern legal challenges (Adunola, 2019; Faizi & Alib, 2024), such as the rule, "In contracts, purposes and meanings are decisive, not the wording or construction forms" (United Arab Emirates Civil Transactions Law, 1985). Moreover, the principle of "There is neither harm nor reciprocal harm" (Ibn Hajar al-Asqalani, 2017, Hadith 924). These

foundational precepts provide a framework for adaptability in legal applications and facilitate the accommodation of emerging developments within the legal landscape (Al-Suyuti, 2018). This flexibility is not only theoretical; it is also evident in contemporary applications, such as Islamic finance, confirming the flexibility of *Maliki* jurisprudence and its practical importance in contemporary transaction systems (Zakaria, 2018; Samad & Al-Qubaty, 2017).

The French law is distinguished by its comprehensive regulation of various types of lawsuits, including their conditions and consequences. This regulatory framework enhances legal certainty and stability in transactions. Nevertheless, the significance of this study is underscored explicitly in the current time, where the world is experiencing rapid advancements in financial transactions and light of the emergence of novel contract types and actions. Such developments necessitate exploring balanced legal solutions designed to safeguard the interests of all the parties involved (Malaurie & Aynès, 2021).

Methodology

This comparative study employed a qualitative methodology that integrates both the analytical comparative method and the inductive method to examine the extension of contractual effects to third parties within the *Maliki* jurisprudence and French civil law. It involved a thorough analysis of the legal and doctrinal texts pertinent to indirect actions, Paulian actions, and actions for declaration of simulation in both legal systems. It also examined their practical applications and relevant judicial rulings. The study relied on primary sources from *Maliki* jurisprudence, French law, and contemporary references and studies addressing the subject matter. The nature of the comparative research necessitated tracing the historical development of legal rules in both systems to understand the points of influence between them, with a particular emphasis on the practical and applicative aspects of the actions under consideration. The scientific material analysis was conducted following a structured methodology, beginning with identifying fundamental concepts and then examining the conditions and effects of each action, culminating in an analytical comparison between the two systems and elucidating the points of similarity and divergence.

Discussion

Indirect Action

Prior to examining the opposability of contractual effects to creditors and subsequently investigating the influence of *Maliki* jurisprudence on the regulation of this issue within French law, it is essential first to delineate the distinction between creditors and successors in their respective categories (Capitant et al., 2019). A creditor does not qualify as a successor to their debtor in the manner typically observed in succession, where the rights or obligations of the debtor are transferred to the successor, as is the case in general succession, nor in certain instances found in particular forms of succession.

However, the principle in French civil law is that all of the debtor’s assets serve as a general guarantee for fulfilling their debts (Carbonnier, 2020). This general guarantee extends the effects of a contract to the creditor in contracts entered into by the debtor. Thus, the creditor is affected by these contracts, whether positively or negatively. Just as such contracts may increase the debtor’s assets and thus enhance the general guarantee, they may also diminish the debtor’s assets, reducing that guarantee (Flour & Aubert, 2020).

Based on this distinction, the effects of the contract, whether rights or obligations, are not initially opposable to the creditor in the same way as they are to successors. However, the creditor is also characterised by a position that allows them to exercise specific rights in the name of their debtor, which gives rise to a legal action known as indirect action. For example, a creditor can file an indirect action to claim the debtor’s rights against a third party in cases of negligence and challenge the debtor's harmful actions through a Paulian action to protect his rights. Furthermore, the creditors may benefit from contractual rights that enhance public security and ensure financial stability in their favour. Furthermore, the creditor may remain unaffected by certain contracts entered into by the debtor, being considered a third party concerning those contracts. An example of this occurs when the debtor intends to harm the creditor; in such cases, the creditor may challenge the debtor’s transaction through a legal action known as the Paulian (Al-Sanhuri, 2019).

The indirect action, also referred to as the action for exercising rights (Van Ommeslaghe, 2010), is a legal mechanism that enables a creditor to initiate proceedings on behalf of their debtor to claim a right that the debtor ought to have claimed. This principle is stipulated in Article 1341-1 of the French Civil Code, which states: "Where the failure of the debtor to exercise his rights and actions of a proprietary nature compromises the rights of his creditor, the latter may exercise them on behalf of his debtor, except those which relate exclusively to his person" (French Civil Code, 2021, art. 1341-1).

Even though the French legislator has included this provision as an exception to the rule that the effects of a contract are not opposable to third parties, this exception does not categorise creditors as third parties in this action, as indicated by the title of this provision. As previously noted, there is a distinction between creditors and successors of either type. Furthermore, we may speak of creditors only within the framework of their intervention to protect the rights of their debtors in this action, thereby safeguarding the general guarantee mandated by law (Terré & Simler, 2020).

As in resolving legal actions, the indirect action is subject to specific conditions set forth by French jurisprudence. These conditions are primarily attributed to the creditor who seeks to invoke the rights of their debtor. First, the right in question must be due and payable. Second, there must be an urgent interest for the creditor (insolvency of the debtor). Third, the right exercised by the creditor must be inherently linked to the general financial guarantee rather than personal to the debtor. These conditions underscore the concept of a legitimate interest on the creditor's part that necessitates protection through an indirect action (Flour & Aubert, 2020).

Despite the lack of a distinct, clear theory within *Maliki* jurisprudence that specifically addresses the indirect action, it is only necessary that these two aforementioned conditions are met: the expiry of the maturity date of the debt and the debtor's possession of insufficient assets to settle their debt. In such cases, the creditor may initiate actions on behalf of the debtor to recover amounts owed (Al-Khattab al-Ra'ini, 1995). For instance, in *Maliki* jurisprudence, if the interdicted debtor has no evidence regarding a right they hold against a third party, except for a single witness, and the debtor refrains (out of fear or hesitation) from taking an oath alongside the witness, the creditors may then take the oath with the witness. In doing so, they effectively exercise their debtor's right to swear, aligning with the intent of the indirect action or the action for the exercise of rights (Ibn Juzayy, 2019). The *Maliki* jurisprudence states in this regard: And if the bankrupt who presented a witness regarding a right they hold against a person refrains from taking an oath alongside that witness to claim their right, then all of the creditors may take an oath with the witness to place themselves in the position of the bankrupt regarding the oath as if it were the oath of the bankrupt. Each one swears that what the witness testified to is indeed a right, and each swearing party takes their portion of the debt only, even if others who do not swear do not take anything. Thus, the swearing party only receives their share, even while swearing on behalf of everyone according to the established opinion, which is the prevailing view (Al-Khattab al-Ra'ini, 1995). We can observe here that there is an alignment with French law regarding the action that enables the creditor to exercise the rights of their debtor following the aforementioned conditions.

The Paulian Action: The Unenforceable Disposition Action

Given the complexity of the French jurisprudence regarding the provisions of this action, it is necessary to begin by examining how French law regulates it. Subsequently, we will discuss the position of *Maliki* jurisprudence on this matter and conduct a comparative analysis based on these insights. Similarly, and as reflected in Article 1341-1 of the civil code mentioned above, the *Maliki* jurisprudence grants the creditor the right to claim the debtor's assets in order to satisfy their debt, particularly when the creditor observes negligence on the part of the debtor in preserving those rights. The foundation of this right is that it pertains to what is permissible under *Shari'a* law rather than being connected to conditions related to the debtor's person (French Civil Code, 2021, art. 1341-1).

The conditions set forth by the *Maliki* jurisprudence in exercising the debtor's rights to safeguard their assets for settlement from these assets are the conditions related to bankruptcy. It is stipulated that the debt must be due and not deferred, and that the debtor must be insolvent, evidenced by insufficient assets to cover their debt (Dusuqi, n.d.).

The Paulian Action under the French Civil Law

This action is founded on the provisions of Article 1341-1 of the French Civil Code, which states: "They may also challenge, in their name, the legal acts performed by their debtor with the intent to harm them" (Code civil (C. civ.), art. 1341-1, 2021). This explains that this action aims to protect the creditor from the risk posed by the debtor's actions intended to harm them. The article grants the creditor the right to challenge the harmful actions of their debtor to prevent those actions from being enforceable against them and to consider them third-party actions (Terré & Simler, 2020). Since this article merely addressed this action without detailing its specific provisions, French jurisprudence has extensively elaborated its regulations by discussing its conditions and effects. It is noteworthy that the foundation of the Paulian action, as indicated in the aforementioned article, does not pertain to the annulment of the transaction but rather to its non-enforceability against the creditor (Flour & Aubert, 2020). Consequently, French courts have recognised the Paulian action as a crucial legal mechanism for protecting creditors from debtor actions that lead to the transfer of assets or harm creditors' rights. The French Court of Cassation has confirmed that the essential requirement for invoking this action is the creditor's ability to demonstrate actual harm suffered as a direct consequence of the debtor's actions.

Additionally, the Court has ruled that transactions weakening the creditor's financial position may be contested, even without explicit fraudulent intent on the debtor's part. Moreover, the court does not require proof of the debtor's apparent bankruptcy; the Paulian action can be invoked in cases where a fraudulent business transfer hinders creditors' rights (Vaquer, 2009). Thus, the French judiciary has established a broad principle of legal protection for creditors, allowing the Paulian action to extend beyond cases of obvious bankruptcy. It applies to any debtor action that negatively impacts the interests of creditors, which enhances its effectiveness as a legal tool for protecting financial rights.

The Conditions Incumbent upon the Creditor

One condition incumbent on the creditor is that the right must be due and payable. A condition that, although also required in the indirect action as previously demonstrated, differs here in the gravity of the act affecting that right (Mazeaud & Chabas, 2020). The indirect action aims to safeguard the transactions undertaken by the debtor. As for the case of the Paulian action, the creditor may challenge the act to nullify its effects and prevent its opposability to them. This assumes the existence of a due and payable right, free from any dispute. The absence of disputes regarding the rights is what renders them due and payable. Additionally, a right is not considered due if it is contingent upon a precedent condition or associated with a precedent term (Al-Sanhuri, 2019).

Conditions Related to the Act Challenged for Non-Enforceability

Some of these conditions are that the act must be legal, impoverishing, and after the creditor's right. The act must be legal for the creditor to challenge it through the Paulian action. For instance, there is no basis for challenging financial acts performed by the debtor when they commit an unlawful act, either intentionally or through negligence, resulting in harm to others or creating an obligation for compensation, even if such compensation might render them insolvent. (Malaurie & Aynès, 2021). If the act is considered legal, the creditor then has the right to challenge its non-enforceability, whether it originates from a unilateral act, as in the case of the debtor release, or from a bilateral act, such as a sufficient donation, exchange, or a sale (Al-Qarafi, Shihab al-Din, 2020). The condition for the act to be impoverishing means that it must reduce the debtor's rights on the one hand or increase their obligations on the other. For example, if the debtor donates an asset they own or waives a debt owed, they impoverish themselves by reducing their rights. Conversely, if they borrow more assets, thereby increasing their debts, they are impoverished by increasing their obligations (Yassine et al., 2024). As for the condition that the act must be after the creditor's right, it is required that the challenged act occurs after the creditor's right has come into existence. The creditor cannot complain about an act that took place before they became a creditor to the debtor (Flour & Aubert, 2020).

Conditions Related to the Debtor

These conditions include the debtor's insolvency and any fraudulent actions on their part. The debtor's act must have caused their insolvency if they were not insolvent prior to the act, or it must have increased their level of insolvency if they were already insolvent before the act (Terré & Simler, 2020). This insolvency gives the creditor an urgent interest in challenging the non-enforceability of the debtor's act. The creditor's interest is manifested in their priority to recover their right over the right that the debtor has transferred (Al-Dardir, 2013). Fraud on the debtor's part is a condition that varies depending on the nature of the act, whether it is a reciprocal exchange or a donation. In cases of an exchange act, the creditor must demonstrate that the debtor's act involved fraud and collusion with the party benefiting from that act. This requires establishing the debtor's awareness of the potential insolvency or increase in insolvency that the act would cause. As for the act that constitutes a donation, the creditor is not required to prove fraud or collusion on the part of the recipient of the donation; they only have to prove that the act has resulted in the debtor's insolvency (Al-Sanhuri, 2019).

Based on the aforementioned, when discussing the Paulian action in light of the French Civil Law, it is important to emphasise that even if this type of action is addressed in a single article without detailing its provisions, as previously demonstrated, the legislator has provided numerous practical applications for this action across various texts (Planiol & Ripert, 2020). One example of this is Article 618 of the Algerian Civil Code, issued by Ordinance No. 75-58 of September 26, 1975, which addressed the annulment of usufruct when the usufructuary exceeds the usage limits in a manner that harms the property. This provision allows creditors with rights related to the usufruct to intervene to protect their interests. Furthermore, Article 921 of the same law pertains to the return of a gift to its rightful status through a request made by any interested party, including rights holders (Algerian Civil Code, Article 921, 2005).

The Unenforceable Disposition Action Compared to the French Civil Law

By referring to *Maliki* jurisprudence, we find that its stance is founded on the same principle as that of French civil law. The debtor may dispose of his/her property through reciprocal exchange or donations, provided he/she is not in a state of impending death. Such acts are opposable to creditors, as previously mentioned. However, the exception is that the debtor's acts do not apply against creditors after the debtor has been insolvent, following the concept of insolvency as previously discussed in French law. Moreover, the *Maliki* jurisprudence adheres to principles consistent with French law regulating the Paulian action. The *Maliki* doctrine addresses the non-applicability of the debtor's detrimental acts even prior to the imposition of insolvency, as will be further elaborated upon later on (Al-Shatby, 2017).

Insolvency of the debtor

In *Maliki* jurisprudence, assessing a debtor's ability to meet his/her obligation gives rise to three district scenarios. First, if the debtor possesses sufficient funds, he/she is prohibited from disposing of these assets without compensation, as such actions could harm creditors' rights and lead to financial harm. Second, in general bankruptcy cases where the debtor is in financial distress but has not yet been declared bankrupt, creditors have the right to take preemptive measures without requiring a court ruling. These measures may include imprisoning the debtor and restricting his/her ability to manage the funds or engage in any transactions in a manner that favours certain creditors over others. This underscores the severity of financial mismanagement and the need to protect creditor rights (Al-Sanhuri, 2019). Lastly, a specific bankruptcy occurs when the court formally declares the debtor bankrupt, allowing creditors to reclaim their assets from the debtor's estate. This emphasises the importance of holding debtors accountable for their financial obligations.

What can be observed, upon examining the first and second cases, is that the condition for a court ruling does not arise in these cases. This results in the non-applicability of the debtor's actions to the creditors' rights. This will be further explored in the second section, which addresses the non-applicability of the debtor's actions concerning their creditors to the equivalent of the Paulian action in French law. As for the third case concerning specific bankruptcy, the *Maliki* jurisprudence stipulates three conditions: the debtor must possess sufficient assets to settle the debt, the debtor must have delayed payment beyond the due date, and the creditors collectively or individually bring the debtor's situation to the judge. If these

conditions are met, the judge will declare the debtor bankrupt and insolvent and transfer their assets to the creditors, regardless of whether the debtor is present or absent (Al-Sanhuri, 2019).

It becomes clear from the above that the *Maliki* jurisprudence regulated the debtor's insolvency to protect creditors' rights primarily. This objective aligns with the intentions of the French legislator, who seeks to safeguard creditors through a series of legal actions, including the Paulian action. (Terré & Simler, 2020)

Non-enforceability of the Debtor's Detrimental Act against the Creditor

In this context, the *Maliki* jurisprudence restricted the actions of a debtor whose assets are valuable enough to pay off the debt even prior to the insolvency of the debtor. This principle is derived from the texts in this field, including Ibn Rushd's interpretation regarding the debtor's possession of assets enough to solve the debt before the declaration of bankruptcy, as discussed in the first case mentioned earlier, referred to as before bankruptcy (Ibn Rushd, 2015). Imam Ahmad bin Muhammad Al-Dardir's (2013) explanations regarding the rulings of the second case, in comparison to the first and third cases, further elaborate on this under the notion of general bankruptcy. As is the case for the Paulian action in French law, the *Maliki* jurisprudence establishes certain conditions for restricting the actions of a debtor whose assets have attained the value of the debt prior to the insolvency, such that their harmful actions do not affect the rights of creditors (Al-Sanhuri, 2019). These conditions are as follows:

i. The debtor's assets must be valuable enough to satisfy the debt. This is achieved when the debtor's current and deferred debts exceed their assets (Carbonnier, 2020). However, *Maliki* jurisprudence, on his part, has often maintained that this is established even in cases where the debts are equal to the debtor's assets rather than merely exceeding them (Al-Qarafi, Shihab al-Din, 2020).

ii. This encumbrance is established when the debtor's current and deferred debts exceed their assets (Carbonnier, 2020). Furthermore, *Maliki* jurisprudence has often asserted that encumbrance exists even in cases where the debts are equal to the debtor's assets rather than solely exceeding them (Al-Qarafi, Shihab al-Din, 2020).

iii. The debtor must be aware that the value of their assets has attained that of the debt at the time of the act. This condition is essential for establishing the debtor's fraudulent intent when acting to harm their creditors. However, if the debtor conducts transactions believing otherwise, those actions are considered valid even though their assets are sufficient to satisfy the debt.

iv. The debtor's act must be detrimental to the rights of the creditors. In this case, it is important to distinguish between the situation where the debtor's assets are sufficient to pay the debt prior to bankruptcy and the situation of general bankruptcy, as previously discussed. The restrictions are more extensive in the latter case than in the former.

In the first case, the debtor cannot dispose of their assets without compensation unless such actions are customary. For instance, the debtor cannot give a gift that would harm their creditors. However, this restriction does not apply to obligatory donations, such as alimony. The same applies to customary actions, such as sacrifices (*udhiya*). As for exchanges, the debtor may engage in them as long as they are not preferential since any preferential treatment would be detrimental to the creditors (Al-Sanhuri, 2019).

To conclude with the aforementioned, the fundamental basis of the Paulian action defined in Article 1167 of the French Civil Code is founded in *Maliki* jurisprudence and its provisions that restrict the debtor's acts to prevent harm to creditors. This restriction applies not only after the imposition of legal interdictions (*hajr*) but also exists prior to it. Before the imposition of interdictions, these interdictions aligned with the principles found in the Paulian action, specifically when the debtor's debts exceeded their assets, equivalent to the debtor's insolvency in French law. Any detrimental act made by the debtor in this context is considered ineffective against creditors, provided the debtor is aware of their insolvency at the time of the act. Furthermore, *Maliki* jurisprudence stipulates conditions for acts that imply impoverishing the debtor or depleting their assets in a manner that exacerbates their insolvency. This framework empowers creditors to challenge such acts for lack of enforceability, a principle echoed in French law and *Maliki* jurisprudence (Al-Zuhayli, 2020). Therefore, the Paulian action is a legal means for the creditor to

challenge the harmful behaviours against him (Abumalik et al., 2023). This action serves as a method of defence for creditors against infringements on their right to the performance of an obligation (Fala & Poalelungi, 2024).

Action for Declaration of Simulation

Upon examining the provisions related to the action for declaration of simulation in French civil law, it becomes evident that the law has limited this action to a single, concise article, similar to the provisions governing the direct action and the Paulian action, as previously indicated (Terré & Simler, 2020). It is worth noting that the text on the action for declaration of simulation differs from the others in terms of its placement, as it is addressed in the context of proving obligations in Article 1321, which states: "Simulated contracts generate effects only between the contracting parties and have no effect against third parties" (Code civil (C. civ.) 2021, art. 1321). In this context, the term "simulation" refers to the existence of two contracts issued simultaneously: one that is explicit and another that is implicit. The parties involved resort to hiding the true nature of their agreement for various reasons, thus maintaining one apparent position in the contract and another covert position (Malaurie & Aynès, 2021).

The overt position of the parties results in the existence of a simulated contract, while the covert position leads to a real contract. The purpose of simulation in this context is to deceive third parties and to circumvent the law in a manner that constitutes fraud. This simulation is relative to the type of contract rather than absolute in its existence. French jurisprudence distinguishes between absolute simulation, which concerns the existence of the contract itself—where the overt contract is effectively non-existent, such as a husband selling certain assets to his wife in a covert way to circumvent creditors—and relative simulation, which involves the nature of the contract rather than its existence. In this latter case, a gift may be disguised as a sale, where the overt contract is the sale (the simulated contract) and the concealed contract is the gift (the actual contract) (Terré & Simler, 2020).

Despite the inherent fraud associated with simulation in such contracts, the effects of simulation, as outlined in Article 1321 of the Civil Code, are limited to preventing the unlawful purpose intended through the simulation of the contract. This does not extend to nullifying the genuine agreement intended by the parties. The article distinguishes between the simulation's effects on the parties involved and those on third parties. It is important to note that the term "third parties" here encompasses a broader scope than merely those affected by the contract's effects. It includes anyone who, in good faith, believes that the simulated contract is genuine and engages with the parties based on that belief.

From this perspective, the term "third parties" includes the personal creditors of the contracting parties, such as the buyer's creditor in a simulated sale. Additionally, it encompasses creditors with material rights, exemplified by a mortgage on either the seller's or the buyer's side in the case of a simulated sale. These parties are considered third parties within the context of this contract. They may challenge the contract's validity on the grounds of simulation by invoking the contract concealed, as they have a vested interest in it that surpasses that in the simulated contract. It is important to note that the burden of proof regarding the existence of simulation lies with the party claiming it (Capitant et al., 2019).

Before exploring the *Maliki* jurisprudence regarding the equivalent to the action for simulation in French law, it is important to note that *Maliki* jurisprudence, like Islamic jurisprudence in general, has not established a general rule or specific theory on simulation in contracts. However, it has referenced concepts related to simulation in numerous texts, applications, and interpretations that embody the idea of protecting creditors and third parties from simulated contracts.

When examining the applications that embody this protective idea, we can briefly focus on the discrepancy between the expressions of contracts and their true intention, or, in other words, the existence of an overt intention without a corresponding hidden intention. A significant application in this context is the *"al Talji'a"* sale, where Islamic jurisprudence while prioritising overt intention to ensure the stability of transactions, does not overlook the importance of genuine intention. This is reflected in the famous previously discussed principle: "In contracts, the essence lies in the objectives and meanings, not in the words and forms" (Al-Sanhuri, 2019).

As for *"Talji'a"* sale, or "simulated sale" it refers to a situation where two parties agree to enter into a simulated contract, either to evade an unjust encroachment on a specific property, to manifest a higher consideration than the actual one for the sake of reputation and status, or to conceal the identity of the person who benefits from the arrangement (as in the case of using a pseudonym). Thus, the simulation can occur in the contract's essence, consideration amount, or parties' identity (Al-Sanhuri, 2019).

Simulation in the Essence of the Contract

In this context, the parties collude to enter into a simulated contract, misleading third parties into believing that a non-existent contract exists between them. An example is when a person fears an unjust encroachment on their property and pretends to sell it. This also encompasses the debtor selling their assets in a simulated manner to evade creditors. Due to the manifestation of collusion in this practice, it is referred to as "collusion", while the term *"Talji"* or simulated sale pertains to a person resorting to another in such types of contracts.

In Islamic jurisprudence in general, specifically in *Maliki* jurisprudence, this type of contract is considered void despite its apparent existence. This is due to the absence of a genuine intention to create a binding agreement (Al-Dusuqi, 2021).

Simulation in the Consideration Amount

In this case, collusion pertains to the amount of consideration rather than the essence of the contract. An example is the agreement to increase the price in a real estate sale to prevent the preemptor from enjoying the preemption right *(Shuf'a)* or ostensibly increasing the dowry for reputation. All these cases are simulations according to the *Maliki* jurisprudence, regardless of the agreed-upon considerations (Al-Zuhayli, 2020).

Simulation in the Interested Party

In this context, the collusion pertains to the interested party rather than the essence of the contract. For instance, the person who appears to contract in their name and for their benefit, while in reality, they do so for the benefit of another party. Subsequently, they declare that all or some of their contracts are, in fact, for the benefit of that third party and that their name was merely a pseudonym. In this type of collusion, the simulated party appears as the principal one and thus takes the place of the actual party. Accordingly, the effects of the contract are opposable to them as a way to safeguard the rights of the third party (Al-Qarafi, Shihab al-Din, 2020).

Table 1. Similarities and Differences Between *Maliki* Jurisprudence and French Law

The subject matter	*Maliki* Jurisprudence	The French Civil Law
The relativity of contract	The concept exists, but it is flexible and can be expanded according to the general rules, such as: "There should be neither harm nor reciprocating harm".	The principle of the relativity of contracts is fundamental and can only be overridden by legislated exceptions in specific provisions.
The indirect action	The creditor can exercise the rights of their debtor if there is a legitimate interest under general conditions, such as the debtor's insolvency.	Under detailed conditions, the creditor exercises the debtor's rights according to Article 1166 of the French Civil Code.
The Paulian action	This is defined through rules such as the interdiction (Hajr) of the debtor and detrimental actions against creditors, and it is treated as a general exception.	These are detailed in Article 1167, which specifies conditions such as fraud and the debtor's insolvency.
The action for declaration of simulation	These concepts are discussed under terms like *"Talji'a"* sale and are addressed based on the parties' true intent.	This is regulated in Article 1321, distinguishing between absolute and relative simulation and their impact on third parties.
Sources of legislation	This is based on Sharia texts and general principles such as the objectives of *Sharia* (*Maqasid al-Sharia*).	This is based on legal texts interpreted according to clear judicial precedents.

In short, comparing the sale of *"Talji'a"* (or collusive sale) in Islamic jurisprudence, particularly in *Maliki* law, reveals a significant similarity to French law regarding protecting creditors from simulated contracts. Indeed, the simulation of the essence of the contract results in its nullity, which corresponds to the absolute simulation in French jurisprudence. On the other hand, simulation related to the contracting party's consideration and identity is more akin to relative simulation under the aforementioned French law.

Apart from the issue of simulation in contracts, it becomes evident that the French Civil Code aligns with the *Maliki* jurisprudence in addressing the details of the effects of contracts' opposability to the contracting parties. Both systems agree on the opposability of effects to both their general and particular successors, as well as to creditors. The question then arises: Do they also agree on regulating the opposability of contract effects to third parties in situations where an effect extended to a third party can be established?

Conclusion

The comparative study between Maliki jurisprudence and French civil law regarding the opposability of contractual effects to third parties revealed that both systems have sought to establish a delicate balance between the principle of relativity of contractual effects on the one hand, and the need to protect the rights of third parties, especially creditors, on the other hand. It was evident that there is a notable convergence between the two systems in fundamental principles, despite differences in their underlying sources and foundations، both systems agreed on the necessity of restricting the debtor's freedom to dispose of their assets if such actions would harm their creditors' rights, and they maintain various legal means to protect these rights. This convergence was particularly evident in both systems' approach to the indirect action and the Paulian action, which allow creditors to exercise their debtor's rights against third parties when necessary to protect their interests، Furthermore, both systems similarly addressed simulated contracts, distinguishing between absolute and relative simulation, and recognizing the right of third parties to rely on either the apparent or concealed contract based on their interests.

This study also revealed that, despite Maliki jurisprudence originating in a socio-economic environment different from French law, it has managed to provide balanced and advanced solutions to the issue of opposability to third parties, aligning with modern civil law principles. The flexibility inherent in Maliki jurisprudence, grounded in general principles like "There should be neither harming nor reciprocating harm" and "The essence of contracts lies in their purposes and meanings," has enabled it to offer practical solutions to various issues arising from contractual relationships ، French law, in contrast, is characterized by detailed and precise regulations concerning various lawsuits, their conditions, and their effects, providing greater legal certainty and stability in transactions.

Based on these findings, several recommendations can be made to develop contemporary civil legislation in this field, including drawing from the heritage of Islamic jurisprudence, particularly its flexible and adaptable general principles. Efforts should also be made to create new mechanisms to protect creditors' rights in light of contemporary economic developments and emerging financial transaction forms. Strengthening cooperation between legal and research institutions in both the Islamic and Western worlds will facilitate the exchange of knowledge and expertise in civil law development. Furthermore, unifying legal terms related to contracts and their effects will ease comparison and development processes. Establishing specialized databases combining judicial rulings and jurisprudential opinions on contracts will serve as valuable references for researchers and practitioners.

Finally, the study emphasizes that a deeper exploration of various legal systems, especially Islamic jurisprudence and Western law, reveals significant opportunities for convergence and integration, which contribute to legal development and achieving justice in society. The solutions offered by Maliki jurisprudence regarding the opposability of contractual effects to third parties remain relevant and valuable today, serving as a rich source for advancing contemporary legal systems.

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