

The Legal Balance of Rent in the Rental Relationship - a Comparative Study Between the Civil Law and the Law of Real Estate Rent

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Annotation: A lease contract is a netting contract because the lessor collects rent from the lessee in exchange for the lessee's use of the rented property. Giving freedom to contractors in determining the rent in rental laws would have a negative impact on the balance of this essential rental relationship, so the legislator intervened to establish specific rates of rent that may not be exceeded when estimating the rent to establish a balance on this relationship to preserve the legal and social system between the interests of landlords and the class of tenants based on Justice, Solidarity, and Cooperation. The lease contract is among people's most traded contracts because of its economic, social, legal, and practical importance. It creates mutual obligations between the two parties by imposing obligations on the lessor and lessee. It was too expensive for me. Families who can't find a place to live because of the growing housing crisis are at risk of being kicked out of their homes. To stop this from happening, the Lease of Real Estate Law gives the human and social aspects of the contract more weight than the economic situation of the weaker party (the tenant). The lessor has no right to request evacuation as long as the tenant occupies the leased property and continues to pay the rent unless one of the reasons specified in Article 17 of the law mentioned above is available. The same law also specified the appropriate amount for rental fees, stating that the annual rent for a house or apartment shouldn't exceed 5% of its total value and 7% for real estate and apartments rented out as residential rooms. This will guarantee that the rental costs are reasonable for both parties. Directly to the rise and fall of the Iraqi currency's value in various circumstances, notably since the law granted the briefer and tenant the right to request an estimate of the property's value every five years to adjust the rental allowance. We examined the legal balance of the fare in both real estate rental law and civil law to determine the extent to which the legal balance is achieved in the fare.

Keywords: Civil Law, comparative study, Real Estate Law, rental relationship, Iraq

1. Introduction

The rental relationship is one of the most critical relationships in all societies in a way that is indispensable to humans. Because this relationship has many problems due to its imbalance, this study should focus on determining whether or not legal balance has been achieved by clarifying its provisions and identifying the areas where it is out of balance. The lease contract is one of the essential contracts that we deal with in our daily lives, and we exchange roles in it; sometimes, we

are tenants, and others are lessees in various ways, and among the contracts is the real estate lease contract. Any individual can dispense with it, and the issue was not limited to the Iraqi legal system only. Still, many countries took care of it, which preceded Iraq. In Iraq, lease contracts were subject to Sharia rulings and followed Islamic Sharia, which was in the time of the Ottoman Empire, published by Al-Ahkam magazine. AAdliya is an encyclopedia of lease agreements, and during its time as the Ottoman Empire's official philosophy, it collected Sharia regulations from the Hanafi school of thought. Next, it outlined obligations and codified real estate rental regulations according to the 1951 Iraqi Civil Law No. 40 as it had been amended. The relationship between the two parties to the lease contract was reciprocal, and the contract's terms and the agreed-upon rent amount had to be upheld. More than one law has been passed thus far that either repeals or modifies the law that came before it. All of these laws, even if the last law change was specific, required the landlord, who had no involvement, to extend the lease indefinitely with the same estimated rent from the beginning. This was done to protect the tenant from the landlord. Eight years are allotted for this protection; after five years, the owner may request a rent increase. To find a balance between the tenant's right to housing and the owner's right to use, it is crucial to understand each party's obligations under these laws. The commercial lease contract is essential in many fields because it is one of the most important and traded contracts in our daily lives. The concept of rent dates back to the Roman era when the middle class needed to work in lands owned by the class of masters. From this arose the need for a system to govern this relationship and the concept of rent, which is crucial in social and economic life. The majority of Arab and Western legislation adopted this system, and the Algerian legislature regulated the lease contract in the Algerian Civil Code.¹ from Articles 467 to 537 and supported it with special provisions in the Commercial Law from Articles 169 to 202 through commercial lease provisions, which he knew², to amend. Law 02-05³. Was passed in 2005. The commercial lease contract is one of the essential actions in the shop designated for commercial use, which plays a vital role in many different fields of business. Commercial transactions and money circulation stimulate economic activity.

1.1 Importance of the study: Since the rental relationship is one of the most essential and important relationships, the housing crisis that most countries are witnessing has resulted in a disorder of the rental relationship and the accompanying repercussions that cast a shadow on societies and given that we found it essential to address this issue, by establishing a legal balance for this relationship between the landlord and the tenant.

1.2 The fare concept: We will divide this topic into three demands. First, we will deal with the definition of fare. In the second, we will talk about the terms of fare. In the third, we will present the types of fare:

¹ Ordinance No. 58-75 of September 26, 1975, containing the Civil Code, Official Gazette No. 78, issued on September 30, 1975, as amended and supplemented.

² Ordinance No. 59-75 of September 26, 1975, containing the Commercial Code, Official Gazette No. 101, issued on September 19, 1975

³ Law No. 02-05 of February 6, 2005, amending and supplementing Ordinance No. 75-59 of September 26, 1975, containing the Commercial Code, Official Gazette No. 11, issued on February 09

2.0 Methodology

The methodology of this topic is embodied in analysis and comparison, as it included a comparison between the Iraqi Civil Law and the amended Real Estate Law No. 56 of 2000.

2.1 Research Structure

In this research, we will deal with the legal balance of wages by dividing it into three sections, where we will explain the concept of wages through two requirements in the introductory study. Dividing it into three demands, in the first, we will talk about determining the amount of the rent, and in the second demand, we will discuss the time of fulfillment of the value of the rent. In contrast, we will talk about proving the rent in the third. In the third topic, we will discuss the legal balance of the rent in the real estate rental law by dividing it into three demands, the first, we will talk About determining the amount of the fare, and in the second requirement, we will show the time of fulfillment of the fare value, while the third we will deal with proof of the fare.

2.1 Definition of fare: The rent is the money that the lessee is required to pay to the lessor in exchange for his benefit from the rented thing⁴The rent is considered a fundamental pillar without which the lease cannot be concluded. In front of a lease contract, if the rent does not exist, then the contract is voluntary⁵The rent is the subject of the lessee's obligation and is an essential element of the lease contract. The lessee undertakes to pay it in a severe and accurate manner⁶The lessee intends to pay it, and the lessor intends to fulfill it, but if it is fictitious, that is, according to it, the two contracting parties do not intend that the lessee be obligated to pay it, but it was mentioned for form only. It is free of charge⁷, and each of the contracting parties may adhere to the fictitious wage in the concluded contract, and this fictitiousness may be proven by all means of proof, including evidence and presumptions⁸,

Attached to the fictitious rent is the trivial rent, which is not proportionate between it and the value of the benefit of the rented thing at all⁹, or it is so tiny the benefit the thing that it cannot be considered a severe wage, as it is considered non-existent¹⁰.

But it is not required that the rent is entirely equal to the benefit, it is sufficient to be close to the benefit, and then the low rent is valid in the contract¹¹, which is less than the fare like the thing

⁴ Dr. Ahmed Sharaf El-Din, The Tenancy Contract in Civil Law and the Laws of Lease Buildings, The Egyptian General Book Organization, Cairo, 2006, p. 55.

⁵ Dr. Muhammad Kamel Morsi Pasha, Explanation of the Civil Law, the Lease Contract, Manshaat al-Ma'arif, Alexandria, 2004, p. 63, Dr. Mahmoud Abd al-Rahman Muhammad, Al-Wajeez in the Lease Contract, Dar Al-Nahda Al-Arabiya, Cairo, p. 69

⁶ Dr. Saeed Mubarak and Dr. Taha Mulla Huweish, Summary of Named Contracts (Sale, Rent, Contracting), Dar Al-Arabiya for Law, 4th Edition, 2010, p. 235

⁷ Dr. Mahmoud Abdul Rahman Muhammad, Al-Wajeez in the Lease Contract, Dar Al-Nahda Al-Arabiya, Cairo, pg. 72, d. Saadoun Al-Amiri, previous source, p. 223, d. Ahmed Sharaf Al-Din, previous source, p. 55, d. Abbas Al-Araf, previous source, p. 344

⁸ Dr. Ahmed Sharaf Al-Din, previous source, p. 55, d. Saadoun Al-Amiri, previous source, pg. 223, d. Muhammad Kamel Morsi Pasha, previous source, pg. 65

⁹ Dr. Mahmoud Abdul Rahman Muhammad, Al-Wajeez in the Lease Contract, Dar Al-Nahda Al-Arabiya, Cairo, pg. 72, d. Saadoun Al-Amiri, previous source, pg. 224

¹⁰ Dr. Ahmed Sharaf Al-Din, previous source, pg. 56. Dr. Abbas Al-Sarraf, previous source, p. 345

¹¹ Dr. Kamal Qassem Tharwat, previous source, p. 79; Dr. Mahmoud Abdel-Rahman Muhammad, previous source, p. 73; Dr. Muhammad Kamel Morsi Pasha, previous source, p. 66

hired to the degree that exceeds the usual in dealing or that involves gross unfairness for the lessor¹², the low rent does not lead to a lack of proportionality between the benefit and the rent, and if it leads to unfairness to the lessor, that does not affect the validity of the contract unless it is accompanied by deception unless this unfairness is focused on the money of the seized, the transfer or the endowment, then the contract is considered void at that time¹³, and goes aspect of jurisprudence¹⁴, until the distinction between cheap and trivial fares is unjustified due to the absence of a clear boundary separating them from one side and the absence of a legal basis for differentiating between them from the other side, and he believes that as long as the law does not require proportionality between the fare and the value of the benefit that the tenant brings from the property, So any fee is sufficient for the contracting of the lease, no matter how small it is, provided that it is serious, that is, the fee that the contracting parties tend to charge and fulfill.

The general rules apply to the subject matter of the contract in terms of existence, appointment, and legality, so it is required that the fare be what can be fulfilled, that it be specific or capable of being appointed, and that it be legitimate, and the legality circle is determined by the scope of public order and public morals, so if the fare is in violation For public order and morals, such as the fare being a number of drugs, illegal sexual intercourse, or covering up a crime, and therefore the contract is considered void due to the failure of one of the conditions that must be met in the contract.¹⁵

2.2 Types of fare: The rent is the consideration that the lessee is obligated to pay in exchange for his use of the leased property. This consideration may be a sum of money or any other money. In light of that, we will divide the demand into two branches as follows:

2.2.1 Cash fare: The rent is usually an amount of money paid by the tenant in successive periods of time or paid once at the beginning or at the end of the lease¹⁶, so the principle is that the rent is money paid in the form of equal installments, it may be monthly or annually, or it is paid once according to the agreement¹⁷, and here the rent meets the price in the sale since, in the latter, it must be money¹⁸, so the rent is usually an amount of money that the lessee is obligated to pay to the landlord in exchange for his use of the rented asset, And in the event that the fare is in money, then it is either in the local or foreign national currency, such as the dollar, for example¹⁹, and some of the

¹² Dr. Muhammad Abd al-Rahman Muhammad, previous source, pg. 73. Dr. Saadoun Al-Amiri, previous source, p. 223, d. Asaad Diab, previous source, p. 442

¹³ Dr. Abd al-Majid al-Hakim, Sources of Commitment, Part 1, Edition 2, Baghdad, 1963, p. 155

¹⁴ Dr. Muhammad Abd al-Rahman Muhammad, previous source, pg. 73. Dr. Muhammad Azmi Al-Bakri, Encyclopedia of Jurisprudence and Judiciary in the Provisions of the Lease Contract in the New Civil Execution, Dar Mahmoud for Publishing and Distribution, 1994, p. 7

¹⁵ Dr. Mahmoud Abdul Rahman Muhammad, previous source, pg. 72, d. Saad Adib, previous source, pg. 44

¹⁶ Dr. Mahmoud Abdul Rahman Muhammad, previous source, pg. 74, d. Tariq Al-Tantawi, The Tenancy Contract in Civil Law, Al-Omrana Press, Cairo, 1998, p. 96.

¹⁷ Dr. Ahmed Sharaf Al-Din, previous source, p. 55

¹⁸ This is what was stated in the text of Article 527/2 of the Iraqi Civil Code, which says (in an absolute sale, the price must be estimated in cash)

¹⁹ The Egyptian Court of Cassation ruled on January 3, 1990, appeal No. 253/55 B.C., regarding dealing in foreign currency, to the effect that the legislator has authorized dealing in foreign currency, inside or outside the country, and that the obligation of the tenant to pay the rent in a specific foreign currency is a valid and legal obligation that he referred to: Dr. Ahmed Sharaf Al-Din, previous source, p. 56

Muslim jurists went²⁰, that if the rent is a monetary amount, its amount must be clarified in order to avoid ignorance by specifying its value as a thousand dinars, then the rent must be a known, valued money that is able to deliver and benefit from it.

2.2.2 In-kind Fee: We have mentioned previously that the fare is originally an amount of money, but that does not prevent the fare from being any money other than money, and accordingly, Article (736) of the Iraqi Civil Code stipulates that (it is correct for the fare to be money, just as it is correct for it to be Any other money) as stipulated in Article (561) of the Egyptian Civil Code that (the fare may be money, just as it may be any other offering) and this is what most laws stipulate²¹ and based on that, the fare is not prevented from being Any other money other than money, whether the money is movable or real estate, such as giving the lessee a specific commodity in exchange for the rent, and the rent may be given as part of a crop²², or the use of something else in return for the use of the leased property (usage-for-use barter) or any performance. Another obligatory for the lessee²³. It is also possible for the rent to be based on the value of the lessee in the leased property so that it becomes the property of the lessor or to make improvements to the leased property²⁴ So that the rent is the same as the improvements made by the lessee to the leased property and to other possible forms of rent other than money²⁵, and among these forms is that the tenant refuses to open a commercial store on a specific street or to provide something or work or both together, and this is what the legislator intended in the text of Article (736) by saying (as it may be any other money) The text of Article (561) of the Egyptian Civil Code corresponds to it by saying (any other offering).

Hence, we find that the laws granted the two parties to the rental relationship broad freedom in determining the type of rent that the lessor receives, and this is contrary to what was stated in the sale contract, in which the legislator required that the price be a cash amount.²⁶

As for the permissibility of the fare is a benefit, the Muslim jurists²⁷ have unanimously agreed that the fare is a benefit, but they differed in the permissibility of the benefits being of the gender of the contract or otherwise? So a part of the jurisprudence went to the permissibility of the rent being a benefit of the gender of the contracted upon, such as renting housing for housing, farming for agriculture, and service for service, while most Muslim jurists went for the inadmissibility of the rent if it was a benefit of the gender of the contracted upon because the union of sex generates usury, so

²⁰ Abd al-Rahman al-Jazairi, *The Book of Jurisprudence on the Four Doctrines*, (Department of Mu'amalat, Part 3, Lebanon, 1988, p. 99, and Imam Aladdin Abu Bakr bin Masoud al-Kasani al-Hanafi, *Bada'i al-Sana'i fi Tartib al-Shari'a*, Part 1, Beirut, 2nd Edition, 1982, p. 98, Zain Al-Din Bin Najm Al-Hanafi, *Al-Bahr Al-Ra'iq, Sharh Kanz Al-Daqa'iq*, Volume 7, Lebanon, without a publication date, p. 298

²¹ See: the text of Article (536) of the Lebanese Code of Obligations and Contracts, Article (529) of the Syrian Civil Code, and Article (561) of the Libyan Civil Code

²² Dr. Mohamed Kamel Morsi, *Explanation of the New Civil Law, Named Contracts, Lease Contract*, Part 5, Egypt, 1953, p. 62

²³ Dr. Ahmed Sharaf Al-Din, previous source, p. 55; Dr. Asaad Diab, previous source, p. 442; Dr. Mahmoud Abdel-Rahman Muhammad, previous source, p. 74, d. Saadoun Al-Amiri, previous source, p. 222

²⁴ Dr. Esmat Abdul Majeed, *Explanation of the provisions of the lease contract*, Baghdad, 2002, p. 62

²⁵ Dr. Abd Al-Razzaq Al-Sanhouri, *The Mediator in Explanation of Civil Law*, Part 6, Volume One, Cairo, Dar Al-Nahda Al-Arabiya, 1963, p. 162, Dr. Abdel Fattah Abdel-Baqi, *the lease contract*, Egypt, 1952, p. 100

²⁶ The first paragraph of Article (527) of the Iraqi Civil Code states that (in an absolute sale, the price must be estimated in cash.), corresponding to the text of Article (418) of the Egyptian Civil Code, which says: (Sale is a contract by which the seller is bound to transfer The purchaser has ownership of a thing or another financial right in return for a cash price.

²⁷ See the scholar Zain al-Din ibn Najm al-Hanafi, a previous source, p. 51

it was necessary to differ in the genus of the benefit, such as renting the house's residence by cultivating the land,²⁸ However, Iraqi civil law did not provide for this case, whether the rent may be a benefit or not. In our opinion, the benefit of the rent may not be of the gender of the contracted upon, and this is the jurisprudence and giving the contractors greater flexibility in choosing the gender of the rent in a way that enhances the stability of the relationship between the landlord and the tenant and achieves its balance.

3.0 The legal balance of wages in the civil law

The rental relationship is divided into the right of usufruct granted to the tenant in return for the commitment to the rent, which is a cornerstone of the lease contract and invalidated by its non-existence. The following demands:

3.1 Determine the amount of fare: The principle is to leave the determination of the rent between the contracting parties, so they have the right to determine it²⁹ for the entire lease period or divide it according to the time units for the lease term, and the two contractors often estimate the rent in a direct way, such as agreeing on a specific amount of money, and this amount that the two parties accept is usually fixed throughout the lease period. However, it may be variable and varies according to circumstances and circumstances, and the latter is called repetition.³⁰, such as renting a house for two rents if the tenant inhabits it and for another rent that exceeds it if he releases it from the subcontractors, or that the agricultural land is leased for a specific rent if the tenant cultivates wheat, and for a double rent if he sows it. Cotton³¹. The Iraqi Civil Code permitted the fare transfer³².

In more than one image, the fee is required according to the image in which the item appears, as Article (737) stipulates:

- 1- It is correct to repeat the fare in more than one form and must be given according to the forms that appear.
- 2- If a shop is rented on the condition that it has a certain fee to be used for perfumery, and if it has another wage to be used for blacksmithing, then for which of the two jobs is the shop used, its wages will be given.

And we note in the text of the article, as mentioned earlier,, that the lease is considered valid from the time the contract is concluded, based on Iraqi law's position. It is more appropriate for the legislator to declare the conclusion of the contract and its validity from the moment the work is done because the lease does not arise as a contract unless the rent and the nature of the benefit are determined. Therefore in the returned lease, this is only achieved When carrying out work, such as exploiting the wages by blacksmithing or carpentry, for example. Hence, the rent is valid from the time of doing the work and not from the time of concluding the contract.

²⁸ Zain al-Din ibn Najm al-Hanafi, a previous source, p.86

²⁹ Dr. Ahmed Sharaf El-Din, previous source, p. 56; Dr. Muhammad Kamel Morsi Pasha, previous source, p. 63, d. Mahmoud Abdul Rahman Muhammad, previous source, pg. 76, d. Asaad Diab, previous source, p. 442

³⁰ The repetition of the wage is intended to mention more than one wage, provided that the wage that shows the nature of the use of the wage is established, such as specifying a specific wage, if the wage is used for trade, and another wage is that the wage is used for plumbing, so the wage is established on the basis of the work that was carried out with the wage, see: d. Muhammad Kamel Morsi Pasha, previous source, pg. 65

³¹ Dr. Mahmoud Abdel-Rahman Muhammad, previous source, p. 77, d. Saadoun Al-Amiri, previous source, pg. 223

³² A part of contemporary Islamic jurisprudence went to hesitation due to the invalidity of the rental due to the ignorance of the two recipients. See: Grand Ayatollah Sayyid Muhammad Muhammad Sadeq al-Sadr, Manhaj al-Salihin, vol. 9,

The contracting parties may not estimate the fare indirectly, and this is by agreement not on the amount of the fare itself but instead based on its estimate only, and this agreement is permissible in the application of the general rules that do not require that the subject of the obligation be specific in itself. The agreed foundations are clear so that it is possible to know the amount of fare in the future without confusion or ambiguity.³³,

It is noted that the method of determining the wage differs according to its nature. If it is money, it is determined by its amount, and if it is one of the things in particular, then it is determined by explaining the thing in a way that denies ignorance about it. If it is a share of an agricultural crop, then it clearly defines what the work is³⁴, but if the two parties to the rental relationship did not offer the rent or it was not possible to prove the alleged rent, then the rent is determined on the basis of the rent for the same, and the rent for the same is meant the rent for a similar employee in terms of the characteristics and advantages of the hired whose wage is to be determined, and the judge determines the similar rent after seeking the help of experts³⁵ And that In order to reduce cases of invalidity, this is stated in Article (837) of the Iraqi Civil Code, which says: ***“If the contracting parties do not agree on the amount of the alleged rent, the similar fee must be paid.”***

This is stipulated in Article (562) of the Egyptian Civil Code, Article (530) of the Syrian Civil Code, and Article (537)³⁶ Of the Lebanese Code of Obligations and Contracts.

It is noted that it is not accurate to use the expression (if the two contracting parties do not agree) because this expression indicates a difference in the fare, and hence the non-conclusion of the contract because the fare is a pillar of it. 'If the two contracting parties omitted it,' even the meaning leads to a state of agreement on the fare, although it cannot be proven.

A question is raised about the agreement of the parties to the rental relationship on a specific rental fee, and then economic or political conditions occurred that led to a change in the value of cash, whether it was a decrease or an increase, at the beginning or during the rental relationship. How can a balance be achieved for this relationship and protect the contracting parties from those fluctuations that have become a reality? No way?

At first glance, it may seem that the theory of emergency conditions is sufficient to restore balance to this relationship, which can be summarized as follows: If the contract is one of the continuous or immediate contracts, but it is deferred, and unexpected exceptional circumstances occur that lead to the contractual imbalance that existed when it was concluded, and in a way that

³³ Dr. Mahmoud Abdul Rahman Muhammad, previous source, pg. 78.

³⁴ Dr. Saeed Mubarak, Taha Al-Malahweesh, and Sahib Abd Al-Fatlawi, Summary of Named Contracts, Baghdad, Dar Al-Hikma for Printing and Publishing, 1993, pg. 236. It should be noted that Muslim jurists tended to determine the fare according to its nature. If it was money, its amount should be determined, and if it were of measures, weights, and counts, it would be determined by indicating its weight and quantity. If the fare was an animal, then it must be concerned and referred to, like this camel or this cow. The fare is in a manner that negates ignorance. For more, see: Grand Ayatollah Sayyid Abd al-Ala al-Musawi al-Sabzwari, Mohdhab al-Ahkam, vol. 19, Najaf, 1983, p. 19

³⁵ Dr. Esmat Abd al-Majid, Explanation of the provisions of the lease contract, Baghdad, 2005, p. 66, and see: the following judicial decisions:- Cassation Decision No. 384 / C / 66 dated 2/2/1966, Court of Cassation Court, Volume IV, pg. 65, referred to by Dr. Esmat Abdel Majeed, previous source, pg. 67.- Decision No. 644 / H / 1968 on 2 / 1966, Volume V, p. 191, referred to by Dr. Jaafar Al-Fadhli, Al-Wajeez in explaining the lease contract, Al-Jeel Al-Arabi Library, Iraq, 2003, p. 25

³⁶ See the text of Article (554) of the Syrian Civil Code and the text of Article (585) of the Libyan Civil Code.

threatens The debtor suffers a heavy loss, as the debtor is not forced to implement his obligation contained in the contract, but instead reduces this obligation to the extent required by justice.³⁷, through the text of the aforementioned article, we see that Iraqi civil law has permitted a decrease in the obligation if there is an increase in the value of cash; here, the judge has the right to reduce the onerous and consequential obligation in the debtor's debt, except that he is the tenant as a debtor of the rent, but what is the ruling if those exceptional circumstances lead to a decrease in the value of the cash?

This is understood implicitly from Article (146) of the Iraqi Civil Code, stipulating that "If general exceptional incidents occur that could not be expected, and their occurrence results in the implementation of the contractual obligation, and if it does not become strictly impossible and exhausting for the debtor, so that it threatens him with a heavy loss, the court may After balancing the interest of the two parties, the burdensome obligation shall be reduced to a reasonable extent, if justice requires, and every agreement to the contrary shall be null and void." The content of the text of Article (146) where did not provide for an increase in the obligation on the debtor, who is represented by the tenant, and therefore it stipulated a decrease in the amount of the rent and not an increase in it on the part of the lessee, and therefore this text is incapable of absorbing all developments that would disturb the rental relationship, and this, in turn, leads to To make the rental relationship turbulent and unbalanced, and therefore it is necessary to adopt the same rent at the time of the change in the value of the currency resulting from those circumstances, taking into account the side of the lessor if the value of the currency decreased, and taking into account the side of the lessee if the value of the currency increased to lead to achieving a balance between the lessor and the lessee.

3.2 The time of payment of the fare value: The lessee is obligated to pay the rent agreed upon in the contract, so the lessee is obligated to pay the rent on the dates agreed upon and specified in the contract³⁸.

As for the Lebanese Law of Obligations and Contracts, it stipulated in Article (569) that "the lessee must pay the rent within the term specified in the contract, and if there is no specification in it, then according to local custom, and if it is not customary then at the end of the usufruct period, it is permissible to stipulate that the rent be paid in advance."

It is clear from this text that the lessee must pay the rent at the agreed-upon dates, and if the contracting parties do not specify a date for the payment of the rent, custom must be adopted, and if the custom is absent, payment must be made at the end of the usufruct period, because the rent corresponds to the benefit received or possible to be fulfilled³⁹, It may be agreed upon to expedite the rent, i.e., to pay it before the start of the usufruct, or it may be agreed to postpone the rent, i.e., to pay it at the end of the usufruct period, or it may be agreed to pay the rent in installments, i.e., to pay it in the form of installments throughout the usufruct period⁴⁰This is stated in the text of Article (765), From the Iraqi Civil Code that "*it is correct to stipulate that the fare be accelerated, postponed, and*

³⁷ Dr. Esmat Abdel-Meguid, Theory of Emergency Conditions and the Role of the Judge in its Application, Ministry of Justice, Legal Research Center, Dar Al-Hurriya for Printing and Publishing, 1993, p. 28.

³⁸ Dr. Muhammad Ali Omran, Explanation of the provisions of the lease contract in Libyan law, 1976, p. 124, d. Muhammad Kamel Morsi Pasha, previous source, pg. 217.

³⁹ Dr. Tawfiq Hassan Farag, The Lease Contract, A Study of the Rulings of Rent Laws, Beirut, 1984, p. 725

⁴⁰ Dr. Tariq Al-Tantawi, previous source, pg. 215

divided into installments to be paid at certain times." The Egyptian Civil Code, stipulates in Article (465) that "*the rent for each period of usufruct is due upon its expiration unless there is a condition otherwise,*" and this means that the rent is paid later and not in advance, in other words, the rent is not due unless it is fulfilled The tenant of the benefit or was able to collect it unless he stipulated that the rent be paid in advance.⁴¹

Thus, in order to achieve a legal balance between the landlord and the lessee, the payment of the rent must be determined in terms of expediting or postponing it for a reasonable period, given the exceptional circumstances the country is going through, and the consequent economic and political fluctuations that destabilize this relationship, and thus disturb its balance.

3.3 Proof of fare: The lessee is charged with proving the payment of the rent, as it is considered one of the essential obligations that the lessee bears in accordance with the general rules. In the Iraqi Evidence Law⁴².

As for the Libyan Evidence Law, it subjects the proof of the rental relationship to what is required by the general rules, so if the value of the installment that the tenant claims to fulfill exceeds ten pounds, it must be proven in writing, but if the installment is less than that, it may be proven by the rest of the methods of proof.⁴³

The Lebanese Law of Evidence states in Article (28) that: "*If the contractual obligation in non-commercial matters exceeds ten pounds in value, or if the value is not specified, then it is not permissible to testify in proving the existence of the obligation or acquittal thereof, but there must be written evidence.*"⁴⁴. In addition to the foregoing, we see that the tenant's payment of an installment of the rent is considered a presumption of his delivery of the previous monthly installments, and this is stated in the text of Article (769) of the Iraqi Civil Code by saying "*and that the fulfillment of a portion of the rent is a presumption of the fulfillment of the previous installments of this installment until the evidence is established to the contrary, that, and this is the task of the lessor, who can prove it by testimony when the installment is less than five thousand dinars*"⁴⁵

This is also stated in Article (587) of the Egyptian Civil Code: "*The fulfillment of a portion of the rent is related to the fulfillment of previous installments on this installment, until evidence is established to the contrary.*"⁴⁶

It is worth mentioning that Islamic jurisprudence relies on proving the rental relationship in terms of paying the rent to personal evidence, as some Muslim jurists went on to say that if the

⁴¹ Dr. Abd al-Razzaq al-Sanhouri, Explanation of Civil Law in Contracts, previous source, pg. 214, d. Zuhdi Yakan, the lease contract, Beirut, without a printing year, p. 63

⁴² Article (77) of the Iraqi Evidence Law in force stipulates that (the legal disposal if its value exceeds five thousand dinars, or if the value is not specified, then this disposal may not be proven or terminated by testimony...), more see: d. Abbas Al-Aboudi, explaining the provisions of the Iraqi Evidence Law, Baghdad, 1997, p. 204. Dr. Ismat Abd al-Majid, Al-Wajeez fi Explanation of the Law of Evidence, Baghdad, 1997, p. 228

⁴³ Acharaleh: Dr. Monther Al-Fadl and Dr. Sahib Al-Fatlawi and Dr. Kamel Saeed, named contracts, 1st edition, Jordan, 1993, p. 242

⁴⁴ Acharaleh: Dr. Muhammad Ali Omar, see: Explanation of the provisions of the lease contract in Libyan law, 1976, p. 135

⁴⁵ Dr. Saeed Mubarak and others, previous source, p. 238, d. Tariq Al-Tantawi, previous source, p. 220, d. Muhammad Kamel Morsi Pasha, previous source, pg. 228.

⁴⁶ See Article (555) of the Syrian Civil Code No. 84 of 1949.

landlord and the tenant dispute the origin of the lease, then proving it is on the claimant, whether the owner or the tenant, in other words, if he has evidence. His saying was presented, and the reprehensible oath, because the evidence is on the plaintiff and the oath is on the denial, but if the rent is not proven and the benefit is fulfilled, the rent for the same is necessary, but if the dispute is focused on the highest principle of the rent but rather on the rent, then if the lessor claims the rent is two thousand dinars, and the tenant says one thousand dinars, then the increase that the other denies must be Proving it, and if it is not proven, the case is forfeited, and it is only worthy of what the denier acknowledges.⁴⁷

4.0 The legal balance of the rent in the amended Real Estate Rental Law No. 56 of 2000:

Rental laws came with legal texts that specify limits for rental rates for real estate, which are subject to the provisions of those laws, to protect the tenant from raising rental rates in the face of the growing housing crisis in most countries, and in light of that, we will divide this topic into three demands. And in the second requirement, we will talk about the time of fulfillment of the value of the fare, and in the third requirement, we will discuss proof of the fare, and this is what we will discuss successively:

4.1 Determining the amount of the fare: The amended Real Estate Rental Law No. (56) for the year 2000 stipulated a maximum rental allowance for real estate included in its provisions⁴⁸, in the first paragraph of Article 4, which states:

- 1- The annual rent of real estate included in the provisions of the law shall not exceed the following two percentages:
 - A- 5% of the total value of the real estate or apartments intended for housing rented for this purpose.
 - B- 7% of the total value of the real estate or apartments rented in the form of rooms for living.
- 2- The Council of Ministers may increase the two percentages stipulated in Paragraph (1) of this Article whenever necessary.
- 3- Newly built residential properties whose construction was completed on or after 1/1/1998 are excluded from the provisions of Paragraph (1) of this Article. The real estate rental law was issued in varying percentages according to the property's character. If the real estate is rented in

⁴⁷ Grand Ayatollah Sheikh Murtada al-Burujerdi, Al-Urwa al-Wuthqa Document, Najaf, 1984

⁴⁸ Article 1 of the Amended Real Estate Rental Law No. 56 issued on 4/10/2000 stipulated as follows:

"1- The provisions of this law apply to built real estate leased for residential purposes to Iraqis within the Municipality of Baghdad.

2- The following real estate properties shall be excluded from the provisions of Paragraph (1) of this Article, and their rent shall be subject to the provisions of the Civil Code or the laws pertaining to that:

A- Residential real estate rented by the state or public legal persons to its workers.

B- Real estate intended for housing leased by the state or public legal persons, which the Minister of Finance issues a statement excluding.

C- Real estate leased to non-Iraqi persons or entities."

the form of apartments intended for housing, then the rental allowance should not exceed (5%) of the total value of the property.⁴⁹,

But if it is in the form of residential rooms, then the rent allowance must be more than (7%) of the total value of the property, and it seems that this discrepancy in percentages is due to the fact that the real estate that is rented in the form of residential rooms is subject to rapid extinction, which requires continuous maintenance on it.⁵⁰

It should be noted that the stipulated rates of rent are considered part of the general system, and therefore if the two contracting parties agree to exceed these rates, then the agreement is considered null and void within the limits of what exceeds the rates specified by the law, so the rent is reduced to the rates stipulated in accordance with the theory of diminishing the contract.⁵¹, and the amended real estate rental law in the second Paragraph of Article 4 permitted the Council of Ministers to increase these percentages whenever necessary, and it seems that the legislator tried with this text to achieve a balance for this relationship in light of exceptional circumstances or economic fluctuations, but the treatment was not accurate and the legislator did not specify Certain limits in the case of increasing these percentages, in addition to that we see that the legislator permitted the increase of those only and did not declare the permissibility of reducing them, so it was more appropriate for the legislator to stipulate the adoption of a similar wage in light of the circumstances that lead to a decrease or increase in the value of the currency or real estate, in order to maintain The balance of that relationship in all circumstances and fluctuations that may occur, and it is noted from the text of Paragraph (3) of Article Four of the amended real estate rental law that the legislator excluded newly built real estate and its construction was completed on 1/1/1998, from the percentages stipulated in the law, and we see That this will push the landlord to take advantage of the housing crisis and pay the rent, as long as the rent is not subject to percentages. Stipulated in the real estate rental law for newly constructed real estate and before the date of 1/1/1998, through the aforementioned, we see that the legislator wanted to increase residential real estate constructions by throwing them on the shoulders of individuals, while the legislator had to rely on public capital in Directing it towards increasing residential real estate constructions primarily, because that is the duty of the state towards its citizens and people, so it was better not to seek to destroy the balance in this relationship in order to evade the duties that the state is supposed to carry out instead of trying to place them on the shoulders of individuals, so it was first to These real estate properties remain subject to the percentages specified in the real estate rental law because there is no reason to refer them to the civil law in light of the aggravation of the housing crisis, in addition to that, the fifth Paragraph of Article Four of the amended real estate rental law stipulates that *“and the lessor or the tenant may request an estimate of the total value of the rented real estate once Every five years, and adjusts according*

⁴⁹ The fourth Paragraph of Article 4 of the effective Rent Law No. 56 of 2000 clarified what is meant by the total value of the property, which is the sum of the land and building at the time of the assessment conducted by the financial authority in the implementation of the provisions of this law.

⁵⁰ Kazem Sheikh Jassim, Real Estate Rental Rules, 1st Edition, Baghdad, 1987, pg. 77, d. Jaafar Al-Fadhli, previous source, p. 26

⁵¹ See: the text of Article (139) of the Iraqi Civil Code and the second paragraph of Article Four of the Amended Real Estate Rental Law No. (56) of (2000).

to the new estimate of the allowance. The rent is in accordance with the two rates stipulated in Paragraph (1) of this Article”.

It is clear from this text that the legislator tried to achieve a kind of balance by allowing the landlord or tenant to request an estimate of the total value of the rented property once every five years, but what is the solution if fluctuations occurred in the value of the property before the lapse of five years? Should the parties to the rental relationship wait under the shadow of the imbalance until that period has passed?

Therefore, it was better to adopt the rent for the same in those circumstances while maintaining this text, but this is not the case since the text requires the passage of a period of five years to re-evaluate the total value of the property, which is a long period when compared to that period with the rapid economic and political fluctuations, so it was better to limit it to two years instead of that period, taking into account these fluctuations.

4.2 Time of payment of the fare value: The amended Real Estate Rental Law No. 56 of 2000 stipulated that the payment of the rent should be in monthly installments and ruled that the agreement is invalid otherwise, for fear that the landlord would exploit the tenant by collecting the rent in advance for an extended period that the tenant might be unable to fulfill when the contract was concluded, and this was stated in the first paragraph of Article 10 of The amended Real Estate Lease Law says: *“The rent of the real estate covered by the provisions of this law shall be paid in advance in monthly installments regardless of the validity period of the lease contract, and any agreement stipulating otherwise shall be null and void, and if the lessor is the state or public legal persons, then the tenant may pay the rent monthly or in one installment or more.”*

And through the foregoing, we see that the legislator in this Paragraph removed the rent from the scope of the real estate rental law and included it within the scope of the civil law in terms of paying the rent if the lessor is the state or legal person, as some jurists went.⁵²The reason for this exception in the first paragraph is taking into account an aspect of leaving the freedom to pay the rent to the tenant.

The second paragraph stipulates that *“it is permissible to pay the rent in accordance with what was stipulated in the previous paragraph, through the mediation of the notary public, or by bank transfer or mail to the account of the lessor.”*

And through what the Iraqi legislator stipulated in the aforementioned Paragraph, we see that he wanted to achieve legal balance by giving the tenant the authority to fulfill the rent through the mediation of a notary or by the bank or postal transfer, for fear that the lessor would refuse to receive the rent allowance.

The third paragraph stipulates that *“If the lessor refuses to receive the due installment of the rent, the tenant may deposit it with the notary public in the city in which the property is located within fifteen days from the date of its maturity, and the lessor shall bear the costs of warning and deposit, and it will be deducted from the deposited installment.”*

We see that the legislator in the aforementioned Paragraph has given the tenant another guarantee in the event that the lessor refuses to receive the rent, which is that the tenant deposits the rent with the notary public within fifteen days from the date it is due so that the lessor does not use

⁵² Dr. Saeed Mubarak and others, previous source, p. 247.

the excuse of not receiving the rent to demand the abandonment, and well the legislator did these guarantees.

And in the fourth Paragraph, the law stipulated that “in real estate rented by the state or public legal persons, the conditions for paying the rent stipulated in the contract” shall be taken into account.

We see that this Paragraph is clearly indicative, as the rent is paid according to the terms of the contract if the state or its institutions are rented, and therefore the state and its institutions have been granted broad freedom by the legislator in how to pay rental fees, whether they are rented or leased, and it was first to subject them to the real estate lease law in Pay the installments monthly, in order to prevent possible exploitation and to imbalance this relationship.

The Egyptian Space Rental Law No. (121) of 1947⁵³ stipulated specific rates for the rental fee that may not be exceeded, as the first paragraph of Article 4 of this law stipulates that “*It is not permissible to increase the rent agreed upon in contracts. The rents concluded since the first of May 1941 A.D. on the rent for the month of April 1941 A.D. or the rent for the same month for that month.....*”. The Egyptian legislator took the rent for the month of April 1941 A.D. as a basis for calculating the upper limit of the rent because this date preceded the emergence of the housing crisis, and the rent allowances at that time were familiar and logical with average prices. 1944 A.D., it is not subject to the aforementioned percentages, which represent the general rule, but is subject to other percentages that may not be exceeded as well.

Also, the Lebanese Rent Law of 1994 stipulates in Article 10 that “*the tenant may, despite every agreement, pay the rental allowance, first-hand and in advance.*”

Accordingly, the Lebanese legislator has granted the tenant the advantage of paying the allowance jointly, despite every agreement to the contrary, and it is evident that this text came to protect the tenant from the possibility of the lessor exploiting him to guarantee the terms of the contract, which makes him receive rent allowances for a long and subsequent period and in one payment before the tenant actually benefits from the benefit of the rented property.⁵⁴

Proof of fare:

The Iraqi legislator stipulated in the amended Real Estate Lease Law No. 56 of 2000 that proof of the lease contract in terms of rent for the real estate included in the provisions of this law is done by all methods of proof in contradiction to the general rules of evidence to serve as a unique text restricting the general texts of evidence in this regard and that In fairness to the tenant from the lessor's unfairness in his refusal to release the lease contract as a prelude to denying the rental relationship and the consequent eviction of the leased property by describing its occupant as a usurper.

A- The landlord and the tenant must draw up the lease contract in writing and deposit a copy of it with the real estate tax office and the information office or the police station when the office is not present within a period not exceeding (30) days from the date of its conclusion.

⁵³ It is worth mentioning that the Muslim jurists held that the lessor is not entitled to the rent except by receiving the property, and the ownership of the rent is settled by the fulfillment of the benefit or what came in its ruling. See: Grand Ayatollah Sayyid Abd al-Ala al-Sabzwari, previous source, p 57

⁵⁴ Article 1 of Law No. (121) of 1947 A.D. states that its provisions apply “*with the exception of space lands to places and parts of places of different types leased for residential or other purposes, whether furnished or unfurnished.*”

B- If the lease contract was not drawn up or a copy of it was not deposited in accordance with document (a) of this Paragraph, and a year or more lapsed after the agreement on the lease contract and the occupancy of the rented tenant without a written dispute from the owner, and the owner or his representative was residing in Iraq during the aforementioned period The tenant has the right to prove the lease contract and its conditions by all methods of proof.⁵⁵.

It should be noted that this exceptional provision is related to real estate intended for housing, that is, which falls within the scope of the real estate rental law. As for the rest of the real estate, such as commercial or industrial offices, they remain governed by the general rules stipulated in the Evidence Law. This was the first to generalize this exceptional text on real estate designated for commercial purposes or Industrial because the presence of an occupant of the property for a period of one year without a written dispute indicates that the rental relationship has been achieved.

And we see that the Lebanese legislator in the Lebanese Code of Obligations and Contracts has come up with particular texts related to proving the rental relationship if the leased property is real estate and the contract is not drawn up if Article (542) stipulates that *“a non-written real estate lease contract cannot be proven before its implementation except with the confession of the defendant The existence of the lease, or his oath, and if there is a commencement of execution, then it is considered proof of the existence of the lease, and the allowance is determined when the contracting parties differ by means of an expert, and its duration is determined according to the custom of the country...”*.

It is clear from this text that if the contract is not drawn up and its implementation has not started, then it must be proven by the defendant's acknowledgment of the existence of the rental relationship or by taking the legal oath. The rental relationship is achieved by the evidence of implementation, but what is taken from this text is that the start of implementation may express a state of usurpation of the property, and it does not necessarily express the rental of the property, so it was preferable to pass the start of implementation for a reasonable period without a dispute from the landlord to infer that the realization of the rent is not usurped.

It was suggested that the law in force should be amended so that each of the parties to the contract, whether the owner or the tenant, has the right to ask a committee formed by a judge of the Court of First Instance in The area of the real estate and the membership of a representative of the real estate registration and the Ministry of Finance, and this committee, based on this request, estimates the value of the real estate and determines the amount of the rent. For those with competence in evaluating real estate, its decision is final and final, and the two parties must adhere to that, and whoever fails to bear the legal consequences, as if the owner refuses to receive the rental allowances specified according to the committee's decision, the tenant has to deposit them with the notary public, and the tenant, if he considers that they are exaggerated, then the owner may file a lawsuit for abandonment before the competent court. We would have resorted to a neutral committee that might bring us closer to the line of justice, not absolute justice.

⁵⁵ Decision 762 / Rental Property / 2000 on 12/17/2000 Al-Karkh, Resolution 761 / Rental Property / 2000 on 12/18/2000 Al-Karkh, referred to by Hadi Aziz Ali, General Legal Principles in the Judiciary of the Two Courts of Appeal of Baghdad-Karkh as Discriminatory, p. 9

Through the aforementioned, we must show the most important findings and recommendations that we reached in this study as follows:

5.0 Results:

1- The laws granted broad freedom to both parties to the rental relationship in determining the nature of the rent charged by the lessor, as it may be an amount of money or any other money as long as this does not disturb the desired balance of the rental relationship.

2- In order to reduce cases of invalidity and achieve stability in the balance of the rental relationship, Article (738) of the Iraqi Civil Code approved the adoption of a similar rent in the event that the parties to the contract did not specify the amount of the rent or could not be proven, which is determined through the assistance of experts.

3- We see that the Iraqi legislator has excluded the Real Estate Rental Law No. (56) for the year (2000) the real estate built on 1/1/1998 or after this date from the specific percentages specified for the rental allowances, and subjected the rent therein to the civil law in an attempt to pay private capital towards real estate investment, but this solution has negatively affected the balance of the rental relationship and placed the tenant at the mercy of the landlord as a result of the exacerbation of the housing crisis.

6. Recommendations:

1- Paragraph (2) of Article (4) of the Real Estate Rent Law No. (56) of (2000) authorized the Council of Ministers to increase the rates of rental allowances for residential real estate whenever necessary, and we suggest in this regard that the legislator adopts the equivalent rent in light of the circumstances that lead to the depreciation or rise in the value of the currency, in order to maintain the balance of the rental relationship, especially since the text allows an increase and does not allow a decrease.

2- The legislator permitted, in Paragraph (B/4) of Article Seventeen, for the tenant to prove the lease contract by all methods of proof if a period of one year or more has elapsed since the lease contract and the tenant occupied the property without a written dispute from the landlord or his representative during that period, and we suggest In this regard, amend this text by saying that the tenant has the right to prove the lease contract by all methods of proof in the case of the occupation of the leased property without a written dispute from the lessor, because the rental relationship may be issued by someone other than the owner, and limiting the written dispute to the owner does not achieve the legislative wisdom of the text.

3- Paragraph (3) of Article Three of Real Estate Rent Law No. 56 of 2000 stipulates that real estate whose construction was completed on 1/1/1998 or after this date should be excluded from the rates specified for rental allowances, and we suggest subjecting these properties to the stipulated rates. It is in the real estate rental law because the legislative reason for determining rental rates is the housing crisis and the accompanying possibility of the landlord exploiting it and raising rental fees. That reason still exists, and there is no justification for excluding this real estate from these ratios.

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