

Preemption in Islamic and civil law a comparative study

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Abstract

If the principle is that pre-emption leads to the forcible possession of property on the buyer, it restricts the latter from disposing of the real estate. However, jurisprudence agreed a long time ago that pre-emption is one of the most important Islamic organizations and therefore must be taken into account. It is not separated from its legal traditions and norms, and that interest is limited to reducing the number of partners in the property and the damage that lays in the complexity of disposition procedures as well as the exorbitant expenses and thus ending the common denominators through pre-Afad achieve this.

Keywords: *pre-emption, civil law, pre-Afad*

I. Introduction

Islamic law came in its entirety to preserve the human being, and to maintain his dignity, so is it higher and higher than his stature as the creatures of God's generosity and preference over many of the creatures of preference. ((And came the data of laws and legislation p and the instructions that I spoke and dealt with about))preventive and effects resulting from the pre-emption introductionand according to the adaptation to tj taking t by a, there is a part of the legislation's promise that pre-emption is the waiver of rights and obligations between the buyer and the seller, and in the interest of That the instructions in the governorate about pre-emption from which the rulings of Islamic jurisprudence were derived from which scholars disagreed. Also, about how the ownership of the patron saint was transferred, in some they see it)) the sale that took place between the seller and the buyer was invalid and was kept for another sale saint, as some believe: That the deal turns into Shafi'i directly)). The research is an attempt to uncover an important rule in relation as well, (a he was attached in Islamic law and civil law - a study of his own -) refers to the preventive actions that the intercessor must undertake to preserve the right of pre-emption, and they are accompanied by satisfaction or spending (Valveh in The view of the Muslim jurists of the truth is weak.) Therefore, those who want to uphold this weak right should not follow the established procedures in support of the right and in order to avoid the consequences that may result from mere reliance on it, and distorting the report and good faith. If the buyer does not deliver, then the intercessor has the right to intercession, so the last thing is that I must concentrate all the confirmed measures to take the support, by disclosing the judgment of the judge.

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The importance of research

Given the practical importance of the intercession system in our daily life, and its attachment to the right to property, the street's interest in and fostering intercession did not come from a vacuum, but rather from the perspective of the needs of many people. So. Pre-emption does not prejudice its wisdom and the intention of the street to implement it. Whoever pays compensation to the neighbor or his share in the property, and who forbids dividing the property and selling it to other than the neighbor and partner, and collecting what is different from the right of ownership, by taking priority. Given the importance of the pre-emption system in our practical life, and its attachment to the right of ownership, the rights associated with it, and the consequent social problems that undermine the building of society if it does not have a detailed and contemporary. Legislation addressing these problems is in its infancy. T explains the implications of introducing the right of pre-emption into comparative legislation and Islamic jurisprudence and the fact that "the reason for preemption acquires property" remains a serious limitation on discretion and discretion. Ownership and contracting, "and according to it, and he sees that the buyer himself assigns Majapura to the property he bought", and the seller finds himself a party to a contract with a person whose brother did not wish to initiate the contract with him, however, he is bound by this rule according to the law if he has these conditions And Vq is not a special approximation drawn by the law. The Egyptian civil law was the first of all Arab laws influenced by Islamic jurisprudence, and even the revelation that inspired Arab legislation to pay attention to the glorious Islamic law.

Research problem

Any research is not without certain difficulties encountered in preparing the researcher for the research, and the difficulty of the subject of preemption in (preserved medicine) is reflected in the fact that the research relates to "real estate issues" and is considered one of the most difficult matters, mainly due to its bifurcation, the large number of jurisprudential opinions, and their differences and contradictions Sometimes, and sometimes other ambiguities, which forces the researcher to find and understand all of them. In the event that you present for any reason the reasons for pre-emption and the conditions in the Jordanian civil law, and any judicial judgment is rejected, respect the provisions of pre-emption and division according to the law, as well as "if the buyer is "to provide pre-emptive consent", which leads to the emergence of different relationships in terms of weakness of power between all parties and not, Be it in H. My contract of contracts, such as the contract (sales), and the intercessor who takes ba to accompanied by "satisfaction", (where the Jordanian legislator put the law of pre-emption in the valley, (935. 948), where the preemptive Sharia system for the streets was derived from the "Islamic Sharia" Where this law is considered the "historical source"), and that the litigants in the case, and if they are taken according to the court rulings, (but to what extent are the emergence of such relationships and equations between all the parties in every system)? Are these relationships legally appropriate Arabic translation? That which took the principle of solutions)? (M) More success came in the legislation promised by the pre-emption, like a new purchase? "And when the wisdom of the street is to lift the harm from taxpayers as much as possible, then if it is not raised, but is a greater vaccine without change, the fundamental problem lies In determining the origin of the Jordanian civil law and who was considered, that (preemption) is like buying from (a new type), as he chose most of the provisions of Islamic jurisprudence and Islamic law, which tended to look mostly from where a kind of high and new starts from it, through which the law The Egyptian civilian who took this idea of solutions and both of them did not conceal any kind of officials The sales contract to prove taking the lip as is the case in Jordanian legislation.

II. Research methodology

Given the importance of the topic and its connection to human life and to economic, social and psychological health, and the existence of detailed texts clarifying the topic (a Lord revolted in Jordanian civil law), therefore I suggested that this topic be examined according to the analytical and comparative approach, and the Jordanian and Iraqi civil law curriculum that is entirely derived from the Islamic jurisprudence curriculum "Mesil", and this is Jordanian civil law is the focus of this study.

Analytical approach

It has been highlighted in the legal texts related to the topic of research, with a focus on the terminology contained in it and conformity, and this term absorption with the objectives of the legislative authority and its compatibility with the provisions contained therein.

The comparative approach

The Jordanian civil law was adopted as a basis for this study and compared it with most Arab civil laws, such as civil law and the Egyptian and Iraqi laws that are identical to it and taken from the French civil law, as well as Arab and other laws derived from Islamic jurisprudence.

Search Plan

Despite the importance of this topic and its brevity in all respects, this topic has been divided into two topics. In the first topic we deal with the effects of impudence, and in the second topic the fall of lust, then the conclusion.

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What is pre-emption?

Diaphragm

In the language: pre-emption is taken from the healing: it differs from the tendon, which is the husband. She says: He was tenderness, and I interceded for him. And the intercession of the lute tendon: make him a husband. And the patron saint of numbers.

Traditional: Islamic law jurists defined pre-emption with precise definitions, some of which I mention for a short time.

The definition of the tap: The Hanafi jurists know the pre-emption: (It owns the spot that forces the buyer to do what is based on it, as well as in public comments and texts). (1) It is noted in this definition that there is no indication of the reason for the existence of a story with pre-emption, and it is also noted that he enters what was without charge and does not guard about it in the definition, and general scholars. They said: There is no evidence for pre-emption, or what compensation is not mentioned in it, and the Hanafis have said: The pre-emption is not proven. This is what the Murshid al-Hiran stipulated in Article 95, and Egyptian civil law did not use it.

Definition of Maliki: They know the Maliki jurists: (preemption is the entitlement of the partner who takes the sale of his partner for his price). And the speech objected to it, saying: (It does not include what is in the pre-emption. The story is worth.) As if the return is a non-financial compensation, such as a woman's dowry and reconciliation.

The definition of Al-Shafi'i: According to the scholars of Al-Shafi'i (Sharia: the right to have an old partner a convincing argument for the incident of the possession of mosquitoes). And from Al-Sherbini Al-Khatib, the definition notes that there is no objection to the entry of narratives in them, and Al-Shafi'i does not say with the lip where, as well as entering the real estate that cannot be divided, and Al-Shafi'i does not in the lip and it contains their correct doctrine, and this is what We will discuss it when discussing issues of rudeness.

Selected identification: It owns the purchased eye compulsorily on behalf of the buyer, which is based on it. Any consideration for paying the price and supplies or expenses, such as broker's fees, selling costs or registration fees, and from their strips, the broker's property at the time of purchase is in the form of pre-emption. My definition of al-Mukhtar

corresponds to what is stated in Article 95 of Murshid al-Hiran, which says: "Owning all or part of the sold property, even if it is forcibly imposed on the buyer with what he makes of supplies".

Second: In the Egyptian civil law:

The Civil Code stipulates in Article (935) that pre-emption is a license that allows the intercessor to replace the buyer in the event of selling the property related to his property under the terms and conditions stipulated by the law. Therefore, pre-emption is considered a source of real estate rights, and thus it is appropriate as a reason for ownership, usufruct and monopoly. As for easement, since it is not envisaged to be sold independently of the property associated with it, priority is not a reason for its independent acquisition, but rather leads to its transfer with the property loaded with it and it is based on protecting the intercessor from potential harm from the partner or neighbor. Take it or not. This is left to its sole discretion. Therefore it is not permissible for the creditors to intercede; because it is a license and not a right (not in person or personally), and it belongs to the intercessor. Taking satisfaction requires the lifting or eliminating the effects that belong to the sponsor of the seller and the buyer and can be summarized in three a. Moore, chief, as follows

First: - Have an intercessor for the intercessor

Article (1164) of the Jordanian Civil Code states the following: - (The property is established to the intercessor in the sale by virtue of a court ruling or by handing it over from the buyer by mutual consent, subject to the registration rules). As stated in Article 1165/1, which states: - (Possession of the property seized by virtue of a judgment or approval of a new purchase is considered in which the choice of vision and defect of the intercessor is proven, and if the buyer abandons them (2) The patron may not use the term given to the buyer to pay the price without the consent of the seller. If the property is owed to others after taking it with priority, the intercessor may return the price to the seller or buyer who paid it to him. It appears from the second text that the ownership of the intercessor is according to a new contract between him and the buyer, meaning that intercession does not replace the buyer in the same contract concluded with the seller (3) The idea of a new contract can be accepted when it is prioritized by mutual consent with the buyer, either if it is by judgment, which is usually, it cannot be accepted between the intercessor, he has the report and the buyer compulsorily while the contracts are based on mutual consent ((4)) and it is noted in the first paragraph that they agree with The idea of the new contract because it specifies that the two options of vision and defect are proven to the intercessor and that the buyer waives them, while the second paragraph is in agreement with the idea of solutions in the same contract because it determines that the intercessor is not entitled to benefit from the condition granted to the buyer unless the seller is satisfied, and because granting the term depends on Personal considerations. If there is a new contract. As for the third paragraph, it does not agree with the idea of the new contract nor with the idea of solutions, because according to the idea of the new contract it is necessary to return the guarantee in exchange for the buyer according to the idea of solutions, must the guarantee be returned to the seller. In all cases, the existence of a new contract between the intercessor and the buyer results in the following:-

1- The intercessor is considered to be a buyer and his intercessor (the buyer) is considered a seller, and they bear the obligations of the buyer and seller in the sales contract.

2- The ownership of the report and are not transmitted to the intercessor as soon as the compromise on pre - emption or sentencing them but must register in the relevant department ,and it deserves Valhafee from the date of registration, as he shall be liable for his destruction of this date.

Second: Pay the price and expenses.

The payment of the price by the intercessor is the effect of pre-emption according to the text of Article (1163) of the Jordanian Civil Code, but according to the text of Article (2) of Law No. (51) Of 1958). It is a condition for accepting the pre-emption suit ((5)). The intercessor is obligated to pay the expenses that the buyer incurs in order to obtain the sale and which the law obliges him to bear (6)

Third: - Ruling on the buyer's actions in mediation

Physical behavior

Article (1166/1) of the Jordanian Civil Law No. (43) Of 1976 stipulates the following: (If the buyer increases in the notarized property something of his money, or he built or planted a tree in it before the pre-emption. Procedure: The intercessor has the right to choose between leaving the pre-emption, And that he owns the property at its price with the value of the increase or after construction or cultivation if the increase, construction or planting is after the lawsuit, the intercessor has the right to leave the pre-emption or request removal if it has a place, or to remain with the payment of the increase value or the reason for removing it) (7) It is clear from the first paragraph that ((the Jordanian legislator dealt with the buyer in a similar way to his treatment of the builder in good faith in the land of others, because it is based on a legitimate reason for his establishment of these hadiths.)) ((8)) Preferring intercessory text between two matters, either leaving priority Or possession of the property at its price with the value of the increase, while it appears from the paragraph that he dealt with the buyer in a treatment similar to his treatment of the builder in bad faith in the land of others (9) The reason for this is that filing a pre-emption lawsuit exposes the buyer's property to the risk of disappearing, and this means that every procedure he issues regarding the property will affect the right of the intercessor, and therefore good faith requires that. Refrain from doing so (10)the text of the intercessor is preferred between three things: ((Either intercession or a request to remove hadiths if they have a place, or memorize them while fulfilling their value)) (11) It has a placeis not clear in its meaning and was the first to permit that the words used accurately express his illness, so there is no place for removal in two cases, one of which is in the case of a disease. Misuse of the right holder.

Legal actions

Article (1167/1) of the Jordanian Civil Law No. 43 of 1976 (a patron of this) states that all the buyer's actions are nullified even if he suspends the drug report or makes it a place of worship. It does not apply in his case to any real estate mortgage official or any buyer with the rank of privileged right or Arrangement against him on the seized property if this is done after filing a pre-emption suit, and the creditors remain with their rights on the property price(12) The first paragraph gives the intercessor the right to cancel all the procedures that the buyer performs on the accompanying property, even if this behavior was an endowment or the property was a place of worship, provided that these procedures take place after initiation. From the pre-emption procedure, and if the text does not mention this condition because saying otherwise leads to restricting the buyer's freedom to dispose of the property, and if the responsible buyer sells after filing the lawsuit, then this sale does not apply to the right of the advocate, but if the sale was made before the lawsuit was filed, it is valid The intercessor has the right, but the Jordanian legislator has exaggerated the protection of the latter, so he may take the one responsible for the price based on the first buyer ((13)) the second rule of rights in the in-kind dependency that the buyer arranged or the report showed against him on the property, and the report provided the same ruling, that is, no It applies to the correct intercessor if Valhafee does not have free ownership of these rights after proving the case of pre-emption in front of the creditors, but Ba to Rjoua the buyer must pay for the property to recover their rights from it. It should be noted that the phrase (the buyer's rank) refers to the mortgage, while the phrase (the ranks opposite it) refers to the lien rights, because the pledge is made only by the will of the owner, who is the buyer, only. Where franchising is arranged according

to the rule of law only. He appealed to the Supreme Court in Case No. 3 of a “constitutional” judicial year No. 2 of the second case of Paragraph (e) of Article 936 of the Civil Code, which gives the right to seize property. The neighbor, if the sold land has a right of easement over the neighbor’s land or vice versa, on the basis that the pre-emption system, in which only the intercessor authorizes the intercessor the right to purchase the land sold to others in a legitimate manner, leads to a monopoly that violates the constitution in its first and ninth articles, namely the principles of equality and equal opportunity. The court ruled to dismiss the case at the 3/6/1971 session, based on the constitutionality of the pre-emption system. Consequently, the provisions that regulate pre-emption in civil codes are constitutional. The Court of Cassation upheld this and ruled: “If the Supreme Court, in its judgment issued on 3/6/1971 AD in Case No. 3 of 1 year BC, rejected the challenge to the unconstitutionality of the pre-emption system on the basis that the right of pre-emption does not violate the principle of equality before the law nor Contrary to the principle of equal opportunity endorsed by the constitution, the obituary of unconstitutionality is incorrect. Article 935 of the Civil Code states the following: “Pre-emption is a license that allows the intercessor to replace the buyer in the event of selling the property associated with his property in the terms and conditions stipulated in the law. Therefore, pre-emption is considered one of the sources of real property rights, and therefore it is a reason for the acquisition of ownership, usufruct and monopoly unlike the right of easement, and it is based on protecting the intercessor from potential harm from a partner or neighbor. In fact, I agree to the pre-emption clause as a license, and I see in it the correct saying, as the license is more than freedom and without right, and this is the saying of the legislator in the new civil law. The same, and his statement raises the disagreement, as it is only a desire and will, for intercession is related to the person of the intercessor and he is free to take it or not to remove it, it is left to his discretion alone.

The first requirement

Relationships implied by pre-emption

In the event that one of the reasons and conditions for pre-emption is available, the intercessor begins the pre-emption procedure by declaring his desire to take it to both (the seller and the buyer). By consent or judgment (14) and it follows that the coming of the intercessor replaces the concentrated, agglomerating buyer. Which in all of its rights, obligations and claims by the seller, and this means that the intercession replaces the buyer in the same contract with the report and the insurer who has not changed in the contractual bond except one party of the parties is a buyer with staying as such, a new sale contract has not been created for this expression In the parties to the contractual bond, this is not new in civil law, and the substitution of the buyer instead of the buyer has implications either at the level of the relationship between the intercessor and the seller or between the intercessor and the buyer or between the intercessor and others, so that one of the parties to the relationship is committed to the other. And the wisdom of pre-emption is to pay the harm that is caused to the other. The neighbor or the share in the property, it also prohibits splitting the property and selling it to other than the neighbor and partner, and collecting anything that differentiates from the ownership right, such as annexing the usufruct right to the neck. Take pre-emption. Actually harm and the absence of wisdom in determining pre-emption do not negate its occurrence. The former proves the availability of one of its causes and the conditions for its application. In view of the practical importance of the pre-emption system in our daily life, and its attachment to the right to property, the rights associated with it, and the consequent social problems that undermine the building of society if there is no detailed and contemporary legislation. That helps it in its infancy, before it aggravates and threatens the individual in his home and money. Pre-emption also came in light of the need for many people. The vast majority of people notice that someone in his

life is exposed to selling his or her share to a new buyer, resulting in distress, hardship and embarrassment for the old neighbor or partner. Embarrassment, and confirming the pre-emption and permissibility of work according to it.

The second requirement

The relationship between the saint and the seller

It entails a proven right of spending or consent to replace the shafih in the place of the buyer in the sale and to abide by all the obligations that are bound by the contract of sale and to have all the rights arising from this contract and to transfer the ownership from the seller to the Shafi'i directly once the patron has registered, judged, final approval, registration and delivery by lip And waived it according to Article 945 of the Egyptian Civil Code. (15) Where the text of a word where: the intercessor replaces the seller with the buyer in all of his rights and obligations, and the king becomes the patron saint of sales by the court ruling or the buyer receives it by mutual consent without prejudice to the rules related to registration. It is clear through this that the Egyptian National Law said that "the intercessor replaces the buyer" and that the source of this solution is the court ruling issued in the case or the buyer's satisfaction with the lip is the date of the beginning of this solution. From the date on which the buyer becomes confirming the judgment, it has been attached permanently or from the time of the settlement of peace by the buyer where the text that (replaces the intercessor in place of the buyer from the seller in all his rights, obligations and obligations) is confirmed to the king of the patron saint of sales by the court ruling or has occurred It shall be signed by the buyer with mutual consent without prejudice to the rules relating to registration). This is a matter of disagreement between jurisprudence, as he went to consider such solutions from the date of the reported sale contract, and in it it is considered that this judgment was accompanied by its original. Another opinion went to consider the date of announcing the desire as the date of dissolution (16) By solutions, it is intended that the saint replaces the buyer and takes the position of the patron with him regarding the rights and duties that he owes, and this means that the intercessor replaces the buyer in the same contract with the report, which despite the contractual bonds between the seller and the buyer is subject to change in the name of the contractor only as an intercessor and the contract remains in the state that becomes In which the saint is the saint instead of the buyer in the contractual deed, and therefore, a new sale contract was not created just because of a change in the two parties to the contract. The Jordanian civil law disagreed regarding it as all previous Egyptians considered that the acquisition by disclosure is a new purchase that takes place between the broker and the buyer, as stipulated in Article (1165)) On it. Ownership of the report and its disbursement or consent is the purchase of a new proof that includes the choice of visibility and the defect of the beneficiary and the buyer's assignment with M ((17)). Thus, there is a Jordanian civil difference between two contracts, one between the seller and the buyer, and the second between the buyer and the Shifa'a, which differs from the idea of solutions that were previously explained and taken by the Egyptian civil law. . And that the most important thing that must be clarified is the relationship of the companion to the buyer present in the three branches. The first branch is devoted to the judgment of the king, the patron of fruits, and the second branch is specific to the case of the increase that the buyer is going through for the building and planted in the eye report, and where in the third section the obligations of the seller and the buyer are discussed within two.

Branch the first

Own the intercessor to fruits

If the saint was the patron saint who took the real estate with the cuff, he must take the property with the cuff, and there are no lists of Egyptian law and civil that clearly govern the fruits from among the owned fruits, starting from the date

of the declaration of the desire and among those owned by them from the date of issuance of the judgment and it becomes final or the buyer is handed over by the lip of consent, and in fact, the right of the property does not It is proven for the guardian of the shepherd except to obtain approval or issuance of judgment and the contradiction that proves the king's intercessor at that time and gives the right to the fruits at an earlier time, as long as the fruit is a development of the king and increases, and the person is only after he has proven his ownership and this opinion is derived from the Islamic jurisprudence that gathered scholars It states that the fruits of the report and that it is the right of the buyer while he took the lip, it is not valid for the patron saint to spend the fruits before the judgment. Subtracting the price Although it is said that he is a patron deprived of fruits and forbidden to benefit from the price, and that justice requires that it be a fruit from the time of depositing the price, but the buyer also did not benefit from the money that he deposited an intercessor and if we try to honor one of the two interests, the buyer's interest provides benefit to the intercessor So that the owner of the property has the report and does not take away from him his property or the fruits of his possession from him before the demise of this title, he is the owner and defends the price of demineralized by force.

The second branch

Judgment plus the buyer building or planting in the intercession of the eye that This lawsuit stipulated the provision of Article (946) of the Egyptian Civil Code stipulating that if the buyer decided to establish in the ownership report and / or planting trees before declaring the desire for (pre-emption), the intercessor was obligated according to the chosen buyer to pay him either the amount that was spent or The amount of the increase in the value of the property due to the building or farm that was acquired (18) But if you got the building or planting after announcing the desire for pre-emption, then the saint was the patron of the request for removal. If you choose to keep the builder or the grower, he is only obligated to pay for the construction tools and wage labor or the strong planting expenses. Therefore, we must differentiate between two cases:

Case first: - If you built a buyer in the real estate report and / or planted trees before announcing the desire for pre-emption, then the buyer's choice was either to demand the intercessor for what they spent on building or planting or for an amount increased by the value of the land because of that, you have the largest working legislator here, a buyer who treats better than The one who has good faith in the provisions of general adhesion is in this case taking any lower values (19)

The second case: - If you built the buyer or his colleague planted after E. And not now because of the desire for pre-emption, the patron of which is asking to remove the building or planting at the buyer's expense and return the property to its original compensation if that is appropriate for him, or it may be that the beneficiary is to request the building The detainee and the planter to the buyer what he spent on construction and any grower to pay for the construction tools, taxi work, and planter expenses.

The third requirement

The relationship between the intercessor and others

Article 947 of the Egyptian Civil Code states that it does not apply in the right broker to any real estate mortgage official or any right to judicial jurisdiction against the buyer, nor any sale issued by the buyer, nor any right of the eyes that was arranged or arranged if that was after the date In which the declaration of the desire for pre-emption is recorded, and with that the creditors remain to record their pre-emptive rights in each buyer from the price of the property (20) as in Article (1167) of the Civil Code. Some did not receive its mention (the intercessor of this nullifies all the buyer's actions

even if he stops Decide on medication or make it a place of worship). It applies to the right of any real estate mortgage official or any lien right arranged by the buyer or its arrangement against the property with a report, and if after filing the lawsuit, the creditors of their rights remain on the price of the property. Pursuant to what is stated in the Jordanian civil texts, the seller may act in many types of behaviors listed in the ownership report, which he sells or sells, or the determination of easements or demonstrations officially or comically. (21) And the rule regarding these actions that have long been incurred on the reported property and where before the establishment of the generation of E did not announce its desire to take the scale before filing the case according to a Jordanian civilian (and thus the truth) that the seller is the buyer in the sale first) These behaviors are applicable in the right mediator, but it is required That the person responsible for it may record it immediately before recording the declaration of the desire, and verify that it was the effect of these actions in the right intercessor (1). The rights arranged by the buyer are valid as long as they were prior to the registration of the declaration of desire. Or before the lawsuit was filed, according to a Jordanian civilian, because there is no procedure called declaration of desire in this law. And build on it. If the buyer sells the ownership report and the buyer records the second place before declaring the desire - according to the Egyptian, or he filed the lawsuit according to the Jordanian - then the second sale is carried out in the correct way and the intercessor takes the lip only in the second sale ((22)) with regard to the real rights that the seller arranged Registering it before declaring the desire for pre-emption, as these rights are not enforced in the right of the intercessor, for example, if it is sold to a second buyer, and the sale was not registered before the desire was announced or before the lawsuit was instituted. The patron saint intervenes in the sale of the first because the buyer is the second guarantee of the seller, and the same applies to whether the seller has arranged the right of easement or usufruct. The litigant before declaring the desire or before filing the lawsuit (23)the real rights arranged by the buyer are also the register of desire or the procedures that were concluded. The right of the intercessor does not apply to any act issued by the buyer if the report is attached to the property and in it. If the sale is disposed of, it does not apply to the correct intercessor, as he can take the lip from the first buyer who did not find that from his clinic he mediates in the sale of the second as if the price is lower. But if the act here was not recorded until after the declaration of the desire and the date of filing the lawsuit did not apply these rights to the right of the intercessor, then the system of intercession defined by Islamic law fourteen centuries ago is the source and the source of pre-emption provisions. When the mixed civil congregation was issued, the rulings of intercession were taken from its source, which is Islamic law. Articles (93-101) were stipulated as a reason to own property, because it was clear to the mixed civil law formators that this system had become part of the legal traditions of the country. When the civil group was issued, it was natural to be affected by this situation, and in turn the pre-emption was stipulated in Articles (68-75) of the reasons for ownership. However, the work showed that the provisions of the previous articles are not sufficient to settle the various disputes arising from them, which prompted the judiciary to seek the help of the provisions of Islamic law and the opinion of its jurists in the problems that cannot be resolved. Reliance on the provisions of the law, thus opening the door to ijthihad wide. Which led to differing opinions and contradictions

Fall of preemption

Pre-emption is a restriction on the freedom of action, so the legislator worked to narrow its scope and order the loss of the right to it in the cases stipulated by law. And the cases in which the right of lip service is not proven, which is selling the property by public auction, the issue of selling between spouses or relatives, and the issue of selling the property to make it a place of worship, as well. As if the reserved property was a gift. Where Article (935) civil states: "Pre-emption is a license that allows the sale of real estate to replace the buyer.

Condition first

Reasons for dropping pre-emption

- Waiver: If the intercessor waives his right explicitly or implicitly, and this assignment was made before the sale, Article (1134 paragraph / d) of the Iraqi Civil Code (if he waives his right to pre-emption, explicitly or implicitly, even before the sale). This is contrary to what is established in Islamic jurisprudence, because the assignment before the sale does not waive the preference because, as the Muslim jurists say, (a right that was not before the sale, it is not permissible to waive it). Before there was (24) Likewise, according to the text of Article (1158 - if pre-emption is proven, it is not invalidated by the death of the seller, buyer, or intercessor) (25)

- Likewise, Article 948 of the Jordanian Civil Code states that the right to retain the lip lapses. (A) If the intercessor relinquishes the right to take the disclosure even before the sale and relinquishing the legal disposition may be forfeited with or without pay. The accusation, as it may be explicit and may be implicit, is subject to the explicit signer in the established general rules to prove the legal disposition, although it can be proven implicitly by all means, and use it to get rid of the implicitness of every action or behavior taken from the lineage his patron. The intercessor mediates in the sale between the seller and the buyer, or he agrees with the buyer in deciding the easement in favor of or on the sold property, or guarantees the buyer the price. The intercessor may waive the pre-emption after its request, and he still has the right to waive unless the precedent is taken by judgment or the buyer has precedence since the assignment. It is clear and clear and does not need any statement. As for the implicit assignment, the example is A, he buys the property from the record and the intercessor, the buyer A, and in the event he leases it, it must be noted that the loss of pre-emption due to the assignment must be made on him by a ruling (27)

Six months have passed from the day the sale was completed

When six months have elapsed from the day of the sale being completed, that is, from the day it was registered in the Real Estate Registration Department ,the right of the intercessor to pre-emption is forfeited,and this ruling applies even to the right of the interdicted or absent intercessor,and this period is forfeiture and not a period of prescription,and that is it does not accept the situation or interruption .

Failure of the intercessor to take pre-emption procedures:

Likewise, the right to fall is covered if he is not the patron saint of the procedures decreed by Articles (1139-1140) of the Iraqi Civil Code. If the intercessor does not declare his desire for pre-emption for both the seller and the buyer or to the Real Estate Registration Department within fifteen days from the date of the warning addressed to him by the seller or buyer, his right to pre-emption and his right also forfeit if the lawsuit is not filed within thirty days from the date of announcing the desire. The right of pre-emption is also crushed if the intercessor has not deposited half of the real price for which the sale was made when the lawsuit is filed and the intercessor has not filed in the court case.The right of the intercessor to intercession shall be extinguished by the demise of his possession, or by the failure of the condition of the conditions necessary to prove the preemption in the period between the sale and the taking of the full lip, if the king of the intercessor remains before the judgment or bargaining over them. They have the right to pre-emption, as it is required that they be the owner of what is to be interceded, and the time of selling the secured property is used and its owner remains until the judge rules it with intercession or consent. To accept it. If the intercessor sells his share that he mediated, or

donated it to himself and his children after him or to a charitable body. His right to preemption is forfeited by the cessation of its cause (28)

The second condition

A- The buyer sells the bogus property- If the buyer sells the report and the sale before announcing any desire to keep the lip or before registering this desire, then it is not permissible for the patron saint who takes the cuff except with certain conditions in the second sale, and the dates specified in accordance with the text of Article 797 of the Egyptian Civil Code, but the record and against him did not They abide by this provision wherever it was placed, but resort to it to drop the correct attempt of intercession by contracting the sale of the image, which is circumventing the law, an investigation for the purpose of the Guy R. Project, dropping the right of preemption in this case is the burden of the intercessor to prove the feasibility if it is based on that right in pre-emption)

B - The claim of buying a property to build a house of worship. The buyer may argue in order to forfeit the right of pre-emption, for the intercessor to warn that the purchase was aimed at establishing a place of worship that refuses with pre-emption in accordance with Article 798 of the Civil Law, and thus the intercessor refrains from taking any action in the pre-emption, on the specified dates, After the end of the prescribed dates, the buyer begins to establish business, construction and economic exploitation, and in this case the saint may take everything measures in the right of pre-emption at any time, and because fraud and fraud nullify the actions and all procedures, and therefore this false warning does not have any effect on it ((30))

III. Conclusion

At the end of this research, pre-emption is considered one of the reasons for obtaining ownership, as the Jordanian civil pre-emption law is defined as a right, and Egyptian civil pre-emption is defined as a license, but the reality and application of the right of pre-emption, but it is higher than the license and less than the right.

First:Results

1. The reason for pre-emption is the availability of one of its causes, such as the Shawa, for example, or the neighborhood, which differs from the wise men that pay the harm that the hypothetical legislation under consideration is assuming, is subject to proof. The opposite.

2. The right of pre-emption differs from every right of preference in that it is in the owned property, whether it is registered or not. As for the preference, it is in the sale of the building only according to the law on the ownership of floors and apartments, while the priority is limited to the common denominators in the princely lands according to the provisions Jordanian Civil Law and the provisions of the Judicial Rulings Law.

3. The Jordanian legislator and civil have added a new case for them to have the right of priority, which is that the needy is from the people of the village without requiring that the right of pre-emption be according to the civil law of the Egyptian because the latter assumes that the chef is the owner and has a reason for acquiring ownership. The Jordanian legislator also canceled the issues of the neighborhood and the needy people of the village, which were mentioned among the reasons for priority, and kept one case, the state partner in the common denominator. Likewise, there is no priority in Egyptian legislation, because the cases mentioned in the

Jordanian civil law and other laws are included in preemption cases, with the exception of the case of needy people from the village.

Second: Recommendations

Where the right of pre-emption was discussed in each of (Egyptian, Jordanian and Iraqi civil legislation) and where the first legislation adopted “the idea of Egyptian solutions” and it is permissible for the Jordanian legislator to mix between jurisprudence and a set of results that I remember: -

1. Amending the text of Article (1158) of the Jordanian Civil Code to become, after the amendment, (the number forfeiture of pre-emption with death, seller, buyer, or intercessor).
2. Amending the text of Article (1161) of the Jordanian Civil Code to include some amendments (it was not accompanied in the following cases (it was not associated in the following cases)).
3. The text amending Article (1166) of the Jordanian Civil Code to read as follows (1 He is not the patron of any rights on the ownership determination and before the buyer is handed over by the lip of satisfaction or the issuance of the court rule). (2. If the buyer increases the report and the building or planting, then he has the choice between pre-emption papers or keeping them with payment of the increase value).

References

1. AnwarTolba/ preemption and deception to drop it, without print, Modern University Office, Alexandria, 2004.
2. Suleiman Khalif Al-Qallab / Al-Shifa in Jordanian Civil Law, Comparative Study of Jordan - University of Jordan - 1989 AD.
3. His Message and the Request of Muhammad Nasir al-Din / Original Property Rights, Ain Shams University Publications, year 2001 AD.
4. Abdel Razzaq Ahmed Al-Sanhouri / Wasit Explanation of Civil Law, Part Nine, First Edition: In 1952, the Egyptian Universities Publishing House of the new third edition, in 2011 AD, the Egyptian Renaissance House.
5. Abd Al-Hamid Al-Shawarbi / Provisions of pre-emption and division in light of judiciary and jurisprudence, a detailed explanation of the pre-emption lawsuit, the issue of dividing public money (sorting and moving away), House of Arab Thought, Alexandria College of Law, second edition, publisher, Dar Al-Fikr, Sutter University, 1995 AD.
6. About Hadi Al-Obaidi / Brief Explanation of Civil Rights Law in Kind / Amman / House of Culture Library First Edition / Third Issue / Year 2000 AD.
7. Ali Haidar / Dürer Arbitrators to explain the provisions of the magazine, Dar Gil Dar Al-Jeel, HaqiqArabization: Fahmy Al-Husseini Advocate, Part Two, Special Edition 1423 AH, 2003 AD.
8. Muhammad Taha Al-Bashir and Dr. Rich HassounTaha / In-kind rights, original rights in kind, accessory, part of the first, copyright and copyrights are reserved to the Ministry of Education, Higher Education and Scientific Research / Republic of Iraq / Baghdad - Journalist Knowledge - 1969.
9. Muhammad Abdul-Zahir Hussein / Right to Ownership - Publications of BeniSuef University 2006 AD.
10. Muhammad LabibShanab / Brief on Original Rights in Kind, Al-Ahadan Publishing House, Year of Publication 1973 AD.
11. Mahmoud Gamal Al-Din Zaki / Original Rights in Kind, Second Edition, Cairo University Press, 1978 AD.

12. Harjah Mustafa Majdi / Intercession in light of the latest opinions, provisions of the veto and provisions of legal formulas, University Press.
13. WafaHilmi Abu Jamil / The Right of Ownership and the Rights of Affiliation, Part 1, Al-Nasr Library, First Edition, 2006 AD.