

Pre-Emption in Jordanian Legislation: Critical Reading

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Abstract

The Jordanian legislator restricts the practice of pre-emption on the owned real estate in common without addressing pre-emption on movable property. This legislative approach is unwelcome, so the Jordanian legislator should have found a special legal system that controls and regulates pre-emption in movable property. This study aims to evaluate the position of the Jordanian legislator regarding pre-emption to give solutions, and to find an integrated legal system that regulates and controls pre-emption.

Keywords: Pre-emption right; Movable property; Real estate law; Property law; Jordanian legislation.

1. Introduction

In order to exercise pre-emption in Jordanian legislation, the Jordanian legislator stipulates that right holder shall be a co-owner of the pre-emptive real estate. It is also permitted to be exercised in case of sale and gift with compensation, and it is restricted by the Jordanian legislator to exercise the pre-emption to the joint real estate.

With regard to the pre-emption, the Jordanian legislator narrowed the scope of exercising pre-emption on immovable real estate, as in Article (14) of the Real Estate Ownership Law: "Despite what is stated in other legislation, A- The right of pre-emption is exercised only by co-owner in the real estate."

In light of that, in order to achieve the purpose of pre-emption, the ownership is to be unified for one owner as much as possible and to prevent the damage to co-owner by entering foreign co-owner with the others. a general rule has been established which is the inability of pre-emption to be divided, which requires the exercise of pre-emption on the entire estate, except by multi-buyers and one seller, It is possible to divide the exercising of pre-emption by confronting one of the buyers and not others, but should the co-owner in the pre-emption lawsuit to claim the part sold for one of the buyers, or should he claim the entire pre-emptive estate?

The Jordanian legislator excluded from the scope of exercising pre-emption the case of sale on movable property due to the impossibility of applying the rules regulating pre-emption of real estate on movable property, but this is not good enough to exclude the permissibility of practicing on the movable property, especially such as vehicles, aircraft and ships. Jordanian legislator needs to reconsider the legislative insufficiency.

To answer the previous questions, it is required to divide this study into two parts. We dedicate the first topic to study: the narrowing the scope of exercising of pre-emption in Jordanian legislation, and we divide it into two requirements. In the first requirement we present: restricting the exercising of pre-emption to real estate, and in the second one we dedicate to study: the inability of pre-emption to be divided.

As for the second topic, we study: the exclusion some property from the scope of pre-emption, and we divide it into two requirements. In the first, we present: the restricting of Jordanian legislation in regulating pre-emption in movable property. As for the second, we dedicate to a study: the legislator's removal of some real estate from the scope of pre-emption.

2. Literature Review

The main research examined the pre-emption through its focus on the rights in kind ([Abu Al-Layl and Ibrahim, 1990](#); [Abu Al-Saud and Ramadan, 2002](#); [Abu Shanab, 2020](#)). This paper however critically analyses the pre-emption in the Jordanian legislation. In addition ([Al-Jundi, 1997](#)) has compared pre-emption in the Jordanian Civil Law with the pre-emption in the Civil Transactions Project for the United Arab Emirates, where this paper examines Pre-emption in Jordanian Legislation. Finally, ([Hassan, 2000](#)) has examined conditions of Pre-emption. In contrast, this paper goes further to discuss the applications of pre-emption for reporting the results to the Jordanian legislator in order to be taken into consideration in future legal reform.

3. Methodology

This paper uses the descriptive method to collect data. It is an appropriate method in gathering the information related to the rights in kind. The paper also uses the legal analysis method to ensure the Jordanian law has been theoretically analysed. Finally, the paper applies these methods to the data collected to get the best results, as well as to understand the role of the right of pre-emption in keeping private property in light of Jordanian legislation.

4. Discussion

4.1. The First Topic: Narrowing the Scope of Exercising of Pre-emption in Jordanian Legislation

The Jordanian legislator defines real estate in Article (58) of the Civil Code, which states: "Everything that is stable and fixed, and cannot be moved without damage or changing in the form, it is real estate and anything except that is considered movable property."

The law of real estate has dedicated the restriction of the pre-emption to real estate, and we note that the Jordanian civil law has stipulated that pre-emption to be exercised to the entire pre-emptive property, which is called the principle of indivisibility of the right of pre-emption.

Accordingly, we will divide this topic into two requirements. We will deal with the first requirement, restricting the exercise of pre-emption to real estate while we will dedicate the second requirement to study the inability of pre-emption to be divided.

4.1.1. The First Requirement: Restricting the Exercise of Pre-emption to the Real Estate

The Jordanian legislator stipulated in the Real Estate Ownership Law that the pre-emptive property should be real estate, as in Article 14: "Despite what is stated in other legislation, A- the right of pre-emption is exercised only by the co-owner in the real estate."

By extrapolating the said text, the exercise of pre-emption in Jordanian legislation is restricted to real estate, so pre-emption is not exercised except in the case of selling a common share in a joint estate. Accordingly, pre-emption is established and permitted to be exercised in case

The real estate by its nature: that includes land regardless of its nature and how to be used whether for agriculture or useless desert land, or if it is mines, minerals, and The Jordanian legislator defines real estate by assignment in Article (59) of the Civil Code, which states: "It is considered a real estate with a movable assignment that its owner puts in his real estate and to use it. Also, it fixed to the land. Other form of real estate by its nature, the only thing is that when sale is made for a common share of the joint estate.

Pre-emption is given to the real estate by assignment (Obeidat, 2020): is the movable that has been found to serve the real estate, such as the tractor and the harvesting machine that the owner has assigned to serve his land, and accordingly, pre-emption shall be concluded on it provided that it is sold with the real estate. Whoever, pre-emption shall not be concluded if it is sold independently of the real estate and it is considered as movable property.

Is it required for the sale to be contained a property that is divisible in kind? There is no provision in Jordanian legislation requires that. Accordingly, pre-emption is exercised in Jordanian legislation that is replaced by real estate whether the real estate is divisible in kind or not (Obeidat, 2020).

4.1.2. The Second Requirement: Indivisibility of the Pre-Emptive Estate

Undoubtedly, in order to achieve the purpose of pre-emption, the ownership is to be unified for one owner as much as possible and to prevent the damage to co-owner by entering foreign co-owner with the others. Pre-emption is stipulated to be concluded to the entire sold joint share. Accordingly, in case it is claimed for a part of the preemptive share and other is left, the claim is considered null and void. This can be imposed in case the buyer is one person.

But an exception has been made by the legislator from this in the case of multiple buyers. In this case, the pre-emption maker may exercise pre-emption against one of buyer except the others. (Abu Al-Layl and Ibrahim, 1990; Abu Al-Saud and Ramadan, 2002; Abu Shanab, 2020; Al-Sada and Abdel, 1982; Shukri, 1991).

Article (1160) of the Jordanian Civil Code states: "Pre-emption is indivisible, so the pre-emption maker is not entitled to take some of the estate by force from the buyer unless the multiple buyers and the seller is unified, so pre-emption maker can take the share of some of them, and leave the rest.

The Jordanian legislator was silent about explaining about multiple pre-emption makers for the pre-emptive joint share, and is it necessary to claim the entire pre-emptive share? It can be said that each of the pre-emption makers regardless of their number, have to claim the entire joint pre-emptive estate, just in case the right of pre-emption has been waived or forfeited by one of the co-owners. Divisibility of pre-emption will be concluded if pre-emption makers make approval about what they get from Abu Shanab (2020).

It's all about to be claimed for the pre-emptive estate by the pre-emption makers. It is equally divided between them by the court regardless of the shares. Accordingly, claiming a part of the pre-emptive estate from one of the pre-emption makers constitutes a not acceptable division of pre-emption (Abu Shanab, 2020).

Silence of the Jordanian legislator is unwelcome, and it is required to be intervened and regulated for its seriousness and importance. Accordingly, in the case of multiple buyers, pre-emption may not be exercised to some without others and if the estate is one and the conditions of pre-emption are met, and the contract is one by its nature. (Massad, 2008).

The Jordanian legislator excluded some common property of the permissibility of exercising pre-emption which is dedicated to the study in the second topic that we present the exclusion of some properties from the scope of pre-emption.

4.2. The Second Topic: Exclusion of Some Properties from the Scope of Pre-Emption

Researching on properties that are outside the scope of pre-emption requires exposure to the restrictions of Jordanian legislation in regulating pre-emption in movable properties, and also requires exposure to the legislator's removal of some real estate from the scope of pre-emption, which is dedicated to the study of two independent requirements.

4.2.1. The First Requirement: the Restrictions of Jordanian Legislation in Regulating Pre-Emption in Movable Properties

No doubt that the text of Article (14-A) of the Real Estate Ownership Law, in which the legislator established restricting the exercise of pre-emption to owned estate in common. Accordingly, the permissibility of exercising pre-emption in movable property has been excluded by the Jordanian legislator upon the explanation of the provision. (Abu Shanab, 2020).

Controversy and jurisprudential debate about the text of Article (1156) of the Jordanian Civil Code stating: "The sale that pre-emption is made shall be owned or movable real estate within the provisions stipulated by law."

Whereas part of the jurisprudence sees that the Jordanian legislator has enshrined the idea of pre-emption to movable property, finding from the text that the legislator's recognition of pre-emption to real estate and movable property despite the weakness of the legislative formulation of the text. (Al-Jundi, 1997; Explanation of the Jordanian Civil Law The original in-kind rights, 1995).

While other side went to say that evidence and texts used by the Jordanian legislator to organize pre-emption shows that pre-emption is restricted to real estate, but it went even further, considering this text to be used by the legislator. (Mubarak & Massad). The controversy has been resolved by the Jordanian legislator upon Article (14-A) of the Real Estate Finance Law, which restricted the exercising of pre-emption only to real estate, and pursuant to the rule which states that the special text restricts the general text, so the Real Estate Law, which is a special law, is more important to be implemented than the general text, i.e. the civil law. Pre-emption is not concluded to the movable property in Jordanian legislation.

Accordingly, the movable properties by its nature shall be excluded from the scope of re-emption, which are things that are not stable and not fixed, and can be moved without damage or changing in the form, including all goods, animals and sui generis movable properties such as planes, ships and vehicles except the movable property that used to serve the estate. If a common share of the movable properties is sold, pre-emption is not established for the remaining co-owners (Hassan, 2000).

To sum up, the position of the Jordanian legislator by excluding the practice of pre-emption to movable property is unwelcome, so what is the solution to this legislative defect? It is very difficult to drop the provisions of pre-emption to real estate, and to be implemented on movable property due to the specificity of the rules regulating them to real estate, so that it is impossible to be implemented to movable property.

We see that the solution is the necessity of the Jordanian legislator's intervention and the regulation of pre-emption provisions to the movable property, taking into account its privacy through including what is called (the right of redemption), a way by which the co-owner in the movable property can get back the common share sold from the movable property to a foreigner on behalf of the co-owners, and to be restricted to sui generis movable properties because of its high value, and in order to prevent the damage to co-owner by entering foreign co-owner with the others.

We note that the Jordanian legislator has excluded some real estate from the properties which pre-emption has been allowed to be exercised. This exclusion has been made for certain purpose and objectives, which what we will address in the second requirement that assigned for excluding the legislator for some real estate from the exercising of pre-emption.

4.2.2. The Second Requirement: Excluding Some Real Estate from the Scope of Pre-emption by the Legislator

Referring to Article (1159) of the Jordanian Civil Code, in which the Jordanian legislator has dedicated pre-emption, upon the explanation of the provision, cannot be made in each of the following properties (the Civil Code):

1- in case of suspension: The Jordanian legislator defines the suspension in Article (1233) of the Civil Code, which states: "suspension is preventing of property owned from being disposed, and the entire benefits are assigned to charitable causes, even if money.

Accordingly, the suspended property may not be disposed of in any of the transfers of ownership. therefore, if the suspended real estate was owned in common, pre-emption is not exercised on the suspended real estate when the pre-emptive real estate is being sold (Obeidat, 2020).

2- The building and trees that are sold intentionally without the land on which it is built or on fenced land (18): The Jordanian legislator excluded these properties from being implemented for pre-emption because they are not real estate (Obeidat, 2020). Although part of the jurisprudence sees that it is entitled to the right of pre-emption in the event of selling buildings and trees on the fenced land (Al-Sanhoury and Abdul, 2000).

3– What is being divided from real estate: the apportionment is an admission while pre-emption is proven in the process of exchanging.

To sum up, the explanatory memorandum of the civil law justifies excluding of pre-emption in the previous cases in its explanation of Article (1159) of the Jordanian Civil Code:

“Suspension is preventing of property owned from being disposed, and the entire benefits are assigned to charitable causes, and the reason for being pre-emption null and void is the loss of the first condition. Concerning the buildings and trees set on the fenced land, the right to build on is not permanent. If the building owner refuses to pay the same wage or the specified allowance, the buildings will be excluded. As for what is being divided from real estate, the apportionment has the meaning of classification, and pre-emption is permitted in the process of exchanging, and is not in apportionment because it is exchanging on the one hand and classification on the other hand”. (Explanatory Notes for the Jordanian Civil Law, 1987).

5. Results

1. Explanation of the provision of Article (14-A) of the Real Estate Ownership Law restricted the pre-emption to real estate owned in common, which means that no pre-emption to movable property is made in Jordanian legislation.
2. The Jordanian legislator did not indicate that the sale must be made on real estate that can be divided in-kind, which means that this share will remain owned in common or resorting to follow procedures of liquidation and at auction.
3. The Jordanian legislator was silent to explain the judge about the multiple pre-emption makers to the pre-emptive joint share and shall entire joint share be claimed or the amount of the share is pre-empted by confronting one of the buyers in case they are multiple.

6. Conclusion

In light of this study, the Jordanian legislator should intervene and organize pre-emption to movable property, and here we mean movable properties of sui generis such as planes, vehicles and ships, whereas the text is as follows: “A co-owner in a movable property of sui generis may get back before the apportionment, the common share that his co-owner sold to a foreigner within thirty days from the date of notification of the sale, or ninety days from the date of registering the sale in the competent department. The recoverer shall replace the buyer in all his rights and obligations in the event that he compensates him for all his expenditures, and when multiple recoverers, each one gets back his share in the money”. In addition, there is a necessity of stipulating that the pre-emptive share shall be divisible in kind and we suggest the following text: “If the property is not divisible in kind, no pre-emption is made. The legislator also should intervenes to explain that the pre-emption lawsuit required with entire pre-emptive property not only the share to be owned by pre-emption when multiple buyers and the seller is united. The suggested text is: “the pre-emption maker shall claim the entire pre-emptive property even if pre-emption makers are multiple”.

References

- Abu Al-Layl and Ibrahim, D. (1990). *The original rights in kind, the first part*. 1st edn: Kuwait University Press.
- Abu Al-Saud and Ramadan, A.-W. (2002). *In the original real rights, sources and provisions of the original real rights, in Egyptian-Lebanese law*. Halabi Human Rights Publications: Beirut, Lebanon.
- Abu Shanab (2020). *Ahmed abdel karim, rights in kind*. 1st edn: Wael Publishing House: Amman.
- Al-Jundi, M. (1997). *Preemption in the jordanian civil law and the civil transactions project for the united arab emirates, journal of law, first issue, ninth year, issued by the college of law*. 2nd edn: Kuwait University.
- Al-Sada and Abdel, M. F. (1982). *The original rights in kind, a study in Lebanese and Egyptian law*. Dar Al-Nahda Al-Arabiya: Cairo.
- Al-Sanhoury and Abdul, R. (2000). *Mediator in explanation of civil law, part nine, reasons for owning ownership*. Halabi Human Rights Publications: Beirut, Lebanon.
- Explanation of the Jordanian Civil Law The original in-kind rights (1995). *Part two: Reasons for owning ownership*. 1st edn: Dar Al Thaqafa Library for Publishing and Distribution: Amman.
- Explanatory Notes for the Jordanian Civil Law (1987). *Part two issued by the technical office of the bar association*. 2nd edn: Al-Tawfiq Press: Amman.
- Hassan, A. A. R. (2000). *Conditions of preemption, a comparative study, master's thesis*. University of Aden: Yemen.
- Massad, M. F. (2008). *Preemption as one of the reasons for acquiring property, a comparative study, a master's thesis*. An-Najah University: Nablus.
- Obeidat, Y. (2020). *Rights in kind*. 2nd edn: Modern Book World for Publishing and Distribution: Irbid.
- Shukri, M. (1991). *The original rights in kind, Part two, Reasons for earning ownership*. 1st edn: Kuwait University Publications.