

How to Transfer Ownership of Real Estate to Individuals by Settlement, Or by Registration

Mamdouh Mohd Mamdouh Alresheidat¹ and Muhammad Awad Al-Zubaidi²

Abstract

Real estate is characterized as stable money that is suitable for production and exploitation over time, this study Looking for an answer to the following question: How to transfer the ownership of real estate to individuals through settlement, or registration? The study found that The real estate owned by the state is of three types: the first is real estate designated for public benefit, and the second is real estate owned by the state, private ownership, i.e. registered in the name of the treasury or one of its institutions, and real estate owned by the state by definition, that is, unregistered real estate. and The transfer of ownership of state-owned real estate to individuals, includes registered and unregistered lands, where individuals can register state lands in their own name, provided permission from the state, through the acts of the provisions of the real estate ownership law, whether by settlement or registration. and If the ownership is transferred to individuals, according to the settlement of land and water, or the registration of immovable property that has not previously been registered, then the title deed is considered an official document, and its contents cannot be challenged by any means of appeal, not even by fraud or forgery. After that, the title deed has the right to challenge it, for any defect in the elements of the contract or a succession in the implementation of the contract, before the regular courts, to demand the invalidity or rescission of the act.

Keywords: *Transfer Ownership of Real Estate. Individuals by Settlement, By Registration*

INTRODUCTION

Real estate is characterized as stable funds suitable for production and exploitation over time, and the legislation of these rights has developed in Jordan and the Arab and Islamic countries since the Islamic conquest until today in many periods. The impact of its cruelty and tyranny has been eased by the principles of justice, equity, equality and compassion for the vulnerable classes in the land that the Holy Qur'an preached with sincerity, liberation and sovereignty has been introduced by Islamic legislation and jurisprudence.) for the year 2019 (1), And that the property system and the related provisions of original real rights are among the systems that are not subject to mere artistic industry and abstract explanatory logic only, because their causes are connected to the social and economic entity of each society and because they are in rapid development and dynamic movement. The fact that real estate and the goal is to group a large number of laws into one law, but the position of the legislator was not clear in its division of real estate, and its treatment of the mechanism of individual ownership of real estate by hand clearly. Article (60) of the Civil Code, and this leads us to the next question. Does seizing state-owned real estate through these two reasons lead to the transfer of ownership to individuals, or else their role is limited only after the permission is issued by the state to own it through settlement or registration actions for real estate that was not pre-recorded (2), As the study of the new law, and the previous laws, which varied among them, due to the different legislative philosophy that synchronized the development of these legislations, which in turn were affected by circumstances that varied among themselves from one legislation to another, and which reached the limit of some of them to the execution of any effect on the contract of sale of unregistered property that required conducting Registration for the conclusion of this contract, or delaying the transfer of ownership, or invoking it among the contracting parties, or for others, varies according to the legislative texts that required registration for this, and whether the new law under study is subject to resolving these issues or not.

¹ Al Balqa' Applied University, Jordan, E-mail: mamdouhresheidat@bau.edu.jo

² Al AlBait University, Jordan

Noting that this study does not address the study of the two reasons for acquiring the property referred to, but rather seeks to answer the following question: How to transfer the ownership of real estate to individuals through settlement or registration?

The answer to this question is the focus of our study, as follows: The first topic: - Definition of real estate.

The second topic: - Real estate settlement mechanism.

The third topic: - The mechanism of registering real estate that has not previously been registered

The fourth topic: the authenticity of the registration bonds.

The First Topic

Introducing Real Estate

The jurisprudence differed in this regard, as some of the jurisprudence went to the division of real estate into two types (3), real estate that has been settled, and real estate that has not been settled or outside the settlement. Others said that real estate in Jordan is of two types in terms of ownership: real estate owned by the state and real estate owned by its individuals (4) (5).

As for the Jordanian legislator with the new real estate ownership law, it was affected by the Ottoman laws, just as the previous Jordanian legislator was affected by all the Jordanian laws related to real estate, regarding legal concepts related to real estate, including the types of real estate, which are five types, the first of which is: owned lands, whose owner has the right to use, exploit and dispose of them in kind and for benefit. And princely lands, which are the property of the state, and the right of their benefit is for individuals, and this type and classification has been canceled based on Article (8 / a) of the real estate property law, and the Jordanian legislator did well, since in fact the result is one between the right of ownership and the right to dispose of property. Where the nature of ownership, and endowed lands, which are the lands whose owners have endowed them, so they are withheld from ownership, ownership and mortgage, and their proceeds are allocated to a specific party, and they remain so, unless they are exchanged for a legitimate replacement, and lands are left, which are left to the right of use for the public, and mewat lands, which are lands Empty that is not at anyone's disposal.

And state-owned real estate, corresponding to real estate owned by individuals(6), where it is possible to transfer real estate owned by individuals to the state and vice versa, and state-owned real estate includes real estate registered in the name of the treasury and unregistered.

The jurisprudence defines real estate owned by the state as: (real estate not owned by individuals (individual property), which is for the public's interest and benefits, and the state has the right to exploit, manage, supervise and dispose of it as individuals dispose of their private property (7) and real estate.

State-owned three types (8), we study them as follows: -

The First Requirement: State-Owned Real Estate Allocated for Public Interest

It includes state-owned properties allocated for public benefit that benefit the general public, such as rivers, seas, roads, streets and public squares (9), It is very similar to the lands abandoned in the Ottoman law that we referred to earlier, so the jurisprudence stated, that (these properties are not subject to the provisions of the civil law with regard to ownership, but are subject to the principles and provisions of administrative law, and they cannot be disposed of and cannot be possessed with the lapse of time and it is not permissible to seize them) (10).

Article (60) of the Jordanian Civil Code stipulates that: ((1- All real estate and movables belonging to the state, or public legal persons, which are actually designated for a public benefit under the law or regulation, are considered public funds. 2- It is not permissible in all cases to dispose of in these funds, or seizing them, or owning them with the passage of time)) (11).

The Second Requirement: State-Owned Real Estate Is Private Property

They are those that may be disposed of by persons of public law, in accordance with the legal rules determined by laws and regulations. These funds include (12) real estate registered in the name of the state treasury or a person of public law, and which it owns in several ways such as sale, exchange, settlement, or acquisition, or Allocation, or delegation (13), and the state is the one who manages its property by persons of public law, and it has the right to dispose of it, and in this it does not differ in appearance from the funds owned by individuals. Decided by the Civil Code of individuals, in terms of government contracts with individuals regarding their private property (14).

The Third Requirement: Legally Owned State Real Estate

According to Article (2) of the Law of Preserving State Lands and Property, which states that: (State property lands....means any other lands and properties of the state, even if it has not been registered, including the meowed lands....)

Real estate includes lands that are not registered in the name of the treasury, such as (the mewat lands), which are (the lands that have no owner and that are considered state property). These funds may not be disposed of, seized or owned by prescription.

If the government issues permission to a person to revive and rehabilitate the land of the dead in accordance with the relevant laws and regulations, then this person acquires the ownership of these lands through revitalization and reconstruction when the legal conditions for that are observed (15).

According to Article (2) of the State Property Management Law, issued after the law amending the provisions relating to immovable property (16), which considers all lands not registered in the name of the above-mentioned persons to be the property of the state, either in person or on behalf, and which states that (the term (state property) Immovable funds registered in the name of the treasury of the Hashemite Kingdom of Jordan or registered in its name in accordance with the provisions of the legislation in force) and based on the text of Article (2) of the Law on Preserving State Lands and Properties, which states that: (State lands and properties for the purposes of this law mean all immovable property registered in the name of the treasury, in person or on behalf of those who have an interest in it, and registered in the register of solutions and any other lands and properties of the state that have not been registered, including dead lands....) The following: (Raising the hand of the aggressor immediately upon filing a lawsuit against him, without paying attention to any claim of disposition.....) (17).

It is clear from the above that all unregistered real estate, whether it is outside the settlement or that is excluded from it or that is not owned by anyone, is lands owned by the state, and that the Law of State Property Management and the Law of Preserving State Land and Property are two laws related to the protection of public money, and thus it must be adhered to With their texts, their texts are peremptory, unlike the texts of the law amending the provisions related to immovable property, as they are texts of a special law regulating the relationship of individuals among themselves, and that the public law takes precedence over the private law. The law amending the provisions relating to immovable property, and that the last law is considered a law amending the first law. Therefore, the text of Article (3) of the law amending the provisions relating to immovable property has no value; Because these properties are owned by the state, and because any disposal of them by others is considered invalid, they are owned by the state as a public property of the community, and no person can authorize this sale, and the provisions of Articles (550) and (551) of the Civil Code are not applied to them on the grounds that it is a sale of property Others, and the provisions of Articles (171), (172), (301) and (302) of the Civil Code shall not apply to him, given that the seller is curious.

The Second Topic

Real Estate Settlement Mechanism

The former Land and Water Settlement Law was of great importance as its provisions were most applied by the Court of Cassation, whereby under this law individuals owned real estate by virtue of a judicial decision

issued by the Settlement Court, after its settlement was subject to certain procedures that must be observed(18), and the above-mentioned law was merged Within the texts of the Real Estate Ownership Law (19), so we present in this study, to the definition of settlement in general, then we go through the powers of the competent court of first instance, and we also study the powers of the settlement officer, and we are exposed to the registration of contracts for the sale of real estate that have been settled, as follows:

The First Requirement

Introduction To Settlement in General

When the state decides to register specific properties in the name of its beneficiaries, it first issues a settlement order in the Official Gazette, and then announces it to the public in the specified area, so that all persons, bodies and associations who have the right to dispose of, the right to own, or the right to usufruct in the land and water located in the settlement area, whether This right, recognized or contested, is to submit a request to the settlement commissioner to claim their rights, and in accordance with Article (35) of the Real Estate Ownership Law. For the year 1952, every person, as the owner of the right to dispose of, the right to own, or the right to a benefit in the land or water, or any rights related thereto, and any of these rights as a result of the implementation of the settlement if he objects ((20).

The settlement of lands goes through three stages, after issuing the settlement order, which are: the stage of announcement (21) based on Articles (36 and 37) of the Property Law, the stage of investigation and audit (22) on the basis of Article 38 up to Article 48) of the Property Law, and the stage of objection (23) A document (for Article 49 to Article 57) of the Property Law, after the completion of these stages and the ratification of the Bill of Rights, or the issuance of a court decision indicating the right holder, the Court of First Instance sends the schedule to the Director of Lands and Surveys, and the corrected schedule is known in this way as the Final Bill of Rights)(24).

After that, a registration manager must, after receiving the final table of rights, work on organizing another table called (the registration table). flattening (25), After the transaction of the registration is done, no court shall have the right to hear any objection to the validity of the records of that record except in the cases provided for in the Settlement Law, which is a conclusive argument for the validity of the ownership, so that no one other than the owner may acquire a right in his ownership for any reason whatsoever, Except on the basis of an official transaction taking place in the registration department (26).

The Second Requirement

Powers Of the Court of First Instance

The Settlement Court, which was a special court, consisting of a single judge appointed in accordance with the provisions of the formation of regular courts, was abolished, and jurisdiction and all issues related to the settlement were referred to the Court of First Instance, which had jurisdiction based on Article (2, 53 / a, b) of the property law, and the powers of a court The beginning is limited exclusively, in comparison with the powers of the Director General of the Land Department and the settlement commissioner. The powers of the Court of First Instance are as follows:

- 1 - Ratification of the Bill of Rights when no objections are received, in accordance with Article 56 of the Property Law.
- 2 - Examining the objections submitted by any person to the Bill of Rights, in accordance with Article (53) of the Property Law. The jurisdiction of the court in this case is limited to either dismissing the objector's claim and ratifying the Bill of Rights, or ruling for the objector to correct the Bill of Rights if the property has not been transferred to another person by sale. The court may issue a decision of precautionary seizure if the land is still in the name of the person in whose name the property is registered in the Bill of Rights, in accordance with Article (61/c) of the Property Law. The Court of Cassation ruled that (the Settlement Court has jurisdiction to consider the objections submitted in accordance with the provisions of the Settlement Law in relation to the lands for which the settlement order was issued and published in the Official Gazette...) (27).

3- Examining compensation claims brought by any injured person against the person who fraudulently acquired any right in the final schedule of rights stipulated in Article (61/b) of this law, provided that such action is submitted within three years from the date of ratification of the schedule of rights According to Article (60/a) of the same law.

3- Issuing a final decision to correct the error in the final table of rights arising from a written omission, a mistake in surveying, or a mistake in fixing or linking borders on maps during surveying operations, whether the error occurred before or after the entry into force of this law, based on a placement from the Lands Director in accordance with Article (62/a-d) of the Real Estate Ownership Law. In this regard, the Supreme Court of Justice decided, that (if the role of the land manager is to present the information available to him to the settlement judge to consider the correction request, and that in writing he did not modify the previous legal positions, but rather in the place of the assignment, then the assignment is not considered an administrative decision... The decision of the settlement judge is a judicial decision, whether in terms of formal or substantive criteria, or both, because it is a decision issued by a pleading judge who has the plaintiffs' representative, and after the pleading, he issued a ruling, not an administrative decision, and the jurisdiction of the Supreme Court of Justice does not include judicial decisions.(28)

The Third Requirement

Powers Of the Settlement Officer

In accordance with Article (34/a) of the Real Estate Ownership Law, settlement work takes place under the supervision and supervision of the manager, and is carried out by the persons he delegates on his behalf. The Court of Cassation ruled, that (.... which makes what the settlement officer did by registering the two plots of land subject to the objection in the name of the objector in accordance with the law....) (29).

The tasks of the settlement officer begin from the moment the settlement is announced, until the moment of preparing the table of rights, where the settlement officer on the ground is similar to the judge, as he prepares plans and sensory detection on the ground, informs the people of the area and hears all the conflicting parties among themselves about the real estate subject of the settlement, and when The settlement officer finishes investigating the allegations by all parties. He organizes a table called (the allegations table) that includes all the allegations, whether they are recognized or disputed. Registering the land in the name of the treasury if he did not find a disposal or any work on it, but the settlement judge in his work is ruled either to confirm the schedule by dismissing the objection case, or to rule the objector to correct the schedule, but if the settlement judge finds that the land has no disposal, he cannot register the land in the name of the treasury (30).

Fourth Requirement

Registration Of the Contract of Sale of Settled Real Estate

Article (2) of the law on the disposal of immovable property states that: "All transactions of disposal of princely and endowed lands and properties are confined to ... and the issuance of registration bonds thereto in the land registry departments." Article (3) of this law states that: "The Sharia and regular courts and other government departments are prohibited from hearing the case or conducting any transaction in immovable property, including property, that issued registration bonds in their lands by virtue of a law provisions of land settlement laws.

The Jordanian legislator, in Article 63 of the Real Estate Ownership Law, avoided the criticisms about the text of Article (16/4), with regard to the phrase, "The sale is not considered valid" by saying that the concept of an invalid contract does not necessarily correspond to the invalid contract. A defect occurred if one or both of the contracting parties was incapacitated, or he was one of those whose capacity was completed but the acceptance did not match the offer, or the subject of the contract was missing one of its conditions, or the cause of the obligation did not exist or the reason for the contract was unlawful, and the invalid contract is not legitimate its origin and description, rather its corner, place, purpose, or the form that the law imposed for its convening has been distorted, and it does not have any effect and the license does not respond to it...) (). The aforementioned Article 63 stipulates that (dispositions, contracts, or any transactions conducted on real estate

or water shall not be valid in the areas where the settlement was made if they are registered with the Registration Directorate, and any disposition, contract or transaction conducted to the contrary shall be considered void).

From the foregoing, it is clear that all sales contracts on real estate that have been settled, under the real estate property law, must be registered with the Land Registry Department and extract a title deed in it, after the seller and buyer acknowledge, pay legal fees and transfer to the Land Registry newspaper, and the failure to register them makes them void contracts .

The Third Topic

The Mechanism of Registering Real Estate That Has Not Previously Been Registered

Real estate that is not registered in the name of the treasury or its institutions, or is not owned by any of the individuals, is legally owned by the state, and the state owns it to individuals according to the law on the registration of immovable property that has not been previously registered, which has been incorporated into the real estate property law in the texts from Article 82 to Article 93 .

The Real Estate Ownership Law has determined the registration of real estate that has not been previously registered, the real estate to which this law applies, which are real estate on which no previous registration transaction has taken place or real estate that is not covered by settlement work. In each governorate or district, and upon submitting the request, the director shall announce the request with its details clearly in two daily local newspapers from the three most widely spread newspapers and on the department's website, as well as announcing the request in a prominent place in the village where the property is located, in the Registration Directorate and the administrative governor's headquarters. He indicates the two advertisements that are the subject of the application and informs the public that any person has an objection to the application within a specified period of thirty days from the publication of the first advertisement in the newspapers, and the registration applicant shall bear the advertising expenses (32). After the expiry of the above-mentioned period, and after paying the detection fee from the registration applicant, the manager inspects the property required to be registered. The warden, at the expense of the applicant, goes to the property's site, to verify the direction of disposal and its reasons, and to hear all objections. He organizes a report signed by the neighbors of the property, stating in it The details of the real estate and the reality of the situation regarding the request and objections, if any, and attached to the minutes an accurate plan of the real estate for the purpose of knowing its boundaries and its area, and submitting the papers of the real estate registration transaction that has not been previously registered for consideration to the Real Estate Registration Committee, and referring all requests and investigations to the competent committees (33).

The Real Estate Ownership Law Has Identified Two Bodies Competent to Decide on Registration, Namely

The First Requirement

Unregistered Real Estate Registration Committee

It is formed in each governorate or district, and it is composed of three members, who are each of the administrative governor, the membership of the finance director and the director of registration, and each of them is in his area. which it deems appropriate, and among its powers, is to postpone the decision on the application until the settlement work is implemented in the area in which the property is located. The department announces the settlement in the area in which the property required to be registered is located, and its decisions are by the majority, within sixty days, and its decision in this regard is communicated to the concerned parties. 87 of this law its decision to register the property in the name of the applicant (34).

The Second Requirement

Recourse To the Competent Court

The Court of First Instance, in whose area the property is located, has jurisdiction to review the appeal against the decisions of the committee submitted by the person harmed by the committee's decision, whether the

registration applicant was a rejection of his application, or he was a third party affected by the registration of the property in the name of the registration applicant, within a period of thirty days from notification of the decision, and the court considers the case pleading And it has the right to ratify the decision of the real estate registration committee that has not previously been registered or canceled according to the facts and evidence of the case (35).

All decisions issued regarding applications to register real estate that have not previously been registered shall be notified to the concerned parties by the registration manager or his designee from the other registration managers in the event that the person requested to be notified resides in an area outside the competence of the registration manager, and after (45) forty-five days have passed from the date of notification of a decision The committee to the stakeholders, the manager completes the real estate registration transaction in the name of the registration applicant according to the committee's decision unless the registration directorate receives during this period a notice from the court to stop proceeding with this transaction. (36).

Article (92) of the Property Law has confirmed what some jurisprudence has stated, "After completing the registration transaction in the records of the registration department, the disposal deed issued on the basis of this transaction is considered a document that cannot be challenged before the courts by the objector, but the absent, the insane, the imbecile and the minor are entitled to From filing a lawsuit against the one who registered the land in his name, or his ascendants or descendants, and the husband and wife, in the event that the ownership of the land is transferred to any of these and in any manner whatsoever. That: ((It is clear from the text of Article (8/c) of the law on the registration of immovable property that has not been previously registered, that the law has limited the right of the claim to challenge the registration deed issued in implementation of the provisions of this text if this claim is based on one of the reasons mentioned, which is the absence dementia or minors, and the lawsuit is based on a reason other than the aforementioned reasons is not acceptable), and these bonds are used without evidence and may not be invalidated. or renting it or placing it as a security for the debt, and each one of them has the right to dispose of it completely" (37).

The Third Requirement

Registration And Its Impact on Sales Contracts

We talked that real estate owned by the state or individuals may have been transferred to them, under the settlement, and the study of this topic is focused on answering the question that may be raised: Is it possible to apply the text of Article (63) of the Real Estate Ownership Law, to contracts for the sale of real estate owned by their owners under registration Real estate that has not been registered before, and are the contracts for selling it outside the registration department valid or not?

There is no text in the real estate ownership law in this regard, such as what came in the article referred to above, and we hoped the legislator would add to the article after a phrase in the areas in which the settlement took place or the real estate that was registered in the registration department, since the real estate law is a comprehensive law for most of the laws related to With regard to real estate, however, with reference to the definition of the registration transaction contained in the text of Article (2) of the same law, I defined it, as (the registration of a disposition, contract, change of ownership, amendment or cancellation thereof, seizure or reference regarding a real estate that requires the law to register any of them in the real estate registry in accordance with the provisions of the law) and thus the law requires the registration of all actions and contracts within the registration department, and any contract outside the registration department is considered void because it violates the text of an order. Considering the real estate sale contract as a formal contract, as is the case with the insurance mortgage)(38)., then based on the explanatory memorandum of the civil law that came as follows: (As Article 1148 stipulates, neither ownership nor rights in kind in real estate materials may be transferred except by registration. Because the reason for the transfer of ownership is the contract, and in this case the contract to sell the property outside the registration area is considered a valid contract, because the principle is in consensual contracts, and that registration is not considered a cornerstone of the contract because there is no legal text that dictates that.(39)

The Fourth Topic

Authentic Registration Bonds

When talking about the authenticity of registration, we must differentiate between two stages. The first stage is the authenticity of the registration deed issued by the registration department to the owner by hand by settlement or registration of real estate that has not previously been registered. And we talk about that in two demands as follows:-

The First Requirement

Authenticity Of the Registration Deed Issued by The Registration Department to The Owner by Hand بوضع

The registration deed according to which individuals own real estate according to the settlement or real estate registration, it is considered an official document with its contents and an argument against all, in other words, if the reason for owning the real estate is based on settlement work, or registration, and received a registration deed, no individual can have the right Or he acted prior to the settlement, authorization or registration works, proving the opposite of what was stated in the registration deed, and his right is limited to a claim for compensation only, and the evidence for this is the following:

1 - The text of Article (59) of the Real Estate Ownership Law, which states: "In cases other than those stipulated in this law, no court may hear any objection to the validity of the final schedule of rights or to the validity of any entry in the real estate registry or the return water registry." For the village)... This text was repeated in Article (65) of the same law, where it stipulated (in cases other than those stipulated in this law, no objection is heard about the validity of the final bill of rights or the validity of any of the records of the real estate registry or the water registry) . We wish the Jordanian legislator to remedy this repetition and to be satisfied with the last text. Lands and waters are registered in this registry according to the registration schedule based on the final rights and secretion schedule, and registration bonds are issued after paying the fees or expenses that are due from the settlement work. After the registration is processed in the aforementioned manner, no court in the Hashemite Kingdom of Jordan has the right to hear any objection to the validity of the records of that record...)

2 - The text of Article (92) of the Real Estate Ownership Law regarding registration bonds issued as a result of real estate registration actions that precede its registration, in which it says (The document issued by the Registration Directorate with the right to act in the name of the applicant is a document that is not subject to appeal before the courts by any objector to this registration However, the injured person who is incompetent, lost, absent or missing, has the right to file a case with the court against the person who registered the property in his name during the period mentioned in paragraph (b) of Article (50) of this law, or against any of his ascendants, descendants, or his wife in the event of The ownership of the property is transferred to any of them in any way, and if it is transferred to others, the provisions of Article (13) of this law shall be applied) to show from this text that if the property is registered in the name of any individual, no individual has the right to expropriate it, even if the ownership of the property For others, the aggrieved party is limited to claiming compensation only.

3 - What some jurisprudence has held, (If the title deed - (registration deed) - arises under the Land and Water Settlement Law, then it is considered an official document, the owner of which is exempted from establishing evidence of the validity of what it contains, because what it contains is a stand-alone evidence, and it works It is used by the courts without evidence to prove it, and its contents cannot be challenged by any means of appeal, not even by fraud or forgery.(40)

The Second Requirement

Authenticity Of the Registration Deed Under Which Ownership Is Transferred to Others

After the individuals received the title deed - (registration deed) - after the settlement or registration work, and the owner of the registration deed wanted to sell, here the matter is different. The invalidity of the contract due to the absence of mutual consent or its invalidity or adherence to a defect of consent, and this was confirmed by some jurisprudence by saying (The registration of the property in the land registry does not confer absolute authority on the sale contract so that it is not permissible to challenge it due to a defect in its elements or effects, as the texts must be respected The command that governs the rules of contract conclusion and its enforcement, and registration is nothing but to guarantee the rights of the contracting parties first and to better organize and manage real estate, and this is why its strength lies in concluding the contract and transferring ownership of the property to the buyer) and this was confirmed by some jurisprudence by saying (the authenticity is absolute for the restriction resulting from the settlement, and the appeal for nullity and rescission). It is in the bonds that are issued not based on settlement work, i.e. after the title deeds are issued ((41)

CONCLUSION

As we have finished this study, in which I dealt with a topic that is considered one of the most important topics in practical life, we have tried hard to combine theory and practice, as analysts and critics of the subject, researching jurisprudential opinions and citing judicial rulings. We have reached the following conclusions and recommendations:

First: The Results

- 1 - The real estate owned by the state is of three types: the first is real estate designated for public interest, and the second is real estate owned by the state, private ownership, i.e. registered in the name of the treasury or one of its institutions, and real estate owned by the state by law, that is, unregistered real estate.
- 2 - The transfer of ownership of state-owned real estate to individuals, includes registered and unregistered lands, where individuals can register state lands in their own name, provided permission from the state, through the acts of the provisions of the real estate ownership law, whether by settlement or registration.
- 3- If the ownership is transferred to individuals, according to the settlement of land and water, or the registration of immovable property that has not previously been registered, then the title deed is considered an official document, and its contents cannot be challenged by any means of appeal, not even by fraud or forgery. After that, the title deed may be challenged, for any defect in the contract's pillars or failure in the implementation of the contract, before the regular courts, to demand the invalidity or rescission of the act.

Second: Recommendations

Given that the real estate law comprising several laws related to the transfer of real estate ownership in Jordanian law, it caused confusion in the legal texts in them, and inconsistency among them, which is reflected in the opinion of Jordanian jurisprudence, and on the accuracy of judicial decisions that will be issued in this regard. It should be necessary to intervene by the legislator again, some of the provisions of the real estate law, which meets the needs and requirements of civil security and stability of real estate transactions, and to surround them with strict protection, preventing abuse and exploitation, especially since real estate is the core of the national economy of all countries.

And the Jordanian legislator did well, at this stage uniting it with a law, setting the precise legal and field organization for the most important element of the national wealth, and knowing the holders of these real estate records that enjoy conclusive authority against all, in response to those who call for the existence of a single law that shows people what they have and what they owe, through An inventory of real estate and an indication of its types, owners, its history, the actions taken on it and the rights arising therefrom, taking into account that these procedures should not be a restriction preventing the movement of these economic real estate, but rather that they require a great benefit by knowing the owner of the property and preventing it from being sold more than once, and also limiting The possibility of selling the property of others, preventing

encroachment between owners, protecting state lands and not attacking them and excluding some people in them.

REFERENCES

- The Real Estate Ownership Law No. (13) of 2019 was issued in the Official Gazette No. (5573), dated May 16, 2019, page No. (2792).
- If the seizure of real estate, it does not acquire its ownership, no matter how long it has passed, except with the permission of the state and the activation of one of the laws mentioned below, and related to unregistered real estate or that has not been settled, real estate that has not been subject to settlement under the settlement law, or has not been authorized by virtue of The law on the management of state property, or that has not been registered under the law on the registration of lands that have not been previously registered. As the closing of the door to its registration makes it frozen real estate that does not accept the transfer of ownership to others even because of inheritance (), and the Ministry of Finance or (Treasury) may demand registration like individuals, based on the fact that the neck of the land belongs to the state, such as forests, for example, and rivers, so these are funds It is immovable, and the state may demand its registration if it is not. Article (3) of the law amending the provisions relating to immovable property states: Or those excluded from it are effective if a period of ten years has passed since the actual disposal of the purchaser in the princely lands, and fifteen years in the owned real estate). See, Mustafa, Real Estate Ownership in Iraq, Part One, *Ibid.*, pg. 191, The Law amending the provisions relating to immovable property No. 51 of 1958, was issued in the Official Gazette No. 1410 dated 1/1/1959, and a law was issued Management of State Property No. (9) of 1968, which was repealed by Law of Management of State Property No. (17) of 1974, published in the Official Gazette in Issue No. (2486) issued on 4/16/1974, Article (20/c) of the latter.
- See, Al-Jubouri, Al-Mabsout fi Sharh Civil Law, Part Two, Effects of Personal Rights, Volume One, Book One, Section One, previous reference, pg. 193. See Al-Zoubi, Contracts Named Explanation of the Sale Contract in the Civil Law, *ibid.*, p. 240 and beyond, and his research entitled The Effect of Possession in Gaining Ownership of Real Estate Over Time, *Dirasat Journal*, University of Jordan, Volume Twenty (A) Supplement, 1993, pg. 462 and beyond. And his research entitled The extent of the strength of the registration of real estate sales in the Jordanian Land Registry, *Dirasat Journal*, University of Jordan, Volume 13, Volume 3, 1986, p. 3, p. 9 and beyond, and Salem Hammad Al-Dahdouh, the legal nature of registration and the effect of its failure on real estate sales, PhD thesis, Alexandria University, 1997, p. 313.
- See, Wafi, Ali Abdul Wahed, Private Property in Islam, Lectures of the Third Cultural Season of the Academic Year 1968/1969, Omdurman Islamic University, p. 3.
- See, Majeed, Law of Explanation of the Real Estate Registration Law, previous reference, p. 88 and beyond.
- Mubarak, Saeed Abdul Karim, Summary of the Provisions of the Jordanian Civil Law, Rights in Kind, 1st Edition, without a publishing house, 1995, p. 83, and see Siwar, Muhammad Waheed Al-Din, Explanation of Civil Law, Original Rights in Kind, Part 2, Reasons for Earning Ownership and rights derived from the right of ownership, a budget study in Arabic blogs, Library of Culture House for Publishing and Distribution, Amman, Jordan, 1999, p. And see, Al-Obaidi, Ali Hadi, Al-Wajeez in explaining the civil law, rights in kind, (original in-kind rights, subsidiary rights in kind, property right, rights subordinated to the right of ownership, budget study), 5th edition, House of Culture for Publishing and Distribution, p. 102 and what Then . Al-Assaf, Legal Functions of the Money Register, previous reference, p. 130 and beyond. Omar, Hamdi Pasha, Transfer of Real Estate Ownership, previous reference, 15 and beyond.
- See, Duhnay Baak , Abd al-Salam, in Money, Movables and Real Estate, Al-Etimad Press, Egypt, 1926, p. 7. Also see, Al-Zoubi, The Effect of Possession in Gaining Ownership of Real Estate Over Time, *Ibid.*, p. 470.
- See, Decision of the Constitutional Court No. (3/2013) dated 6/12/2013, published in the Official Gazette, Issue No. (5225), page No. (3028), on 1/1/2013.
- Othman, Osama, Provisions for the Disposition of Public and Private State Properties in the Light of Jurisprudence and Judiciary, Mansha'at Al Maaref, Alexandria, Egypt, 1987, p. 19 and beyond, where the researcher touched on the statement of the state-owned properties allocated for public benefit.
- See, Al-Zoubi, The Effect of Possession in Gaining Ownership of Real Estate Over Time, *Ibid.*, pg. 470
- See, Al-Sharman, Walid, The Importance of State Property, unpublished research, Department of Lands and Surveys, 1998, p. 5 and beyond. Omar, Hamdi Pasha, Transfer of Real Estate Ownership, previous reference, 15 and beyond. Salam, Rafiq, Criminal Protection of Public Funds, second edition, Dar Al-Nahda, Cairo, 1994, p. 69.
- See, Article (60) of the Jordanian Civil Code.
- Where the Jordanian Civil Code referred to it in Articles (1080-1084), and Article (1080) of the Law stated that: 1 - The lands that have no owner are owned by the state.
- 1- It is not permissible to own these lands or seize them without permission from the government in accordance with the law.
- See, Al-Zoubi, Muhammad Yusuf, The Effect of Possession in Gaining Ownership of Real Estate Over Time, previous reference, pg. 462 and beyond. Sheikha, Ibrahim Abdel Aziz, Principles and Provisions of Jordanian and Lebanese Law, A Comparative Study, University House, Beirut, 1983, p. 279. And see, Al-Zoubi, Khaled Samara, Administrative Law and its Applications in the Hashemite Kingdom of Jordan, second edition, House of Culture, Amman, 1993, p. 280. Sheikha, Principles and Provisions of Jordanian and Lebanese Law, previous reference, pg. 281 Omar.

How to Transfer Ownership of Real Estate to Individuals by Settlement, Or by Registration

See, Mubarak, Saeed Abdul Karim, Summary of the Provisions of the Jordanian Civil Law, Rights in Kind, 1st Edition, Without a Publishing House, 1995, p. 83, and see, Siwar, Muhammad Waheed Al-Din, Explanation of Civil Law, Original Rights in Kind, Part 2, Reasons for Acquiring Ownership and Rights Derived from the Right to Ownership, A Budget Study in Arabic Blogs, Library of Dar Al Thaqafa for Publishing and Distribution, Amman, Jordan, 1999, p. And see, Al-Obaidi, Ali Hadi, Al-Wajeez in explaining the civil law, rights in kind, (original in-kind rights, subsidiary rights in kind, property right, rights subordinated to the right of ownership, budget study), 5th edition, House of Culture for Publishing and Distribution, p. 102 and what Then .

The law amending the provisions relating to immovable property No. (51) of 1958 was issued in the Official Gazette No. (1410) dated 1/1/1959, and the State Property Administration Law No. (9) of 1968 was issued, which was canceled by the State Property Management Law No. (17) for the year 1974, published in the Official Gazette in Issue No. (2486) issued on 4/16/1974, Article (20/c) of the latter.

Therefore, the contract of sale by individuals of real estate owned by the state, in which the settlement was not announced, or which was not authorized, is a void contract, based on the mentioned laws, and this was confirmed by the Court of Cassation (since Article (2) of the Law of Preserving State Lands and Properties stipulates) State lands and properties for the purposes of this law mean all immovable funds registered in the name of the treasury, in person or on behalf of those who have an interest therein, and registered in the liquor register. Contrasting with this in any other law, the registration restrictions and royal decrees related to state property are considered, and their content is judged and worked in the courts without evidence). As for what was raised in the Cassation Regulations regarding adherence to the provisions of Article (3) of the Law amending the provisions relating to immovable property, in terms of the existence of sales and disposal contracts, the concept of this Article refers to the disposition that is based on sale From the owners of the property, and I am not curious, and the official evidence as we mentioned proved that the land is not for the sellers, and therefore there is no lesson for this behavior, as long as it is not based on any legitimate reason, and that this behavior in reality is nothing more than an attack on the state's lands without permission and without justification Legal (See: Cassation Resolution No. (2380/1997) dated 4/3/1998, Adalah Publications. In another decision of the Court of Cassation, it stated that: (Since the period specified in Article (3) of the law amending the provisions relating to immovable property, did not pass the external sale contract formed between the plaintiff and the defendant, what is based on this is that this sale is not considered Accordingly, the plaintiff (the distinguished against him) has the right to recover the amount he paid to the defendant (the distinguished) from the price of the property, as it was proven that the land sold by the defendant to the plaintiff under the external sale contract is from the treasury lands, so the defendant has sold a registered land In the name of the treasury of the Hashemite Kingdom of Jordan, and it is a void sale that entitles the plaintiff to recover the price he paid to the defendant...) See: Cassation Resolution No. (292/2000) dated October 26, 2000, Adalah Publications.

Refer, Land and Water Settlement Law No. 40 of 1952 and its amendments, Land Determination, Survey and Valuation Law No. 42 of 1953, Land and Water Registration Fees Regulations No. 2 of 1952, and Land and Water Settlement Court Fees No. (3). For the year 1952 issued pursuant to Article (27/1 and 2) of the above settlement law.

See Articles 35 and beyond of the Real Estate Ownership Law.

Cassation Resolution No. (318/2015) dated 7/30/2015, Qastat Center Publications.

Announcement stage: When the Lands General Director sets the date that will be the date for starting the settlement work, he announces to the people of the settlement area and this announcement is called (Settlement Announcement). A copy of this announcement must be hung in a prominent place in the village, town or clan that will take place in its area. Settlement work, and if he does not make this comment, then any of the settlement procedures will be considered void.. See: Al-Zoubi, Land Registry entries as a result of the settlement, previous reference, 325 and beyond. And its author, The Named Contracts, the previous reference, p. 241 and beyond, Siwar, Explanation of the Civil Law, the original real rights, the previous reference, p. 133 and beyond.

The stage of investigation and audit, which is the stage in which the director of lands and surveys must publicly investigate the allegations of the stakeholders according to the rules decided by the director of the lands, provided that they submit them at the time and place specified for that. The schedule of rights that he specifies, see: Siwar, Explanation of the Civil Law, the original rights in rem, previous reference, p. 133 and beyond.

The objection stage, which is the stage that begins after the table of rights is suspended in the registration department and in a prominent place in the village, and a copy of it is delivered to the village mayor. In the objection, it must be submitted within thirty days from the date of suspending the schedule of rights and two exceptions are given to this original: for the minor and the incompetent, and for those who were outside the country, see: Siwar, Explanation of the Civil Law, Original Rights in Kind, previous reference, p. 133 and beyond.

See: Article (56/b) of the Property Law. And review, Al-Zoubi, Land Registry Restrictions as a Result of Settlement, previous reference, 325 and beyond. As well as its author, The Named Contracts, the previous reference, pg. 241 and beyond, Siwar, Explanation of the Civil Law, the original rights in rem, the previous reference, p. 133 and beyond.

See: Article 57/a of the Property Law. And review, Al-Zoubi, Land Registry Restrictions as a Result of Settlement, previous reference, 325 and beyond. As well as its author, The Named Contracts, the previous reference, pg. 241 and beyond, Siwar, Explanation of the Civil Law, the original real rights, the previous reference, p. 133 and beyond.

See: - (59) of the Property Law, and see also, Resolution of Cassation of Rights No. (191/ 1978) dated May 31, 1978, Adalah Publications, and see: Al-Assaf, Legal Functions of the Funds Registry, previous reference, p. 131 and beyond . Al-Zoubi,

- Land Registry Restrictions as a Result of the Settlement, previous reference, 325 and beyond. As well as its author, The Named Contracts, the previous reference, p. 241 and beyond, Siwar, Explanation of the Civil Law, the original rights in kind, the previous reference, p. 133 and beyond.
- Cassation Resolution No. (343/1980) dated October 29 1980, Qastas Center Publications.
- Supreme Court of Justice Decision No. (34/1978) dated May 13, 1978, Qastas Center Publications.
- Cassation Resolution No. (936/2001) dated 06/28/2001, Qastas Center Publications. See also, in the same sense, Cassation Rights Decision No. 260/1977 (date 9/24/1977, Qastas Center Publications, as well as Supreme Justice Resolution No. 125/1966) dated 3/15/1966, Qastas Center Publications, and see, Cassation Rights No. (52/1970) dated 3/19/1970, Qastas Center publications, as well as distinction of rights No. (3375/2007) dated 06/26/2008, Qastas Center publications.
- See, (37, 38, 43, 44, 47) of the Real Estate Ownership Law.
- Al-Fatlawi, Sahib Obaid, The Named Contracts, House of Culture for Publishing and Distribution, Amman, 1993, p. 93 and beyond. And its author, Forced Specific Execution of Unregistered Real Estate Sale Contracts, Comparative Analytical Study, op. cit., 39 and beyond. Al-Kashbour, Muhammad, Selling real estate between contentment and form, previous reference, p. 55 and beyond.
- See Articles (84-85) of the Real Estate Ownership Law.
- See Articles 2 of the Real Estate Ownership Law .
- See Articles (87 and 88) of the Real Estate Ownership Law .
- See Articles 2 and 89 of the Real Estate Ownership Law .
- See Articles (90 and 91) of the Real Estate Ownership Law.
- Al-Assaf, Legal Functions of the Money Registry, previous reference, p. 76 and margin 2 of the same page. In this regard, refer to Mustafa, Real Estate Ownership in Iraq, the previous reference, p. 191, and Al-Hakim, Abdul Majeed, The Month of Real Estate Dispositions in Iraqi Law, Documents and Texts of the Seminar's Work Group on Real Estate Laws in the Arab Countries, Institute of Arab Research and Studies, Cairo, Republic of Arab Egypt, 1973, p. 380.
- Article (1323) of the Jordanian Civil Code states that: A security mortgage shall not be contracted unless it is registered.
- Abu Dalbough, Reem, Formality in the Real Estate Sale Contract in Jordanian Law, op. cit., p. 82.
- Al-Zoubi, Muhammad Yousef, Jordanian Land Registry Records as a Result of the Settlement, Ibid., p. 317.
- Al-Assaf, Legal Functions of the Money Registry, previous reference, p. 76, and Abu Dalbough, Reem, formality in the property sale contract in Jordanian law, previous reference, p. 82. Examples include, for example, the following:
- 1 - Invalidity¹ as a result of the imbalance in the consensual corner: it is possible to imagine the transfer of ownership of the property and registration from a person other than the owner, if this seller presented as the real owner with forged documents and documents that were proven to be forged after registration.
 - 2 - Imbalance in the corner of the shop: that one of the conditions of the corner of the shop in the contract is that it be a specific designation that denies outrageous ignorance, and on the contrary, the contract is void. .
 - 3- Termination of the contract: According to Article (246) of the Civil Code, four conditions must be met for the possibility of annulment to be achieved (), the first of which is: the debtor's breach of his contractual obligation represented by his failure to perform his obligation, his delay in its implementation, partial implementation, or defective implementation, Provided that the breach of an obligation is essential and not secondary, and the second condition: excuses for the breach of commitment, and the third condition: that the breach of implementation of the obligation is attributed to the defendant, and the fourth condition: that the applicant for rescission has implemented his commitment, or is ready to implement, and that the breach of an obligation is one of the emerging obligations The contract is a reason for rescinding the contract of sale of the property, and rescission means that each contracting party in contracts binding on both sides may request rescission of the contract and return the situation to what it was before the contract.

List of Sources and References

- Baz, Salim Rostom (1986), Explanation of the Journal of Judicial Judgments, 3rd Edition, Arab Heritage Revival House, Beirut.
- Tharwat, Kamal Qasim, Explanation of the Provisions of the Sale Contract, 2nd Edition, Baghdad, 1976. Al-Jubouri, Yassin Muhammad (2008), Al-Wajeez in Explanation of Civil Law, Part One, Sources of Personal Rights, Edition 1, First Edition, House of Culture for Publishing and Distribution, Amman.
- Jaradat, Muhammad Abdullah (1995), the settlement of land rights in Jordanian law, a comparative study of a master's thesis, Lebanese University, Beirut, Lebanon.
- Haddad, Hamza (1978), The Contract Contract in the Jordanian Civil Law, Journal of the Bar Association, Research Supplement No. 2.
- Al-Hanbali, Shaker (1947), a summary of the provisions of land and immovable property, Al-Tawfiq Press, Damascus, Syria.
- Hawa, Hassan Habib, The Real Estate Notification System in Jordan, an article in the Lawyer's Journal, p. (7, 8), 1972.
- Haidar, Shakir Nasser (1947), Rulings on Land and Immovable Property, 1st Edition, Al-Etimad Press, Baghdad, Iraq.
- Al-Khafif, Ali, Publication of Real Estate and Recording Dispositions and the Position of Sharia on it, an article published within the group of realization seminars for the real estate registration laws in the Arab countries in 1972.
- Department of Land and Survey, set of laws, regulations, and instructions related to the work of the Department of Land and Survey (2007), part 2, edition 4, Amman - Jordan.
- Al-Dahdoh, Salem Hammad Shaaban (1997), the legal nature of registration and the effect of its failure on real estate sales, Ph.D. thesis, Alexandria University, Egypt.

How to Transfer Ownership of Real Estate to Individuals by Settlement, Or by Registration

- ___(1989), *Formality in Civil Contracts in Jordanian Law, A Comparative Study*, Master's Thesis, University of Jordan, Amman, Jordan.
- Daradkeh, Fouad Saleh Musa (2005), *Pledge to Transfer Ownership of Real Estate, Jurisprudential and Judicial Study of the Jordanian Civil and Iraqi Civil Laws*, New Vision, Kuwaiti Law Journal.
- Dawas, Amin (2013), *Land Law*, Palestinian Judicial Institute, Palestine.
- Diab, Asaad, Ziada and Tariq (1985), *Research in Selection, Editing, Records and Real Estate*, Modern Library Publications, Tripoli, Lebanon.
- Jam, F. A., Sheikh, R. A., Iqbal, H., Zaidi, B. H., Anis, Y., & Muzaffar, M. (2011). Combined effects of perception of politics and political skill on employee job outcomes. *African Journal of Business Management*, 5(23), 9896-9904.
- My Mind Bey, Abd al-Salam (1926), *In Money, Movables and Real Estate*, Al-Etīmad Press, Egypt.
- Al-Zoubi, Muhammad Youssef (1993), *Named Contracts, Explanation of the Sale Contract in Civil Law*, 1st Edition, House of Culture for Publishing and Distribution, Amman, Jordan.
- ___, *The extent of the strength of the registration of real estate sales in the Jordanian Land Registry* (1986), *Journal of Studies*, University of Jordan, Vol. 13, p. 19.
- ___ (1993), *The Impact of Possession on Acquiring Ownership of Real Estate Over Time*, *Dirasat Journal*, University of Jordan, Volume Twenty (A) Supplement.
- ___ (1986), *Jordanian Land Registry Records Result of Settlement*, *Dirasat Journal*, University of Jordan, Volume 13, P3.
- ___ (1988), *Reasons for Terminating the Contract between Hanafi Jurisprudence and Jordanian Civil Law*, *Mutah Journal for Research and Studies*, Volume Three, Issue Two.
- (1994), *Disposal of the right of ownership over the right to dispose*, *Yarmouk Research Journal*, Humanities and Social Sciences Series, Volume Ten, Issue Two.
- Al-Saud, Heda Abdul-Rahman Al-Sulaiman (2005), *Land Ownership and the Evolution of Land Systems in the Emirate of Transjordan*, Ph.D. thesis submitted to Yarmouk University unpublished, Amman.
- Al-Sharman, Walid (1998), *The Importance of State Properties*, unpublished research, Department of Lands and Surveys.
- Al-Sarraf, Abbas Hassan (1976), *selling real estate before registration in Iraqi law, a comparative study*, *Justice Journal*, Q2, p. 4, year 1976, and also published in the *Iraqi Law Journal*.
- (1984), *Pledge of Transferring Ownership of Real Estate in accordance with Article (1127) of the Iraqi Civil Code*, *Journal of Legal and Political Sciences*, College of Law and Politics at the University of Baghdad, a special issue on the occasion of the Diamond Jubilee of the College of Law, Al Dar Al Arabiya Press, Baghdad.
- Al-Attiyat, Malik Tuaima (2013), *The Problems of Classifying Land into King and Mary in Jordanian Law, (a comparative study)*, PhD thesis, Amman Arab University.
- Al-Obaidi, Ali Hadi (2005), *Al-Wajeez in Explanation of Civil Law, Rights in Kind (original in-kind rights, subsidiary rights in kind, property right, rights subordinated to the right of ownership, budget study)*, 5th edition, House of Culture for Publishing and Distribution.
- Al-Assaf, Tayseer Abdullah Al-Makid (2007), *Legal functions of the immovable property registry, a comparative study*, PhD thesis, Amman Arab University, Jordan, Amman.
- Omar, Hamdi Pasha (2000), *Transfer of Real Estate Ownership*, Homa House for Printing, Publishing and Distribution, Algeria.
- ___ (2013), *Protection of Private Real Estate*, 9th edition, Homa House for Printing, Publishing and Distribution.
- Al-Fatlawi, Sahib Obaid (2002), *Compulsory In-kind Execution of Unregistered Real Estate Sale Contracts, Comparative Analytical Study*, *Mutah Journal for Research and Studies*, Volume 17, Issue 8.
- Al Kashbour, Muhammad (2001), *Selling Real Estate between Consensuality and Form, A Study of Islamic Jurisprudence, National Law and Judicial Positions*, 2nd Edition, New Success Press, Casablanca.
- Al-Momani, Suhaib Musa (2005), *The Role of Formalism in Legal Actions, A Comparative Study*, Ph.D. Thesis, Amman Arab University, Amman, Jordan.
- Majid, Mustafa (1973), *Explanation of the Real Estate Registration Law No. (43) of 1971, Part 1*, Al-Irshad Press, Baghdad.
- Mohamed, Abdel-Gawad Mohamed (1974), *Land Ownership in Libya in the Old and Ottoman Era*, Cairo University Press, Khartoum.
- Al-Murr, Dr. Aybes (1981), *Explanation of the Land Law - 1924*, which was reprinted and published within the sixteenth part of the *Palestinian Laws Collection*, prepared and compiled by Suleiman Al-Dahdouh