

# The Legal responsibility of the lessor about hidden defects in the leased premises at the Jordanian Civil law - A comparative Study

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## Abstract

The subject of this research revolves around the existence of the hidden defect in the wage and the penalty resulting from the Jordanian civil law, which is one of the most relevant subjects in our lives, where there is a lot of dealing between members of society, owners or tenants. The Jordanian legislator did not stipulate that the tenant should oblige the lessor to repair the defect by removing it or replacing the defective wage with the proper wage. The Jordanian legislator does not differentiate between the lessor who knows the effect and the lessor who is not aware of it, and its effects on the amount of compensation for damage caused by the hidden defect in the rental. The criterion is that if the lessor is aware of the defect or not, and the lessee is entitled to compensation for the damage caused by the defect in the leased and the amount of compensation includes all that the lessee's right of loss only. Also, the lessor who is aware of a defect informs the lessee that there is a defect at the time of signing the contract is not asked to compensate for the defects existing at the time of the lease, through the research, I reached to important results for the society as a whole, so as to guarantee the rights of tenants, especially that the Jordanian laws did not explicitly provide these solutions, which requires us to address the position of jurisprudence and the judiciary on this issue. Therefore, this research is divided into three sections, section one: specific performance. section two: cancelling the lease or the reduction of rent. section three: compensation.

**Keywords :** hidden defect. Owner and tenants. Lessee obligation. Jordanian civil law.

## Introduction:

Talking about the right of the lessee to terminate the contract or to reduce the rent is preceded by a security action of a warranty, which is to notify the lessor within a reasonable period of time for every defect found in the leased premises and the lessor have to guarantee it, in addition to proving the defect. The Jordanian legislature did not refer to this subject in legislative terms, leaving the issue of proof of the defect to the general rules, despite the importance of these procedures the Jordanian legislature did not assign a special legislative text to this issue.

The Jordanian legislator did not provide the matter of the lessee to oblige the lessor to repair the defect by removing it or replacing the defective premises with a proper one, which requires us to address the position of jurisprudence and the judiciary on this issue.

The right of the lessee does not stop at this limit, but he may also claim compensation for the damages and harms caused to him. The legislator has provided the lessee with an additional means of reparation, through which he can obtain money as compensation for the harm he has suffered or to remove the damage, as an additional procedure that was approved by the legislature in most cases.

If the conditions exist for a defect in the lease, the lessee has the right to cancel the contract or reduce the rent, while ensuring that the damage is incurred, and that if the lessee found a defect in the leased premises that require the guarantee, and applied to the terms of defect warranty he can sue the lessor by either terminating the contract or reduce the rent in proportion to the defect found in the leased premise.

## Research problem

The problem of this research lies in several questions:

- 1-Is it permitted for both the lessor and the lessee to agree on adjusting the provisions of the warranty of the hidden defect?
- 2- What is the limitation period of a lawsuit for the warranty of a hidden defect?
- 3- What is the effect of hiding the defect by the landlord as an intentional fraud in all the previous issues?

## The importance of the research:

The importance of the research lies in:

- 1-Clarifying the eligibility of the lessee's request to the lessor for specific performance.
- 2-Terminate the existing defect.
- 3- Clarifying the right of the lessee in cancelling the lease.
- 4-Clarifying the right of the lessee to hold leased premises and reduce the rent.

## Research objectives:

The objectives of the research are highlighted in the penalty statement of a hidden defect in the rent, in addition to answer the questions of the previous study.

## Research Methodology:

In this research, the comparative analytical, descriptive approach was followed through the study and analysis of the legal texts through the reference of the Jordanian and Egyptian civil laws.

### 1. Specific Performance

The Lessee may detect that there is a defect in the rented premises that meets the terms of the defect required by law for the possibility that the lessor may be liable for the guarantee, even if it is liable for the guarantee, and which causes damage to the lessee, but it does not require the termination of the lease between him and the lessor because the lessee may prefer the leased premises or find it suitable.

Therefore, we will divide this subject into two sections:

#### 1.1 The right of the lessee to claim the lessor specific performance.

The Jordanian legislator did not provide the right of the tenant to claim the in-kind specific performance of the lessor in the terms relating to the warranty of the defect in the lease. The text of article 687 of the Jordanian Civil Code states: "If the defect results in depriving the lessee from using the rent, he is permitted to cancel the lease or reduce the rent with guarantee damage caused. Based on this article some jurists tended to the inadmissibility of obliging the lessor to repair or remove the defect. Accordingly, there is no need to exchange the same defect. Therefore, the lessee has no right to claim the lessor to specific performance if there isn't any defect requires guarantee, as a legislator in this article, select the options available to the lessee specifically without including a choice of in-kind specific performance.

While another trend of jurisprudence indicates that the lessee may demand the in-kind specific performance despite the fact that there is no provision in the law, provided that it is not excessive, considering that there is nothing to prevent it as long as it applies to the general rules. Based on it the lessee may request the removal of the defect if the removal is not borne by the lessor because the lessor is the guarantor of the defect<sup>1)</sup>.

The researcher think that the lessee may demand the lessor to guarantee the defect in the rent as long as the terms of the warranty are as required, and there is no reason to oblige the lessor to repair the defect or to replace the defective premises as long as it does not harm the lessor, and it may be to the interest of the lessor himself, who may detriment by cancelling the contract or by the reduction of the rent with having ability to repair the rent or remove the defect. Article 517 of the Code of Justice states that: "If the defect is removed before the lessee terminates the lease, he will not have the right of annulment it."

Hence, the researcher concludes that the lessor may remove the defect found in the lease, before the tenant cancel the lease, thus the tenant shall not have the right to terminate the contract.

"Some jurists who have argued that it is permissible to demand in-kind specific performance based on practical reality if the defect is repairable, the lessee must also accept the offer of the lessor to repair the defect, even if the lessee has the right to appeal the annulment<sup>2)</sup>.

The general rules state that the creditor has a fixed right to apply for in-kind execution if such action is possible and not impossible, and if the creditor does not perform the obligation willingly<sup>3)</sup>. This is stated in Article 355/1 of the Jordanian Civil Code, which states: "1. The debtor shall be compelled, after being notified, to perform what he has committed to perform in kind whenever possible .<sup>(1)</sup> In applying this provision, we find that it agrees with the claim to the application for in-kind specific performance as required by the general rules in the implementation of the obligation, and that there is no dispute that the lessee may request in-kind implementation by repairing the defect in the hire where possible, that means the repair should not cost large expenses .<sup>(2)</sup> In other words, the repair of the defect does not require large expenses that are not commensurate with the rent, and if the repair requires reconstruction or work that incurs heavy expenses that harm the lessor, provided that all this is done within a reasonable period so that the tenant does not deprive from using the property for a long period of time, otherwise he would have to request for annulment or reducing the rent stipulated in Article (687) of the Jordanian Civil Code.

On the other hand, the lessee may request the court to authorize him to carry out the repairs required at the lessor's expense, according to the provisions of article (356/2) of the Jordanian Civil Code, which states: "If the debtor does not work The creditor may request permission from the courts to do it at the expense of the

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<sup>1</sup> Article 203 of the Egyptian Civil Code reads as follows: "The debtor shall be obliged, after his excuse, in accordance with articles 219 and 220 to carry out his obligation in kind, whenever possible".

<sup>2</sup> Explanatory Notes to the Jordanian Civil Law, 1/391.

debtor or to execute it without authorization if necessary <sup>(1)</sup>.

If the lessee is required to perform the in-kind specific performance, and the lessor has the right to do so, avoiding lease cancelling, the lessor must repair the defect. In this regard, it must be considered that the extent of applying the specific performance if the lessor is committed to maintain the rent and the consequences of the breach. The text of Article 681 of the Jordanian Civil Code states that :1-The lessor is obliged to repair any defect in the rent that affect the acquired benefit.If he fails to do so, the lessee may terminate the contract or obtain a court authorization, which allows him to repair and return to the lessor for the payments. 2-If the defect that the lessor needs to fix it is a simple or an urgent matter that cannot bear the delay, and the lessee asked him to repair it and to deduct the expenses for the known amount of the rental allowance<sup>1)</sup>. We can notice from this text that If the lessor fails to perform the necessary renovations, the lessee may request the dissolution of the contract .Or he may request the Court to carry out such repairs by himself and then to return to the lessor by spending as much as is customary .In applying the general rules the lessee has to inform the lessor before the claim of specific performance or the cancelling of the lease. And in both cases his claim will be under the responsibility of the judicial discretion <sup>(2)</sup> (In accordance with the current practice and the nature of the dealings between the people. In accordance with the general rules, he is entitled to claim compensation for any damage caused to the lessee by the breach of lessor's commitments. He also has the right to stop paying rent until the lessor does the maintenance <sup>(3)</sup>. The lessee may perform the necessary repairs on his own behalf without the need for the court's permission if two conditions are met: that such repairs are simple or urgent and that they should be delayed Lessor for doing yet request, or can not be contacted.

The researcher proposes that the above can be applied to the case of hidden defects and obligate the lessor to repair and remove it because of the close link and points of similarity between the two obligations, and based on the provision of the legislator in Article 681 Jordanian citizen regarding the obligation to repair,

If the lessor did not repair the defect, the lessee could do it at the expense of the lessor. The lessee may obtain a permission of the judiciary to carry out the repair himself and return to the lessor for what was expended. The lessee may, without a permission , carry out the repair if it is urgent or simple if the lessor fails after he was informed for implementing this obligation or can not be contacted.The lessee may also deduct from the renting payment without referring to court until the lessor repair the defect. This is an application for non-payment<sup>1)</sup>

The lessee shall not arbitrarily use this payment as if he had received the rent and had minor defects that would not cause him harm or a clear lack of use. The lessee may be considered arbitrarily to use his right if the allowance is held by the lessor fulfills the required reforms and delivers the rent free of defects.

Finally, we would like to say that if the Jordanian Civil Code mentioned in Article (687) mentioned above, besides the cancellation or reduction of the rent on the right of the lessee to require the lessor to perform the in-kind specific performance in any form, it should not be burdensome to the lessor ,According to the provisions of Article 577 of the Egyptian Civil Code: "If the rent has a defect in respect of which the guarantee is achieved, the lessee may, under the circumstances, request the cancelation of the contract or the reduction of the rent, and may also request repair of the defect or repair it at the expense of the lessor if this repair would not have harm the lessor. 2-If the lessee has suffered damage from the defect, the lessor has committed to compensate him unless he proves that he was unaware of the defect <sup>(4)</sup>. We would like to point out that the Jordanian Landlords and Tenants Law did not deal with provisions giving the lessor the right to repair the defect of the warranty. And It did not mention the lessor's commitment towards maintenance work ,to be measured as a reference for commitment of hidden defects guarantee, but what was stated is the construction of the leased ,destroying and rebuilding .<sup>(5)</sup>

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<sup>1</sup> Resolution No. 809/1985 dated 1-2-1986, Qustas Publications, which stated: "... \* The necessity that exempts the creditor from obtaining the court's permission for execution at the expense of the debtor in application of the provisions of article (356/2) of the law Civil society is a matter of reality that the court of the subject deems." ...

<sup>2</sup> Article (246) A Jordanian citizen who states: 1. In contracts binding on two sides, if one of the contracting parties fails to comply with the contract, the other contracting party may, upon his excuse, request the debtor to demand the execution or dissolution of the contract. It shall consider it for a specified term and may decide to dissolve and to compensate in any case if it is required.

<sup>3</sup> Obeidi, Ali Hadi, Explanation of the provisions of the Law of Owners and Tenants in the Light of the Court of Cassation, I.1, National Center for Publishing, Amman, Jordan: 2002., p.277

<sup>4</sup> Article (577) of the Egyptian Civil Code.

<sup>5</sup> Law of Owners and Tenants (No. 14 of 2013), published on page (5047) of issue (5253) of the Official Gazette on

## 1.2 : Specific performance aspects

In the beginning, we say that the lessee has the right to demand the in-kind specific performance, that to repair the defect by removing it or replacing it with valid one, or repairing the defect at the expense of the lessor, unless repairing the defect will cause the lessor any harm and if he requires to reconstruct the last. Or if the required repair costs exceed than the amount of the rent agreed upon for a long time. In other words, the repair expenses should not be too high to be equivalent to the rent paid by the lessee, since the conditions of the in-kind specific performance should not be burdensome to the debtor (the lessor), and according to the in-kind specific performance the lessee may ask for removing the defect by repairing it or replacing it with another valid one, as clarified the following two sections:

### 1.2.1 : Removing the defect in the leased premises.

The first aspect of an in-kind specific performance is that the lessor repairs and removes completely the defect in the leased premises so that the lessee can make the best use of it, in the condition that the claim for removing the defect should not be burdensome the lessor. In other words the repairs should be possible and acceptable. The approval for this request based on the possibility of repair, and that the lessor does not incur higher expenses than the reduction of the rent and within a reasonable period of time. Otherwise the lessee may demand a contract cancelling or reducing the rent.

The response to the request for removal of the defect must be taken into account not only in the interest of the lessee but also in the interest of the lessor. It is not permissible to harm the lessor by removing the defect in the leased premises.

Repair expenses should not be exaggerated, or more than the fare paid by the lessee, Also, It is not permissible for the lessee to force the lessor to repair the defect and remove it, if this is not possible if the leased premises had a defect that is irreparable, it is an exaggeration to harm the lessor which is not permitted by law or reason.

Article (355/1) of the Jordanian Civil Code stipulates that: "The debtor shall be compelled, after inquiring, to perform the obligation to implement in kind whenever possible." Based on this provision, any creditor (lessee) shall have the right to request in-kind execution, The same debtor (the seller) may offer to perform the in-kind implementation and here the creditor must accept this offer <sup>(1)</sup>, and this in-kind execution is not to be burdensome to the debtor.

If the lessee repairs the defect at the expense of the lessor, and the lessor refuses the amount of the expenses incurred, in that case the matter is presented to the expert to assess the value of the repairs carried out and the request for removal of the defect is permissible for the lessee. The judge may order the lessee to obligate the lessor to repair the defect instead of the provision to reduce the rent that may be the lessee request, and the judge may enforce the lessor to pay for the repair of the defective thing, if the lessor has done so, it should also be noted that if the lessor repaired the defect and then appeared the defect again and could not be removed for any reason, the lessee has the right to claim and choose between termination of the contract or decrease the rent <sup>(2)</sup> to guarantee any damage caused.

### 1.2.2 : replacing the defective item with a valid one:

The second aspect of the in-kind specific performance is that the lessor replaces the defective item with a valid one. The replacement is required to be identical, defective, flawless, and irreplaceable, in addition to not being burdensome to the lessor or harming the lessee.

It is often agreed between the contractors on this substitution, which can be considered as an agreement to amend the warranty provisions which we will explain later. This agreement is mostly for the benefit of the lessor, as it is often associated with the lessor's liability for the damage, And in all cases the expenses and expenses of such replacement shall be borne by the lessee, unless otherwise agreed <sup>(3)</sup>.

The lessee may demand the replacement of the defective item with a valid one. The lessor may suspend the claim of termination or decide to offer the replacement of the defective item. Such replacement shall be possible and shall not surpass the lessor and shall be agreed between the contractors in accordance with the principle of freedom of the contract, based on the principle of the willpower, both agree to suspend the replacement acceptance of the lessor in advance, and take into account that the request for implementation in kind does not prejudice the right of the lessee to seek compensation for damage suffered because of the defect.

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<sup>1</sup> Debash, Legal System to Ensure Hidden Drawbacks in the Contract of Sale under the Egyptian Civil Code, p. 471.

<sup>2</sup> Dabash, Legal System to Ensure Hidden Drawbacks in the Contract of Sale under the Egyptian Civil Code, p. 475

<sup>3</sup> See Debash, Legal System for Ensuring Hidden Defects in the Contract of Sale under the Egyptian Civil Code, p. 476.

The researcher notes that the Jordanian legislator did not provide for the right of the lessee to demand the in-kind specific performance. However, we find that it is not unreasonable for the lessee to demand the lessor to perform the in-kind repair, replacement, or other forms where possible, and as agreed on between the two parties. And does not cause any harm for the lessor who may compensate the lessee if necessary for the damage that may have been caused to him. If the lessor does not perform the in-kind performance, and the lessee does not wish to do so at the expense of the lessor<sup>(1)</sup> or has not been authorized to do so, the lessee may request the cancellation of the contract or the reduction of the rent, and the request for annulment in this case is subject to the discretion of the judge as he sees the magnitude of the defect and the consequent denial of the use of the thing.

## **2 : Cancelling the lease or the reduction of rent.**

### **2.1 : The lessee's right to terminate the contract.**

The lessee is entitled to cancel the lease, but the claimaction should be preceded by a notice of such annulment, which is taken by the Jordanian legislator as not provided for in the provisions relating to the lease or sale contract in the Jordanian Civil Code, other than the Arab legislation, including the Egyptian legislation referred to as one of the procedures to be followed prior to the initiation of the proceedings before the court in respect of the sales contract without the lease according to the text of the article (449/1) of the Egyptian Civil Code, which stipulates that: "if the buyer receives the sale must verify its condition as soon as he can and in accordance to the usual in dealing if a fault is guaranteed by the seller he should be informed during a reasonable period of time if he does not do that it is considered as capable of sales<sup>(2)</sup>. considering it necessary to take the necessary procedures to report the defect and prove it, and the quick initiative to bring the case in order to focus on dealing on a stable basis, and maintain the survival of contracts and stability of transactions, and the legislator did not specify the period during which the tenant can choose between the termination of the contract or claim constipation of the leased premises or refer to the decrease in rent. Accordingly, this period is subject to the general rules over time. This considered a lack of legislation that should be rectified so as to determine this period within a reasonable period of time, or to leave the judge's discretion in accordance with an objective criterion<sup>(3)</sup>

The researcher considers that it is better for the Jordanian legislator to take the provisions of the Arab legislation, including Egyptian legislation, and to specify explicitly stating that the buyer in the contract of sale or lessee in the lease must notify the other party of a defect within a reasonable period and determine the duration, And that there is no objection to adopt the texts provided by the Arab legislation with respect to notification in the contract of sale and its implementation in the lease in proportion to the provisions of the option of defect. If the lessee found a defect of the defects that the legislator committed to be warranted, he should notify the lessor of the existence of this defect During a reasonable period of time, and without delay, depending on the circumstances, and that prior to the proceedings before the court.

The notice differs from the warning that the warning is the obligation to carry out the obligation, while the notification is to inform that the contractual obligation is not performed and sometimes accompanied by a notice of compliance. The notice differs from the warning to its effect regarding to the chance of the contract<sup>(4)</sup>

After referring to the notification statement as one of the legal procedures for filing the claim, the lessee may terminate the contract if the guarantee is due to the existence of a defect in the rented premises.<sup>(5)</sup> The Islamic jurisprudence considers that once the defect is in its terms of warranty, It does not prevent the contract validity and remain in force by the lessor. But not required by the tenant.<sup>(6)</sup> Article 246 of the Jordanian Civil

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<sup>1</sup> Mansour, Amjad, *The General Theory of Obligations, Sources of Commitment*, Dar Al-Thaqafa for Publishing and Distribution, Amman, 6, 2011, p. 209.

<sup>2</sup> Beni Khalaf, Hisham Ahmed Salem, *Damages and Underdevelopment in the Contract of Sale: A Comparative Study in the Jordanian Civil Law and the Egyptian Civil Law*, MA Thesis. - Amman Arab University [Amman, Jordan], Arab Organization for Education, Culture and Science, Law, 2001, p. 65.

<sup>3</sup> See al-Zu'bi, explaining the contract of sale, p. 415.

<sup>4</sup> Diab, Assaad, *Ensuring the disadvantages of hidden sales: a comparative study between Lebanese law and Islamic law and modern Arab and European laws*, I.3, Dar Iqra, Beirut, 1983, p. 127.

<sup>5</sup> Bataina, Iyad, *Judicial Applications in the Labor Law and the Law of Owners and Tenants and the Evidence Law*, Amman, Jordan, 1, 2016, p. 110.

<sup>6</sup> Al Tayyar, Abdullah bin Mohammed bin Ahmed, *the choice of the Council and the defect in Islamic jurisprudence*, Dar al-Missir, Riyadh, 1997, p. 190.

Code states that: 1- In the binding contracts of two parties, if one of the contract holders fails to fulfill the contract, the other contracting party may, after the debtor's notifying, demand that the contract be executed or terminated.

2- The court may oblige the debtor to execute the case or consider it for an indefinite period, and may decide to terminate and compensate in any case if it is required. "In the binding contracts of two parties, the reason for the obligation of each contractor is the reason for the obligation of the other contractor to fulfill the obligations imposed by the contract. But if one party didn't fulfill his commitment the other is not obliged to fulfill it in return and he may requires lease termination. The obligation to excuse the debtor for the possibility of requesting annulment, the importance of the notification comes from being a strong argument for the default of the debtor<sup>(1)</sup>, and therefore it is imperative to the creditor only to make this notification.

According to the researcher, when the lessee finds a hidden defect in the rent, he may ask for the cancelling the contract, after notifying the lessor. The Jordanian legislator obliged who call for contract cancelling to inform the debtor (the lessor) to put him in the position of the defaulter in implementing his obligation .If the lessee proceeds his claim requesting the termination of the lease, that does not mean that the judge is obliged to respond to his request, but has discretion in the annulment or non-occurrence. In the event that the judge rejects the request for annulment, he shall reduce the rent by the rate of underutilization<sup>(2)</sup>, with guarantee what the lessee may suffer harm<sup>(3)</sup>.

In the event of termination, the lessee deserves compensation for the denial of the contract's benefits and for the resulting damages. If the rent is a house, the lessee is entitled to compensation for what he spent on the house to prepare it for his house, and the cost of searching for another house, And repair the damaged furniture in the course of transportation. If then he is forced to pay a higher rent in a similar house due to the cost of the house at the time of the expiry, he shall be entitled to compensation for damages sustained in the person, family members, his or their money at the time defect by the lessor until the lessee has been able to cancel and move to the new house.<sup>(4)</sup>

The termination of the contract, whether by agreement or by the judge, entails that the contractors return to their pre - contract status, meaning that the reversal has a retroactive effect, but this applies to immediate contracts. As for contracts of duration, such as the lease contract, the annulment has no retroactive effect, as it is impossible in these contracts, but applies to the future. But the continuous contracts do not exclude the retroactive effect in the case of invalidity of the contract and not its termination. The jurisprudence demonstrates that continuous contracts are generally subject to the system of termination and not annulled.<sup>(5)</sup> As the termination is for the future, and the annulment has retroactive effect, but we use the word annulment in accordance with the text adopted by the Jordanian legislator, and since the lease of contracts executed throughly, the decision to terminate the contract is achieved since the date of judgment, it is determined by the court if the cancellation is postponed to a certain date, in which case the contract shall remain effective until such date as specified in the decision of the court<sup>(6)</sup> Thus, it turns out that the termination of the lease because of a defect in the rented premises does not have a retroactive effect, but only for the future.

The defect may be found in some parts of the rented premises or on some of its units and when it is returned to multiple units, in this case it can only be partially broken in the defective part of the rented premises with taking into account the reduction of the rent, and thus annulment could be entirely or partially for the defected part. The annulment is fully if the rent is indivisible, or if it is contained in several things but cannot be separated without causing harm.

If the rent is based on something divisible, or it is available on a number of things that are easy to distinguish between them without harm, and the defect in some parts of the premises that accepts the division, or in some of its units, the response falls only on those parts of the defective, with reducing the corresponding allowance and all this, taking into account that the vulnerability of the leased premises shall not prejudice the division, fragmentation or exclusion of some of its units for the intended purpose according to its nature or

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<sup>1</sup> See: Mansour, Amjad M., *The General Theory of Obligations: Sources of Commitment*, International Scientific House, Amman, 2001, p. Abdul-Moneim, *Theory of Contract*, Dar al-Nahda al-Arabiya, Cairo, 1992, p. 587.

<sup>2</sup> Al-Obaidi, Hadi Ali, *Contracts for Sale and Rent, and the Law of Owners and Tenants in Accordance with the Latest Amendments with the Judicial Applications of the Court of Cassation*, p. 5, Dar Al-Thaqafa, Amman, 2011, p. 296.

<sup>3</sup> See Zu'bi, *Explanation of the Contract of Sale in Jordanian Civil Law*, p. 426.

<sup>4</sup> Mark, Suleiman, *Lease Contract*, I.4, Cairo, p. 430.

<sup>5</sup> Mansour, *The General Theory of Obligations: Sources of Commitment*, p. 213.

<sup>6</sup> Faraj, Tawfiq Hussein, *Lease Contract in Lebanese Law*, Distribution of the Makkawi Library, Beirut, 1975, p. 464.

according to the contract <sup>(1)</sup>, and to indicate this in the following two sections.

### **2.1.1: Total Termination:**

The rent may be on one thing that is indivisible and division, or it may be in many things that cannot be separated, in which case when the conditions of the positive disadvantage of the guarantee are available, the lessee may request the cancellation of the contract and if the lessee has the right to request the cancellation of the lease, The court has the power of appreciation in his response to his request, or in retaining the lease with the reduction of the allowance in accordance with the relevant rules.

If the rent includes the entire property, so that one could not be leased without the rest, that is, when it cannot be separated, such as the pairs, in this case the lessee cancel the entire lease, whether the defect is a part of the entire leased, the lessee has the right to request termination.

In accordance to what was mentioned previously, it is clear that a total annulment based on the entire leased which cannot be separated or distinguished without causing harm to the tenant because they are indivisible, even if the defect is only part of it ,that is the defect in one of them makes it impossible to consider the rest valid or useful .<sup>(2)</sup>In addition, the obligation to cancel the lease in full and the return leased premises as received from the owner requires the need to return it with its entire parts and the appurtenances that were with it when the contract was signed and the leased premises hold by the lessee.

### **2.1.2 : Partial Termination**

If the rented premises is something or things that can be separated and divided without harming the tenant and without prejudice to the purpose for which the rented premises was prepared for, or the rental premises is on multiple things, all of which are main and equivalent and it was separated from each other, and a defect was found in one part of it ,the tenant can claim for cancelling that part and ask for a reduction in the appropriate fare, especially if it was possible to do so and to remove the defective item in the leased premises.

The jurisprudence 'clears that seeking termination in such a case mentioned above is permissible, so the tenant has the right to annul the defective portion of the whole part of the whole rental and he can claim for a total termination if it proves that the leased premises will not be repaired after the termination for the defective part for the purpose it constructed for .<sup>(3)</sup>The lessee cannot break the entire contract on the grounds that there is a defect in part because the rent can be separated and split if it is returned to multiple things without harm to the lessee. If it can split without harm on the lessee, he can only return the defective part with the equivalent fare, but not to break the entire contract on the grounds that there is a defect in part, unless the lessor agreed.

Finally, we would like to point out that the above mentioned cases were not provided by the Jordanian legislator in the provisions relating to the guarantee of the hidden defect in the lease, but stipulated in Article 519/2 of the Jordanian citizen regarding the contract of sale which can be implemented in the lease which states:

2-if the sale of multiple things is one deal and an old defect appeared in some after delivery and there is no harm if it is divided apart the buyer: can refund the defective part of the share of the price, and he cannot return it without the seller's satisfaction, but if the separation causes damage, he may return all the sale, or accept it at all costs. It is clear to us through this price that the legislator distinguishes whether the dissolution of the deal causes harm to the buyer or does not cause him any harm. If the deal separation does not cause harm to the buyer in this case he has the right to refund the defective part with the corresponding price .But he does not have the excuse to return the whole parts because there is a defect in one part, for example, if a person bought two baskets of saffron and has the whole ,he has the right to refund the defective part, especially.

However, if the separation of the transaction detracts the buyer, and the sale was one transaction and the sale was received fact or judgment .The legislator gave the buyer one of two options, either to return the wholesale, and recover the price, or to accept the existing defect and the price named and this option is a decision of the buyer alone can choose one of the two things and obligates the seller, for example if the sale of multiple things one deal like the sale of furniture for the bedroom and a guest room<sup>(4)</sup>.

### **2.2 : the right of the lessee to hold the rent and reduce the rent**

The lessee may not be deprived of the use of the leased premises because the defect is not of a great degree that justify the cancellation. The lessee may first request reduction of the rent in a manner corresponding to the lack of utilization caused by the defect and from the time it occurs. That is the defective rented deserves

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<sup>1</sup> Faraj, Lease in Lebanese Law, p. 624.

<sup>2</sup> Diab: Ensuring the disadvantages of hidden sales, p. 190.

<sup>3</sup> Faraj, lease, p. 626.

<sup>4</sup> See Beni Khalaf, Warranty of Defect and Underdevelopment in the Contract of Sale, p.

less than if it is valid, so the fare should be reduced<sup>(1)</sup> If there is a defect from the beginning, the rent has to be reduced since then, on the basis that the allowance is to benefit. If the benefit is reduced, the rent should be reduced too on the basis of the connection between them. If it is judged to reduce the rent ,there is nothing to forbid the lessor to repair the defect and the renter returns of the fare to its origin from the time of repair<sup>)</sup>

A leased premises may be made up of several things that may be divided, and a disadvantage may be found in the appurtenance of the leased premises without the original. In all these cases, the rent should be reduced by a percentage of the benefit, as long as the defect does not significantly reduce the benefit or makes the intended use impossible, and this reduction is compensation for the lack of benefit both in the past for what the lessee did not benefit or in the future if the defect is irreparable.

The retention of the contract with the claim to reduce the rent is a response from the legislator with the implicit desire of the contractors to keep the contract as long as its implementation is still useful, and as long as the lack of usability does not cause serious harm to the lessee and this Legislative policy : agrees with the benefits of both parties, as reducing the rent is an effective means of enhancing the implementation and continuity of contracts.

In Islamic jurisprudence, also did not indicate how the rent was reduced in relation to the lease, but indicated that reducing the price was estimated by reliable experts on selling properly who will decide if the sold item is valid or defected. And if the estimates between the two values of inequality, according to this ratio, the buyer is responsible for the decrease, as stipulated in the Code of Justice in Article (346) "The garment is valid and then it is defective, what was between the two values of the is inequality attributed to the allocated price, and on the basis of that ratio, the buyer returns to the seller with the decrease..." And this usually done by experts. Based on the above, we believe that there is nothing to prevent the introduction of the provisions of the Code of Justice in relation to the manner in which the decrease in the price and its realization in the reduction of the rent in relation to the lease, is determined that the Jordanian civil law derives its provisions from Islamic law, There is no provision in the Jordanian Civil Code that conflicts with it.

Based on the above, the researcher finds that the allowance is reduced by estimating the value of the rent allowance in the case of validity at the time of the contract, and then estimating its value in its present state on the other hand. In this case, the lessee may request a reduction of the allowance equal to the difference between the two cases ,and the above shows that the value of the allowance at the time of the contract, which is the value of the allowance as a rented is not defective, and the value of the allowance given to him is defective, in light of the value estimated in the contract .<sup>(2)</sup>

The reduction of the rent should be in accordance with the claim for compensation. The reduction of the rent is from the date of the decision in the future, whereas the compensation is for the damage that actually occurs to the tenant before the rent is reduced. It is not enough to reduce the rent to compensate for all the damage that the tenant suffered from the time the lessor breached his commitment, Compensation shall be taken from the period of the lack of utilization and for the period that the defect appears (the occurrence of the harmful act) until the claim is filed, and he worth a compensation for the loss he exposed to during the period prior to the filing of the action, and this is what I shall discuss in detail in the subsequent study.

### **3: Compensation for damage**

#### **3.1 : Conditions for compensation**

If the lessee seeks to cancel the contract or reduce the rent in the event of a defect in the rental, he also has the right to seek compensation for the damage caused by the denial of the use of the leased premises and other compensation for the damage he suffered in his person or money. If he is forced, for example, to break the contract and move to another house and he loses what he spent in the repairs he made at the old house, and what he spent to move to the new home, and what he may have been paid by an increase in the cost of housing prices at the time he moved to another house. This is compensated for depriving him of the use of the leased premises, and if some of his possessions are damaged due to the defect (such as the house decay) or if he or one of his followers is injured by the fall of the house balcony which its construction had a defect or a defect in the elevator, it deserves further compensation for that, and this is compensation for damage to the person or money, and therefore the law determined that the tenant has a right in recovering award for damages .<sup>(3)</sup>

It is necessary for the tenant to claim compensation for damage caused by the existence of the defect in the leased premises is the availability of two conditions:

The first condition : The tenant is not aware of the existence of this defect in the leased premises.

In the sense that the lessee has good intent, and this condition is related to his right to guarantee himself, we have provided that in order the tenant has the right to return the warranty, he must have good intentions, and

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<sup>1</sup> Mansour, The Contracts Named, p. 200.

<sup>2</sup> Faraj, lease, p. 627.

<sup>3</sup> Al-Sanhoury: The Mediator in explaining the Civil Law, p. 449.



this is achieved if the defect is hidden and unknown. This condition should generally be available for recourse to the lessor in general as a matter of principle,

Therefore, if the lessee is aware of the defect, he is not entitled to return the warranty, and accordingly he has no right to claim compensation, and the lessee must be aware of the defect with certainty and real knowledge of the defect and its severity, as expressly stated in the second paragraph of Article (686) of the Jordanian Civil Code, which states: "The lessor does not guarantee the defect if the lessee is aware of it at the time of the contract or it is easy for him to know about it."

If the lessee is aware of the defect and is satisfied with the defected thing, he is not entitled to refer to the lessor by the guarantee of the defect, according to the original, but if he does not expect such defect to result in such damages, his right of guarantee is due to him and therefore he is entitled to claim damages caused by <sup>(1)</sup>.

The second condition : is that the lessor should be aware of the defect.

In accordance with Article 687 of the Jordanian Civil Code, we recognize that the lessor is responsible for compensation, whether he knows of the defect or does not know it, nor is there a reason to require his knowledge of the defect, The obligation to guarantee the defect, such as the obligation to ensure exposure to the obligation to achieve an objective, the mere presence of the defect is a breach of the obligation must be compensated even if the lessor is not aware of the defect, In contrast to some Arab legislation.<sup>(2)</sup> From which we conclude that it is assumed that the lessor is aware of the defect, because the leased premises was under his hand before handing over to the lessee, he knows all the defects, so he is originally responsible for the compensation, But he can distance himself from this responsibility if he proves that the defect was not present in the rental when it was handed over to the lessee and it occurs after then and the lessee didn't know at time. And if he proves that, although the defect was present at the time of the handover to the lessee, he was unaware of his existence because he was not able to identify. If he proves that, he will not be liable for compensation, but remains responsible for the termination of the lease or reduction of the rent .<sup>(3)</sup>

Some of the jurisprudence considered that the condition of the lessor's knowledge of the defect is a prerequisite for the possibility of recourse to compensation, that the lessor must be aware of the defect so that the lessee can return the compensation. And if the lessor knew the defect and stated to the tenant at the time of the contract, the latter has no right to refer to the lessor with warranty and compensation , by doing such a thing he lies the responsibility on the lessee who be aware of it , In such case the lessor pay a slight amount ,but if the lessor shows the defect after signing the lease he remains a guarantee, and the tenant has the option of the defect, unless the he abandons the option and the guarantee <sup>(4)</sup> Which was not explicitly stated by the Jordanian legislator in the context of the legal provisions on the protection of the hidden defect in the lease. The legislator did well when he did not generally distinguish between the lessor's knowledge of the defect or his lack of knowledge and the effect on the tenant's claim for damages, Since the lessor's commitments is an obligation to achieve a result, therefore, if the result is not achieved, responsibility, regardless of the good or bad intent of the lessor, and failure to do so may cause an imbalance in the legislative stability.

That the lessor has bad intent and he is aware of the defect in the leased. And intentionally he did not declare that he rented without a warranty, considering that this is sufficient in itself to be recourse to compensation, and if he knew that it is sufficient to say there is an existence of bad intent of the lessor as stated in the jurisprudence .<sup>(5)</sup> There is no doubt that bad intent is more likely if the lessor is a fraudulent. Article 689 states that: "Any agreement exempting from the warranty of injury or defect is null and void if the lessor fails to

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<sup>1</sup> Debch, Legal System for Ensuring Hidden Disadvantages, p. 490.

<sup>2</sup> Article (577/2) states: "If an alien is harmed by the defect, the landlord undertakes to compensate him unless he proves that he was unaware of the existence of the defect." Mark: The lease contract, p. 434.

<sup>3</sup> Senhoury: The Mediator in explaining the Civil Law, p. 451.

<sup>4</sup>Faraj.lease P. 627, and the legislator of this provision in the provisions regarding the guarantee of hidden imbalance in the contract of sale as provided in other cases showing that the buyer does not have the right to claim security through the text of Article 514 Jordanian citizen, which reads as follows: If the seller sells a sale defect, the sale will be good, 2. If the buyer buys the sale, and it is a world with a defect, 3. If the buyer is satisfied with the defect after the selling seller sells or defective or defective only if the seller aims to hide the defect Or that the buyer is in a position to prevent him from knowing the defect ... "Sale, there is no error in the application in the case of rent, especially Article (688) Art expressly to the sales contract.

<sup>5</sup> Faraj, lease, p. 629.

cheat the reason for this warranty" I have previously indicated that we conclude from this article that the lessor is responsible for ensuring the hidden defect in case he concealed the defect from cheating is not considered acceptable even if the lessee agrees to exempt from warranty the hidden defect in the lease. Thus, the lessee is entitled to claim compensation for the damage inflicted on him in addition to the penalties stipulated in Article 687 of the Jordanian Civil Code.

Good intent is presumed to be evidence to the contrary, so the renter in order to obtain compensation must prove his knowledge and ill-intention of the lessor in the event of concealment of the defect is fraudulent, proves his knowledge of the existence of defects.<sup>(1)</sup>

The researcher concludes that the lessor is obliged to compensate the lessee for the damage caused by the defect in the rent. If the lessee does not know that the defect exists at the time of the contract or it is easy for him to identify, in addition if the lessor has knowledge of the defect or its reason and he didn't inform the lessee, Unless he proved that he was unaware of the defect in the leased, which the Jordanian legislator did not explicitly state in the framework of the provisions relating to the warranty of the hidden defect in the lease, the legislator only stated the right of the lessee to demand the lessor either to cancel the contract or to reduce the rent, in addition to guarantee of harmfulness caused by the defect in the leased without reference to knowledge of the lessor or proof of his ignorance of the existence of the defect and the extent of this effect on the right of the tenant to claim compensation.

### **3.2 : limitation of compensation**

If the lessor is not required to pay compensation, except in certain cases and conditions on the basis of what we have provided, then the compensation will be deserved for the lessee. There is no doubt that the compensation is for all damages caused to him due to the defective leased<sup>(2)</sup> This is because the lessee owes the lessor compensation for the damage caused to him by the existence of the hidden defect in the rental based on the rules of the contractual liability and provided that the contractual liability is to be in a valid contract, In order the contract be liable it should include aspect of the fault and damage and the causal relationship between error and damage<sup>(3)</sup> According to Jordanian civil law, the contractual liability is not done solely because the debtor (the lessor) does not perform its commitment, but the non-performance must be due to the fault of the debtor<sup>(4)</sup> It is also not enough to have the fault alone for the liability of the contract, but the fault of the debtor (the lessor) must be detrimental to the creditor (the lessee) and the creditor bears the burden of proving the damage claimed. Moreover, damage is not presumed to be wrong, damage within the scope of contractual liability is what the creditor has suffered as a result of the debtor's breach of its contractual obligations and may be physical, material or moral harm<sup>(5)</sup> But it is only comprised the direct and the expected damage, the debtor is not liable to compensate for indirect damage<sup>(5)</sup> The debtor (lessor) must deny its causal relationship between the fault and the damage if it claims that it does not exist.

Since compensation in the scope of contractual liability is only for direct and expected damage, the lessor is required to compensate the lessee only for direct damages which are an inevitable consequence of the defect in the leased premises and the lessor's denial to remove this defect, and the lessor is not required to guarantee originally if the appearance of the defect is due to the lessee's fault. If the lessee leaves his goods in a part of the rented where the moisture or water saturation is present, although he could transfer it to another part of that rental which did not show such defect, the damage of the goods will not be considered as a direct or a natural result to breach the lease as long as the tenant could avoid the fault by moving the goods on the one hand, the lessor is not required to compensate the tenant for such damage because it is the result of tenant's fault and not the fault of the lessor<sup>(6)</sup>.

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<sup>1</sup> See Diab: Ensuring the disadvantages of hidden sales, pp. 217-220. 538. Dabash: The Legal System for Ensuring Invisible Disadvantages, p. 492.

<sup>2</sup> See: Article (363) Jordanian citizen.

<sup>3</sup> In one of the decisions of the Court of Cassation, "it is agreed that, as with the responsibility for the wrongful act, the liability of the wrongful act is only due to the availability of its three elements: error, damage and causality." The fault in the contractual liability is an error based on breach of a contractual obligation. Bar Association PO Box 537, 1992, referred to in Al-Far, Abdul Qadir, Sources of Commitment, Amman-Jordan, Dar Al-Thaqafa, p. 3,2011, p. 144.

<sup>4</sup> Obaidat, Yousef Mohammed, Sources of Compliance in Civil Law: A Comparative Study, Dar Al-Masirah, Amman, 2009, p. 218.

<sup>5</sup> Alfar, Abdelkader, Sources of Commitment: Sources of Personal Rights in Civil Law, Dar al-Thaqafa, Amman, 2011, p. 147.

Furthermore, if the origin is the application of the rules of liability for personal fault, but if a special provision is found in respect of this latter liability, it shall be taken, as in the case of article 686/1, In this case, the lessor is asked about the damage caused by the tenant by the act of the rental, as if the roof of the house collapsed because of a hidden defect in it and it damaged the estate of the tenant, The basis of this responsibility is not the act of the personal lessor but the act of another party .<sup>(1)</sup> We distinguish from the above that although the basis of contractual liability is the damage caused to the creditor by the non-implementation the alternative to the commitment, but it may occur that something interferes causing such damage and that the responsibility for things within the framework of the fault of the contract does not have special rules separate from the rules governing the liability of the personal error and therefore the rules of this responsibility went upon.

It is stated in Article 363 of the Jordanian Civil Code that: If the warranty is not determined in the law or in the least, the court estimates it to the extent of the damage that actually happens when it occurs. It explained that the Jordanian Civil Code limited compensation within the scope of the contractual liability for the damages that occurred In fact, it includes the loss actually incurred by the creditor without the lost gain due to non-performance of the contractual obligation<sup>(1)</sup> . However, the final estimation of compensation for the actual damage may not be available to the judge when the case is being heard. In such a case, the judge may grant temporary compensation provided that the judgment is reviewed within a reasonable period of time determined by the judge. If the allocated period ends the judge reviewed his decision. And, he may decide an additional compensation for the harmed party if it is necessary. And to this provision, article 268 states: "If the court cannot determine the extent of the guarantee as a final designation, it may retain the right of the harmed party to demand a review of the estimate within a certain period" .<sup>(2)</sup>

By applying the provisions of the preceding article to the amount of compensation owed by the lessor, there is no doubt that for all the damage caused by the tenant due to the defective rental. Thus the lessor had to compensate for the direct harm which affected the tenant due to the cancelation of the lease .The lessor also undertakes to compensate the lessee or his heirs in full compensation for the damage, whether the damage occurred to the tenant himself in his body or money due to the defect, or to compensate others for the damage caused by the defect. In which the defect of damage is asked by the lessor.

Although the general rules set out the amount of compensation in the contract liability, which is the direct and the expected damage only, that is, the compensation is limited to the loss actually suffered by the creditor without the profit that missed<sup>(3)</sup>, but it is better if the Jordanian legislator's act like the Egyptian legislator who did not obligate the debtor to compensate only for the loss suffered by the creditor but also for compensation for lost profits. The lessee is not entitled to compensation for the loss of benefit for the period that has elapsed from the time of appearance of the defect and notify the lessor until the lawsuit is filed, but it is more than compensable for the profit that he missed due to the lack of use during the remaining period of the rental. If the lessee is deprived of the use of one of the rooms of the house or the garage attached to it, he must rent another room or garage near the rented house. The lessor must compensate him for the costs of exceeding the reduction of rent. In the general rules, the Egyptian legislator also distinguished between the compensation for the expected damage described above and the unexpected damage in which the debtor is required to compensate the lessee (creditor) because he committed a fraud or a gross error. Serious fraud and error involve intentional error or, in other words the implement intentional harm .<sup>(4)</sup>

The Jordanian legislator does not differentiate between the lessor who knows the effect and the lessor who is not aware of it, and its effects on the amount of compensation for damage caused by the hidden defect in

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<sup>1</sup> Sultan, Anwar, Sources of Commitment, I.1, Dar Al-Thaqafa, Amman, 2005, p. 238.

<sup>2</sup> Sultan, Anwar, Sources of Commitment, p. 247.

<sup>3</sup> The Court of Cassation stated in one of the above-mentioned decisions that the lessor (the debtor) may compensate the lessee for the loss of liability in the cases of fraud and serious error where it states: "The compensation for lost profits and moral compensation shall be governed only by Cases of fraud and serious error. " Rights No. 560/90 Journal of the Bar Association, p. 2175, year 1991.

<sup>4</sup> Article (221) states: "1. If compensation is not determined in the contract or in a provision of the law, it is the judge who appreciates it. The compensation shall include the loss and loss of the creditor's right, provided that this is a natural result of The obligation to be fulfilled or the delay in fulfilling the obligation is considered to be a natural consequence if the creditor can not foresee a reasonable effort 2. However, if the obligation is the source of the contract, the debtor who has committed a fraud or serious fault shall only be liable for damages that could have been anticipated Usually contract time ."

the rental. The criterion is that if the lessor is aware of the defect or not, the lessee is entitled to compensation for the damage caused by the defect in the leased and the amount of compensation includes all that the lessee's right of loss only. Also, the lessor who is aware of a defect informs the lessee that there is a defect at the time of signing the contract is not asked to compensate for the defects existing at the time of the lease.

In addition, the Jordanian legislator did not specify the extent of the guarantor's obligation to compensate for the damage and its amount in accordance with the rules of the warranty for hidden defects. And did not state in the general rules when the guarantor is liable for the unexpected damage under the contractual liability, as did the Egyptian legislator who clarifies, by its general rules, that if it is proved that the lessor (Creditor) made a fraud or gross error here he is required to compensate for direct damages, all expected or unexpected.

### **Conclusion:**

#### **The findings and recommendations included:**

##### **First: The results:**

1. The lessee may require the lessor to guarantee the defect in the rental as long as the terms of the warranty apply to it, and there is no reason why the lessor should not be obliged to repair the defect or replace the defective proper leased as long as that does not harm the lessor, which may agree with the interest of the lessor himself, who may be detrimental to the termination of the contract or the reduction of the rent with its ability to repair the rental; and remove the defect from it.
2. The tenant may ask the court to authorize him to carry out the necessary repairs to the rented premises at the expense of the lessor according to the provisions of article (356/2) of the Jordanian Civil Code, which states the following: "If the debtor does not work, the creditor can ask the for a permission from the judiciary to do it at the expense of the debtor or to execute it without permission if necessary. "
3. The Jordanian legislator did not provide for the right of the lessee to demand the in-kind specific performance. However, we find that it is no preclusion for the tenant to require the lessor to perform the in-kind repair, replacement, or other forms of execution. In accordance with what is agreed upon between the parties, whenever possible and does not harm the lessor with the compensation, when necessary for the harm that affected the lessee.
4. 1 - There is no objection to the adoption of the texts provided by the Arab legislation with regard to notification in the contract of sale and its implementation in the lease in proportion to the provisions of the option of defect, if the tenant found a defect of the defects that the legislator committed to ensure, he should notify the lessor of the existence of this defect during a reasonable period of time, and without delay, before proceeding with the claim before the courts.
5. 1 - The tenant may, when he finds a hidden defect in the rent, to ask for the cancellation of the lease, after the lessor notified.

##### **Second: Recommendations:**

1. The Jordanian legislator should adopt the provisions of the Arab legislations, including the Egyptian legislation, and explicitly state that the buyer in the contract of sale or the lessee in the lease shall notify the other contracting party of a defect within a reasonable period and shall determine the period.
2. 1. The Jordanian legislator should explicitly state the hidden defect under the legal provisions concerning the warranty of the hidden defect in the lease.

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