



Loss of Benefit and its Impact on the Lease Contract "A Comparative Study"

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Abstract: That the benefit is a meaning that is easy to slip from it to the interest, but the confusion or confusion that some fall into referring to one or both of them has gained prevalence and commonness that needs to be addressed by standing on the meaning of each of them to remove misunderstanding, as the benefit itself is not intended unless there is an intended interest behind its collection, regardless of the legitimacy or illegality of that benefit.

And that the serious actions issued by a normal human being do not fall abstract from the benefit because the benefit is an innate goal that is not manifested by the innate tendency of man in something as manifested in his pursuit of his actions to get the benefit, whether public or private, material or moral, and the fact that understanding the benefit in this way is almost a given that does not differ in which the two.

Keywords: Loss of benefit- lease contract.

Introduction

First: The importance of the research topic:

The importance of the right of benefit and the impact of its loss on the lease contract through the needs that require these benefits such as the need for objects, the contract is also permissible on the objects, it is permissible on the benefit, many people may not own a car and may not own a house in the first place, so that it is outside the limits of its material capabilities, so the person may not be able to own all his needs, and this is what requires people to benefit from things that others are bored with according to specific conditions and controls according to the law.

Although the Iraqi legislator and some Arab and Western legislation have joined the right of benefit and the impact of its loss on the lease contract, the studies that deal with this matter in detail and accurately are few, although its aspects require highlighting it and discussing it for what it may need from interpretation and clarification due to the ambiguity that surrounds it, which formed a strong motivation for us to choose it because of its importance in practice.

Second: the formality of the study

The problem of the study is raised here in the event of the loss of part of the benefit of the lease contract and the consequent impact of this loss and not the entire benefit and whether the loss of part of the benefit leads to the same effect in the event of its full lapse and whether the impact of the lapse has been regulated by special legal texts or not.



Third: Objectives of the study:

The research mainly aims to analyze the legal texts that regulated the right of usufruct and the impact of its loss on the lease contract in the Iraqi civil law and comparative laws and to address it in a detailed manner in terms of what it is and what it is and the impact of its loss in the lease contract.

Fourth: Study Methodology:

In our research, we adopted this comparative analytical approach through the statement and analysis of the legislative texts that regulated this right and the comparison between them and the texts that dealt with it in the French and Egyptian civil Laws.

Fifth: The structure of the study:

We dealt with the issue of loss of the right of benefit and its impact on the lease contract in two requirements:

The first requirement: the nature of the loss of the right of the intended benefit of the contract

The second requirement: the effect of the loss of the usufruct right on the lease contract

This is what we have discussed according to that:

The first requirement: the nature of the loss of the right of the intended benefit of the contract

The right of benefit is a right in kind that entitles the usufructuary the authority to use and exploit something owned by others without disposing of it, where the authority to dispose of it remains in the hands of its original owner and the right of benefit is contained on the property and movable and is based on the fragmentation of the right of ownership and withering the owner retains ownership of the neck and retains the authority to dispose of the thing and that the right of use and exploitation move to the usufructuary and these two elements are the ones that make up the right of benefit and the Iraqi legislator dealt with the right of benefit in articles (1249-1260) and in the same sense came Article (587) of the French Civil Law. And that the right of benefit can only be returned to something that is not consumable because the usufructuary is obliged to return the thing encumbered by the right of benefit to its owner upon the expiry of this right and this will need to be the place of the right, which can be used without consuming it and that the right of benefit is returned to the property and movable such as houses, agricultural lands, machinery, cars, livestock and others, In this section, we will deal with the request in two sections, namely (the first branch) the definition of the benefit and in the (the second branch) the conditions of the intended benefit of the contract.

Subchapter One: Definition of the intended benefit of the contract

The development of a definition of the intended benefit of the contract can not be straightened only by referring first to the linguistic definition of the meaning of the benefit and then the jurisprudential definition of it and then defined in the legal terminology in the benefit language is like a parameter weight and meaning, it is a source in the sense of benefit or a name for the unit of benefits, and the benefit is what is used to reach the good, and the benefit is the name of everything that benefits it. ⁽¹⁾

The benefit can be defined as: includes everything that can be benefited from the thing, whether it is a purpose such as housing the house or a material such as the fruit of the tree, which is what the jurists call (yield) and in the income obtained from the purchase of a house or the interest of land or the like. ⁽²⁾



It was said that the benefit lies in the names of Allah, may He be exalted: The beneficial is the one who delivers the benefit to whomever He wants from His creation, for He is the Creator of benefit and harm, good and evil. ⁽³⁾ A benefit is a lot of benefit, and the benefit is the name of what a man has benefited from, and a benefit is a lot of benefit, and it is said that it benefits people. ⁽⁴⁾

It is said in this sense: The most beneficial man is: I trade in benefits, which are sticks, to obtain the benefit of beating them, and the benefits of the house are its facilities, such as the well and the place of washing. ⁽⁵⁾

It is noted that some civil legislations have developed a specific definition of the right of benefit, unlike the Iraqi legislator, who did not provide any definition of it, he left the issue of defining the right of benefit and clarifying it to the commentators, and that the Egyptian legislator also did not provide a definition of the right of benefit, as most civil legislation did, but the Egyptian legislator has shown the situation in which the right of usufruct ends, it ends with the term specified for it or with the death of the beneficiary, so this right results that it is not inheritable and does not move by will and this Article (993-1) of the Civil Law.

The French legislator has defined the right of usufruct as: the right to use things owned by another as the owner himself benefits from it, but on the condition of preserving its entity, that the French legislator with this definition did not take full note of the right of benefit as it did not specify in kind the right nor the duration of the right of benefit and that it inevitably ends with the death of the usufructuary and these two things distinguish the right of benefit and the right of benefit can be defined as (a right in kind that entitles its owner to use something owned by others, provided that the same is preserved The thing to be returned to its owner at the end of the term of the right, which inevitably ends with the death of the beneficiary). ⁽⁶⁾

Subchapter Two: Conditions of Intended Benefit of the Contract

We mean the terms of the benefit are those conditions that the law requires to be available in the benefit in order to be a valid object of contractual obligation or money that cannot be guaranteed in the event of damage or loss and there are several conditions in the benefit that are almost the same as the conditions of the thing subject to contractual obligation and in general they must be present and certain and legitimate and we will address these conditions successively as follows:

1- That the benefit exists: that the benefits are subordinate to the things and not independent of them, and therefore the requirement for the existence of the benefit requires the existence of the thing that is its place at the time of the contract and that the absence of the object of the benefit entails that the contract contained on the benefit of the thing that is null and void, and if the object of the benefit has been found and then perished or if the benefit has been found and then decreased and this destruction or expiration of the benefit has occurred before the contract, the contract is void for lack The shop, but if that loss has occurred after the contract, the contract is terminated spontaneously because it is impossible to fulfill the obligation in the remainder of it. ⁽⁷⁾ The benefit subject of the obligation can also be non-existent at the time of the contract if it is possible to obtain it in the future, and in this regard, Article (129-1) of the Iraqi Civil Law stipulates that (the object of the obligation may not be non-existent at the time of contracting if it is possible to obtain in the future and appointed an appointment that negates ignorance and deceit).

2- The benefit must be specified in a manner that negates due diligence: the property subject to the right of benefit must be known by the parties and shall not be known unless it is certain at the time of the creation of the right or assignable, i.e. it must be sufficiently known to avoid obscene ignorance leading to the dispute.



3- That the benefit is legitimate: that the origin of things their ability to deal with them is not excluded from them by a text and this exception is generally due either to their nature or to the rule of law and the inability of the things or benefits contained on them to deal with them by their nature, but it is due to the impossibility of this dealing, because the nature of these things or benefits prevents them from making them a valid object of dealing and the conditions that are outside the scope of dealing are of two types: One of them is money that goes out of dealing because it is by its nature reluctant to do so, and the other is money that the law takes out of dealing, so the money that is subject to the right of benefit is required to be legitimate and not prohibited by law and not to be in violation of public order and morals, and the inadmissibility of dealing by virtue of the law is due either to the violation of this transaction for the purpose for which the benefit was allocated and either for the illegality arising from the conflict of the benefit contracted with public order or public morals, It is worth mentioning that the illegality of the benefit may be achieved by realizing the illegality of the object of the benefit and may be achieved by the illegality of the benefit contracted without the illegality of its object. ⁽⁸⁾

4- The benefit shall be returned to a non-consumable thing: Whatever the money to which the usufruct is received, it must be non-consumable, because the usufructuary can only use and exploit the usufructuary thing, provided that the same thing is preserved and returned to its owner at the end of the usufruct, and this thing must be non-consumable. ⁽⁹⁾

The second requirement: the loss of the usufruct right and its impact on the lease contract

Before addressing at the beginning of our request this about the loss of benefit and its impact on the lease contract, we must address the meaning of loss first and the impact that this loss has on the lease contract in two branches:

Subchapter One: The Meaning of Lapse in the Lease Contract

Lapse is defined as: the process of self-imbalance and direct benefits of the contracted defaulted or derogated for a reason that is necessary, such as total or partial destruction and to achieve a defect or failure to describe what the intended benefit defaults with in whole or in part or as a result of a partial, defective or delayed implementation of the obligation, which results in the loss of the contractor advantages and benefits produced by the same contractor directly and that the loss of the contractor of the advantages stipulated in the contract and that should have been available Btalha given to him The right to request the annulment of the contract, rescission or compensation to the extent of the loss of the benefit. We can say that the failure or loss of capacity is (mismatch between the qualities requested by the lessee, which required the lessor to be available in the property required for rent and the absence of those qualities becomes entitled to rescind the contract or keep it at the same rent that was agreed upon at the moment of conclusion of the contract).

And that the law has developed a distinction between the lapse of conditional description and the hidden defect as they differ in terms of concept and provision in terms of concept we see that the loss of description is not considered as a defect and is not covered by its definition because the defect must be the thing free of it in most cases in order to consider its presence other than the usual casual shortage, but in terms of the provision that the lessor does not guarantee the loss of the description in the leased conditional contract by the tenant in this case his failure is guaranteed on the shoulders of The lessor, and here the failure of the promised capacity is considered a breach of one of the terms of the contract

Subchapter Two: Effect of Loss of Benefit on the Lease Contract

That the impact of the lapse varies according to the nature and amount of the defaulter of the provision of the contract, that is, the impact is commensurate with the importance of the missed part



of the contract and that the loss of benefits is closely related to the failure of the promised qualities in the leased property, the lessor pledged to the lessee in the lease contract to provide a certain characteristic in the leased by the failure of this required attribute inevitably will lead to a decrease in the benefits of the leased property, and it follows that the lessor is obligated to guarantee in the event that the leased property is free of Qualities that he expressly pledged to have or are devoid of qualities required to benefit from it. ⁽¹⁰⁾ It may happen that the lapse is achieved at the pre-contract stage and the effect is nullity or that it is achieved after the completion of the contract and the effect is avoidance or compensation. If the loss of the benefit of the property that was agreed to rent before the entry into force of the contract has the right of one of its parties to request its invalidity, and that the void contract is considered as if it did not exist and can not have an effect on its absence, however, in some exceptional cases produces some effects as it does not accept the leave and does not respond to the statute of limitations as it is determined invalid on its own, in terms of effects as a material fact may produce an effect that is not It is the original effect that would have resulted if it had been a contract, but it is an incidental effect of the material fact itself. ⁽¹¹⁾ If the lapse occurs after the entry into force of the contract, the effect is either the rescission or compensation, and the lessee is entitled to request a reduction in the rent. This is stated in Article (758) of the Iraqi Civil Law as (1- If there is a defect in the leased property with which the guarantee is achieved, the lessee may request the termination of the contract or the reduction of the rent 2- If the lessee suffers damage from the defect, the lessor is obligated to compensate him unless it is proven that he was unaware of the existence of the defect).

It is clear from the aforementioned text that the lessee has the right to request compensation, annulment or reduction of rent for everything in the leased property contrary to what was agreed upon with the lessor in the lease contract and he also has the right to nullify the contract.

Conclusion:

First: Results

1. The right of usufruct gives its owner the authority to use something owned by others and he has the right to exploit it for a certain period ending with the period specified for it or with the death of the usufructuary.
2. The right of usufruct shall return after the expiry of its term or the death of its owner to the owner of the neck.
3. The principle is that the right of usufruct is contained on non-consumable things, but if it is contained on consumable things, it is not considered a real usufruct right, but it is considered a quasi-usufruct right and the usufructuary is obliged to return such thing upon its expiry.
4. The lessee shall have the right to request rescission of the contract or compensation, whether the lost part of the benefit is small or large.
5. Loss of benefit entails two rights for the lessee, namely his right to nullify the lease contract and his right to seek compensation or rescission.
6. The failure of the promised character in the leased property leads to the failure of the required benefits of the property.
7. The Iraqi legislator is silent about stipulating that the right of benefit is in favor of the legal person.



Second: Recommendations

1. We call on the Iraqi legislator to develop a special legal text that sets a special definition of the right of usufruct because it has been silent about its definition in the civil law.
2. Dealing with the registration of the usufruct right contained on a property and stipulating the necessity of registering the usufruct right contained on a movable.

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