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Types of Apportionment of communal money

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Abstract

Common property is an exceptional temporary condition that is doomed to expiry, because communality is not desirable as long as it arouses disputes between partners, and no matter how accurate the arrangement of communism is, it is nevertheless impossible to put an end to these disputes, and the maximum that can be reached from this arrangement is to prevent disruption of the use of something common. Communality is also not desirable economically because the multiplicity of owners makes the exploitation of the situation more complicated, which is reflected in its impact on the public interest of the society. Therefore, the legislator is keen to facilitate the prevalence of the state of communality and the return of property to its normal state, i.e. a separated property, and where the reasons for the prevalence of communism are multiple, but the main reason which aims to end the state of commonness is apportionment and this apportionment has two types, consensual and judicial, and each of them has its provisions and conditions, and each leads to ending the state of commonness, but in a different way and special procedures.

Introduction

In this research we deal with the types of apportionment of common property as the many disputes that arise between shareholders in common property due to the desire of each partner to monopolize its share of the common property and dispose of it freely as an owner, and on this study comes to explain

the position of the Iraqi legislator in organizing the types of apportionment Common property and clarify the deficiencies in this law and compare it with the laws of other countries and determine the position of the best law to avoid what may exist in Iraqi law of lack or ambiguity and remove it.

In writing this research, we will rely on the comparative approach as much as possible by comparing the position of the Iraqi civil law with the Egyptian civil law, taking into consideration the position of some other Arab laws such as the Jordanian civil law and the Yemeni civil law, whenever it is possible; to obtain the resources for explaining it.

In order to gain a broader knowledge of this topic, we divided this research into two topics, the first topic is consensual apportionment and the second topic is entitled Judicial apportionment and is preceded by an introductory section to explain what is the apportionment of common property and we concluded this research with the most important results and recommendations.

Chapter 1

What is the apportionment of common money?

Since apportionment is the most important way to eliminate and prevalence communism, it was appropriate to review a simplified idea of what apportionment is, through two branches, the first section is devoted to defining the apportionment of common property and the second section is devoted to distinguishing apportionment from adaptation.

1.1 Definition of common property apportionment

We will define apportionment by language, law and jurisprudence, as follows:

First: The definition of apportionment is language: the name of apportionment it is said that the thing is divided between them by apportionment and apportionment and the name of the apportionment is feminine. The Almighty said: So provide them with it, after the Almighty saying: If he attends apportionment he says: The oath and the oath and the oath are the portion of man. I divided the thing among the shareholders and gave each partner its divider and divide it. (Ibn Manzur, 2005, pp. 102-p. 103-p. 104)

Second: Legally definition of apportionment : The Iraqi legislator, as well as the Egyptian, have not been subject to the definition of apportionment . However, the Jordanian legislator defined apportionment in the Jordanian Civil Law as (exerting and appointing of the common share) (Article 1038 of Jordanian Civil

Law No. 43 of 1976) and the Yemeni legislator defined apportionment as (knowing the amount of each partner in the money and its release after parallel shares of similarities and their modification of values. (Article 1097 of the Yemeni Civil Law No. 14 of 2002)

Third: the definition of apportionment - Jurisprudence: law jurisprudence defined apportionment as being a process that aims to end the state of communality and the specialization of each partner with a sorted portion equal to its common share in its state before apportionment . (Ghani and Muhammad, 1982, p. 117). A private property with which a person stays independent free of the other shareholders (Muhammad Morsi, 2005, p. 157)

Although these definitions are different in pronunciation, the goal is the same, which is to end the state of common and for each partner to obtain his right to common property excreted. Consequently, we can define apportionment as: every owner gets a separated share after having a common share in the common property and aims to end the state of communality permanently.

1.2 Distinguish apportionment by adaptation

Adaptation is a method of organizing the use of common property between shareholders by agreeing to divide the benefit of common property between them and by the nature of this money (Nada Mulla Alou, 2009, p. 4).

It is clear to us from the above definition that apportionment and adaptation are similar in the following

1. Apportionment and adaptation both relate only to common property
2. The source of apportionment and adaptation is originally the shareholders 'opinion, but in the event that the shareholders do not agree on the apportionment or adaptation, the shareholders resort to the courts (Nada Mulla Alou, previous source, p. 39).

However, the apportionment differs from the adaptation in the following: -

1. Apportionment is given by ownership, and adaptation is given to the benefits of something.

2. The apportionment ends with the state of commonness, so it is called the final apportionment while the adaptation does not end with the state of commonness, so it is called the temporary apportionment .

3. Apportionment is one of the reasons for the end of commonness (Nabil Ibrahim, 2006, p. 125), but adaptation is a method of managing common property (Jaber Mahjoub, DT, p. 177 and Nada Mulla Alou, previous source, p. 39).

4. Dividing takes place in the values and similar objects, but the adaptation is done only in the values and not in the similar objects, because the similar objects

cannot be used with the existence of its notables, and in addition to that the similar objects are divisible in any case there is no need for adaptation in it. (Ghani and Muhammad (Previous source, p. 106)

It became clear from the above mentioned that the difference is clear between the two terms, therefore some believe that the combination of the provisions of apportionment and adaptation under one title is under consideration. This is what the Iraqi legislator did in the modified civil law number 40 for the year 1951, as he treated the provisions of common property in articles 1077-170 under the title "Commonness" so that this title combines the provisions of apportionment and adaptation (Al-Nahay, 1961, p. 143)

We note that the Iraqi lawmaker was not successful in his position because apportionment ends communism; the adaptation does not end communism as mentioned above, but only regulates the use of common property. Therefore, we support what the Egyptian legislator went to in the Egyptian Civil Law No. 131 of 1948, which organized the apportionment of common property by articles (834/849) and under the title of the expiry of communality by apportionment which is the most accurate title after he excluded the provisions of temporary apportionment known as adaptation apportionment. We suggest that the Iraqi legislator takes the path of the Egyptian legislator so that his position is more accurate, and he changes the term removing communism and replaces it with the term prevalence of communism by dividing because the term prevalence is more linguistically accurate as it means the termination and end of the thing (Ibn Manzur, previous source, p. 133)

As for removal, it means lifting, removing, and moving. For example, removing the damage or removing it (Ibn Manzur, previous source, p. 99 - p. 100). The Iraqi legislator succeeded when he used the topic "removal" considering that removal is used for the urgent things and common is an urgent exceptional situation on the property, and it is originally exerted, but is preferred to use the term prevalence for the duration and common which are temporary and undesirable and doomed to end no matter how long it takes in addition to that the term removal is broader than the term expiry. In addition to that, the term "adaptation" and the term "apportionment" of common property have to be separated because they are two different systems in their nature.

1.2.1 Consensual apportionment

If one of the shareholders wants to end the state of communion and does not adhere to a restriction that prevents him from ending the state of communality, whether this restriction is provided by the law or condition, then he must reach an

agreement with the other partners, if all the shareholders agree to the apportionment and there is no objection to making it, then this apportionment will be satisfactory.

Accordingly, we will clarify consensual apportionment in two requirements, the first requirement is what is consensual apportionment the second requirement is to challenge consensual apportionment due to injustice.

What is consensual apportionment ?

We will divide this requirement into three branches, the first section is devoted to the definition of consensual apportionment the second section of the terms of consensual apportionment and the third section of the method of consensual apportionment .

1.3 Definition of consensual apportionment

We will define consensual apportionment legally and in jurisprudence as follows: -

First: The definition of consensual apportionment legally: The Iraqi legislator did not come to the definition of consensual apportionment in the Iraqi civil law as well as other comparative laws, but the Yemeni legislator defined consensual apportionment in the Yemeni civil law in the text of Article (1199) as (an optional apportionment of consent between shareholders in which it is agreed on between all partners, provided that each of them takes their share of the common property according to what they agreed on, without coercion or lottery).

Second: the definition of consensual apportionment according to jurisprudence : some people have known (Al-Dawdi, 1986, p. 48), consensual apportionment as the apportionment that removes the state of commonness by the agreement of all shareholders in a way that they choose if there is no quarantined between them, the quarantined is the minor and insane and these are precisely reserved for themselves according to Article (94) From the Iraqi civil law, the court may be excused about foolishness and people who are unaware and announce the quarantine by the prescribed methods, and this is stipulated in Article (95) of the same law.

Others have defined it (Tariq Abdel Raouf, 2010, p. 115) as a contract concluded between the joint shareholders with a view to ending the state of communality friendly by agreeing to conduct it in the way they see fit, provided that he has the necessary capacity to conclude the act.

Chapter 2

2.1 Conditions of consensual apportionment

The first paragraph of Article (1071) of the Iraqi Civil Code stipulates that: (For partners, if there is no quarantined between them, the common property y shall be divided by consensual apportionment in the manner they see).

It is clear from the text above that two conditions must be met to perform consensual apportionment namely: -

1. All shareholders agree to consensual apportionment .
2. The absence of quarantined on the part of the partners.

It is noted that the Iraqi legislator did not refer to the consensus of the shareholders in consensual apportionment but the term "partners" came in an absolute and without specifying a certain majority, and this means that the agreement of the shareholders is an obligatory condition in the apportionment . The conditions and validity applied on any other contracts are applied on the consensual apportionment (Ghani and Muhammad, previous source, p. 119 and Anwar Talabah, 2006, p. 572), but despite that, the Iraqi legislator stipulated that there is no quarantined between the shareholders to complete the apportionment and this means that when the quarantined exists, consensual apportionment does not take place, and if the quarantined is among the partners, then Those who want to leave the communes want to resort to judicial apportionment (Al-Dawdi, previous source, p. 48).

This represents a departure from the general rules requiring the prosecution of the quarantined person, because if the guardian and guardian are to sell and he is more dangerous than apportionment, then he has to divide the apportionment because the one who owns the most has the least (Saeed Mubarak, 1973, p. 106), but the Iraqi legislator handled this matter In the Iraqi Minors Welfare Law No. 78 of 1980, as amended, in the second paragraph of Article (43), which permits the deputized person to agree on consensual apportionment but with two conditions:

1. The existence of an quarantined interest in conducting apportionment .
2. Obtain the approval of the Minors Welfare Department.

We note that the Iraqi legislator has treated his deviation from the general rules of representation in the Minors and Private Welfare Act that restricts the general.

As for the position of the Egyptian legislator, it is generally consistent with the position of the Iraqi legislator, but the Egyptian legislator stipulated the unanimity of the shareholders explicitly in Article (835). In addition to this, the issue of a deficiency of eligibility is referred to the law of the state over money.

(Refer to Article 40 and 79 of the State Law on Money No. 119 of 1952)

We note that the position of the Egyptian legislator was more accurate and better than the Iraqi legislator because he did not prohibit the apportionment in the event of a lack of eligibility but rather referred it to the law of the state over the money. While the Iraqi legislator conditions the consensual apportionment with the absence of the quarantined and if he is available among the shareholders or partners; then who wants to leave the communes should resort to judicial apportionment. But avoided this matter in the Minors Welfare Law, that permits for the which permits the deputized person to agree on consensual apportionment on behalf of the quarantined and after the approval of the Minors' Department to agree on consensual apportionment.

As for the Jordanian legislator, he prohibited the practice of consensual apportionment in the event of absence or loss of eligibility and incomplete in the first paragraph of Article (1041) of the Jordanian Civil Code, in order to protect the interest of the absent or incompetent partner, but in the second paragraph of the same article he authorized them to conduct judicial apportionment in the case all shareholders disagree, i.e. consensus, or one of them is incompetent. (Swar, 2010, pp. 139-p. 140)

While the Yemeni legislator, who distinguished between two cases, the first case prohibited the conduct of consensual apportionment if one of the shareholders was not eligible, and this is stipulated in Article (1211) of the Yemeni Civil Law. What is stipulated in Article (1200) of the same law.

2.2 Consensual apportionment method

The Iraqi Civil Law and other comparative laws stipulate that if all the shareholders agree on consensual apportionment then they may divide the common property in the way they see suitable. (Refer to Article 1071/1 of the Iraqi Civil Law, Article 835 of the Egyptian Civil Law and Article 1211 of the Yemeni Civil Law And Article 1040 of the Jordanian Civil Code)

Shareholders may choose to divide in kind, so they divide each one's share in the common property and the apportionment may be through liquidation, that is, they agree to sell the common property by public auction and divide the price between them, and they may choose to share the common property in whole or in part, that is, to share in part with the other part. (Sanhuri, 2000, pp. 895-p. 896)

However, the Iraqi legislator, in the second paragraph of Article (1017), restricted the freedom of the shareholders to choose the appropriate method of apportionment by registering consensual apportionment in the Real Estate Registration Department if the object of consensual apportionment is a real estate,

as is any action that responds to a real estate in accordance with the provisions of the Iraqi civil law. (Refer to Article 1071/2 of the Iraqi Civil Code)

Likewise, the Jordanian legislator mentioned a restriction on the freedom of the shareholders to choose the appropriate method for consensual apportionment that is, if the common property is from immovable property, then Article (65) of the Jordanian Immovable Property Apportionment Law No. 48 of 1953 should be taken into account and this article listed methods and procedures that the shareholders must follow when Consensual apportionment of immovable property. (Obaidat, 2011, pp. 63-p. 64)

2.3 Appeal the consensual apportionment due to injustice

Since consensual apportionment applies to it the provisions that apply to contracts, so the object of appeal is the same as the object of appeal in contracts (Jaber, previous source, p. 191).

It may challenge the consensual apportionment of cancelation due to lack of eligibility or cancelation due to the existence of a defect of will, such as mistake or coercion (Al-Sanhouri, previous source, p. 898).

As for injustice, the Iraqi legislator and other comparative laws have included provisions of their own, due to its importance in apportionment .

Article (1077) of the Iraqi Civil law stipulates that: (1 - It is permissible to request a reversal of the apportionment that takes place, by mutual consent, if one of the participants proves that he has suffered from it a gross injustice, and the lawsuit will not be opened after six months of the end of the apportionment as for the defendant; he has to stop its implementation and forbid the new apportionment if he completes in cash or in kind, what has decreased from his share 2. The injustice is considered obscene when he is as much as a quarter of the tenth in dirhams and half in tenth of in kind , the and tenth in animals and fifth in real estate).

It is clear from the text above that there are conditions for challenging appeal against conscientious apportionment namely: -

1. Injustice is obscene.

2. That the lawsuit be filed within six months of the expiry of the apportionment and this period is a period of loss, not a statute of limitations, and therefore, neither stop nor interruption shall be returned to it.

It is noted that the criterion adopted by the Iraqi legislator to determine obscene injustice does not lead to raising injustice in many cases, so we support what some have gone by taking the standard that considers injustice obscene if it is from something that does not fall under the modification of those modifiers

(Ghani and Muhammad, previous source, p. 131)

Therefore, we call on the Iraqi legislator to adopt this standard in order to achieve justice between the partners.

If the conditions are met, apportionment will be revoked, and it will take place again until the gross injustice rises and the apportionment becomes fair (Ghani and Muhammad, *ibid.*, P. 130).

However, defendants can stop the progress of the lawsuit and prevent the apportionment from taking place again if they pay the defendant's share in kind and cash (see Article 1077/1 of the Iraqi Civil Code)

The Egyptian legislator differed from the Iraqi legislator in terms of the value of obscene injustice, which considered injustice obscene if it exceeded one-fifth in movable and real estate (see Article 845/1 of the Egyptian Civil Law) As for the Iraqi legislator, the amount of unfair in movable varies according to the type of movable (see Article 1077 / 2 of the Iraqi Civil Code), and in terms of the duration of the lawsuit, the Egyptian legislator made it the following year for apportionment (see Article 845/2 of the Egyptian Civil Code)

As for the Jordanian legislator, it has taken a criterion that does not fall under the modification of the modifiers to determine the gross injustice (refer to Article 146 of the Jordanian Civil Law), and the filing of the lawsuit takes place within a year from the date of apportionment (see Article 1051 of the Jordanian Civil Law), in addition to that the Jordanian legislator did not The defendant is exposed to the issue of the defendant's ability to stop the progress of the lawsuit by paying what is missing from the plaintiff's share in kind or cash (see Article 1050 of the Jordanian Civil Code)

We support what some people have said (Obeidat, previous source, p. 67 and its margin No. 2) that the Jordanian legislator's position is more in line with justice because it gives the plaintiff the opportunity to obtain his right through the law without being forced to accept the money offered by the defendant.

We call on the Iraqi legislator to delete the last part of Article (1077) that allows the defendant to stop the course of the case if he pays what is missing from the plaintiff's share in kind or cash because in his position; this gave the defendant the opportunity to inflict injustice on the plaintiff when dividing and the opportunity to keep the apportionment as he wanted by paying a cash allowance or in kind to complete the plaintiff's share.

As for the Yemeni legislator, his position was completely different from the previous laws, the injustice is tolerant in it, even if it is large in consensual apportionment and the courts do not hear the injustice lawsuit if the participant is fully qualified and present at the time of apportionment except for a decisive matter, such

as injustice being the result of a mistake in the law. (Mansour and Munir, d. T, p. 198)

Consensual apportionment is only that it is challenged due to injustice, but judicial apportionment is not permitted due to injustice, because this apportionment is carried out under the supervision of the court and takes all precautions to prevent injustice (Ghani and Muhammad, previous source, p. 130 and Al-Dawudi, previous source, p. 57)

Chapter 3

3.1 Judicial Apportionment

When consensual apportionment is not possible because its conditions are not fulfilled, the court is resorted to divide the common property

We will learn about judicial apportionment in two requirements, the first requirement is devoted to what is legal apportionment and the second is how to do judicial apportionment .

3.2 What is judicial apportionment ?

We will clarify what is legal apportionment through two branches, the first section includes the definition of judicial apportionment and the liabilities of the lawsuit of judicial apportionment the second branch is the competent court in the consideration of the case of judicial apportionment .

Definition of judicial apportionment and the liabilities of the lawsuit

We will know the legal apportionment and then show the litigants of their lawsuit, as follows: -

First: The definition of judicial apportionment : The Iraqi legislator did not address the definition of judicial apportionment as well as other comparative laws.

However, the law professors defined the judicial apportionment as the apportionment that is made by the judiciary due to the inability of the shareholders to agree to the consensual apportionment of the money common among them, one of them or all to the judiciary, so that the court will divide them among them (Al-Dowaini, 2013, p. 418)

Others defined it as the apportionment that is carried out by the court and of its nature that it is indivisible, as it is established by the partner in the face of the owners of the rights in kind (Tariq Abdel-Raouf, previous source, p. 139).

Also, it was known as apportionment taking place by the judiciary due to the difference in shareholders in sharing common property or because one of them is absent or not fully qualified. (Siwar, previous source, p. 145)

Second: The litigants of the lawsuit of judiciary apportionment: The lawsuit

of judiciary apportionment is only filed by the partner and only filed against the partner. So what partner in common property and his public and private successors can file the lawsuit of judiciary apportionment so he is the plaintiff and the rest of the shareholders are the defendants. (Tariq Abdel-Raouf, a previous source , P. 139)

And if an apportionment of the lawsuit is brought to some without the others, then it is permissible to enter those who did not enter into the lawsuit, and they may enter on their own initiative, and the court may order their entry by its own. (Al-Sanhouri, previous source, 913)

If the ruling is issued in the lawsuit, it will be an argument for the shareholders present in the lawsuit, and not for the other shareholders not present in the lawsuit, because the partner who was not an opponent in the lawsuit is the only one who can request that the ruling is not enforced against him (Al-Sanhouri, the same source, p. 913).

3.3 The court competent to hear the lawsuit of judicial apportionment

The first paragraph of Article (1072) of the Iraqi Civil law stipulates that (if the shareholders do not agree on apportionment or if there is an quarantined between them, then the partner who wants to leave the commune faces the Primary court to remove him).

It is noted from the above text that the Primary Court is the court competent to hear a case of judicial apportionment .

As for the Egyptian legislator, the consideration of the apportionment case is the prerogative of the Partial Court (see Article 836/1 of the Egyptian Civil Code) and whatever the value of the common property is to be shared, even if its value exceeds the quorum of the judge, but the Partial Court is within its jurisdiction only apportionment procedures as for disputes Which are not related to the apportionment procedures, according to the general rules, the consideration of it is within the jurisdiction of the Primary Court according to the value of the subject of the dispute (Fayez, 2010, p. 215)

As for the Jordanian legislator, consideration of the apportionment claim is the prerogative of the Magistrate's Court (see Article 8 of the Immovable Property Apportionment Act)

We note that the position of the Iraqi legislator and the comparative laws are similar, and the names differ.

3.4 The Judicial apportionment procedure

The apportionment procedure depends on the susceptibility of the common property to divide, it may be divisible in kind, so the judicial apportionment is in kind, and the common property may not be divisible in kind, so the common property is sold and its price divided among the partners, so the judicial apportionment is divided by liquidation.

Thus, there will be two methods for conducting judicial apportionment which we will explain through two branches. The first branch will be allocated to the in-kind apportionment and the second branch will be devoted to the liquidation apportionment .

3.4.1 Apportionment in kind

When the common property is divided in kind, the result of the apportionment must not be a missed benefit to one of the partners, and the benefit is the intended benefit of the common property before the apportionment (see Article 1072/2 of the Iraqi Civil Law)

The in-kind apportionment is either the apportionment of the addition or the apportionment of separation, and these two types are not limited to judicial apportionment but also include consensual apportionment . (Ghani and Muhammad, previous source, p. 121)

We will clarify them as follows: -

First: If the common property is from movable and unified things, and this condition is limited to judicial apportionment (Qusai, 2011, p. 59, Ghani and Muhammad, previous source, p. 121), then the apportionment is carried out by sorting common property transferred together from some, by the usual measures, for example, by counting or measuring, or by measures or By weight and its distribution among shareholders by lot (refer to Article 1072/4 of the Iraqi Civil Code)

If the things transferred are of a different kind, then it is not permissible to make a judicial apportionment in kind, and the judiciary will resort to the apportionment of liquidation.

Second: The apportionment of separation: If the common property is a real estate, it is divided on the basis of the smallest share, and in this apportionment two things must be taken into account when dividing:

1. The independence of each share as far as possible the right to drinking, the road, the path and other easements.

2. Location, quality and all other features for each share, and this is stipulated in the third paragraph of Article (1072) of the Iraqi Civil Code.

If it is not possible for each of the shareholders to allocate his full share in

kind, he shall compensate for the decrease in his share at a rate equal to it in terms of value, whether it is another in kind or an amount of money, where the shares do not necessarily equal in kind, but their value must be equal, and the value of the shares must be determined by the agreement of the partners. If they did not agree, the court appoints an expert and then distributed the shares to the shareholders by lottery method (Al-Dawdi, previous source, p. 51).

As for the Egyptian legislator, he made the in kind apportionment in four stages, which are:

1. Dividing the common property into shares or sparing, as the second paragraph of Article (836) of the Egyptian Civil Law stipulated this stage (and the court shall delegate, if it appears to one of them, an expert or more, to evaluate the common property and divide it by shares if the money accepts the apportionment in kind, without causing a significant decrease in its value). Likewise, Article 837 of the same law stipulates: (1) The expert shall allocate the shares on the basis of the smallest share even if the apportionment is partial, so if apportionment is not possible on this basis, the expert may give each partner his share. If it was not possible for one of the shareholders to allocate his entire share in kind, is compensated with an equal rate of his share.

2. Settlement of disputes, where the second paragraph of Article (838) of the Egyptian Civil Law stipulated at this stage by saying (If disputes arise that do not fall within the jurisdiction of that court, they should refer the litigants to the Primary court, and designate a session for them in which they will attend, The apportionment case will stand until it is finally decided on these disputes.

3. The ruling to give each partner his share of the proceeds, since Article (839) of the Egyptian Civil Law stipulates that (1) when the settlement of disputes has ended and the quotas have been set by way of retainment, the Magistrate's Court issued a ruling to give each partner the share dedicated to him. Quotas were not set as a method of setting aside, apportionment is carried out by voting method, and the court shall prove this in its minutes and issue a ruling to give each partner his share of the sum.

4. Ratification of the judicial apportionment judgment in special cases where Article (840) of the Egyptian Civil Law stipulates that: (If the shareholders are absent or if they do not have the eligibility, the court must certify the apportionment judgment after it becomes final, according to what Determined by law.).

We note from the foregoing that the first stage in the apportionment in kind in the Egyptian civil law does not contradict its provisions with the position of the Iraqi civil law, except that the Egyptian legislator differed from the Iraqi legislator in the criterion of the susceptibility of common property to apportionment. So the

Egyptian legislator considered the common property divisible if there is no significant shortage in the value due to apportionment and this criterion is an economic standard (see Article 836/2 of the Egyptian Civil Code)

We support what the Iraqi legislator went in choosing the criterion of not missing the intended benefit for the susceptibility of common property to the apportionment in kind, because this criterion is more to achieve justice. As for the Jordanian legislator, he followed the same path as the Iraqi legislator, where Article (1039) of the Jordanian Civil Law stipulates that "the dividend must be a divisible property owned by the shareholders when it is conducted." Article (1043) of the same law stipulates that "the joint money must be divisible." So the intended benefit is not missed through dividing). (Obaidat, previous source, p. 71/74)

3.4.2 apportionment for ending the state of commonness

The procedure for judicial apportionment depends on the susceptibility of the money to apportionment so if the court finds, after filing the lawsuit from one of the partners, that the common property in question is not divisible in kind because the in-kind apportionment will miss one of the shareholders the intended benefit of the common property before the apportionment, then the court will judge the sale of the common property. (Saeed, previous source, p. 110)

The court uses the assistance of the people of expertise to estimate the allowance instead, based on a review by the plaintiff or one of the shareholders (see Article 1073/2 of the Iraqi Civil Law), and the sale takes place in one of the following ways: -

1. The unfinished method for the state of commonness: for the court to follow this method, the plaintiff must agree to the allowance estimated by the court and the approval of all or some of the shareholders on the estimated allowance, after being presented to them by the court in order to express their opinion in it within fifteen days from the date Informing them of that, so the plaintiff's share is sold to the shareholders who want the shareholders equally between them However, if one of the shareholders offers to purchase at a premium higher than the estimated, the court will conduct a bid between the shareholders alone, and the plaintiff's share will be sold to the highest bidder. (Refer to Article 1073/2 of the Iraqi Civil Law) We note that this method does not end the common but rather leads to the exit of the plaintiff after taking his share and the money remains common among the rest of the partners, but the common situation may end in this way in one case which is that the common property belongs to two people Only. (Qusai, 2011 p. 60)

Termination of the common case: The court follows this method in the event

that the plaintiff does not agree to the estimated allowance or the shareholders' unwillingness to purchase or the passage of the legally estimated period for the shareholders to express their willingness to purchase, which is limited to fifteen days from the date of notification, then the court will sell all the common property in Public auction (see Article 1073/3 of the Iraqi Civil Code) In this auction, anyone is entitled to enter it, whether it is a partner or not. (Al-Dawoodi, previous source, p. 52) When the court sells the common property by public auction, the court follows the procedures stipulated in the Law of Implementation No. 45 of 1980, then the price is distributed to the shareholders each according to their share.

As for the Egyptian legislator, his position was different from that of the Iraqi legislator, so if the court finds that the money cannot be divisible, it decides to sell the common property in the public auction and gives the shareholders the right to limit the auction to the shareholders alone, provided that they agree to this (see Article 841 of the Egyptian Civil Code).)

We note that the position of the Iraqi legislator in not limiting the auction to the shareholders alone is better than the position of the Egyptian legislator, because not limiting the auction to the shareholders alone and foreign entry in the auction may lead to raising the price of the common property to the best amount and more than what the shareholders may pay and the more the price of the common property increases It was in the interest of all partners. As for the Jordanian legislator, his position was similar to that of the Egyptian legislator, so the liquidation is divided by either selling one of the shareholders his share to the other in the event that the common property belongs to two people or selling the common property in the public auction and the shareholders may request restricting the auction to them alone Provided they are unanimous. (Refer to Article 1044 of the Jordanian Civil Code) While the Yemeni legislator gave the partner the freedom to choose the method by which the common property is sold, he may sell it in the regular way or by auction. From a partner who chooses between them by lot, and if the auction was sold, the auction may be general and you may be limited to the partners, provided they are unanimous in that. (See Article 1202 of the Yemeni Civil Code. For more details, refer to Mansour and Munir, previous source, pp. 206-207

Chapter 4

4.1 Conclusion

Praise be to God, thanks to which the righteousness and peace and blessings of God be upon the Messenger of God, the Seal of the Prophets and the messengers and the God and his companions and those who follow them with good deeds until

the Day of Judgment.

And yet

With his praise and conciliation, we reached the end of this research and through our study of the topic of common property apportionment types, we reached conclusions and recommendations, which we summarize in the following:

First :

1. Apportionment is the main cause of the expiration of communism, and the shareholders intend to end the state of communality, and that each partner obtains his right to the common property excreted.

2. Apportionment differs from adaptation in many things because they are two different systems in their nature. Therefore, the combination of them under one heading is under consideration, and this is the position of the Iraqi legislator.

3. Apportionment has two types, consensual and judicial, the first is by agreement of the shareholders and the second is by the judiciary.

4. The Iraqi legislator stipulated the shareholders 'agreement to conduct consensual apportionment and the word" shareholders "was absolute without specifying a specific majority, unlike the Egyptian legislator, who stipulated the partners' consensus explicitly in Article (835) of the Egyptian Civil Law.

5. The Iraqi legislator stipulated the absence of an quarantined for conducting consensual apportionment and this represents a departure from the general rules for procuracy, but he dealt with his departure from this in the law on caring for minors. As for the Egyptian legislator, whose position was more accurate and better than the position of the Iraqi legislator, the apportionment was not prohibited in the event of a lack of eligibility but rather Forward it to the state law on money.

6. The shareholders choose the appropriate method for dividing the common property in consensual apportionment but they are restricted to registering this apportionment in the Real Estate Registration Department if the subject of the apportionment is a real estate, as well as the Jordanian legislator who mentioned a restriction on the freedom to choose the appropriate method for the consensual apportionment which is to follow certain procedures and methods when consensual apportionment . If the common property is immovable money.

11. Shareholders are entitled to appeal by consensual apportionment without judicial apportionment due to unfairness, if this injustice is obscene and in order that their right to do so does not fall, they must file a lawsuit within six months of the expiry of the apportionment .

12. The Iraqi legislator has taken an arithmetic standard to determine obscene injustice in the second paragraph of Article (1077), and this criterion does not lead to raising injustices in many cases, as well as the Iraqi legislator allowed

defendants to stop the injustice case in the event that they paid what decreased the plaintiff's share in kind or cash. However, the position of the Jordanian legislator was better, as he took a criterion that did not fall under the evaluation of the evaluators to determine the outrageous injustice and also gave the plaintiff the opportunity to obtain his right in the legal way without being forced to accept the criticism offered by the defendant.

13. Depending on the judicial apportionment procedure, it depends on the susceptibility of the common property to the apportionment. The apportionment may be in kind, and the apportionment may be liquidation. This apportionment also includes consensual apportionment.

14. The Iraqi legislator took the criterion of not missing the intended benefit in determining the susceptibility of the common property to the legal in-kind apportionment unlike the Egyptian legislator who considered the common property not subject to in-kind apportionment if he suffered a great lack of value due to this apportionment and in fact the Iraqi legislator did the adoption of the non-missed benefit criterion. Because it is more to achieve justice.

15. The court chooses in the event that the common property cannot be divided in kind in a specific way to sell the common property, this method may be the end of the common situation and may be not end in the common state.

16. The Iraqi legislator was not limited to dividing the liquidation in a way that ends the state of the common occurrence of the auction by shareholders alone, in order to achieve the interests of all the partners. To raise the price and this is in the interest of all partners.

4.2 Recommendations

1. In view of the inaccuracy of the term "elimination of communality" established by the Iraqi legislator, we recommend changing it and putting the term "expiry of communality by apportionment" instead of it, based on the Egyptian legislator's approach, for the reasons stated in the body of the research.

2. We recommend separating the provisions of the adaptation from dividing common property and not combining them under one heading because they are two systems that are different in nature.

3. We recommend that the prevailing standard in the Jordanian Civil Code be taken to define indecent injustice, and it is the one that considers injustice obscene if it does not fall under the evaluation of the evaluators because this

standard achieves justice between the partners

Given that the Iraqi legislator has given the defendant the opportunity to inflict injustice on the plaintiff when dividing and the opportunity to keep the apportionment as he wanted by paying a cash or in-kind allowance to complete the plaintiff's share, we recommend that the last part of Article 1077 be deleted, which allows the defendant to stop the unfair trial if he pays what is missing from The plaintiffs share in kind or cash.

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