

# A Lawsuit of Judicial Division for Removing Communism

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Actually, it cannot be ignored the fact that the survival of public fund on the common means the persistence of differences between partners mostly, which turns without making optimal use of public fund and disposing it, we must get out of this situation by dividing the common money in order to continue cooperation between partners, this in turn reflects on the public interest of the community. Either one of the partners or non-partners through purchase or inheritance, or the common situation may be eliminated through expropriation of the public good in return for fair compensation, but common property is eliminated by dividing common money and the competence of each partner to a separate part equal to its share since the commencement, but the partners may not be able to agree on the division, or the partners agree, but one of them is absent or forbidden. In this case, the division of the other partners will be forced by the court through a lawsuit filed by the partners or one of them, the removal of the common.

**Key words:** *Lawsuit - division - judicial – removal - commonality.*

## Introduction

Ownership of common money may be lost by dividing it and the jurisdiction of each partner with a separated portion equal to its share since the commencement of communal activity, but it may happen that the partners cannot agree to the division, the partners may agree, but one of them is absent or interdicted. In this case, the rest of the partners will be forced by the court through a lawsuit filed by the partners or one of them, it is a lawsuit to remove the prevalence, and this is what we will try to discuss through this topic.

### ***The Problem of Study***

The state of commonness may disappear due to several reasons, including the fact that the money becomes owned by one person, whether from partners or non-partners through purchase or inheritance, the common situation may disappear through expropriation for the public benefit in exchange for fair compensation, or by the destruction of the public domain, or other reasons, but the common property is often eliminated by dividing the common money and the specialization of each partner with a separated part equal to its share since the commencement of the communism, but it may happen that the partners cannot agree to the division, or the partners agree, but one of them is absent or interdicted. In this case, the other partners are forced by the court through a lawsuit filed by the partners or one of them, which is a lawsuit to remove the commons.

The current study tries to answer the following questions:

1. What is meant by dividing claim for removing communism?
2. What is the court competent to hear the division lawsuit for removing communism?
3. What are the implications of the lawsuit of division for removing communism?

### ***The Aims of Study***

The current study aims at:

1. Answer the questions that were raised about the study problem, and try to find solutions to it.
2. Take note of the legal provisions mentioned in the legislation being compared.

### ***The Importance of Study***

The fact cannot be ignored is that the survival of public fund on the commonality means the persistence of differences between partners often, which prevents the optimal use of public money and disposition, Therefore, we must get out of this situation by dividing the common money in order to continue Cooperation between partners, which is an incentive for action and good behavior, which in turn is reflected in the public interest of society.

### ***The Methodology of Study***

We considered to divide the subject on two demands, the first will deal with the lawsuit for division to remove the commonality , and discussed through two sections, the first will deal with lawsuit for division, and secondly, the court competent to hear the division, while the second request will deal with the implications of the division and discuss it through two

branches, the first devoted to the impact of the detective for the division , and in the second for the maturity guarantee.

### **The First Requirement**

#### ***A Lawsuit of Division for Removing Communism***

In the case of judicial division, the security of each partner shall be equal to its share before the commencement. It can only be done through a claim under which a partner is requested to end the commonality situation by dividing and distributing the allowance to the partners, and this can only be achieved before the competent court. Here we ask the following question: What is the case for removing communism?

What is the competent court? To answer on this question , we will divide this requirement into two sections: the first will deal with the division, and the second will be allocated to the competent court to hear this case.

#### ***The Division's Claim***

A case in which the commonality fund is removed, which is filed by the plaintiff (one of the partners or all of them ) to the competent court to hear the case, demanding the removal of the commonality , without this request, the court cannot hear the case, because the court does not deal with disputes automatically, but must be asked to do so, and this is what the Iraqi legislator referred to in item (1) of the text of Article (44) of the Iraqi Procedures Law No. (83) of 1969 as amended (Al-Waqa'e,2016). The claimant must include copies of the number of defendants in the petition and a list of the documents on which it is based, copies of these documents and signed on each paper or his agent, with the acknowledgment of the conformity of these documents to the original, and then the court shall notify the liabilities accordingly (Arafa,1999).

Whereas the petition for the elimination of communism is not different from other petitions filed in the civil courts in form, content and general grounds, Where the plaintiff must, when filing his claim, indicate the interest he wishes and indicate the subject of the lawsuit, If it is a movable, it must mention its gender, type, value and descriptions, even if it is a property that mentions its location, borders, number or sequence (Al-Rubaie,1989 ) the documents required in this case are the title deed if the parties to the lawsuit are alive, in case of transfer of the property by inheritance, the required documents are the ownership deed and the legitimate allotment if the land is a princely oath, the legitimate allotment must be presented to the heirs, the court is content with it by the legal or the legitimate allotment and it does not need to the transfer request by mentioning the names of the heirs in the case (Majeed,1973).

If the lawsuit relates to the removal of movable commonality owned by the commonality, the documents to be submitted along with the petition are the “partnership contract” with a list of assets, that is, we must show proof of the commonality with the required to remove the commonality among the alive persons, In case of transmission they moved to the heirs annexed in addition to the foregoing the legitimate allotment (Al-Rubaie, 1989).

Regarding to the liabilities in a division's claim who are partners of commonality fund, attending in the claim either as plaintiffs or defendants, it should be noted in this regard that the division claim is not limited to partners only, but to all creditors who have the right to intervene to protect their rights, it may also extend to others whose proceedings affect its rights (Mubarak,2011), this lawsuit is filed by the partner or legal attorney as a claimant to sort his share in kind or through liquidation, based on the principle prescribed by the legislator, it isn't forced anyone to remain in communality, so any of the partners can ask for division, thus, it can be said that the plaintiff is every partner who wishes to exit from the situation of commonality.

It is required to accept the division's claim, the plaintiff must be of interest, qualification, and capacity; The interest is assumed by the partner as soon as the lawsuit to get rid of the commonality, The capacity is the authority to initiate proceedings any proof that the plaintiff is a party to the dispute as a right holder, as a common partner, whether original or general successor such as the heir and recommended by a common share, or a special successor as the buyer of the share of one of the partners, the defendant is the rest of the partners(Zahran,2006), who must be notified to enter into the lawsuit if no one of them has declared his intervention on his own, and may be admitted at the request of the plaintiff or one of the defendants, the court may also order his own admission, otherwise, the judgment rendered in the division case shall not be an argument against him, The partner creditors can also intervene in the division procedure. In order to prevent any agreement of partners to harm them, and from the forms of collusion an agreement of a debtor partner with other partners to be competent with money that may not be seized or can be easily concealed, such as money (Al-Sanhouri,1968).

The law provided the partners' creditors with the means to enable them to protect their right from collusion, including the right to appeal by division if there is fraud in their interests, but this right is limited to consensual division only without judicial, so that division may not be challenged because this division has taken all necessary precautions to prevent injustice and cheating (Shamseddine,2011), and they can oppose the division if it is done without their intervention, it must be entered whom opposed of creditors in all division proceedings, otherwise they are not in force against him (Shihab& Al-Wajeez, 2008). It should be noted in this regard that there is a range of creditors, which must be entered by partners, but no opposition from them or the division has been revoked, and they are whom registered their

rights before filing the division, or those who have rights in kind and listed their names in the land registry on a commonality share (Abul-Saud,2001)

## **Section Two**

### ***The Competent Court to Hear the Division Claim***

The tribunal competent to hear the division is the Court of First Instance (Sewar,2010) This functional competence relates to the type of action whatever its value, whether movable or real estate, is the authority delegated by the legislator for each court of first instance, that is, for each judicial body to adjudicate disputes, the allocation of the judiciary to the place is expressed by the authority in Iraq, it is the restriction of the courts to spatial limits that do not exceed them to rule in lawsuits beyond these spatial boundaries, although these claims are within the jurisdiction of the Court, and the spatial jurisdiction determines the authority according to the administrative divisions, this is referred to in Article (43) of the Iraqi Civil Procedure Law, and therefore the lawsuit to eliminate the commonality will be filed in the court of the place of property if it concerns the material , and if multiple real estate may be set up in one of the shops (Saad, 2005), but in the movable case is filed in the home of the defendant or the center of its transactions, the place where the obligation arose, the place of execution or the place chosen by the parties to file the case; If there are multiple defendants, the case will be filed in one's place.

This is the spatial specialization , and the rule of jurisdiction is based on the authority of the court originally , on the basis of the defendant's domicile, that the original is clear until the plaintiff establishes the evidence of his claim and therefore must seek the defendant in his court . Article (31) of the Iraqi Law of Procedure referred to the jurisdiction of the Court of First Instance to hear the claim of judicial division (Law No. (10) 2016, article (838/1) of the Egyptian Civil Code, and article (85-90) of the assets of the Lebanese civil trials) arguing that the court has no spatial jurisdiction , it must be initiated in the first hearing and before the subject matter of the lawsuit or the right to be dropped. The argument that the court has no jurisdiction because of lack of jurisdiction or because of the type or value of the case shall be decided by the court on its own initiative and may be made in any case where the case is filed. If the court determines that it has no functional, qualitative or spatial jurisdiction, it shall refer the case to the competent court while retaining the judicial fees paid and inform the parties or the present of them to review the court referred to the case no later than fifteen days from the date of assignment.(Articles (74-77-78) of the Iraqi Law of Procedure).

## **The Second Requirement**

### ***The Implications of a Division's Claim***

The main effect that follows the division of commonality fund which each partner to allocate a separate part of the communal money equivalent to its share ,after they are commonality , and until the right of each partner arises among the sharing obligation of guarantee whatever happens to any of them is subject to his share or entitlement, but the question arises as to when to become a partner the owner of his share is the time of division or since the commencement of common? If the participant was considered to be the owner of the allocated share to him from the time of division, the effect would have been a transferable, non-revealing property, but the more correct view is that the effect is a detector rather than a transfer because the partner has been his share since the commencement of common . So that we shall divide the requirement into two branches we will deal in the first with the revealing effect of division, and in the second ensure maturity.

### ***The First Branch***

#### ***Detecting Effect of Division***

As we have already shown, the fundamental impact of the division is the separation to which the participants aim, if the part of which the partner is a property should be registered in the Real Estate Registration Department, that is, the division must be registered because the property does not have the security of the date of registration and consequently the failure to register does not invoke the impact of division on others, but among the participants, the impact of the division is without the need to register.

However, it should be noted that the registration does not have retroactive effect extending to the date of conclusion of the contract and this is the original, but an exception to this is the ownership of the common property, where the registration of the property sorted retrospectively to the date of commencement and not the date of the division.

This is evidence that the impact of the division is revealing and not a carrier, and trends have emerged about the nature of the division. There is no right to this share and this is achieved as a result of the exchange of common parts. Each participant abdicate to his share to the other shareholders shares in return for their abdication of their shares in his share, it is understood from the foregoing that the end of commonality is without retroactive, where each partner is considered the owner of the part that does not belong to the time of division and not from the commencement of commonality, but the impact of the transfer of ownership is incompatible with the concept of division,

which is the competence of each partner with a portion of common money equivalent to its common share since the commencement of commonality, the partner accordingly be the owner of its share since the communion and not from the time of division, and this means that the impact is the disclosure effect, i.e., it reveals the ownership of the partner and not the determination of this right, and the introduction of the disclosure effect of the division and the accompanying retroactive effect of many of the most important results neglect of actions issued by partners, non-partner who his share is a separated part in this right, this part of the partner is devoid of the impact of the actions issued by other partners, this part saves the partner free of the impact of the actions issued by other partners during the common, and this is by virtue of the disclosure effect of the division, because the partner is considered the owner of this part since the common and not from the time of division, while the actions of one of the partners in a sort of common money is considered valid and effective for to him, if the part in which he disposes of his share falls as a result of division, he shall be considered the owner of that part from the beginning.

In this regard, it is the French jurist Putih who advocated the idea of the retroactive effect of division, where he said in his book (division is not an ownership deed but is a specific act of the things received by the heir only each of the heirs inherit only a part and this part should not be divided only). The Muslim jurists have looked at the nature of the division in depth and found that in the division the meaning of swap and the meaning of separation, it is therefore a dual nature separation on the one hand, i.e. revealing and swap on the other any carrier, and this is referred to in Article (116) of the Journal of Judicial Rulings, the rule in Islamic jurisprudence is that division by separation from part to part, whereas the share of each partner in the part to which it is not, and the exchange on the other hand, where each of the two partners exchange its share in the part that does not to his partner to the share of the other partner in the part that does not to this partner, the division has a revealing effect in the sense that it does not create for any really shared. However, it reveals its right of ownership that existed since communism and extended after division, but with a substantial amendment in its place. After its ownership throughout the communion, it was merely a significant share of the common object without any limitation. The division shows the ownership of the partner. While the effect of division is a carrier, the right of the partner is not counted since communality, but since the conduct of the division, transferred to any partner really did not exist before.

We conclude from the foregoing that the impact of the division is the disclosure effect that reveals the share of the partner as its owner since the commencement of communion, and this is referred to in Article (1075) of the Iraqi Civil Code, where the impact is likely on the carrier.

## Second Section

### *The Guarantee of Maturity*

The basic principle that governs the division is to achieve equality between the two parties. If he deserves the part of the shareholder, this means that the shareholder did not receive his share or that he only received part of it. , while The other shareholders received more than their shares ,It is unfair for the other participants to take their full rights, While someone is deprived of all or some right, The Iraqi legislator referred to this in Article 1076 of the Civil Code. This means that the entitlement of a part of a detachment to which a participant was entitled, in whole or in part, For a pre-divisive reason this shared partner cannot bear it ,It is shared by other participants (Zahran,2006) ;It is required for the return of the guarantee to the other shareholders the availability of several conditions, the most important of which is to be exposure or entitlement for a reason prior to division, that is, the right claimed by the pre-existing divisor, In other words, the right claimed by third parties to the division shall not be subject to warranty if the exposure or entitlement is caused by a subsequent division .

The warranty cannot be revoked if the exposure or entitlement is caused by a subsequent division ,For example, a third party may claim to have purchased the share which was not shared by the majority of the partners prior to the division, or that he acquired ownership by the statute of limitations that had been completed before the division; It is also stipulated that the merit should not be due to the fault of the shared person himself, for example, to claim the right of others to the former division of the shared by what he claims although this claim is not true, it is also required that the exposure be legal the subject is based on the claimant's right, whether it is a property right or another in-kind right, such as the use or mortgage, or was a valid personal right in the face of the participant who had been exposed ,it would diminish the value of his money, as if it turns out that the eye that he specialized ,In the division is leased from the gene with a wage less than the wage of the proverb, while physical exposure shared as the seller is not guaranteed It is also stipulated that the exposure is legal in which the person is based on a claiming right, whether it is a property right or another in-kind right, such as usufruct or mortgage, or it is an effective personal right in the face of the participant who has been subjected to the exposure and which would decrease the value of the money to which he concerned.

As if it was found that the eye in which he was competent in the division is leased from the gene with a wage less than the wage of the proverbial, but physical exposure is shared as the seller is not guaranteed ,if there is any material act affecting the use of the division by others, such as rape of the eye, the third party shall not be held liable for that and the person who has been subjected to exposure shall protect his right by the means authorized by law.

It is not enough just to fear exposure, but if there is reason to fear that the participant will take away his share from his hand, this participant may refrain from fulfilling his obligations in . Part of the guarantee is also the absence of an agreement between the partners, which is exempt from it. If the guarantee is imposed but it is not related to public order, the partners can agree among themselves on the exemption from the obligation or increase or decrease it. In order to guarantee in the contract of sale , the participant entitles the defendant to include his partners in the lawsuit Sub security, and it is obligatory interference in the case if he told them shared by lifting it, and if it shared the most serious of these partners did not interfere unless they shall guarantee proves that the judgment in the case was the result of fraud or error shared a particle of it , After indicating the conditions to be met for the guarantee, the consequence is that the shareholders guarantee each other any exposure or entitlement that may occur to some partners, and each of them is obliged to the proportion of his share to compensate the beneficiaries of the security on the basis of the value of the property at the time of division, If one of the shareholders is insolvent, he shall distribute the consequences for the security entitlement to all other shareholders in proportion to the amount of their share.

The assessment of compensation is the value of the item at the date of division and not the date of maturity, as in the contract of sale, where the lesson in estimating the thing sold to know the compensation at its value at the time of maturity and not at the time of sale, and the reason for that In a sale, the basis of the guarantee is that the purchaser will be paid for what he lost when the item was due by others. The shareholder legislator has been entitled to a privilege over the shares of the other shareholders.

## Results

1. The Court shall not divide the common money on its own initiative, but rather by filing a lawsuit of division, which shall be brought by one or all of the partners.
2. The court shall, after filing the case, consider the common property if it is divisible or not.
- 3 .Well, the Iraqi legislator did not limit the auction between the partners only by their agreement, because that indicates the agreement, while we are on the division of the judiciary and not an agreement, unlike the Egyptian law gave the right to partners to limit the auction between them only.
- 4 .The impact of the end of commonality is without retroactive impact , where each partner is considered the owner of the part that does not come from the time of division and not from the commencement of commonality, that is, revealing the right of the partner and not a carrier.
5. The shareholders shall guarantee each other the exposure and entitlement of some partners, each of whom shall be liable to the share of compensation on the basis of the value of the property at the time of division.

6. The basis of the guarantee varies in division, It is the achievement of equality between the participants, on the basis of the sale, which is to get the buyer offset what he lost when the entitlement of something from others.

### **Conclusion**

We conclude the study that, the effect of ending communism will be without retroactive effect, where each partner is considered the owner of the part that has been transferred to him from the time of division and not from the start of communism, that is, he reveals the partner's right and is not a transfer to him. The participants guarantee each other some exposure and entitlement to some partners, each of them is obligated to pay his share of compensation based on the value of the property at the time of division.

### **Suggestions**

1. The guardian shall act on behalf of the absent, interdicted or disqualified person in dividing the common money according to his interest, after approval of the Minors Welfare Directorate, we suggest that the Iraqi legislator stipulate strict

procedures to be followed by the Minors Welfare Directorate when expressing its consent to the guardian, trustee, or curator by undertaking to divide the common money to guarantee and care for the rights of the minor.

2. Although the shareholders guarantee each other what may happen to some partners' exposure or entitlement when dividing the common money, However, this guarantee is not considered from the general system, so it is permissible to agree on its otherwise, therefore, we suggest to our Iraqi legislator to make this guarantee from the public system to achieve the desired result of the guarantee by reformulating the text of Article (1076) of the Civil Law as following : (The participants are obligated to guarantee each other some of the exposure or entitlement to some of the shares due to a reason prior to division, each of them shall be obligated, in proportion to their share, to indemnify the eligible person, provided that the lesson is in estimating something at its value at the time of division, if one of the participants is insolvent, distribute the amount that he requires to the recipient of the guarantee and all the non-insolvent participants).

## Notes

- (1) Amended by Law No. (10) of 2016, published in the Iraqi newspaper Al-Waqa'e, No. (4404) on 9/5/2016.
- (2) See the text of Article (46.47) of the Iraqi Law of Procedure, Article (10) of the Egyptian Law of Procedure No. (13) for the year 1989, and Article (399-445) of the Lebanese Code of Civil Procedure No. (90) on 16 / 9/1983.
- (3) Dr. Jumaah Saadoun al-Rubaie, the provisions of the removal of commonality in Iraqi laws, House of Books and Documents, Baghdad, 1989, p. 44.
- (4) d. Mustafa Majeed, Explanation of the law of real estate registration, c 1, Baghdad, 1973, p. 127.
- (5) Gomaa Saadoun al-Rubaie, previous source, p. 43.
- (6) See the text of Article (261) of the Iraqi Civil Code, which stipulates that "each and every person whose right is not payable may be used in the name of the debtor rights of this debtor, unless he has contacted him in person or was not subject to attachment." 235) of the Egyptian Civil Code and Article 276 of the Lebanese Contracts and Obligations Law.
- (7) Dr. Hammam Mohamed Mahmoud Zahran, the rights of the real in kind, the right of ownership, the new university house, Alexandria, 2006, p 352.
- (8) Dr. Nabil Ibrahim Saad, Rights in kind, the original new university, Egypt, 2005, p. 140.
- (9) See the text of Article (1077/1) of the Iraqi Civil Code, which stipulates that it is permissible to request the revocation of the divide by mutual consent if one of the participants proves that he has been subjected to an obscene injustice.
- (10) See article 842 of the Egyptian Civil Code and article 943 of the Lebanese Contracts and Obligations Law.
- (11) Dr. Ramadan Abul-Saud, A Brief on Original Rights in Real, House of University Press, Egypt, 2001, p. 114.
- (12) The competent court was the Magistrate's Court, but after the issuance of the Judicial Organization Law No. (160) of 1979, the Court of First Instance became the competent court for the removal of commonality .
- (13) See the text of article (43) of the law, which stipulates (determines the spatial jurisdiction according to administrative divisions).
- (14) Dr. Salah Al-Din Al-Nahi, brief in civil and commercial proceedings, without printing place, 1962, p 188.
- (15) See the text of Article (31) of the Code of Procedure, as amended by Law No. (10) of 2016, which stipulated that (the Court of First Instance has a final and distinct able degree to consider the following cases: The value of each of them, corresponding to article (838/1) of the Egyptian Civil Code, and article (85-90) of the assets of the Lebanese civil trials.

- (16) See the provisions of Articles (74-77-78) of the Iraqi Law of Procedure, Article (838/2) of the Egyptian Civil Code, and Article (114/1) of the Lebanese Code of Procedure.
- (17) Dr. Mohammed Wahiduddin Sewar, *The Right to Ownership in Civil Law*, Dar Al Thaqaafa for Publishing and Distribution, Amman, 2010, p. 155 .
- (18) See the text of Article (508) of the Iraqi Civil Code, which stipulates that (the sale of real estate is not held unless registered in the competent department and fulfilled the form provided for by the law), and article (3) of the Iraqi Real Estate Registration Law No. (43) for the year 1971 as amended. , Corresponding to Article (10) of the Egyptian Real Estate Law No. (114) for the year 1964.
- (19) Dr. Abdul Razzaq Ahmad Sanhoury, *Mediator in the Explanation of the Civil Code, Reasons for Acquiring Ownership*, c 9, House of Revival of Arab Heritage, Beirut, 1968, p. 387.
- (20) See the text of Article (1075) of the Iraqi Civil Code, which stipulates that (the separation party returns to the swap in the division, each participant considers that he has always been the owner of the detached share that he had and that he never owned any of the rest of the shares).
- (21) Dr. Girard, *Preliminary Lessons in Civil Law*, 3rd edition, Paris, 1901, p. 210. Mohammed Taha Al-Bashir, Dr. Ghani Hassoun Taha, previous source, footnote (1), p. 126.
- (22) Dr. Mohammed Taha Al-Bashir, Dr. Ghani Hassoun Taha, previous source, p. 127.
- (23) Dr. Abdul Moneim Faraj Al-Saddah, previous source, p. 223.
- (24) See the text of article (116) of the magazine read (and division on the side of the separation and on the one hand swap ..).
- (25) Dr. Hassan Kira, a previous source, p. 512
- (26) Dr. Mansour Mustafa Mansour, *Analysis of the impact of the division of common funds and the protection of each partner from the actions of others*, *Journal of Legal and Economic Sciences*, the first issue, the sixth year, 1964, p 177.
- (27) See the text of article (1075) of the Iraqi Civil Code, which states that "the separation party favors the swap in the division and each participant considers that he has always been the owner of the detached share that he had, and that he never owned any of the remaining shares." 849) of the Egyptian Civil Code.
- (28) See the text of Article (1076) of the Iraqi Civil Code, which stipulates that "the participants shall guarantee each other any exposure or entitlement that may occur in some shares for a reason prior to division, and each of them shall be obliged to the proportion of his share to compensate the security receivable, provided that The lesson in estimating the thing in its value at the time of division is that, if one of the shareholders is insolvent, he shall distribute the amount necessary to the person entitled to the guarantee and all non-insolvent shareholders), corresponding to Article 844 of the Egyptian Civil Code and Article 948 of the Lebanese Contracts and Obligations Law.

- (29) Mr. Abdel Wahab Arafa, lawyer at the Court of Cassation, Division and use and management of common money, Technical Office of Legal Encyclopedias, Alexandria, without printing year, p 127.
- (30) Dr. Mohammed Hassan Qasim, a previous source, p. 173.
- (31) Dr. Mansour Mustafa Mansour, previous source, p. 223.
- (32) Dr. Said Mubarak, d. Taha Mulla Hwaish, d. The author of Obaid al-Fatlawi, the summary in the so-called contracts, Atek book industry, Cairo, 2011, p. 127.
- (33) See the text of Article (552) of the Iraqi Civil Code, which stipulates that (if the receivable proves the maturity and a judgment and then agreed with the buyer to leave the sale with a compensation that is considered a purchase of the sale of the receivable, and the buyer can return to the seller by collateral) and article (557) of The law which stipulates: 1. If the non-warranty is agreed, the seller shall remain liable for any benefit arising from his act, and any agreement to the contrary shall be null and void. Article 44 of the Egyptian Civil Code.
- (34) Dr. Ahmad, The Right to Ownership, Mansoura University, Faculty of Law, without year of printing, p. 116.
- (35) Dr. Afif Shamseddine, Mediator in Real Estate Law, Vol. 2, Real Estate Ownership, 2nd Floor, Zain Publications, Beirut, 2011, p. 128.
- (36) Dr. Abdul Qader Mohammed Shihab, Dr. Mohamedine Abdel Kader Mohamed, Al-Wajeez in-kind rights, Legal Books House, Egypt, 2008, p. 262.
- (37) See the text of Article (1377) of the Iraqi Civil Code, which provides: 1. If the partners share a common transfer between them, the right of each of them to refer to others because of division and to meet the rate decided to him, shall be guaranteed a lien on all quotas 2. The right of this concession shall be the same as that of the debt owed to the seller, if the concession is contradictory if the former is presented on the date), as well as article (1380) of the law stipulating: (1) If the partners share a common transfer between them, each of them to refer to others because of division and in the fulfillment of the rate decided upon him, 2. This concession shall be registered in the Real Estate Registration Department, and its rank shall be from the time of registration), corresponding to the provisions of Articles (1146,1149) of the Egyptian Civil Code, and Article (131/3). (As amended pursuant to Decision No. 102 / LR of 6/8/1932) of the Lebanese Real Estate Law issued pursuant to Decision No. (3339) of 12/11/1930.

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## The Laws

- 1- Iraqi Civil Law No. (40) for the year 1951.
2. The Iraqi Civil Procedure Law No. (83) of 1969, as amended by Law No. (10) for the year 2016.
- 3- Iraqi Real Estate Registration Law No. (43) for the year 1973.
4. The Egyptian Civil Code (131) for the year 1948.



- 5- The Egyptian Real Estate Law No. (114) for the year 1964.
6. The Lebanese Contracts and Obligations Law of March 9, 1932.
- 7 - Lebanese real estate property law issued by resolution No. (3339) on 12/11/1930.
8. The Lebanese Code of Procedure No. 90 of 1982.