



Disposition of Common Real Estate in the UAE Legislation

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Abstract

Disposal of common real estate ownership may be conducted collectively by all the partners, or by the majority of the partners, or individually by one of the partners, and here the partner has the right to dispose of its common share in all forms. The study aimed to identify the common real estate ownership, the legal nature of co-partner's right, the rule on the partner's disposal of its common share alone, the rule on the partner's disposal of a separated part of the common share, the result of that disposal before and after the division, and finally, and the rule on partners' disposal of the common real estate. The study came to several conclusions, chief among them being that it is acceptable for partners to agree to dispose regardless of the results and to divide the common money anyway they see right. However, if a partner disposes of what exceeds its share, its disposal shall not be carried out against its partners. Regarding the rule on a partner to dispose of a separate portion, it shall depend on the result of the division, so the rule before the division is one thing, and after the division is another. Accordingly, the study recommended stipulating that partner shall inform its partners before disposing of its common share within a reasonable period, to give them the opportunity to choose between division or executing the disposal in their favor, as well as providing for the compensation of the aggrieved partner from the disposal of its partner, without limiting that to the general legal provision in civil liability.

Key words

Real Estate Ownership, Co-ownership, Common Real Estate, Partner, Common Share, and Separated Share.

Introduction

The property right is considered one of the most important rights in rem that is governed by a set of texts that are mainly included in Federal Law No. 5 of 1985 AD , regarding property

rights, property assets and disposal thereof, and making the will of the parties consensual in the framework of what the law allows in dealing with these rights.

Article 1133 of the Civil Transactions Law recognized "the right of the owner of a thing to dispose of it in all types of disposition, so he may sell what he owns or part of it for consideration as a sale, or without consideration as a gift, and he may also transfer any element of his ownership, as if he arranges on his property a right from Usufruct or use rights, or to entail on his property a right of easement, official or possessory mortgage, or otherwise.

The right of the owner over his property is distinguished as a preventive right, that is, "a right that is limited to the owner of the thing and not to anyone else, so it is not permissible to share his ownership with others, while it is permissible to own the thing or the property in common, and in this case it is not permissible for either of them to monopolize the whole thing or the property, even if What each of them owns is part of the thing or property, but it remains common. Given the prevalence of common real estate ownership in practical life, as well as the difficulties arising from the multiplicity of owners, which would complicate the exploitation of the thing, "therefore it was necessary to legally regulate the common ownership in a way that somewhat reduces these difficulties." In common ownership, the legislator authorizes, according to Article 1153 of the Civil Transactions Law, "a partner in common ownership has the right to dispose of his share as he wishes without the permission of the rest of the partners, provided that he does not cause harm to the rights of the other partners." It may be "disposal of a common property by a single partner, excluding others in his common share, and it may be by the majority of the partners in common." And because of the practical and scientific importance of the topic in explaining the provisions of the UAE Civil Transactions Law mainly, Especially in protecting the minority of co-owners from the arbitrariness of

the majority of them in the common property without their consent and harming them, while being guided by the opinions of the jurists and the jurisprudence of the judiciary.

Reasons for choosing the subject of study

The choice of the subject of the study is due to the following reasons:

1. The spread of the phenomenon of communism in the Emirati society, and the complexity of the real estate problem due to its connection to the historical heritage as a result of the failure of most families to divide and remain in a state of communism.
2. Common real estate is a complex system at its core; Because the rights of the partners overlap on one thing, and this situation leads to the inevitability of the clash of the partners who are divided
3. The absence of legal texts that dealt with some provisions, especially in the case of the partner's disposal of the entire common property.

4. Frequent conflicts in the event that one of the partners or the majority of them decides to dispose of the jointly; Whether by transferring ownership or arranging any real right over it.

Research problem

The problem of the research lies in the statement of the provisions of the disposal of the common property in the UAE Civil Transactions Law because of its scientific and practical importance, and the shortcomings of these provisions that would raise theoretical and practical problems, especially with regard to protecting the minority of the partners in common from the arbitrariness of the majority of them. common drug, without their consent and harming them, guided by the opinions of the jurists and the rulings of the judiciary. The partners may agree on a specific disposition of the common real property, and this is the principle, and here no problems arise. The unanimous will of the partners may not agree with regard to disposing of the common ownership, and here it is necessary for the legislator to intervene; To regulate this situation, he authorized it for a special majority of the partners. It is also possible for the partner to act alone, "which creates a complex special situation, and leads to many conflicts, especially since the common is a temporary situation that necessarily leads to division and separation, such as disposing of his common share by arranging a real right over it, which raises the question about the effects of this behavior." With regard to the rest of the partners, its effect is after the division, and the partner may dispose of a separated part, which results in his behavior a problem in common ownership, especially since the legislator in his organization of the shared property specified directly the ruling on the dispositions after the division without disclosing its ruling before the division. Explaining how the common property is disposed of? What are the legal implications of it, especially in the face of the partners? What is the ruling on the disposal of all or most of the partners in the common property? What are the implications of division? Accordingly, the main problem of the study is represented in the following question: What are the provisions of dispositions on real estate ownership that are common in UAE legislation?

Search questions

In detail to the entirety of the previous question, we ask the following:

1. What is the common money concept?
2. What is the legal nature of the partner's right to communion?
3. How to dispose of common real estate property?
4. What is the ruling on disposing of all or most of the partners in the common property? What are the implications of division?
5. What is the ruling on one of the partners disposing of a separated part, and the ruling on this disposition before and after the division?

Research Importance

In view of the importance of the provisions of the partner's disposal of real estate ownership that are common in the UAE legislation, the importance of the research is evident in the following:

- The extreme importance of common ownership and the methods of disposing of it, as well as the spread of common ownership in our society, especially because of the inheritance because of which the estate's money becomes owned by the heirs in common, and for the partners to remain without disputes. "

- The importance of the topic is also evident from its practical connection to the reality of the partners' lives.

Despite the large number of provisions regulating common real estate ownership, however, "there are no special provisions on the subject of real estate ownership in a unified rationing that makes familiarity with this subject in its various aspects among the difficulties facing research on the subject, despite the large number of disputes raised regarding it."

- It also narrows the circle of disputes and rivalries between the partners in common real estate ownership, which achieves familiarity and stability among them.

Research Aims

1. The focus of the objectives of this study is the ruling on disposing of real estate property that is common in UAE legislation.
2. Statement of the definition of common money and common real estate ownership.
3. Knowing the legal nature of the partner's right to communion and how to benefit from it.
4. Statement of the ruling on the partner acting alone in his common share.
5. Identifying the ruling on the disposition of partners in a common property.
6. Statement of the ruling on the disposition of one of the partners with a separated part, and the fate of this disposition before and after the division?
7. Answering the study's questions during the presentation of the research, its results and recommendations in order to reduce common real estate property disputes and to benefit from their settlement.

Research Methodology: include

1. The inductive descriptive approach: "by describing common money and common real estate ownership, and extrapolating their rulings in a follow-up, investigative manner based on linkage and discussion."
2. The analytical approach: "By analyzing the provisions for disposing of real estate ownership that are common in UAE legislation, in order to reach the objectives of the study."

3. The comparative approach, "by comparing the provisions of the disposal of real estate property that are common in the UAE Transactions Law, with those provisions in the Egyptian and Jordanian civil law

Common Ownership

Article 95 of the UAE Transactions Law defines money as "everything in kind or a personal right that has one of the material values in dealing"¹. Also, Article 97 of the same law was considered as the subject of the financial right, "everything that can be possessed in a material or moral form and what is permitted to be used and is not prohibited from dealing in it due to its nature or the text of the law"². And perhaps this money was allocated or remained in common, "If it was separated, then the owner may dispose of his share as he wishes without harming others, violating the law, or wasting a public interest or a private interest"³. This is in accordance with Article 1136 of the UAE Civil Transactions Law. And if the money is still in common, "its owners remain partners in it, and the shares of each one of them are calculated equally with the others, if there is no evidence to the contrary."⁴

Definition of common money

We will address this requirement in two sections, dealing with the terminological definition (the first section), and dealing with the legal definition (the second section).

First branch: Idiomatic definition of common money Many jurists singled out several definitions of common money or property, the most important of which are:

"Common property" is defined as that property that is owned by more than one person on specific money"⁵, and this definition highlights the essence of common ownership and what distinguishes it from ordinary divided property, which is "multiple owners of one thing"⁶. It was also known as "multiple owners in one thing without the ownership of each of them being required"⁷. And some define it as "what is attached to a relative part that is not specific and unspecified, and every atom in common money is common to all partners"⁸. And common property

¹ Ali Haidar, *Pearls of Rulers Explanation of Al-Ahkam Magazine*, Arabization: Fahmy Al-Husseini, Beirut: Dar Al-Jil. 1991, p. 115. "Money is" everything that a person acquires and actually possesses, whether it is in kind or a benefit, such as gold, silver, plants, or the benefits of a thing such as riding, clothing, and housing. As for what a person does not possess, it is not called money, such as birds in the air and fish in water. See: Article (166) of the Code of Justice.

²) Muhammad Wahid al-Din Suwar, *The Right of Ownership in and of itself in Civil Law*. (f. 2). Amman: House of Culture Library for publication and distribution. 1997, p. 107.

³) George Chadrawi, *The right of real estate ownership, with an appendix on: the right to act - the right to usufruct*. (f. 2). Lebanon: Modern Book Corporation. 2017, pg. 52.

⁴) Khaled Salti, Nawaf Al-Singlawi, *The Partner's Behavior in Common Ownership: A Comparative Jurisprudential Legal Study*. [Master's thesis] Faculty of Law, Middle East University. 2012/2013, p. 21.

⁵ Nabil Ibrahim Saad, *original in-kind rights*. Beirut: Arab Renaissance House. 1995, p. 117.

⁶ Anwar Tolba, *Common Ownership*. Alexandria: The Modern University Office. 2004, pp. 5 et seq.

⁷ Abdel-Hamid Al-Shawarbi, *Rulings of Pre-emption and Division in the Light of Jurisprudence and Jurisprudence*,

(2nd Edition). Alexandria: University Thought House. 1995, p. 179

⁸ Mustafa Ahmed Al-Zarqa, *Islamic jurisprudence in its new dress*. (i.3). House of thought. Dr.. T, p.

according to this definition; "It is that ownership that relates to an unspecified or specific part of the money, and the money in its totality is owned by all the partners in common, so that every atom in it is owned by all the partners"¹. By extrapolating all these definitions, the **researcher arrives** at a comprehensive definition of common ownership, which is defining it as: "It is the participation of more than one person in the ownership of a specific thing legally."²

As for the idiomatic meaning of the common, it is "a legal situation that results from the multiplicity of owners of the right in kind, without some of them being allocated to a separate part of it". Community is one of the forms of individual ownership in which something is owned by several people, without the share of each of them being divided in a specific aspect, but rather merged into the right itself"³. And she knew that; Proof of ownership of a particular money by itself to more than one in a comprehensive manner for all the money without division, quota, or division.⁴ And another jurist defined it as "the participation of two or more persons in the ownership of one money at the same time and the use of it all"⁵ It was also defined as "a type of property whereby each co-owner or co-owner owns a definable share of the common money"⁶. It was also defined as "a type of property whereby two or more persons have joint and simultaneous rights over a specific property"⁷. The Egyptian Court of Cassation adopted this principle, "when it came in one of its rulings that commonality is based on multiple owners of one thing, and multiple funds are considered in the case of multiple commonality, on the condition that one thing is multi-component and the ownership of the partners together"⁸. Looking at the previous definitions, it is noted that "each of them highlighted one aspect of common ownership, some of which highlighted the case of sharing in common money, and some highlighted the owners' right to this common money"⁹. As for the differences between joint ownership and joint ownership: "In joint ownership, the common parts are common among all the partners, without one of them depriving the rest of the partners of using their rights over them, but in ordinary ownership, the common thing is shared among all the partners without any partner having preference over the rest of the partners with a

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¹ Ali Jabbar Sakeel Al-Asadi, Shared Ownership and the Rulings of Removing Communism: A Comparative Study. Amman: Al-Radwan for publication and distribution. 2016, p. 24.

² Jamal Khalil Al-Nasher, Partner's Disposition of Common Money and its Impact on Partners' Rights. Alexandria: New University House. 2001, p. 114.

³ Riyad Mofteh, *The Right of Ownership in Islamic Sharia and Man-made Laws*. Alexandria: Al-Wafaa Al-Qanun Library. 2018, p. 179

⁴ Abd al-Razzaq Ahmed al-Sanhouri, *Mediator in Explanation of Civil Law: Part VIII The Right of Ownership with a detailed explanation of things and money and the law for the protection of intellectual property rights*. Alexandria: Knowledge Manshaat. 2004, pg. 712

⁵ Rojer J. Simith. *Property Law*. (Eighth Edition). London: PEARSON Education Limited. 2014. P.296

⁶ Clarkem Alison & Paul Kohler, *Property Law, Commentary and Materials*. Cambridge University Press. First Edition. 2005.

⁷ Moawad Abdel-Tawab, reference in the commentary on the texts of the civil law: Volume IX Real rights - the right of ownership - the reasons for acquiring ownership - appropriation - inheritance - will - adhesion - preemption. Tanta: World of Thought and Law Library. 2006, p.11. Judgment of the Egyptian Court of Cassation No. (923) for the year (50 BC) on (17/5/1985 AD)

⁸ Fayez Al-Sayed Al-Lamsawy; Ashraf Fayez Al-Lamsawy, *Common Ownership: Its General Provisions and Practical Problems*. Cairo: National Center for Legal Publications. 2009, p. 16.

⁹ Neil Duckworth & Anne Rodell. *Property Law and Practice*. College of Law Publishing. 2010. P.23.

specific share of it"¹.while if it was a building property; "Distributed among the partners of each of them on a floor so that the stairs, corridors and roofs of the building remain used among them as a matter of participation. The ownership of these common parts was common ownership in proportion to each share of the floor of each partner"².So, ownership of floors is nothing but "a mixture of separate and common ownership, unlike common ownership in which all the money is owned by the partners, all of whom are in common"³.Likewise, "community accepts consensual or judicial division, but this is not possible in the system of floors and apartments, as there must be common parts to serve the entire building, and they are owned by way of forced compulsion, such as the entrance, stairs, elevators, etc."⁴.As a result, it appears clearly through the clarification of the two concepts that joint real estate ownership and ordinary communal ownership are different as follows:

With regard to the divisibility or indivisibility of a common thing

"The difference between joint ownership and common ownership appears, as the legislator acknowledged that division is always possible in ordinary common, and it is the right of every co-owner to get rid of common property and be alone with a divided share, and this is what was stated in the text of Article 1153 of the UAE Civil Transactions Law.

legal system that is the system of joint ownership, and the group of partners is within an association that enjoys legal personality, in contrast to the partners in common property who do not have moral personality, and are not forced to manage common property collectively. ⁵

With regard to the expenses and costs of the common thing

"In compulsory co-ownership, that is, joint real estate ownership, the costs and expenses of the common parts are distributed among the co-owners according to the proportion of the value of the share or shares that each one of them owns as separate property"⁶, while in normal co-ownership; "The expenses of the common thing are distributed to each partner according to his share, unless there is an agreement or provision to the contrary, and this is confirmed by Article 1159 of the UAE Civil Transactions Law."

In terms of the powers of the co-owner over the common thing

"In ordinary co-ownership, it is not permissible for any of the partners to use the common property, to exploit it, or to dispose of it beyond his right without

¹ Anwar Tolba, Common Ownership. Previous reference, pg. 5 and beyond.

² Muhammad Naji Qaid Saeed Al-Awlaki, Common Ownership Provisions. Jordan: The University

³ Muhammad Naji Qaid Saeed Al-Awlaki, Common Ownership Provisions. Jordan: The University of Jordan. 1997, p. 19.

⁴ Abd al-Razzaq Ahmed al-Sanhouri, Mediator in Explanation of Civil Law: Part VIII The Right of Ownership with a detailed explanation of things and money and the law for the protection of intellectual property rights. Previous reference, p. 797.

⁵ Nabil Ibrahim Saad, original in-kind rights. Previous reference, pp. 207-208

⁶ Anwar Tolba, Common Ownership. Previous reference, p. 318.

the consent of the rest of the partners, and this is what Article 1153 of the UAE Civil Transactions Law stated, while the opposite is in joint ownership, the use of one of the partners The common part or its modification is permissible and unrestricted, as long as he does not cause damage to it, or by his disposition prevents the rest of the co-owners from using that common part as well, on the one hand.

On the other hand, "all the common parts are absolutely dependent on the private parts, and this confirms that the co-owner cannot, and prevents him from disposing of his share of it in isolation from his share."

Legal definition of common money

The legislation did not provide for a specific definition of joint ownership or common ownership, but it did provide evidence of the establishment of a state of common ownership among the owners. More than one inherited something without dividing the share of each of them, so they share in common, with equal shares and percentages, provided that there is no evidence to the contrary of all of that.¹By reviewing the previous legal text, it becomes clear to us that it shows us how the state of common ownership exists between the partners, but it did not define the common ownership itself and did not highlight its content, and therefore it cannot be relied upon to develop a correct definition of common ownership"².In UAE legislation: "Article 1152 of the UAE Civil Transactions Law clarified the legal dimensions of joint ownership, as we mentioned.The researcher believes that "the partner has the right not to raise his hand except by dividing the common money, which means his right to comprehensively dispose of every part of it within the limits of his share."Article 1153 indicated that "it is permissible for a co-owner to dispose of his share of the co-ownership as he wishes, without asking the permission of the rest of his partners, provided that this behavior does not cause harm to any right of his partners"³.

The researcher indicates here that; In general, "it is permissible for a co-owner to sell his share without the permission of his co-owner, except in the case of mixing in co-owners, for it is not permissible for him to sell without the permission of his co-owner, nor is it permissible for him to harm his partner by this act without the permission of his co-owner"⁴.

It is clear to the researcher from the foregoing that the Emirati legislator "has considered money to be common in the case where it is owned by more than

¹ Article 1152 of the UAE Civil Transactions Law No. 5 of 1985

² Muhammad Hussain Mansour, *Original In-kind Rights: Ownership and Subsidiary Rights - Reasons for Acquiring Ownership*. Alexandria, Egypt: New University House. 2007, p. 166.

³ Ashraf Ahmed Abdel-Wahhab; Ibrahim Sayed Ahmed, *Common Ownership in the Light of the Views of Jurisprudence, Legislation, and Judicial Rulings*. Cairo: Dar Al-Adalah for publication and distribution. 2018, p. 10.

⁴ "It is understood from the text of Article (1153) of the UAE Civil Transactions Law and what the jurisprudence has settled on that in joint ownership a partner has the right to dispose of his share without the permission of his partners, but this disposal is not absolute but it is conditional not to harm the rest of the partners, in addition to that that This text gave the right to the partner with his share and not with the entire property, and his right to his share also in terms of disposition is

one for one of the reasons of ownership, without sparing the shares and sorting them out for each of them, so they remain participating in the common, with equal shares until evidence to the contrary is established."

In Egyptian legislation

The Egyptian Civil Code came in its article 825 "to show the joint ownership, as that article stipulates that if the share of each owner is not allocated or avoided in the joint, they remain partners in it"¹. The same law describes the manager as entrusted by the rest of his partners as a general agency to manage the shares, in order to sell the crop or output, and receive the price as a disposal required by the administration. This is what the Egyptian Court of Cassation adopted, as it was stated in one of its rulings that the decision in its ruling is that everyone who owns in common has the right to own all its particles and that the fruits resulting from it are an acquired right for all his partners in proportions equal to ownership shares, and each partner may claim the proceeds of the share that belongs to him from The partners who took possession of that share, each by an amount greater than his share.²

In Jordanian legislation

Article 1030 of the Jordanian Civil Code clarified the content of joint ownership, stating that "after taking into account each inheritance share of the heirs, ownership by multiple people of something without dividing their shares is a joint ownership in which the shares are equal if there is no evidence to the contrary"³.

It is clear from the aforementioned text that "if two people jointly own money, then the shares are equal between them as long as the share of either of them in the money is not specified"⁴. In Jordanian legislation:

Article 1030 of the Jordanian Civil Code clarified the content of joint ownership, stating that "after taking into account each inheritance share of the heirs, ownership by multiple people of something without dividing their shares is a joint ownership in which the shares are equal if there is no evidence to the contrary"⁵. It is clear from aforementioned text that "if two people jointly own

¹conditional on non-harm and the partner's exploitation of the entire property, as it deprives the rest of the partners from benefiting from their shares, which constitutes harm to them.

Article (1154) of the UAE Civil Transactions Law

² "The Egyptian Court of Cassation ruled, "when the shares of each of the partners in the commercial establishment were not separated, they are joint partners, and the shares are calculated as equal if the court does not see convincing evidence" to the contrary, pursuant to Article 825 of the new Civil Code. See Appeal No. 0576 of the year 34 Technical Office 21, dated 08/01/1970 AD, p. 24

³ Moawad Abdel-Tawab, reference in the commentary on the texts of the civil law: Volume IX Real rights - the right of ownership - the reasons for acquiring ownership - appropriation - inheritance - will - adhesion - preemption. Previous reference, pg. 19. "Judgment of the Egyptian Court of Cassation No. (1984 AD) for the year (57 BC) on (31/5/1994 AD) S 45 p. 939."

⁴ "And the Jordanian Court of Cassation ruled that "every partner is considered an agent

⁵ "And the Jordanian Court of Cassation ruled that "every partner is considered an agent and a trustee on behalf of the rest of the partners in carrying out the company's business and in disposing of it in a way that achieves the purpose for which it was established. See: Decision of the Jordanian Court of Cassation in its human rights capacity No. 2856/2007 (a five-member panel), dated 3/26/2008 AD,

money, then the shares are equal between them as long as the share of either of them in the money is not specified"¹.

The legal nature of the partner's right to communion

Jurisprudents of law differed "in defining the legal nature of the partner's right to co-habitation as follows"²:

The first opinion: "This nature is a personal bond to do business or give things, in a way that connects a debtor and a creditor, and this nature is not one of the rights in rem"³.

The second opinion: "This bond entitles the owner in common to be a creditor with his personal right only without the right to demand work or give things."

The third opinion: "The common partner has a special right in kind different from what is known of the rights in kind in the law, and therefore the power of a specific person over a specific thing enables him to use and benefit from this thing without the need for the mediation of another person as recognized by the law"⁴.

The fourth opinion: "The common partner is the owner of his absolute right to his share, so he may use it, exploit it, and dispose of it, in the sense that the common thing has multiple owners, unlike the divided thing with one owner"⁵.

The researcher believes that "the partner in the common thing has a right of kind of in-kind rights, which is what the third opinion said, and it should be noted that the Emirati legislator authorized this partner to conduct actions that do not harm others, and this is referred to in Article 1133 of the Federal Law on Civil Transactions".

The partner acted alone in the common property

The Emirati legislator considered "owning something for more than one without dividing the shares as partners in common, with equal shares for each of them with no evidence to the contrary. In that case, it is correct to dispose of them in common money and benefit from it without harming others. "The disposals that are issued by partners "may be from a partner while he is alone, and this is by disposing of his common share only, where he is allowed absolute freedom in this behavior, because his ownership is complete, like the ownership that has been produced, so if this behavior occurred to one of his other partners in common, then there is no A problem, while if it was disposed of to a foreign person, it is

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¹ See the decision of the Jordanian Court of Cassation in its human rights capacity No. 3025/2004 (five-five panel), dated 8/2/2005 AD.

² Khaled Salti, Nawaf Al-Singlawi, *The Partner's Behavior in Common Ownership: A Comparative Jurisprudential Legal Study*. Previous reference, pp. 30-31.

³ Ayad Wahhab, *Disposal of Common Real Estate Property*. [Master Thesis]. College of Law, Mentouri University. 2008, p. 18.

⁴ Abd al-Razzaq Ahmed al-Sanhouri, *Mediator in Explanation of Civil Law: Part VIII The Right of Ownership with a detailed explanation of things and money and the law for the protection of intellectual property rights*. Previous reference, p. 716.

⁵ Ramadan Abu Al-Saud, *Al-Wajeez in the original in-kind rights, its provisions and sources*. Alexandria. New University House. 2007, p. 26.

permissible for the partners to recover the share that was disposed of"¹. Among the other partners' actions is "the behavior of a partner while he is alone in an avoided part of a common property, and here we must differentiate between two cases; the first is that the partner owns the common sale, and the second case is that the partner owns the sold item separately"². The partner may "dispose of his share in common, and may respond to his disposition of a separate part equal to that share, just as the partner may dispose of all the common money. We present the provisions for each type of these actions separately"³. And since acts of disposition "involve danger, the legislator has stipulated in undertaking them the capacity to act in which the person is able to know his true interest"⁴, and also that the agent "by virtue of a general agency cannot carry out the acts of disposal, but rather he must have a special agency." in each of its actions. Accordingly, the following two requirements follow:

The first requirement: the partner acted unilaterally in his common share in the property

The second requirement: the ruling on the partner's disposition of all common money

The partner acted alone in his common interest in the property

Each co-owner owns his common share completely, and has the right to dispose of all or some of it, as a donation or in exchange, and the disposal can be to one of the partners or to a foreigner from them, whether the disposal is a transfer of ownership such as selling, or it is based on a real right over it as a usufruct or an easement or a mortgage."⁵

⁶Article 826/1 Civilian, Jamal Zaki, p. 133. "The owner's disposition of the common in his share is common. Its effect. The enforcement of the disposition

¹ Abd al-Razzaq Ahmed al-Sanhouri, Mediator in Explanation of Civil Law: Part VIII The Right of Ownership with a detailed explanation of things and money and the law for the protection of intellectual property rights. Previous reference, p. 843.

²) Khaled Salti, Nawaf Al-Singlawi, The Partner's Behavior in Common Ownership: A Comparative Jurisprudential Legal Study. Previous reference, p. 39.

³) Muhammad Hussain Mansour, Original In-kind Rights: Ownership and Subsidiary Rights - Reasons for Acquiring Ownership. Previous reference, p. 120.

⁴ Abd al-Razzaq Ahmed al-Sanhouri, Mediator in Explanation of Civil Law: Part VIII The Right of Ownership with a detailed explanation of things and money and the law for the protection of intellectual property rights. Previous reference, p. 712. Al-Issawi and Al-Lahibi, 1440 - 2019, p. 103.

⁵ "A partner in common, in accordance with Article 826 of the Civil Code, may dispose of his share and seize its fruits and use them, except that this is conditional on not causing harm to the rights of all partners. (Repealed 7/2/1979 S 30, p. 496)."

⁶ "The disposition of a partner in a common share is effective against his partners without the need for their consent in accordance with the text of Article 826/1 of the Civil Code. (Repealed 3/24/1966 S17, p. 723)."

It is established in the case that the disposition of the second respondent to the appellants of the sale has focused on a common share in a specific piece included in the group of common property, and it does not change that the disposition in this way is based on a common share that there are many entities in which the properties owned by the seller and his partners are located in common, There is no place for discussing the effect of the purchaser's right to subrogation in rem, pursuant to Article 826/2 of the Civil Code, because the scope of this research is that the disposal by sale affects his divided share in common money, which is not the matter of the disposition subject of the dispute, which affected - and on The aforementioned statement - a common share in it. (Repealed 1/27/1981 S 32, p. 349)

against his partners and the substitution of the disposer for him in the place of the disposing partner. M. 826/1 Civil (Appeal No. 3469 of 58 BC, Session 21/2/1993). However, this rule is restricted by two restrictions; The first: "The behavior should not be harmful to the rest of the partners" ¹. The second: "The right of the other partner to take the share of the disposing partner by preemption in the case of real estate, and recovery in the case of the movable, noting that the right of recovery in the movable was not recognized by the UAE Civil Transactions Law, and only the Egyptian Civil Law. "And the legislator balances "between the interests of the partners over the common, as it gives the partner the absolute right to dispose of his share without the permission of his partner" ². However, on the other hand, "the partner has the right to replace the foreign disposer of affairs with pre-emption in relation to the real estate and recovery in the case of the movable" ³ We recall the basic rule in this regard, which is "the right of every co-owner to transfer all or some of his share to a third party by sale, gift, barter, or bequest, and his disposition is correct because he disposes of his right. The place of the partner in obtaining the fruits of this share, but it is not possible to establish an easement right on a common share, because the easement eliminates material works on a separated property. And it is not possible to decide the right of decision because it requires building or planting on separated land.

Ruling on the partner's disposition of all common money

We will deal with this requirement in two branches, dealing with acting on behalf of the partners (the first branch), and dealing with acting without deputation from the partners (the second branch).

First branch On behalf of the partners

Here, the question arises, "about the rulings on the disposal of a partner in all common money"?

A partner in common "has no right to dispose of all or even part of the common money that exceeds his share in it, and if he does so, his disposition is on the property of others in what exceeds his share, and it is not implemented against the rest of the partners, and they have the right to file a claim for entitlement against the disposer of it." The disposer may "request annulment of the disposition on the basis of a mistake in the ownership of the disposing partner if he does not know that the disposer's right is limited to his share in it. But if he is aware of the existence of other partners," he has the choice between:

¹ "But neither the joint partner nor the one who received the right on his behalf may claim entitlement to the part sold by the other partner except after the division takes place and the thing sold falls into his share, but before that the case is premature. (Appeal 4 of the year 10 BC, session 25 / 4/ 1940).

² Muhammad Hussain Mansour, *Original In-kind Rights: Ownership and Subsidiary Rights - Reasons for Acquiring Ownership*. Previous reference, p. 121.

³) Hamdi Pasha Omar, *transfer of real estate ownership*. Bouzareah: Dar Houma for printing, publishing and distribution. 2013, p. 43.

First: "Either waiting for the result of the division, where the part that has been disposed of may devolve to the disposer, and all common money may fall into the share of the disposer. And "only a part of the money may fall into the share of the disposer, despite his disposition of more than this part. Here the right of the disposer of affairs is based on the part, and the disposition in other than that does not apply to the partners. He may request compensation from the disposer because of the non-fulfillment of his obligation

Second: "Or a request to cancel the contract and return compensation to the disposer of affairs for not implementing what was committed to him in the contract" ¹.

The partner who is allowed to dispose of the common money is within the limits of the permission granted to him by his other partners, "and here it is equal that his behavior, which is carried out by that authorized partner, is a behavior that is harmful to the rest of the partners or a behavior that is beneficial to the rest of the partners, given that the authorized partner When he did such a behavior, he did it on his own behalf as a partner in the common money and an agent on behalf of the other partners, because he was authorized to act by the partners who granted him this permission.² "A partner's disposition of a common amount that exceeds his share is not enforceable against the other partners with regard to the amount that exceeds the share of the departing partner, and they have the right to file a lawsuit to establish their ownership and not enforce the sale in what exceeds the share of the selling partner without waiting for the result of the division. (Revocation) 11/ 11/ 1975, S. 26, p. 1388)."The saying that the partner who jointly owns the amount that he sold segregated is not accepted from him or his partners to claim that the sale is not enforceable in their share as long as the division did not take place and the thing sold did not fall into their share - this saying is valid if the thing sold is a divided part of the funds, but if the thing sold It is not sorted, and the seller exceeded the amount of his common share, so this statement is not accepted (Appeal No. 30 S18 S, Session 12/15/1949).

The researcher concludes that it is permissible for the partner to dispose of his common share in the property alone, in whole or in part, as a donation or exchange, but that rule is restricted by two restrictions; that the disposal is not harmful to the rest of the partners, and that the other partner has the right to take the share of the disposing partner by preemption in the case of real estate. and recovery in case of transfer.

without representation from the partners If the disposing partner is not permitted by his partners to dispose of common money, he has no right to perform any kind of disposal, whether legal or material, and his action in such a case is a valid action, but it is ineffective or dependent on the approval of his other partners. This is because he has disposed of the property of others in what exceeds his share. As for

¹ Muhammad Hussain Mansour, Original In-kind Rights: Ownership and Subsidiary Rights - Reasons for Acquiring Ownership. Previous reference, p. 138.

² Ibid., p. 179

his own share, his disposition here is considered a proper and effective disposition between the two parties. If the rest of his partners agree to their partner's disposition of their shares, "their approval is deemed to be a power of attorney, because the subsequent authorization is like the previous power of attorney." This is an application of what was stipulated in Article 839 of the Jordanian Civil Code, which says: "The approval following disposal is considered in the power of attorney that preceded it."¹ Therefore, "the disposal of one of the partners in the common money without the permission of the rest of the partners is dependent on the approval of the rest of the partners, because it is considered a disposal of the property of others. With regard to the sale of what exceeds his share, the sale is void between the two parties since its conclusion without the need to wait for the result of the division. As for the rest Partners, the disposition of their partner is not enforceable against them in what exceeds the share of this selling partner.

The third topic

The disposition of the partners in the common property

Together, the partners can dispose of the common money, and the law allows - as an exception - for those who own three-quarters of the money to dispose of it.² And the actions of "disposal are those actions that result in permanently modifying the person's financial position, or obligating him with regard to the future, such as selling real estate"³. This business is considered "a dangerous business that results in a final threat to the person's financial position. Therefore, the legislator requires full capacity to undertake it, which is what is known as the capacity to act"⁴. What is meant by "the capacity to act in which a person is able to know his true interest. However, the power to act entitles its owner to strip ownership of a thing, whether in order to obtain something else, or to obtain a benefit, or simply to give up his ownership"⁵. However, the survival of the state of commonality "necessitates a specific method of disposal, for the partner of the common thing has a share that is not *junub* and he can dispose of it as it is for one of his partners, while if he disposed of it to others, there would be a problem, which calls for pre-emption or recovery"⁶.

¹ Maryam Awwad Hamad Al-Ghuwairi, Family Ownership Department. Master Thesis, Jerash Private University, 2013, p. 43.

² Ahmed Falah Abdel Bakhit, Common Property in Islamic Jurisprudence and Law: A Comparative Study. Alexandria: New University House. 2012, p. 192. Muhammad Wahid al-Din Suwar, The Right of Ownership in and of itself in Civil Law. Previous reference, p. 127.

³ Reda Abdel-Halim Abdel-Majid Abdel-Bari, Al-Wajeez in the original in-kind rights. Cairo: Arab Renaissance House. 2012.

⁴ Rana Adnan Al-Qadi, Family Ownership Provisions in the Jordanian Civil Law. [Master's thesis] Faculty of Law, Al-Israa University. 2012, p. 63. Ali Hadi Al-Obaidi, The original rights in rem according to the Civil Transactions Law in the United Arab Emirates. Amman: Bright Horizons Publishers. 2011, p. 24.

⁵ Ayman Saad Abd al-Majid Selim, The Powers of the Owner over the Commonwealth in the Use and Exploitation of Common Money: A Comparative Study. Cairo: Arab Renaissance House. 2013, p. 23. Nabil Ibrahim Saad, original in-kind rights. Previous reference, p. 133. Bahiani Houria, Provisions for the Legal Disposition of the Partner in the Common Real Estate in Algerian Legislation. [Master Thesis]. Yahya Fares University. 2013-2014, p. 3.

⁶ Muhammad Hussain Mansour, Original In-kind Rights: Ownership and Subsidiary Rights - Reasons for Acquiring Ownership. Previous reference, p. 116.

What is the ruling on acting in all these cases?

There are two requirements:

The first requirement

joint disposition of the partners in the common property.

The second requirement: the disposition of the majority of the partners in the common property.

The first requirement

The partners jointly acted in the common property

The partners can "all of them dispose of all the common money or some of it divided or on the common. And their disposition is correct and enforceable against everyone" ¹. If the disposition transfers the ownership of all the money, "such as selling, for example, it results in the exit of the common money from the responsibility of the partners, and with that the situation of commonality between them ends, as we are in the process of a disposal issued by the owners of the money who have over it the authority to dispose of what each

owner has over what he owns"² If the partners unanimously agree "on one aspect of disposing of their money, then this disposition is valid and implemented against all, whatever the result, after division among them, but in reality it is not necessary for them to share the thing as long as its ownership is transferred to the buyer while they share its price"³. By disposal, we mean here "what transfers ownership and does not manage it, such as rent and usufruct" ⁴. There is no doubt that "such behavior is correct and effective in the face of all as long as the commonality remains, except that the difficulty arises in the case of division," where the question arises about "the fate of the rights of mortgage, usufruct, or easement if the part loaded with any of these rights falls into the share of a partner of between the partners, or if all the common property devolves to one of the partners in exchange for cash amounts that he pays to the rest of the partners in exchange for their shares in it. The prevailing opinion goes to the fact that "the disposal of all partners in all or part of the money is valid, and it remains effective against all partners and their successors, whatever the result of the division. ,

¹ Makhzeni Faiza, Partner's Disposition in Common Money: A Comparative Study. [Master's thesis] Faculty of Law, Mohamed Bougherra University. 2005, p. 3.

² "Registration of the sale issued by all co-owners of a subdivided part of the common property that entails the transfer of ownership of the subdivided sold part to the purchaser, and does not depend on the conclusion of another contract by dividing the property or separating the sold amount. (Egyptian cassation, appeal 512, 531 for the year 53 BC – Session 6/30/1987).

³ Abd al-Razzaq Ahmed al-Sanhouri, the mediator in explaining the civil law: Part VIII is the right of ownership, with a detailed explanation of things, money, and the law for the protection of intellectual property rights. Previous reference, pg. 317. Reda Abdel-Halim Abdel-Majid Abdel-Bari, Al-Wajeez in the original rights in kind. Previous reference, p. 87.

⁴ Muhammad Hussain Mansour, Original In-kind Rights: Ownership and Subsidiary Rights - Reasons for Acquiring Ownership. Previous reference, p. 117.

because it is intended to "protect the partner from the rights and burdens that another partner may impose – without a right – on the separated part that is located according to the division of his share. The new Real Estate Property Law No. 13 of 2019 introduced ways to eliminate the prevalence of real estate ownership, by granting owners of three-quarters of ownership shares the right to dispose of the entire property, according to certain conditions. The legislator devoted Chapter Five of the Real Estate Property Law to address the removal of communalism, and was devoted to it¹The Egyptian Court of Cassation ruled that "registering the sale issued by all the partners sharing a divided part of the common property results in the transfer of the ownership of the separated sold item to the purchaser, and does not depend on concluding another contract by dividing the property or separating the sold amount (cassation 6/30/1987 appeal 512, 531, 531, S. 53 BC)". 27 items; That is, Articles 94-120"². In this chapter, the legislator came to specify two means to remove the common: "The first is by disposing of the real estate; The second is by dividing the real estate among the co-owners, either by agreement between all of them, or through a committee to remove common property"³, if they disagree.

In sum, the researcher says, "The consensus of the partners to dispose of all or part of the common property while it is separate or on the common. It is valid and enforceable against everyone."

The disposition of the majority of the partners in the common property

The owners of at least three-quarters of the common property may "dispose of it if their action is based on reasons to strengthen it, provided that their decisions are announced to their partners. Those who are harmed by them have the right to sue within two months of announcing it. The court has the right to estimate the circumstances when the division of commons is detrimental to the interests of some partners"⁴. It is clear from this, "that the legislator permitted the majority of the partners the power to dispose of common money under three conditions"⁵:

1. The issuance of the decision by the majority of the partners "who own at least three-quarters of the shares".
2. Their decision to act must be based on reasons that justify it.
3. The decision must be announced to the rest of the partners. But what is the ruling on the difference? Here it is inevitable to resort to the judiciary. If

¹ "This is what the Egyptian legislator explicitly adopted with regard to the mortgage, as Article 1039 Civil states that" "The mortgage issued by all owners of a common property remains valid, whatever the result of dividing the property later or selling it because it cannot be divided."

² Naeem Al-Atoum, Removing Commonwealth Through the Disposal of the Majority of the Partners in the Entire Property in the Framework of the Jordanian Real Estate Law of 2019: A Critical Analytical Study. Studies, Sharia Sciences and Law, Volume (47). Number (4). 2020, p. 206.

³ "A special system was issued regulating the work of this committee, which is the "Regulation of Real Estate Elimination", No. (145) for the year 2019 AD, published in the Official Gazette, Issue (5599), dated 9/16/2019, p. 5575.

⁴ Muhammad Hussain Mansour, Original In-kind Rights: Ownership and Subsidiary Rights - Reasons for Acquiring Ownership. Previous reference, p. 130.

⁵ Revoked 2/12/1965 S 16, p. 1172.

the money is "what accepts division without harm, then the disposition is not done, because it is more appropriate for those seeking to dispose of it to request division, so the judge conducts the division between the partners."But if there is harm in the division, "the disposal applicants resort to the judiciary to order the judge to dispose of the conditions that he determines, and his decision takes the place of the approval of the rest of the partners."In order for the judge to order the disposal, strong reasons must exist, such as the existence of a profitable deal that is feared to be missed, or if it becomes impossible to manage and exploit the money in a comfortable manner. The judge must specify the conditions for the disposal in a way that achieves protection for the objecting partners.Article 832 of the Egyptian Civil Code. "The text of Article 832 of the Egyptian Civil Code indicates that the partners who own at least three-quarters of the common money may dispose of this money by selling or otherwise if there are strong reasons for that. They must announce their decision to the rest of the partners, and to those who disagree with that grievance. From the decision of the majority before the competent court within two months from the time of announcing this decision, and if the majority exercises this right, it exercises it on its own behalf and on behalf of other partners, and it is implemented against the minority unless the competent court approves it on the objection it may raise.(Egyptian cassation-appeal) No. 517 S 51 S, session 21/2/1985)."The legislator, although he gave the majority of the partners who own at least three-quarters of the common money the right to decide to dispose of it all without referring to the rest of their minority partners, but he stipulated that they should be informed of the decision even if it was not acceptable to any of them – he had the right to object to it. Before the court within two months from the time of announcing it, and this means that the one who counts on opening the date for objection to the decision of the majority is that they announce it to the minority owners, which is not indispensable for the announcement made by others or the knowledge of the minority owners of this decision in any other way, even if it is conclusive. Appeal No. 1531 S 51 S, Session 12/31/1985.Muhammad Hussain Mansour, *Original In-kind Rights: Ownership and Subsidiary Rights - Reasons for Acquiring Ownership*. Previous reference, p. 118.If the common money is "owned equally by two partners, and one of them wishes to act and the other objects, then the desire of the first to rule is considered the desire of the majority, and it is possible to resort to the judiciary."

Accordingly, the researcher concludes that it is permissible for "the majority of co-owners of a common property to dispose of at least three-quarters of its owners, as it is valid to dispose of the majority described in it, based on strong reasons.

The fourth topic

Action of one of the partners with a sorted part of common money

Perhaps a partner "assigns a specific part of common money equal to or less than his share in it, on his own and without referring to the rest of the partners, then he disposes of this part to others, so what is the ruling on disposing of it in this case"? This behavior is considered correct "because it was issued by the owner, but it is not effective against the rest of his partners"¹. This results in several important consequences for the recipient on the one hand and for the other partners on the other hand. The ruling differs before making the division from it after making it

The first requirement

Fate disposition before division

The ruling on disposing of a separate share before division differs among its parties from that of the rest of the partners².

First: Ruling on disposition between the parties

We must differentiate between two assumptions:

1. A partner may dispose of a separated part to a person who is ignorant that the disposer owns his share in common and does not own the property subject to separate disposition. Within common, but if he knows that the seller owns a common share, he is not permitted to request annulment on the basis of error or the issuance of the sale without an owner, and the selling partner is not permitted to request annulment of the sale based on the condition of commonity.
2. A partner may dispose of a divided part to a person who knows that the seller is the owner of this part in common, and an agreement is reached

¹ "It is the right of the co-owner to sell a separate part of the co-money before the division takes place. (Annulment 4/29/1972 S 23 p. 781)."

"The text in the second paragraph of Article 826 of the law indicates that the co-owner has the right to sell his property with specific and divided shares, and this does not invalidate the sale, which is if it is not enforceable against the rest of the partners. Rather, this state of limitation remains dependent on the result of the division, but it is considered valid." And it produces all its legal effects against the selling partner, even if the contract was not registered (Appeal 1997 of 57 BC, session 10/26/1998).

"It is established in the judgment of this court that there is nothing to prevent the seller, even if he is a joint owner, from selling a divided amount of his share, and although it is not enforceable against the rest of the partners, but rather remains dependent on the result of the division, yet it is considered valid and enforceable against the partner." The seller and the product of its legal effects on the same sorted shop that was disposed of before the division (Rescission of 10/3/1981 S 32, p. 779).

This court ruled that the co-owner of the estate may sell his specific share, and none of the partners can object to this sale and claim that he deserves what was sold as long as the estate was not divided by division. (Session 6/30/1955 Appeal No. 111 year 22 s)".

"There is nothing to prevent the seller, even if he is an owner in common, from selling his property, specified and separated, and that this state of limitation, even if it remains suspended or dependent on the result of the division or the partner's approval of the common, all of this does not invalidate the sale contract. (Rescission of 6/28/1956 S 7, p. 60).

² Muhammad Hussain Mansour, Original In-kind Rights: Ownership and Subsidiary Rights - Reasons for Acquiring Ownership. Previous reference, p. 129.

between them based on a standing condition that is the division procedure, and that part falls into the share of the disposer. retrospectively, and if the condition is not fulfilled, the act is considered as if it did not happen.”

Second: The ruling on disposal with respect to the rest of the partners

“The principle is that the partner does not have the right to dispose of an unavoidable part of the common thing, even if this part is equal to or even less than his share, because his right spreads over all parts of the money with the rights of the rest of the partners, and his disposition is considered a procedure for dividing it from his side alone, and this is not permissible.”¹

“However, the legislator permitted this disposal and considered it correct, except that it is not enforceable against the rest of the partners, and it is not permissible for the person to whom it is disposed to invoke his right to confront them. Several important consequences follow from this:

1. “Before registering the common division, the buyer is not considered a partner in the common property, even if he registered his contract”². “And if the appellant partner selling a divided share to the contested buyer did not claim that division took place before the sale, then she is not entitled to request the nullification of the sale issued by her. (Repealed 3/10/1981 S32, p. 779).”
2. “It is not permissible for the one who bought a divided share in a common property to demand that it be delivered divided before the division takes place, even if his contract was registered, except with the consent of all the rest of the partners”³.
3. “It is not permissible for the buyer, even if his contract was registered, to request proof of separate ownership of what he bought before the division took place and that what he bought fell into the share of the seller to him”⁴

¹ “And if the appellant partner selling a divided share to the contested buyer did not claim that division took place before the sale, then she is not entitled to request the nullification of the sale issued by her. (Repealed 3/10/1981 S32, p. 779).”

² “It is decided - and according to what has been done in the court’s judgment - that it is not permissible for a buyer of a separated part of the common property to demand delivery divided - unless it is proven that an effective division has taken place and the amount sold falls into the share of the seller to him - because the seller has a “partner in common.” He was not entitled to allocate his share by his own will before the division took place, and the buyer could not possess more rights than what the seller had, in addition to the consequences of judging delivery in this case in terms of separating part of the common money in a way other than the way drawn by the law. (Appeal No. 1087 x 50 s, session 28/2/1984). Judgment of separate delivery based on the mere registration of the appealed against ruling the validity of the sale issued to him by an owner in common with others without invoking the extent to which an effective division took place between the partners and the sale falling into the share of the seller to him or the satisfaction of all the rest of the partners with the divided sale and delivery. Wrong and shortcomings. (Appeal) No. 2973 of 59 BC, session 12/23/1993).

³ Appeal No. 2382 S 51 S, Session 4/11/1982.

⁴ Cassation 3/10/1981 p. 32 p. 779. “Compare the opposite of that with the previous cassation ruling: It is not permissible for the buyer to judge the validity and enforceability of the sale on a divided amount if the sold is common unless it is proven that an effective division has occurred and the sold amount falls in the share of the seller to him according to these provisions. The division is because the seller to him did not have the ability to place his hand on his share before the division took place except with the consent of all the rest of the partners, and it is not possible for the buyer to possess more rights than what his predecessor had, and because the judiciary by delivery in this case results in the release

4. "The buyer has the right to prevent the seller from disposing of the thing sold to a third party by requesting a ruling on the validity and enforceability of this sale, in order to register his purchase contract"¹.
5. "It is not necessary to represent the purchaser in the division. Rather, the disposing partner remains alone with the right to request division, and he must be litigated in its lawsuit, and the intervention of the disposer of it is not accepted as a shareholder, even if his contract was registered before the division."²
6. "It is not permissible for the partners to sue for entitlement against the disposer of it, whether to obtain the share sold or to recognize their right over the common share in this share"³. "Partners can permit the common partner to act, here the authorization takes the rule of division, unless the authorization is accompanied by the reservation of accepting the disposed to as a mere partner in common in the place of the disposing partner"⁴.

The second requirement

The fate of disposition after division

If the division takes place, "and the separated part, the subject of the disposal, falls within the share of the partner who disposed of it, his disposal is valid and becomes effective"⁵.

But if "this part that was disposed of did not fall within the share of the one who disposed of it, and his share fell in another place, then the legislator requires that the right be transferred to the disposer of it since the conclusion of the contract to this share that became in the share of the one who disposed of it as a result of the division; m 826 civil, i.e. That, in order to ensure that the transactions are

of part of the common money in a way other than the way he drew it The Law.

¹ It is registered as an evidence against him and entails the transfer of his right from the divided part contracted for it to the share allocated to the seller according to that division. (Annulment 4/2/1964, p. 15, pg. 503).

(1) Revocation 1/2/1981 S 32, p. 235.

² Appeal No. 1532 S 49 S, Session 4/18/1984. "If the jurists and the judiciary differ in the ruling on a partner selling a separate part of common money, does it fall true in the seller's share of it and void in the right of his partners, or does it depend on the result of the division among all The partners, their disagreement occurred only in determining the ruling of the contract between its two contracting parties. Whoever considers it invalid gives the purchaser the right to annul it from the day of the contract because it disperses the deal on him. Whoever sees that it is a suspended sale does not give the buyer a way against the seller except when the thing sold is out of his seller's share. As for the determination of the ruling on the contract in the relationship of the purchaser with the one who claims that the thing sold is due to himself, whether this claimant is a partner in the common property or the recipient of his property on behalf of his co-owner in the common property – There is no dispute that it is not for the rightful person to claim entitlement in the sold property except after dividing the common money and the sale falling into his share, not in the share of the seller to that buyer. So, every claim made by him before that is premature, and the court should not accept or reject it. (Appeal No. 18 of the year 2 BC, session 6/16/1932).

³ "Cassation of 11/15/1984 vol. 35 p. 1894, and the Court of Cassation has modified its previous position. (Cassual 6/28/1956 vol. 7 p. 760)."

⁴ Muhammad Hussain Mansour, Original In-kind Rights: Ownership and Subsidiary Rights - Reasons for Acquiring Ownership. Previous reference, p. 135.

⁵ Arafa Abd al-Wahhab, al-Wajeez in the use and management of common money and the case of separation and avoidance: the case of division. Alexandria: University Press House for publishing. 2005, p. 53.

stable and in order to avoid the ruling to invalidate the disposal, the legislator takes the principle of in-kind subrogation, that is, the part that has become a share for the disposer by division replaces this part to which the original disposal was received, and it is considered as if the disposal was on it since its conclusion¹.

The Egyptian Court of Cassation expresses this by saying: "If what was sold was an avoided part of the common property and was prior to its sharing between the partners, then the buyer in that case is not considered a partner in the common property, in application of the second paragraph of Article 826 of the Civil Code; even if his contract was registered before

the division was registered, he would not have any of the rights of the partners, and therefore he should not be represented in the division.

¹ The sale by the co-owner of a separated part of the common property before the division takes place does not allow the buyer to request confirmation of his ownership of what he bought, even if his contract was registered, so it remains dependent on the result of the division, as the stability of the disposal on the same premises depends on its occurrence – after division – in the share of the seller to him. And if it falls into something other than his share, and the disposition is returned to what has devolved to the disposer as a result of the division. "It is decided in the judgment of this court – that the commoner must sell a separated part of the common money before making the division, as Article 826, a second paragraph of the Civil Code stipulates that "if the disposal is focused on a divided part of the common money and this part does not occur at Division in the share of the disposer The right of the disposer has transferred to him from the time of the disposal to the part that belonged to the disposer by division. If the appellant's share is divided, the appellant's share shall be settled, and if it does not occur, the appellant's right shall be transferred by virtue of in-kind subrogation from the sold apportioned part to the apportioned part, which shall devolve to the appellant by division. Hence, the father had the right to sell to his son separately or in common, and to sell his son in turn to the appellant like that, and then the obituary on the contested ruling – that the seller does not own the sold share separately, is unfounded. (Annulment 2/3/1980, p. 31, p. 888).

In order for the in-kind subrogation to be implemented in accordance with this text, a division of the common money should take place between the partners that would lead to the allocation of a specific share for the selling partner equal to his share in the common, so that he alone would have all exclusive ownership powers over this part, and that the thing sold would not fall into the divided part that belonged to him. The seller, to the effect that there is no way to implement the in-kind subrogation unless the disposer of the sale has acquired a detached share of the common property, If the division between the partners resulted in the jurisdiction of each group of them with a separate amount of the common money, while the selling partner remained the owner of a common share, then in this case it is forbidden to implement subrogation in kind as long as the share of the seller remained common and was not separated - because of the foregoing and the contested ruling had been decided With the validity and enforceability of the sale contract for an area of 4 F, which is common in 10 F, which belonged to... the well-known person with... his mother and two sisters, and his court established this on the basis that the right of the first Respondent has been transferred by force of law, pursuant to the second paragraph of Article 826 of the aforementioned statement, to the common share that The seller owns it for him within the space that he and his companions have allotted it.

While there is no way to implement subrogation in kind as long as the seller's share remains common and the division does not result in his competence in a separate amount, then he has decided in the lawsuit contrary to the bond of the buyer and in violation of the will of the contracting parties, and the in-kind subrogation was made contrary to the requirements of the law, which is what defects it and must be overturned (Appeal 276 of the year 57 BC, session 5/12/1991).

A third party, according to the provisions of Article 10 of the Real Estate Publication Law, is the one who receives a real right over the real estate on the basis that it is still co-owned and registered it before registering the division deed. As for the one who received a separate right from one of the partners, he is not considered a third party even if his right was previously registered before The registration of the division, as his right to the sorted part on which the disposition was focused depends on the result that the division ends with, for what is decided According to Article 826/2 of the Civil Code, if the disposition is focused on a separate part of the common money and this part does not fall into the share of the disposer when dividing, the right of the disposer will be transferred to him from the time of the disposition to the part that belonged to the disposer according to the division, which means that the unregistered division is invoked It is incumbent on the one who bought a separated part from one of the two partners, and it has the same consequences for him in the matter of the two partners, i.e. the termination of the common state and considering each shareholder as the owner of the divided part that fell into his share according to the division. According to the division, the seller has the right to request a ruling on the validity of the sale contract with respect to that same part, as long as the division, even if it was not

The researcher concludes that "it is permissible for a partner to act alone in a specified part of the common property equal to or less than his share in it, on his own and without referring to the rest of the partners, as this disposal is considered correct because it was issued by the owner, but it is not effective against the rest of his partners." The ruling differs before the division is performed from the one after it is carried out.

Conclusion

Common real estate ownership is considered one of the most complex issues and systems in the various types of ownership. This is due to the nature of the partner's right to the common property on the one hand, and to the conflicting interests of the partners over the same right on the other hand, and due to the equality of the partners in common and their enjoyment of the same powers over the same right is a matter that leads to Referring to their disagreement and the emergence of disputes over this right, whether in terms of its disposal or management, or in terms of the results that result from these actions. For this reason, we find that the UAE legislator paid significant attention to common real estate ownership in terms of regulating its provisions and status, and clarifying the rights of the partners in it. Where he recognized the right of each of the joint partners to dispose of the common money, he authorized all legal authorities to exercise this right, but he did not leave this right at all, but rather made it restricted to protect the rights associated with the partners and their shares in the common money, so often the partners or one of them disposes of Common money in order to benefit from it, without knowing all the provisions of this disposal; This leads to a large number of disputes before the courts.

The study concluded with a set of results and recommendations as follows

First: Study Results

1. The state of common ownership among the partners does not prevent the partners from disposing of it.
2. A partner's disposition of his share without the permission of his partners must not prejudice their rights.
3. The rights of the partners are not enforced by the disposition of a partner in what exceeds his share, and they may request proof of their ownership over the disposed increase, and they may also request that the sale not be enforced in that excess without waiting for the sharing.
4. It is permissible for the partners to act while they are together, and they may share the common money as they see fit, and they may share its benefits as a temporary arrangement between them without separating or sparing their shares.

5. The principle is that the will of the partner agrees with the rest of the partners, and their disposition in that is a collective disposition, but that will may not agree on the disposition, and here the comparative legislator permitted the majority of that disposition, while the Emirati legislator remained silent on this issue.

Second: Study Recommendations

1. Compiling the legal texts related to the disposal of common real estate property in a unified and special law called the "UAE Real Estate Property Law".
2. We recommend not being limited to the legal provisions of civil liability, with a special provision for compensating partners for damages resulting from the actions of their partners within articles related to common money.
3. A provision to oblige the partner who wants to dispose of his common share to inform the rest of the partners within a reasonable period before concluding the disposal in order to give them an opportunity to conclude the disposal in their favor (taking pre-emption), or to demand division if this is not possible.
4. The need to distinguish between good faith and bad faith, with regard to the buyer in the event that the entire common money is disposed to him, or what exceeds the share of the disposer.
5. Reconsidering the texts governing common real estate ownership in terms of the provisions that regulate them in order to keep pace with economic developments; Especially with regard to industrial real estate and family ownership.

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