

Pluralism of the Legal Function in Registering Real Estate Dispositions: A comparative study

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Abstract

Whereas the contract is considered to be the outcome of the free will expression of its parties and a confirmation of the respect of the principle of the authority of will by the legislator, the special nature of the contract when its subject is real estate, and its seriousness when concerning the transfer of ownership, making the legislator intervene in the formation of the contract. This intervention was represented by the requirement that the concerned contract must meet a certain formal form by registering it with a competent official authority to ensure the integrity and effectiveness of the contract and providing a reasonable level of protection for bona fide others dealing with the property whether in the form of exchange or benefit.

The Arab legislators were not far from all of that, despite their variations in the significance of the form of registration and its function. Such disparity and differences, however, did not deviate from one of two forms: either for the form of registration to be an essential element for the validity of the real estate disposition transferring ownership or to be a necessary element for the most prominent legal effects of the disposition to take place, particularly the transfer of ownership and conferring the act legal authority vis-à-vis the contracting parties and the other.

Keywords: *Effectiveness of the contract, Transfer of ownership, Real estate disposition, Official form.*

Introduction

The contract is considered to be one of the most fundamental pillars of civil transactions that take place in any society and one of the legal means by which many interests of individuals can be achieved. It is the fruit of the successful civil and commercial relations dealings that performs a necessary function having a significant impact. The contract, however, remains one of the most prominent legal instruments that can play an important role in the development and strengthening of the national economy and increasing its income.

As long as the contract has such societal importance, it becomes necessary to be regulated in all its phases, from the stage of negotiations up to its conclusion, as well as the implementation of its provisions and the enforcement of its effects. Such regulation has to take into account the protection of the legitimate rights and interests of the contracting parties as well as that of others who may benefit or be harmed by the contract conclusion. Legal protection of all these rights and interests is one of the causes behind the requirement for the contract to be registered with a competent authority.

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In principle, the contract is established merely upon the obtaining of the mutual consent of its parties on the terms of the contract including its subject matter and purpose. The principle of relativity of the contract's effect is no longer treated as an absolute rule since some national legislations have tended to narrow the scope of the consent that is based on the free expression of the will of the contracting parties for achieving certain goals and objectives viewing that the function of the contract should not only be confined to the achievement of the interests of its parties but also extends to the protection of the interests of the associated community.

Interventions of some national legislations in the formation of the contracts and in the effectiveness of their effects were manifested in the requirement of the contract registration with the national competent authority, considering the failure of observing such procedure may result in either the invalidity of the contract, obstruction of the enforcement of its effects, or a deficiency in its probative significance as well as its legal authority versus the other.

This comparative study, however, tries to shed light on the obvious disparity between the Omani and Jordanian laws in regard to the legal significance of the official registration of the contract, and also on their differences with respect to the consequences resulting from the absence of, or non-compliance with such procedure by the two or one of the contracting parties.

More importantly, this work attempts to investigate the function and the nature of formality in legal acts in Omani law, whether it is an essential element of the establishment of the contract or a condition of its validity, or it is just for the effects of the contract to take place and to be enforced. In other words, whether the formality of registration constitute an element in the formation of the contract, or is it only a framework of one of its obligations and effects?

Other questions also have to be raised in this regard concerning the implications arising from the failure of not adhere to the formality of registration in each case when the law requires, the means provided for the protection of a bona fide person- whether he is a contracting party or not- against the stubbornness of the obliged party to fulfill his duty of registration either he refused to do so, or he with a bad faith has disposed of the property before fulfilling his duty concerning the formality (registration).

This study will be conducted through two parallel paths; the first discusses the legal significance of the procedure of registration in the laws under comparison, and the second explains the impact resulting from the failure of not adhering to the contract registration requirement.

Since the separation between these two paths will lead to the loss of the intended coherence of the main idea, the legal significance of registration should be a matter subsequently dealt with when discussing the question of the effect resulting from the failure of registration on the contractual disposition. This necessitates, first, the determination of the legal function of registration, and then, determining the effect that could result from the failure of registering the contract.

There is no doubt that consent is the basis of the establishment of contracts, upon and according to this basic idea, the principle of consent in contracts dominates the legislative philosophy concerning the building up of the provisions of contracts and arranging their effects. Laws have always left the organization of the contractual relationship to its parties who formulate the contract and draw its provisions as long as they do that in consistency with the peremptory norms of law (*jus cogens*) and not in conflict with public order and public morals.

The ultimate legislative goal behind tuning the function of contracts and ensuring their legitimacy makes the principle of consent like a door that can be opened or closed by the legislator as circumstances require. Thus, the requirement of registering contractual acts

emerged as one of the most prominent means for the legislator to ensure that contracts achieve their individual and collective goals.

Although the Arab civil codes necessitate the registration of some contractual acts as a condition that should be met, they differ in their treatment of the said condition with respect to its legal significance and to the sanctions proposed for non-compliance. However, the role that the law wanted for registration to play in contractual acts either to be an essential element for the establishment of the contract and part of its composition or a condition for its effects to take place and for the permissibility of invoking the contract.

Taking into account these two roles of registration in the light of the laws in question (Omani and Jordanian), this study has been dealt with in two sections. While section one discusses the first role, section two deals with the second one. However, this work will not be descriptive, but rather analytical involving a comparison between the two concerned systems of law showing the role that is expected to be played by the condition of registration and exploring to what extent the legislative drafting of the said condition in both laws under comparison was successful in achieving the role expected to be played by the condition of registration and fulfilling its goals.

For a better and full understanding of the issues relating to this work, a brief preface explaining what is meant by the term of registration of the contractual act and distinguishing it from other terms such as that of property registry and documentation.

Meaning of the legal act registration

While the term registration, in general, means an act of recording a name or information on an official list, in law the term may refer to the act of recording papers or documents at the courts or with competent authorities. In this sense, a registered contract means a contract that has acquired official status by recording it in a special register. Registration has been described as an act of writing or preserving a legal act or judicial ruling in records for the purpose of preservation, proof, or notification. It is also has been defined as “a procedure that consists of recording a contract in an official register owned by registry officials for fees”. In relation to property, registration involves a number of official rules and procedures aiming to define the legal status of the property, establish its ownership, and announce the rights and restrictions imposed on the property by using records and sheets to be available for the public to look at and request statements concerning the status of the property registered.

Property registry differs from property registration, While the first term refers to the official documents that have been authenticated by competent authorities and collected in one blog, the second is the legal procedure that the law entrusts to the documentation officer responsible for organizing the documents of the legal act or approving them. In addition, the ultimate purpose of the property registry system is the stabilization of the physical and legal status of the property by defining its area and boundaries, determining its legal status by declaring its owner, stating all real rights that are attached to or resulting from it, creating an ownership registry for it at the authority of property registry.

Article 2 of the 1998 Omani Property Registry Act defined this registry as “a set of cadasters, each of which pertains to specific Property Unit. The documents and records of registration are deemed complementary to the Property Registry”. The Omani law assigns the task of registration and the control of the property registry to the Land Registry Office as Article (13) of the Property Registry declared: “The Land Registry Office and its branches shall be competent to register and notarize the legal instruments and acts made with respect to the Property Unit and to the changes thereto; each within its respective sphere of competence”. The Omani legislator justifies his creation of the property registry system in view of the function it performs as Article 1 of the Property Registry Act states that: “the system aims to control the right of ownership and other real rights presented to

the Property Unit in order to achieve the necessary protection for the property ownership and other real rights and to ensure stability and transaction thereunder”.

In comparison, Egyptian law defined the Real Estate Registry as “a number of journals that depict the characteristics of each property, state the legal status thereof, lay out the rights and obligations arising therefrom, and illustrate the transactions and amendments related thereto”. The Lebanese law also defined the real estate registry as “a set of documents which provide descriptions of each Real Estate, determine its legal and legitimate status, mention the rights and burdens of which it forms the subject, and state the transfers and alterations related thereto”. By contrast, for the Jordanian law the real estate registry means “a set of cadastres, paper and electronic documents, and maps in the Directorate’s possession that shows descriptions of the property, state the legal status thereof, lay out the rights and obligations arising therefrom, and illustrate the transactions and amendments related thereto”.

Section One: Registration as an element for the establishment of the contract

Some civil codes have traditionally required the registration of some contractual dispositions treating it as an essential element for their establishment. The Jordanian Civil Code, for example, stated in its Article (1148) that: “Property and other real rights shall not be transferred between contracting parties and against third parties except by registration in accordance with to the provisions of its laws.”, the same position has been adopted by the Jordanian Real Estate Property Law in its Article (63) which declared that: “ Disposals, contracts, or any transactions conducted on real estate or water shall not be valid in the areas in which the settlement was made unless registered with the Registration Directorate, and any disposition, contract, or transaction conducted contrary to that shall be considered void.”. Of the same view is the Article (1011) of the Omani Civil Transactions Law which stated that: “The security mortgage shall not be concluded unless it is registered, and the mortgagor shall be obligated to bear the expenses of the contract unless otherwise agreed upon”

This approach is consistent with what has been declared by Article (4) of the Qatari law on the Real Estate Registration System which states that “All acts that would create, remove or change a property right or another property right in kind, as well as final judgments confirming the same, shall be registered. The lack of registration shall mean that the aforementioned rights shall not be moved, transferred, or changed whether between the stakeholders or third parties. Non-registered contracts shall have no effect other than the personal obligations between the contracting parties”.

Therefore, the registration of the legal disposition with the competent administrative authority becomes a fundamental element for the formation and composition of the contract and stands side by side with the consent of the contracting parties, which the contract can't exist without.

Conditioning registration as an element for the establishment of the contract is a restriction of the contractual will. It is in fact, an expression of the relativity of the principle of the authority of the will and its decline, at least in the freedom that has been recognized to the contracting parties in choosing the way they like or method in expressing their will. Although this principle still plays an essential role for the parties in choosing to engage in a contract or not and in determining the provisions of the contract including their rights and obligations therein, imposing formal restrictions for the contract to appear and exist will affect the principle. Precisely speaking, imposing formal restrictions leads to the scope of the implementation of the principle of the authority of will that leads to the contract being the law of its parties will be only limited to the will to contract and the content of the contract without including the means of expressing the will.

If the civil law recognizes that the general rule governs the expression of the will is only its validity regardless of the mean or way of expression as being explicit or implied. This is, in fact, an absolute rule in consensual contracts based only on consent in which the expression of the will is not subjected to any specific external form or to be imposed as such by the legislator. Requiring a certain form for the contract to be established is a clear departure from this rule and an inclusion of the will of the legislator with that of the contracting parties in concluding the contract.

It is clear that the legislator when intervening in imposing a mean of expressing the contract to appear in an external certain form is an exception that has its own controls and conditions. To explain, it is an exception imposed by the nature of the subject of the formal disposition and the interests aimed to be protected in requiring such form.

This intervention by the legislator does not affect the essence of the will or deprive the contract of being based on consent. The difference between the will itself and its expression should be clear in this regard, and perhaps what is presented here is consistent with that ongoing jurisprudential debate between the inner and the apparent will. In the state of disagreement between them; Does the legislator give precedence to the inner will (the intention) of the contracting parties or priority should be given to the apparent will (the wording and the structure of the contract)? The difference between the true will and its wording or the approximation between them is only a difference or an approximation between two different terms, they may be identical or repel each other. In the latter case, the legislator intervenes to conform the true will with its appearance, or more precisely; for the apparent expression to match the true will of the contracting parties

The Jordanian legislator's condition of a specific formula in real estate dispositions is a framing of the will of the contracting parties, dressing it with a guise that has been chosen by him but not the parties of the contract, so such requirement or condition becomes a rule for the establishment the legal disposition (the contract), which is, de facto, parallel and equal in its obligatory and significance alongside the will and the consent of the contracting parties.

Therefore, the legal function of the form (registration), as presented above, is to build up and compose the contract. This function has its reason and purpose that may justify the imposition of the form itself. Economically speaking, real estate is an important fixed and stable asset with significant economic value for the national wealth. The State's supervision of the dispositions relating to a property by requiring its official registration in order to be valid stems from economic considerations in addition to other political ones when registration enables the State to monitor the validity of transactions related to property. In some cases, the law prevents the transfer of ownership of the property to non-citizens with few exceptions. Another reason for conditioning registration of the property at the official registry is for the true owner of the property to be known, and this will prevent others from any deception or fraudulent use of the property or any disposing of it by anyone rather than someone who has authority over it. Moreover, the property record that shows the legal status of the property, whether it is shared or divided, seized or mortgaged, for example, is an effective instrument for protecting any person who wants to deal with the property. Official registration of all that has been said in regard to property is an effective way of achieving true knowledge and its proof, truth, and its proof.

Both the Jordanian and Omani laws agreed that registration is an essential element in the establishment of the security mortgage contract. Article (1323) of the Jordanian Civil Code, which is a counterpart of Article (1011) of the Omani law declared that: "The security mortgage shall not be concluded unless it is registered, and the mortgagor shall be obligated to bear the expenses of the contract unless otherwise agreed upon". Thus, the contract of the security mortgage is absolutely formal, and the form of its registration constitutes an element that nullifies the contract if it is not met. This condition of

registration existed also in the Jordanian civil law in regard to dispositions transferring the ownership of a property, because the property is the subject matter of the security mortgage which might be at any time out of the mortgagor's hands (the owner) for paying debts, therefore, therefore, the reason for requiring formality (registration) here is completely consistent with the reason for requiring the same procedure for the sale of property referred to above.

This result cannot be disputed on the grounds that Jordanian law has permitted the subject matter of the security mortgage contract to be a movable thing as long as its special regulation requires its registration such as a car or a ship , because the Jordanian law for the validity of the disposition transferring ownership of these movables requires its registration as will be explained later.

If what has been said above is true for the real estate dispositions, Jordanian law also requires the procedure of registration for the validity of the contract concerning vehicle sale and states that the failure of not meet such condition results in the nullity of the sale contract. Article (7/c) of the Jordanian Traffic Law states that: “Transactions for transferring ownership of vehicles and mortgaging them are considered All legal transactions related to it are invalid unless they are registered and documented in the Licensing Department.”. It is clear that the legislator’s goal in requiring the registration of these transactions is to achieve exemplary legal protection for the contract parties and for the other as well. Since the vehicle is a property that requires special care, and its use entails several legal consequences such as bearing the responsibility for traffic violations as well as the result of traffic accidents, which requires identifying the identity of the vehicle's owner in a clear manner, therefore, recording the sale contract of the car is one of the most important means of achieving protection.

Accordingly, neither the customary agreement nor the court ruling can replace the registration element in regard to dispositions transferring the ownership of the property and vehicles. The person holding ownership also cannot dispute the disposer of the property under the pretext of proving the validity of the contract transferring ownership, this is so because such a claim should be based on the existence of a contract that obtained all its elements. Since registration in that disposition is a fundamental element of the establishment and composition of the contract, therefore, holding on to the validity of a non-registered contract is nothing more than clinging to an illusion that is not recognized by the law, and the judiciary does not, in this case, have the power to base its ruling upon.

Section two: Registration is a condition for the contract's effect to take place

The formation of the contract has suffered from the fluctuation between restriction based on the existence of a specific formula and form on one hand, and the release upon the principle of the authority of the will on the other, followed by the creation of a dual system for some contracts most of them are based on consent with less formality on the view of the sensitive nature of their subject or for other considerations relating to the protection of dealers with such contracts.

If the contract was based on a specific form and formula that could not exist without it at the early stage of Roman law times, the principle of the authority of will has triumphed over such restrictions to give the contract its absolute effect and free it from any restriction to become based only on free consent. Between the form of restriction on one hand and the excessive freedom of the contract on the other, modern laws adopted a mixed approach by requiring formality in some contracts and freeing others from any specific form or formula.

Probably some political, social, and economic considerations in addition to the developments that took place at a certain time in the history of law due to the influence of the social theories that have witnessed a massive spread in legal thought and as expressed

in many legislations were behind the abandonment of the absolute rule of formality as well as that of the absolute principle of the authority of will. As a result, the latter principle appeared in a legislative form with a specific template with a clear goal, to become a rule with relative generality, for the requirement of the form to appear with different weights with multiple functions in specific legal dispositions and to become an exception on the freedom of will with its own controls and goals.

Perhaps the most confusing form of formality with that of the contract conclusion is the form in which the law stipulates that the contract must be registered for its effects to take place, in other words, suspending the effect of the contract on the fulfillment of the required form (registration), which is, *de facto* and *de jure* a form related to a valid contract already concluded and existed. The form required is not an element of the formation of the contract nor of its composition, thus, its unavailability will not affect the existence of the contract, rather, preventing it from having its effects. Such prevention may negate the proofing of the effects of the contract *vis-à-vis* non-contracting parties to become an ineffective contract.

Among the forms of the form of registration as a condition for the legal disposition to have an effect is what has been stated in Article (901) of the Omani Civil Transactions Law: “Ownership and other real rights in the property shall not be transferred, whether between contracting parties or against third parties, except by registration in accordance with the provisions of the relevant laws.”

This general text was preceded by what was provided in article (28) of the Omani law concerning the Property Registry system which stated that: “All acts that would create, transfer, eliminate or change an original real right, as well as the final judgments proving any of the foregoing, shall be registered with the Secretariat of the Property Registry or its branches. These acts include endowment (Waqf), testament, and pre-emption. Non-registered acts and judgments shall have no effect other than that of pure personal obligations between the two parties.”. This was followed by Article (29) of the same law declaring that: “All acts and final judgments determining an original real right must be registered. In case of failure to register these rights, the same would not be enforceable against third parties and shall have no effect other than pure personal obligations between the parties thereto. Such judgment shall be applied to the property division even if the inherited possessions were the subject matter of the said division”

It becomes clear that Article (901) mentioned above suspends the transfer of the ownership of property on the fulfillment of the registration requirement concerning the sale with the competent authority as a condition of the validity of the disposition transferring ownership. This means that the most important effects of the contract, the purpose of its conclusion, and the reason for its existence (the transfer of ownership) remain ineffective as long as its condition (registration) that has to be sought by the contracting parties is not fulfilled. In this case, the effort required by the contracting parties to register the contract with the competent authority becomes an obligation to achieve a result.

Articles (28, and 29) of the property registry system referred to above, require the registration of acts transferring the ownership of property, and the failure to do so results in the disposition being deemed to have personal effects on its two parties, without having an authority *vis-à-vis* others. Assuming the compatibility between the two said Articles (28, and 29) with Article (901), it can be said - hypothetically - that the legislator by describing the obligations as personal intends to exclude the transfer of ownership from these obligations, so that there is no effect left of the unregistered sale contract except obligating the buyer to pay the price without obligating the seller to deliver the sold as long as this latter obligation is a not a personal obligation. In this sense, there is no other obligation that can be imaginable which is not related to the seller's obligation to deliver. The seller's obligation not to harm the buyer, to prevent him from any legal hindering by

others, and to guarantee hidden defects are only obligations that are implemented from the time of delivery, even if they arise at the time of the contract conclusion.

Perhaps the opposite is correct, simply because the buyer's obligation to pay the price is a reason for the seller's obligation to deliver the sold item. Indeed, the law explicitly stipulates the precedence of the buyer's obligation to pay the price and considers it a reason for the seller's obligation to deliver the sold item as Article (411) of the Omani Civil Transactions law states "The buyer must pay the price first, at the time of contracting, and before taking delivery of things sold or making any claim for the same unless otherwise agreed". While personal obligations have three forms namely are (performing an act, refraining from doing so, and giving something) , the obligation of delivery is one of them (performing an act) which means the removal of the seller's hand from the sold item for the buyer's hand to take its place. In this case, how one can describe the buyer's hand over the sold, is it the hand of the possessor or not? It is a question that carries, in its disapprobation form the answer. It is not imaginable that the hand of the contracting buyer under a valid contract would be other than the hand of an owner who has control over the selling, thus, the validity of the re-sale of the property by the seller to someone other than the first buyer is subject to the latter's approval because it is simply a sale of someone else's property.

Understanding the provisions of the property registry system leads to the conclusion that the sale contract concerning the unregistered property is a valid contract having its effects on the contracting parties, transferring the ownership of the property, making the buyer an owner of the property, and the seller a predecessor and alien to it. Article (29) adds that the authority of such is relative and extends only to its parties, but not to the other who may be harmed by the validity of the contract and the transfer of ownership of the property. For the seller's creditors, the property remains owned by the seller and is included in the general or private guarantee for the fulfillment of the seller's debts. This means that the sold property may be forcibly taken out of the owner's hand (the buyer) by judicial ruling to obtain the rights of the seller's creditors.

This understanding raises the following questions:

Is there an obligation for the seller to register the sold property in the name of the buyer? Or the latter can do the job by himself with the competent authority?

Is it understood from the above provisions that the buyer remains obligated to pay the price despite the seller's failure or refusal to fulfill the obligation of registration? Is it possible for the buyer to be obligated to pay the price even though he is not the owner?

What is the purpose for the form to have this function? What is the desired protection aimed to be achieved from such a function? Is it for the protection of the seller, the buyer, or the person dealing with the property? Was the requirement of the form to be treated as an element for the establishment of the contract more effective in achieving such protection? Rather, was it not an impediment to any views regarding the effect of its unavailability as previously explained?

Before answering all of these questions, it has to be said that the law imposes a contractual obligation on the seller to deliver the sold item to the buyer and enable him to take possession of it. This entails his commitment to do everything necessary to transfer ownership to the buyer. For sales that the law requires its registration in the name of the buyer, the seller must fulfill this obligation by doing everything required by law for such registration

According to the above-said provisions of the Omani law, the function of registration is not an element for the establishment of the contract, therefore, its absence cannot be cause for its invalidity, the failure of registering the contract of property sale does not affect the validity of such contract, neither affects its composition, but rather suspends its main effect to take place (the transference of the ownership).

The buyer may overcome the seller's failure or refusal to register the property in his name by suing him to obtain a judicial ruling that replaces the will of the seller and also be used by the buyer to prove his ownership of the property and to register the property on his name with the competent department. This view can be evidenced by the position of the Supreme Court which explicitly considered that the failure of the seller to register the property in the name of the buyer does not invalidate the sale which can be proven by "the mere transaction.". Since the sale is valid, its effect of transferring ownership to take place depends on one of two things: the seller's initiative to register the property in the name of the buyer, or obtaining a ruling from the competent court that replaces this initiative.

In addition to the provisions of Omani law concerning real estate dispositions, the Traffic Law of Oman also requires registration with respect to the sale of vehicles. In this regard Article (3/4) provided that: "All types of motor vehicles must be registered in special registers with the relevant department at the Directorate and in accordance with the rules, conditions, and forms specified by the Regulations.... The owner shall be granted an ownership registration card in accordance with the form designated therefor" Then the same law places an obligation of notification on the owner of the vehicle, stating that: "If the motor vehicle is sold or if any action is taken to transfer it to a third party, the owner must accordingly notify such sale or transfer to the Directorate in writing within 7 days from the date of sale or transfer, specifying the name of the new owner and his address. The Regulations of this Law set out the procedures relating to the transfer of ownership licensing and the documentation required, provided that a copy of the document which proves the transfer of ownership must be included. The original owner whose motor vehicle is registered in his name shall remain responsible for the fees due and the enforcement of the provisions of this law until the motor vehicle is transferred and licensed in the name of the new owner".

It is clear that registering the disposition transferring ownership of the vehicle is a requirement dictated by the previous texts, and it is an obligation that begins with the owner's initiative to inform the competent department (the Traffic Department) in writing of the disposition transferring ownership on the name of the new owner. It is also clear that this registration was not an element for the conclusion of the concerned contract or a basis for its validity. The reason is that the law concerned did not stipulate that the contract would have a negative effect by the failure of registration, rather, it did not suspend the transfer or cessation of ownership on whether the vehicle has been registered or not. The law gave the owner a period of seven days to initiate written notification of the disposition transferring ownership and did not arrange any contractual effect on his failure to fulfill this duty. However, from a legal point of view, the failure to register the vehicle in the name of the new owner keeps the seller as the owner. All obligations imposed by the law concerned are addressed to the owner in whose name the vehicle is registered, and not to the buyer as long as he has not yet registered the vehicle in his name. Registering the vehicle in the name of the buyer is what brings him under the umbrella of law enforcement as an owner who is subject to the duties imposed by law as everyone else owns a vehicle, and who bears the responsibility for using the vehicle and also for the injuries resulting from such use.

A distinction should be made between the legal status arising from the sale contract on one hand (predecessor, seller, previous owner, specific successor, buyer, or new owner) and that arising from the registration of the vehicle in the name of the buyer (commitment to the duties of the owner in accordance with the law). The first is simply established by having a valid contract, and the second is created by the completion of registration, this does not mean, however, that the vehicle can have two owners at the same time (The seller in whose name the vehicle is still registered, and the buyer in whose name the vehicle is not registered). Ownership is a real right (right in rem) that is established for the owner once its reason (the contract) is proven. As long as the required registration was

not an element included in the formation and composition of the contract nor in the effectiveness of its effects, therefore, its absence does not affect the establishment of the said real right.

To confirm what has been said above, failure to register the vehicle in the name of the buyer will not invalidate the sale contract, nor affect its effects on its parties. The seller is still obligated to deliver the vehicle to the buyer, and the latter is obligated to pay the price to the former in return. In this case, the buyer becomes an owner from the time of concluding a valid contract, not from the time of registering the vehicle in his name. Therefore, it cannot be said in this case that registering the vehicle in the name of the buyer with the competent authority is a condition for transferring ownership to take place, nor is it a basis for the validity of the sale contract a fortiori.

Probably one of the most important and serious consequences that might follow with the above scenario is when the seller sells the vehicle again to someone other than its first buyer, in whose name the vehicle was not registered, and the seller may even hand over the vehicle to the second buyer, and may also register it in his name as well. In accordance with this scenario, the second buyer here has the right to cling to the possession of the vehicle as a presumption of ownership and on the pretext of registration to prove his ownership. The first buyer here will find himself faced with the option of suing the seller and the possessor of the vehicle on an entitlement claim by which he proves his priority of ownership in order to disprove the ownership of the second buyer.

The position of the Omani law treating the condition of registration as an element for the establishment of the security mortgage contract on the movable or immovable property whose special laws require its registration is discussable. It is not acceptable for the law not to require registration as a component of the inevitable transfer of ownership of the property to its buyer, and at the same time require such condition for a deposition that is likely to take the property from its owner's control for paying debts. One cannot deny the seriousness of the security mortgage contract, and the necessity of its registration for the preservation of the rights of the mortgagee creditor as well as the interest of the bona fide Other who had rights over the property before or after the conclusion of the mortgage. It is difficult to justify the approach that has been taken by the Omani law in distinguishing between dispositions definitely transferring ownership of property and that possibly do so, providing protection for the latter more than the former despite the clear need for formality (registration) as an element of the contract in the case of the sale of property or its mortgage, if not in the latter case is more desperate.

The requirement of registration continues to raise many questions most of all relating to its obligatory nature and its significance in the case of promising the transfer of ownership of a property since the comparative laws have approved the permissibility of the subject matter of the promise to be a future contract. As long as the promise of contracting is considered to be an independent contract having the same basic elements as any other contract, the question here is whether this contract needs to be registered if its subject matter is transferring the ownership of a property, and whether its registration - assuming it is obligatory - is an essential element for the establishment of the concerned contract or just a condition for its effects to take place?

The latter question might be logical for those legislations that require registration for real estate disposition transferring the ownership of property as a prerequisite for its establishment, but it is not so for those legislations that consider the procedure of registration only for the act (contract) to have an effect. To explain, the purpose of the promise in contracting is not a contract transferring ownership by itself, but rather a mere pledge from the promisor to the promised person to transfer the ownership for him in the future time if the latter expresses his acceptance. Accordingly, the promise of transferring ownership of a property does not have any effect on transferring ownership as long as it is a mere promise. By contrast, with legislation that requires registration for the validity of a

real estate disposition the issue here is different, it is whether registration is a necessary condition for the validity of the promise of transferring ownership or not because it is an essential element for the establishment of the disposition itself (the contract).

Article (105/2) of the Jordanian Civil Code provided the answer by declaring that: "If the law stipulates that a certain form must be fulfilled for the completion of the contract, this form must also be taken into account in the agreement that includes the promise to conclude this contract." Thus, the same condition required by Jordanian law that the disposition transferring ownership has to be registered applies also to the promise of the same disposition, which means that the promise concerned will not be validly established unless its registration occurs.

Among other questions arising from the issue of the registration requirement is the matter of its obligatory scope in cases relating to the sale of a property as it exists in an engineering chart or a map. As long as the subject of such sales did not exist at the time of contract conclusion, and since the law permits the sale of the future property if there is no deception and the date of delivery has been confirmed as agreed upon between the contracting parties, and as long as there is no special provision in the laws under comparison regulating sales of property that exist on a map or in an engineering chart, therefore the same rules that apply to the sale of an existed property at the time of the sale applies also to the sale of future property. This means that the registration requirement applies to off-plan sales as well. Accordingly, the disposition transferring ownership of the property must be accompanied by registration either to be considered as an element for the establishment of the contract or as only a condition for the ownership to be transferred. This is for the buyer's ownership of the property to be proven once the contract is registered irrespective of the nonexistence of the property at the time of the contract conclusion.

Conclusion

Whereas the dispositions transferring ownership are of a special nature because of the importance of their subject (the property) and their effects (the transfer of ownership), civil codes have unanimously agreed that the legislator must intervene to regulate such acts, monitor them, and protect the rights of the dealers with the property. Therefore, the requirement of registering dispositions transferring property has been seen as one of the most important means by which the said aims can be achieved.

Despite the existence of a legislative consensus that a role has to be played by the legislator alongside the will of the contracting parties in the registration of dispositions transferring ownership of property, the legal significance of such registration varies from one legislation to another. This study highlighted the forms of such disparity, its goals, and the consequences resulting from it and concluded with some results and recommendations as follows;

First: Results

1. The compared laws did not agree on the issue of the function of the registration of real estate dispositions transferring ownership. While some laws treated the registration procedure as an essential element for the establishment of the contract, others considered it only a condition for the effect of the transfer of ownership to take place.
2. Laws that treat registration as an essential element for the establishment of the contract, its absence results in the nullity of the disposition (the contract). By contrast, laws that consider registration have only an impact on the effects of the disposition. In other words, it does not affect the existence of the contract which remains valid, by disrupting its enforcement and suspending its authority.

3. Considering registration of the contract only as a condition of its effectiveness without affecting its validity even if not being registered resulted in the existence of the problem of the sequence of sales on a single property, and obstructing the authority of the registration priority versus the priority of the valid sale.

4. Laws under comparison agreed on the function of registration with respect to the security mortgage contract when they consider it as an essential element of the contract in which its failure results in the nullity of the contract. However, this position is not consistent with the approach of the same laws when considering registration in the sale of property as a necessary condition for transferring ownership.

Second: Recommendations

1. For the avoidance of the problems resulting from the treatment of registration as a condition for transferring ownership but not as an element of the establishment of the contract, the Omani law has to be amended with respect to this point, so that registration has to be considered an element in real estate disposition transferring ownership.

2. Until the legislator decides to take the first recommendation into consideration, the Omani legislator has to explicitly declare the legal authority of an unregistered valid contract of sale against the subsequent registration of sale by virtue of a judicial ruling revealing the validity of the previous contract of sale.

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