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THE INCULCATION OF CUSTOM IN THE LEASE: A COMPARATIVE STUDY

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ABSTRACT. This article will discuss custom from a broad perspective by surveying selected court and tribunal rulings and relevant literature. It analyzes the place and nature of tradition, emphasizing objections to custom's legal applicability. The contract arises from the concurrence of two wills that tend towards creating a specific legal effect on the contracting parties and the contracted party. So it happens in the lease contract for the lessor and the lessee. The lease contract is one of the contracts that the Iraqi legislator has designated and regulated, with a summary of the contract's provisions and forms. The legislator retracted a number of them due to their familiarity and established customs and practices among dealers, which contributed to crystallizing numerous solutions to disputes that may arise during the contract term between the lessor and lessee. It can be accomplished by examining the contract's comparing and regulating legal texts and deducing the role performed by common custom. Then, it reflects positively on the judiciary, resolving protracted issues. Finally, it contributes to the strength of judicial judgments regardless of whether the judge relies on the legal text, custom, or the rules of justice. The primary objective is to arrive at a just verdict and do right.

JEL Classification: K12, K13, K20

Keywords: lease, Iraqi custom, civil law

Introduction

Custom has been the primary source of law since the beginning of humanity, as the rules were described as customary rules (Mejía-Lemos 2020). They were based on the customs and customs of the human soul, which reflected this on the reality of the primitive laws that emerged at the time. Still, the situation soon changed, and the legislation became the primary source, which led to the decline of custom behind it, and this became achieved after the emergence of comparative laws in various parts of the world, starting with the emergence of relative laws in different parts of the world. From Roman law, the old French law and other laws led to the role of custom being complementary, helpful, or harmful to legislation (Schmitthoff 2020). It can be observed in various types of financial contracts, including the lease contract, since despite the regulation of the legislator for this contract. We find that there is an urgent need to return to the prevailing customs and norms of the customers that based on comparative laws, whether

Iraqi, Egyptian, or French, so we will try in this research to identify these topics in these laws, citing this in the comparative judicial rulings in the countries mentioned above.

1. The Custom Relationship With Lease Provisions

Custom has a prominent role in the lease provisions by returning many of these provisions to the customs. The customs have contributed in one way and another to solutions to the disputes expected in the tenant's relationship to the tenant. This prominent role of custom is reflected in the contract mentioned by going through the legal texts in which the legislator returned some provisions to custom. therefore we will divide this research into seven demands as follows:

1.1. The effect of custom in determining the fare

The original principle is that the fare is determined by the contractors in the contract and agrees on how to pay it. But, sometimes, it may not be specified in the contract as the contractors' silence envisages its determination and the determination of any basis on which to estimate it since the contract is not considered invalid. But, it is determined by the law and estimated at an ideal fee if the parties agree to estimate it but cannot prove it. The judge can use the opinion of the experienced or papers and documents provided as lease contracts[1]. For example, for the same thing rented in an earlier or subsequent period, such an example is paid at specific periods by the entity's knowledge. The paragraph specified by custom to pay the ideal fee is the one through which it is possible to determine the duration of the lease as long as it is not in all cases that the appointment of the fare is explicit. Still, we can imagine that it is implicitly determined if it takes advantage of the contract conditions. For example, according to the entity's custom, the contracting parties' departure intention is to deal with the current rent. Therefore, the trial judge can determine the fee according to custom in a dispute between the two parties. Likewise, if he rented a movable and the contracting parties neglected to specify his wages and duration, his wages would be the same. But if it is paid according to the current custom of dealing in good faith, and the period is limited to a month, the rent continues to be valid for successive months until one of the contracting parties notifies the other of the eviction. Accordingly, the rent is revoked by the lapse of the nearest month, and the warning shall be deemed to have been given on time for the month (Fawzy, El-Adaway, and Hamed 2015). Therefore, Article (738) of the Iraqi Civil Code stipulates that (if the contractors do not agree on the amount of the procedure on how to estimate it or if the alleged fare cannot be proven, the proverb must be paid [2]. Therefore, it is concluded that the ideal fare is a clear example of the Court resorting to the prevailing custom to determine the wage that the lessor deserves as long as the parties have not defined it, using the experts' opinions on the subject matter of the dispute. This was the case when the Baghdad Court of Appeal ruled in a decision by The Federal Court of Appeal that (in the examination and deliberation) it was found that the discriminatory appeal was lodged within the legal period and decided to accept it in form and when the special decision was considered to be valid and in accordance with the law, Article (1) of the lease between the parties stipulated that the lease period was ten years and that paragraph (a) of the Article in question stipulated that the amount of rent For the first five years,

[1] Article 414 defined the fair rewrds that The rewards is the fare that the experienced people have been able to do without purpose.

[2] It is met by article (562) of the Egyptian Civil Code, which stipulates that (if the contractors do not agree on the amount of the fare or how it is estimated, and if the amount of the fare cannot be established, it must be considered the same fare).

at a sum of 20 million Iraqi dinars per year and paragraph (b), it stipulated that the amount of rent for the remaining five years of the contract would be agreed upon at the prevailing market price at the time and fairly, and that Article (738) of the Civil Code stipulated that (if the contractors did not agree on the amount of the fare or how it was estimated or if the alleged fare could not be established, the proverb must be paid) and the contract was included in paragraph (b) Above is how to estimate the fare and that Article (779/1) civil of the said law stipulated that the lease expires at the end of the period specified in the contract and therefore the rent is not considered expired and the warning issued by the distinguished by the Department of Notary in Karrada number 28338 on 25/6 / 2008 during the period of validity of the contract. Thus, the claim of requesting the abandonment of the wage is not based on a valid legal reason which requires the provision to be refunded. It is included in the distinguished condition, so he decided to ratify and receive the discriminatory appeal and the response to the discriminatory requests. The decision was issued by agreement on 10/Ramadan/ 1429 Ah, 10/9/2008, resolution 318 on September 10, 2008. Published in the Iraqi legislative base.

1.2. The Custom's Concern In Determining The Duration of The Rent

It is also essential to custom determine the lease period in some instances referred to by the Iraq Grazing Act. For example, article (741) stipulates the following; if the lease contract does not agree on an indefinite period or contract or if the alleged duration cannot be established. The lease is considered in the contract for the specified payment period of the fare. It ends at the end of this period, at the request of one of the contractors if the other contractor is alerted to eviction on the following dates:

In the territories, if the time limit for paying the fare is six months or more, the alert is three months before it ends. The signal is before the last half of the duration is less than that. All this considers the tenant's right to crop according to custom. The recent change in paragraph (a) means that the lease continues even after the expiry of the lease period by warning until sufficient time has passed for the maturity and transfer of the crop and notes that for the tenant to benefit from the extension of the rent until the adulthood and transfer of the crop. It is necessary to cultivate the land-based on agricultural customs. But, if this custom is violated, remain in the leased eye for a more extended period. It has resulted in the tenant not benefiting from this provision, which ultimately extends the lease to the end of the period (Biranvandi and Rahimi 2017). Therefore, the agricultural custom is the custom that prevails between farmers and landowners. In contrast, Article (563) of the Egyptian Civil Code stipulates that if the lease is not agreed on, a period or contracts for an indefinite period cannot be proved (Jadalhaq and El Maknouzi 2019). Therefore, the lease is considered to be in a contract for the specified period of payment of the fare and ends at the request of one of the contractors if it alerts the other contractor to evacuate on the dates as follows:

In agricultural and wastelands, if the specified period of payment of the fare is six months or more. The alert shall be three months before its end. If the duration is less, the last half of it should be alerted to this, considering the tenant's right to crop according to custom. According to the Iraqi and Egyptian texts (741,563), custom can guarantee the tenant's due to the agricultural or plant crop and how long it takes to survive. Noting that the readers are not public order and manners and therefore may be agreed upon by contractors. As for the French Civil Code, Article (1136) of this Act indicates that if the lease is not written, one party cannot send an evacuation alert to the other without considering the time limits set out in the local custom). The French Civil Court of Cassation ruled that if the term "local custom" contained in Article (1136) could, independent of the general customs imposed on all residents of a particular place. It also means unique customs established for specific categories of persons. These latter

customs should only be applied to cases involving the persons mentioned unique traditions adopted in a particular place for users of the Western Railway Company (Wexler 1994).

1.3. The Relationship Between Custom and Fixing Defects Wage

Custom can be a separation between defects that the lessor must be responsible for guaranteeing and those for which his responsibility ends. One of the conditions for the weakness that necessitates the guarantee in the rental is that it is effective. It is meant that that defect that prevents the use of the property or dramatically reduces this use, such as excessive moisture in the house than the usual or its weak foundation or many insects and flies. On the other hand, the lessor is immune from guaranteeing habitually permitted flaws, even if they are effective, so long as the custom in dealing has been founded on not deeming it a deficiency unless it is unfamiliar and might be decreased or exceeded by heating. It is also customary to tolerate weeds on agricultural land if removing them is not difficult (Kumar, Manjunatha, and Sourav 2020). It is also expected to accept the sun not entering the house in the winter (Immergluck 2018).

In the first paragraph of Article (756) of the Iraqi Civil Code, the Iraqi legislator indicated that 1 - the lessor guarantees all lessee defects in the leased property that prevent its use or significantly reduce it. But it does not ensure the faults that are customarily tolerated. Whereas, the first paragraph of Article (576) of the Egyptian Civil Code stipulates that 1 The lessor guarantees to the lessee all defects found in the leased property that prevent its use or significantly reduce this use, but it does not guarantee the defects that are customarily tolerated. He is responsible for The absence of the eye properties, expressly acknowledging their availability or the lack of qualities that require their use unless the agreement requires otherwise.

Therefore, we find that the Egyptian Court of Cassation has stated in Articles 576-577 of the Civil Code that the lessor is obligated to guarantee the hidden defect of the leased property when the lessee is not aware of its existence at the time of contracting. This defect effectively prevents the use of the property for the purpose for which it is intended. It was paid for, or the benefit is reduced by a significant amount, which is not customarily tolerated. Suppose the existence of the defect is realized in this way. Rent can be reduced or terminated if a lessee has incurred harm due to not utilizing the leased property, depending on the terms of the lease (Houria and Salim 2018). According to local custom, the rental repairs or minor maintenance works that the tenant is responsible for in the absence of an adverse condition. Among them are the repairs that need to be done: to the fireplace, the inner chimney wall, the frames and plates of the fireplace; To fill under the walls of apartments and other places of residence up to a meter in height; For room tiles when the number of broken tiles is few; For window glass, provided that it has not been damaged by hail or other unusual accidents or by force majeure for which the tenant cannot ask; For doors, windows, partition panels or warehouse doors, hinges, breakers, and locks. The French text that identifies rental reforms (deficiencies) to local custom gives examples of these reforms, and the subject judge can rule on similar or close cases.

1.4. The Custom and How To Use The Rental Items

The principle is that the two parties must agree on the purpose of renting the leased property. This agreement can be expressed or implied. As for the first, there is no problem with it. While the second is not to be deduced from the conditions of the contract, such as renting a car, for example, with the stipulation in the contract that only a certain number of people ride it, so it is implicit that the purpose of the rental is to transport people. If the exploitation of the

leased property is manifested in a certain way from the explicit or implied agreement of the two parties, this means that the tenant may not violate that.

Nevertheless, the custom may permit a person who rents a place to engage in a specific profession or trade to add another business whose addition or similarity to the company agreed upon in the contract may be in line with the custom. It may be one of its complements or complements as long as this change or addition will not harm the lessor. For example, the grocery store tenant may add other fish, vegetables, and dairy types. It is also permissible for the coal sale shop to establish an isolated place to repair shoes according to the site's custom (Wang 2014). We can also imagine a food vendor opening a shop to sell juices based on where this shop is located. It may also be customary for the house tenant to use its roof to wash his clothes, spread them, raise poultry, or establish a private garden (Wexler 1994).

However, if the lessee does not directly or implicitly terminate the leased property method, the lessee is compelled to use it for the purpose for which it was produced. Here, this use can be inferred by several clues, including the previous use and the profession of the tenant (Fatima 2006). In Iraq, the local customs stipulate that buildings in commercial neighborhoods are intended for use as shops or offices. In contrast, houses in quiet areas are designed for housing (Hakim 2008). Therefore, we believe that returning to custom is by knowing the extent to which people are accustomed and the prevalence of their behavior regularly in a specific place and a particular society. It ensures the identification of the use of the rented property and the location of the lessor. This behavior constitutes the emergence of different customs even in the same country. The Iraqi legislator explicitly refers to tradition to determine the lessee's use of the leased property if the contract is silent about specifying that. Article (762) of the Iraqi Civil Code stipulates that whatever the leased property is, the lessee must use it in the manner specified in the lease contract. Common examples of this behavior include:

- For example, converting a barbershop into a bakery is not permissible if a person rents a barbershop.
- If a person rents a shop to sell pet birds, it is not permissible to turn it into repairing large machines and equipment.
- If a person rents a store to sell utensils, he may not convert it to sell spare parts for cars

In this sense, the presidency of the Kurdistan Regional Court of Cassation - the civil body issued a decision stating the following:

Upon examination and deliberation, it was found that the discriminatory appeal was submitted within the legal period, so he decided to accept it in form. Upon consideration of the matter, it was found that the provisions of the Civil Code governed the case, and the property being investigated was a (hotel). It is known by convention that hotels are intended for people's accommodation and cannot be taken (as a communications center), or parts of them can be exploited for that purpose and the installation of devices and columns on their ceilings to secure Communications. Since the tenants (the defendants) allowed the third person (Cork Company) to take part in the rented hotel for that purpose, they have violated the lease contract under the provisions of Articles (M 762 and M 764/2) of this Civil Code on the one hand. On the other hand, the third person (Cork Company) has rented a part of the hotel from the two defendants (the original tenants), who have the right to sub-lease according to the provisions of the Civil Law. Lifting the devices installed by the aforementioned third person as long as the lease contract links him with the two defendants is in place. The third person has no legal obligation to the plaintiff until he demands to lift the erected devices, so the Court had to. Since it rejected them for other reasons, the response judgment is correct in terms of the result. He decided to approve it, disregarding any objections based on race and charging the appellant a fee for discriminating, provided that the plaintiff was allowed to sue. The property has been used for purposes other than those for which it was constructed according to Civil Code Article (782)

requirements. He has requested that the contract between him and the defendants be terminated due to the latter's failure to meet their contractual responsibilities. It is worth noting regarding the case whose ruling is distinguished that the third person who is included in the case for clarification is not considered a party to the case. Therefore it is not permissible to plead against him in absentia, as the Court of First Instance did in the pleading session dated 6/21/2006 and the subsequent sessions. This necessitated the Court to note its future observation and adherence to the amended Civil Procedures Law provisions and the procedures it takes in the cases before it. The decision was issued in agreement on October 16, 2006, Resolution No. 162 on October 16, 2006. This lawsuit is published in the Iraqi Legislation Base.

On the other hand, Article (579) of the Egyptian Civil Code states that the tenant must use the rented property under the agreement. Therefore, if there is no consensus, he must utilize the eye under its purpose.

Although there is no explicit reference to a custom in determining how the lessee will use the leased property, this does not mean that it is not accepted. Instead, the tradition is a presumption that indicates the likely intention of the contracting parties if the user is not mentioned in the contract.

It was noted that there is an issue related to the tenant's use of the leased property, which is the consequence of regular and non-habitual use (Lupini and Coop 2020). This results in material and moral damages caused by the tenant to the leased property. Therefore, the tenant bears the simple or minor repairs required by the regular use of the leased property. It is defined by custom, including repairing doors, windows, glass, locks, keys, damaged tiles from normal use, minor repairs to ceilings, fixed mirrors in the house, water taps, and electrical and gas appliances. It also includes everything appropriate and compatible with the customary use of the lessee if the two contracting parties do not agree otherwise on the basis that it is not a peremptory norm (K Kareem 2010). In the same context, the second paragraph of Article (763) of the Iraqi Civil Code stipulates that the tenant must make minor repairs required by custom.

The Iraqi Federal Court of Cassation also ruled in this sense with a decision stating that upon examination and deliberation, it was found that the distinguished judgment violates the law because the Court did not observe the provisions of Articles 763/2 and 764/2 of the Civil Code regarding the damages caused to the property. Article 763/2 requires the lessee to undertake minor damages required by custom, such as glass, locks, electric lamps, etc. Article 764/2 requires an unusual use in the rest of the damages (Voigt 2008).

Meanwhile, Article (582) of the Egyptian Civil Code states that (the tenant is obligated to carry out the rental repairs required by custom unless there is an agreement. This violates the French Civil Code, of which Article (1755) stipulates that the tenants shall not be liable for Repairs of a rental nature when they were caused by the old thing hired or by force majeure.

1.5. Customary Connection At The Time of Lease Delivery To The Lessor

Because of prevailing conventions, or unless both parties agreed on another site or interference from those customs, the lessee must return the property in the same spot in which it was given to him at the outset of the lease contract. The Iraqi legislator referred to this idea in the first paragraph of Article (771) of the Iraqi Civil Code. It stipulated that if the lease contract expires, the lessee must vacate the property to the lessor in the place where he received it if the agreement or custom does not specify another location. In the Iraqi text, there is an explicit reference to the possibility of tradition having a role in determining the place of returning the property to the lessor. On the one hand, it is possible to perceive the difference of

this customarily defined place according to the different customs of people in the geographical areas of this one country.

On the other hand, the preceding text gave priority to an agreement at the expense of custom and legal text. The tradition signed a middle ground between the contract and the legal text. It indicates that this text is not from the public order and therefore agrees. It is clear from the text. In the Egyptian Civil Code, Article (590) states that the tenant must return the leased property at the end of the lease. This text was devoid of explicit reference to the role and importance of custom in determining the place of returning the property to the lessor. The draft revision of the Egyptian Civil Code included a text on this issue, the text of Article (791), which stipulates that the return of the leased property should be in the place where it was handed over to the lessee unless the agreement or custom requires otherwise. However, this text has been deleted to satisfy the general rules. Specifically, Article (347) of this law states that:

1- If the subject of the obligation is a specific thing, it must be delivered where it was present when the debt arose unless there is an agreement or a text to the contrary.

2- As for other obligations, the fulfillment shall be where the debtor is located at the time of payment or where the debtor's business center is if the commitment is related to these businesses.

1.6. The Custom Effect on Expenditure For Improvements and Additions

Custom plays a role in the improvements and additions that the lessee can make to the property and can increase its value, provided that it is at the behest of the lessor. The form of this matter did not indicate whether it was written or oral. As long as the issue is related to a legal act and not a legal fact, the proof is made in writing, whether ordinary or official and in the absence of an agreement between the contracting parties about the value of the expenses. In it enters the custom to determine these expenses. In a dispute between the two parties, the Court adopted the matter after considering the experts' assessment (Peikes et al. 2009). In this context, the Iraqi legislator indicated in Article (774) of the Iraqi Civil Code that:

1- If the lease expires and the lessee has built a building in the leased property, planted trees in it, or made other improvements that increase its value, despite the lessor's opposition or without his knowledge. The tenant has been obligated to demolish the building or uproot trees and remove improvements. If this harms the leased property, the lessor may own what the lessee has created at its value worthy of uprooting.
2- If the lessee violates the lease terms with the lessor's knowledge and consent, the lessor may terminate the lease. In most cases, the lessor is obligated to reimburse the lessee for both the money he spent and the increase in the value of the leased property.
3- Suppose the lessee follows the lessor's instructions and does so. Thus, unless there is a written agreement, the lessor must return what he spent to the lessee to the known extent.

About our subject, it is in the third paragraph that the Iraqi legislator referred to the expression (the known amount), which means the possibility that custom plays its role in determining the expenses of improvements and additions made by the tenant. Then it is an indirect expression of tradition. Finally, it helps to resolve the dispute known before the Court. The Iraqi legislator also indicated at the end of this paragraph by granting the passport to the contracting parties to agree to the contrary. This means that it is a text that is not an order. As for the Egyptian legislator did not refer to custom, directly or indirectly, in contrast to what we saw in the Iraqi law (Jangeir 2014).

1.7. The Customs Link To Sublease, Assignment of Rent and Housing of Others

The lessee may sub-rent his right or assign the lease to a third party in terms of the original. The right is established for him from the lease contract itself without the necessity of a special agreement authorizing him to do so. It is also correct to respond to all the leased property, as it can be returned to a part of it, whether it is real estate or movable, but provided that there is no agreement or customary impediment that prevents the lessee from doing so (Abelyan 2020). By custom, here means the profession's tradition, as it can be imagined that professional businesses avoid the tenant from assigning his right to another tenant. It also contains renting his right to a person who may not meet the requirements or requirements required by the custom of the tenant's profession. For this reason, we find that the first paragraph of Article (775) stipulates that the lessee may rent the whole or part of the property after receiving it or accept it in the immovable and movable property.

While the reference was not present to custom in the Egyptian Civil Code, Article (593) of this law stipulates that the tenant has the right to waive the lease or sub-lease for everything he rented or received unless the agreement stipulates otherwise. The Iraqi Real Estate Lease Law has prohibited sub-lease and assignment without referencing tradition based on Article (11). It states that it is forbidden to sub-lease or relinquish it in whole or in part, and any agreement to the contrary is void. The first paragraph of Article (13) also stipulates that the tenant may not live with him in the leased property except those mentioned in the contract without the landlord's written consent. Those who are required to support or live with the tenant by law, custom, or social tradition, as well as their spouses, unmarried brothers and sisters, widows or divorcees, and those whose property accommodates them, are exempt from the provisions of this paragraph, according to the second paragraph of the same Article (1). They doot own a house too. It means that custom can restrict the first paragraph of the text above by allowing the tenant to live with a third party with the conditions specified in the above text. Finally, I would like to point out that there is a link between custom and the acceleration of the rent in the sub-lease. The second paragraph of Article (776) of the Iraqi Civil Code states that the second tenant is obligated to pay directly to the landlord what is proven in his debt to the first tenant when the landlord warns him. Before the landlord, he can not hang on to anything from the tenant's rent that he has expedited. If the rent is accelerated under tradition and documented in a document with a specific date, the first option is not applicable.

So for the second tenant to get rid of his responsibility before the landlord for what he owes to the first tenant, the landlord must warn him by any form of warning. The text also indicates that the second tenant can get rid of the responsibility for accelerating the rent with two conditions. The first is that this acceleration is custom and written in a document with a fixed date. On the contrary, the second tenant is responsible towards the lessor for accelerating the wages to the first tenant (Hatch 2017). As for the Egyptian legislator, it dealt with this matter in Article (596), which stipulates that:

1- The sub-tenant is obligated to directly pay the lessor what is fixed in his description to the original lessee when the lessor notifies him.
2- It is not permissible for the sub-tenant to hold to the lessor before the lessor what he may have accelerated from the rent to the original lessee unless this was done before the warning under custom or agreement fixed at the time of the sub-lease.

It is clear from the Egyptian text that it differs from the Iraqi text. The tenant chose between custom and the fixed agreement generated in the sub-lease contract.

2. The Custom and Special Types of Rent

The Iraqi legislator referred to various forms of rent aiming to disrupt the application of the general provisions, except in the absence of a conflict between them and these special provisions. We must generally stand at the role that custom can play in these images, which interests us in this study. Accordingly, we will divide this topic into nine sections:

2.1. The Custom and Tenant Rights In Agricultural Land

The general rule is that the lease of agricultural lands does not include agricultural implements on the ground, such as tools for harvesting, plowing, and livestock. In contrast, the right of passage and drinking is considered annexes to the land. Therefore, it is included in the lease without mentioning them in the contract. As for livestock and tools, it is permissible to agree on their inclusion expressly, or custom requires their inclusion, and then the burden of proof will fall on those who claim that (Ashukem 2020). The Iraqi legislator referred to this in Article (798) of the Iraqi Civil Code, which stipulates that the tenant of the land has the right to drink and the road, even if he did not define them in the contract. Likewise, he does not have livestock and agricultural tools unless included in the rent. In all cases, the custom of the party must be observed. Here, the Iraqi legislator explicitly mentioned the necessity of keeping the region's customs, which is meant by the tradition of the agricultural area. It is, of course, a unique agricultural custom that can be resorted to in determining the extensions of agricultural land. Therefore, it is not surprising that this custom should specify the tool's standard in the farming environment, such as agricultural machines and machines, harvesters, and other necessary tools. As for the Egyptian Civil Code, Article 610 of it stipulates that if the leased property is agricultural land, the lessor is not obligated to hand over to the lessee the livestock and farming implements found on the ground unless the lease includes them. This text did not refer to custom, either directly or indirectly, treating livestock and tools, leaving the regulation of the right to drink and pass to the general rules. Therefore, it constitutes another point of difference with the Iraqi text.

2.2. The Custom and term of The Agricultural Land Lease

The lease term is subject to the agreement of the two parties. The lease period for agricultural lands is not less than three years, provided that the agricultural year begins in most crops in November and ends in October. The agricultural custom is followed in that. It is about public order. Also, the year's duration is not intended by its usual meaning and according to the Gregorian calendar. Still, it is designed to be an agricultural period that includes the winter and summer crops, provided that the agricultural custom is considered (Vincent 2018). The Iraqi legislator stipulated in Article (799) of the Iraqi Civil Code that whoever rents a year's land to grow whatever he wants on it may plant it annually, in winter and summer. If he rents it for several years, he may plant it in agricultural cycles for the length of these years. Article (612) of the Egyptian Civil Code stipulates that if it is stated in the agricultural land lease that the lease has been held for a year or several years, it has been contracted for an annual agricultural cycle or several cycles.

2.3. The Custom and Use of Agricultural Land

This topic is related to the issue of the obligation on the lessee to use the property for what it was prepared for and under the requirements of normal exploitation. The usual exploitation is for the lessee to use the land for what it has been designed for him and not leave it unused. The meaning of the phrase (in what it was ready for) is how to use it before renting. As a result, people's customs and mores will be essential in determining how the renter uses the agricultural property. The lessee must cultivate the land as agreed upon by both parties to maintain it. If it is a land prepared to grow ordinary crops, he must cultivate it in the usual manner for these crops. If it is intended to cultivate fruits, vegetables, flowers, or other unusual crops, he must follow the typical nature of the cultivation of such crops. It is also not permissible for him, for example, to exhaust it by planting the same crop in successive times and other agricultural customs that are known to the owners of the profession (Veit 2019). Likewise, the lessee may not enter into the method of exploitation defined by tradition. This fundamental change continues beyond the expiry of the lease, such as transforming the fruit orchard into vegetables, for example, unless it is done with the consent of the lessor allowing him to make the essential and non-essential change (Putanloui, Ghalijaie, and Eslami 2021).

The first paragraph of Article (804) of the Iraqi Civil Code referred to progressive ideas. It stipulated that the tenant's exploitation of agricultural land must be under the requirements of normal exploitation. Without the lessor's consent, he may not introduce any fundamental change to the method used to exploit it, the effect of which extends beyond the expiry of the lease. Article 613 of the Egyptian Civil Code stipulates that the tenant's exploitation of agricultural land must be under the requirements of customary exploitation, and the lessee, in particular, must work to ensure that the land remains fit for production. Without the lessor's consent, he may not introduce any fundamental change to the method used for its exploitation, the effect of which extends beyond the expiry of the lease.

Furthermore, article 611 of the Egyptian law stipulates that if the lessee receives livestock and agricultural tools owned by the lessor, he must take care of them and maintain them according to their regular use. That is, the standard of care, preservation, and maintenance of these tools shall be under the custom of the profession. Unfortunately, there is no similar provision in the Iraqi Civil Code.

2.4. The Role of Custom In The Farmer-Landowner Relationship

Article (805) of the Iraqi Civil Code defines the sharecropping contract as a cultivation contract between the landowner and the farmer. The yield is divided between them according to the shares agreed upon at the time of the contract. According to this contract, the landowner has jurisdiction over the farmer to direct the use of the land. It means guiding the farmer to the proper ways of using and exploiting that land and monitoring the farms. It means that the owner follow-up the land to the farmer and the workers employed by the farmer, choosing the best among them in work and care, noting that the power of the lessor in direction and control is restricted by law, agreement, or custom (Morse 2019). Determining this state can be used with the prevailing agricultural traditions without a legal text or contract. The Iraqi legislator referred to this in Article (808) of the Civil Code, which stipulates that the landowner must direct its exploitation and control the agricultural work. His authority in this is determined by law, agreement, or custom. It should be noted that the Egyptian Civil Code was devoid of a text similar to its Iraqi counterpart, as the preliminary draft of the Egyptian Civil Code included a text identical to the Iraqi text. Still, it was deleted from the Audit Committee (Mattar 2006).

2.5. The Custom and Farm Contract Expenses

Custom can play a role in agricultural business expenses as long as the Iraqi legislature's text in this regard was not part of the public system so that it can be agreed otherwise. Under the provisions of this law, the farmer shall bear the expenses of cultivation, such as seeding and plowing, collecting and preserving the crop, repairing tools, and minor repairs to agricultural buildings. Non-minor maintenance is on the lessor, while the landlord and the farmer shall bear each of them, according to his share in the yield, the expenses of seeds, fertilization, and so on. If a particular law, agreement, or custom stipulates otherwise, these provisions can be violated. By tradition here, we mean the prevailing agricultural custom among the owners of the farming profession to constitute the general customary rules governing their relations (Kehoe 2015). The Iraqi legislator indicated in Article (809) that:

1- Expenses of agricultural works, planting maintenance, crop collection and preservation, repair of tools, minor repairs to agricultural buildings shall be on the farmer.
2- The landowner must make minor repairs to the non-agricultural buildings and the necessary improvements to the land.
3- In proportion to his share of the yield, the landowner and the farmer shall bear the necessary expenses for seeds, fertilization, and resistance to minor diseases.

The Egyptian Civil Code did not include a text addressing this issue. There was an article in the preliminary draft of this law, but the review committee deleted it.

2.6. The Custom and The Effects of Irrigation

Article (816) defines irrigation as a contract for giving the tree to someone who repairs it with a known part of its fruit. As for the effects of watering, it is noted that what is suitable for the fruit and its increase, such as plowing the land, watering trees, repairing water paths, removing harmful weeds and thorns, preserving the fruits, and so on. They are all burdens that fall on the canals. The owner of the trees is obliged to do what is included in preserving the original, such as the construction of rivers, digging wells, and purchasing pumps (Hussein 2017). Article (819) of the Iraqi Civil Code states that the fruit must be watered, pollinated, and preserved before it reaches maturity. It is vital to have them on hand for watering and other post-harvest activities, such as stems and the like, and both parties to the contract require them. All this unless the agreement or custom requires otherwise. It is clear from this text that he made all the work necessary for the realization and ripening of the fruit on the shoulders of the sommelier alone. Whereas the actions needed by the fruit after realizing its harvest and storing it shall be on the two parties unless an agreement between them determines otherwise. The unique agricultural custom in these works may dictate otherwise, as if this custom imposes all of them on one of the two parties or that all of them are on the two parties. Therefore, the rank of tradition was after the agreement and before the legal text. It should be noted that there is no similar text in the Egyptian Civil Code, leaving the regulation of the matter to general rules, agricultural custom, and the provisions of Islamic Sharia.

2.7. The Custom and Cultivation

Article (824) of the Iraqi Civil Code defines cultivation as a contract for one person to give his land to another to plant known trees in it and pledge to raise them for a known period. It provided that the trees and the land or trees alone are shared between them in a particular proportion after the end of the period. Custom affects the duration of planting, as long as trees

do not grow except over a long period that may not be known. Therefore, it can be attributed to custom in determining this period, particularly the unique agricultural custom. But if it has specified the duration of the engagement, this period can be applied. The Iraqi Civil Code referred to in Article (825) this effect by stipulating that if a period is not specified for the practice, the estimate shall be based on custom, and the period may not be less than fifteen years in all cases. The Iraqi legislator referred to custom to determine the period if it was not specified. The minimum period is fifteen years, and it is not permissible to agree on a period less than that. The parties may agree for more than fifteen years, or special agricultural customs require a more extended period. The Egyptian Civil Code did not provide a text similar to its Iraqi counterpart, leaving the matter to general rules (Stigall 2004). Custom may have a role in the expiration of the cultivation, specifically in the expiry of the period, as it is one of the reasons for the expiry of the cultivation in the event of the expiration of the agreed period in the cultivation contract.

The cultivation requires that the land and trees or trees only become shared between the two parties (the farmer and the owner of the land. Then the planter becomes either a partner in the land and trees or trees only. In the first form, the farmer is not forced to continue with the common, and he can ask for division, and if it does not reach an agreement on the consensual division, he can demand the removal of the common. In the second picture, the landowner may own the share of the planters of trees equivalent to their value while they are present. Article (830) of the Iraqi Civil Code stipulates that the farmer may request division after planting if he becomes a partner in the land and trees. But if he becomes a partner in the trees only. Then, the landlord has the right to demand the ownership of the share of the planted trees in the existing trees unless the agreement or custom stipulates otherwise.

We can imagine the existence of a special agreement between the planters and the owner of the land that contradicts the preceding provisions or an agricultural custom that destroyed the previous clauses. This custom can eliminate the plant's survival despite the expiration of its period. We find that the Iraqi Federal Court of Cassation referred to it in some of its decisions. For example, it ruled in its conclusion that the conditions for applying Article (830) civil were not available in this case, as the permissibility of appropriating the share of the planters from the planting in the place is not customarily permissible (Haloush 2020). Furthermore, it indicated in another decision that the statement of the requester for correction that Article (830) is absolute that the owner of the money (the correct land) has the right to demand the ownership of the share of the planters in the trees based on giving him a list of its value is incorrect. Because this right is restricted by local custom and local custom came to the contrary (Hasan and Resan 2020). The local tradition in the Karbala district requires that the cultivation remains despite the expiration of its period [3].

2.8. The Effect of Custom on The Orchards Contract

Article (834) of the Iraqi Civil Code defines the obligation of orchards as a contract that includes giving one of the parties a known orchard to the second party, the fruits of which will be met for a known period in return for a known allowance. We can see a role for traditions in this contract. The agricultural traditions were based on those committed to orchards based on the possibility of benefiting from lands devoid of orchards. It is done by planting them with seasonal vegetables without extending their roots deep into the soil, provided that they do not affect the orchard trees. No custom prevents the cultivation of vacant lands that disrupt the

[3] Decision of the Iraqi Court of Cassation No. 1742 / Human Rights / 1957, dated 9/25/1957, quoted from: Salman Bayat, Iraqi Civil Judiciary, 1962, pp. 274-275.

above text. Article (835) of the Iraqi Civil Code stipulates that if the obligation is released, the obligor has the right to plant the vacant land between the trees and the lands that are an integral part of the orchard unless custom requires otherwise. There is no similar provision in the Egyptian and French Civil Code. Article (840) of the Iraqi Civil Code stipulates that:

1- If there is no agreement or phrase in the orchards commitment contract that follows the current custom, the deal will be void.
2- If there is no custom, the sale provisions shall be applied to the fruits and the lease provisions to cultivate the land.

First and foremost, the parties' agreement is given precedence above the language of a specific statute that deals with the situation. Therefore, applying the prevailing and well-known custom in the agricultural field is necessary for the absence of the contract or the text. According to the second paragraph, the lack of tradition necessitates the application of the provisions of the agreement of sale concerning fruits and the lease requirements concerning land.

2.9. The Custom and Rental Modes of Transport

Custom may impact the issue of mentioning the type of means of transport without saying its features by both parties. However, at the time, the tenant has presented with the standards that people are familiar with using, meaning there is stability on the continuous use of it. Furthermore, the Iraqi legislator stipulated in Article (841) of the Iraqi Civil Code that it is permissible if a medium of transport of the usual type is rented. Therefore, he applies to the ordinary means of transportation. There is no similar provision in the Egyptian and French Civil Code.

Conclusions

Custom plays a vital role in determining the rent due to the lessor if the contracting parties remain silent about choosing it by experts who can refer to the custom of the competent authority or the period specified by the tradition to pay the same fee. The Iraqi civil law agreed with its Egyptian counterpart regarding the lack of guarantee of the lessor for defects. They are customarily tolerated, such as the usual humidity in the house or the lack of sun entering the house in winter. Thus, custom becomes a criterion for whether one of the contracting parties has civil liability. The tenant shall bear the minor or minor repairs required by the regular use of the leased property. Custom is responsible for specifying these repairs, such as repairing doors, locks, windows, or other things, unless there is a conflicting agreement between the contracting parties, as long as this rule is not part of public order and morals. Hence, it is permissible to agree on its disagreement, which is the rule of Iraqi and Egyptian laws. The French Civil Code came in a ruling contrary to them when Article (1755) of it indicated that the tenants would not bear the burden of repairs of a rental nature when caused by the old thing or force majeure. Professional customs prevent the tenant from assigning his right to another tenant or renting his right to a person who may not meet the requirements or requirements required by the profession of the tenant. The Iraqi plaintiff's law's first paragraph of Article (775) referred to this subject. At the same time, the reference was not present in Article (593) of the Egyptian Civil Code.

Agricultural custom determines the term of the lease contract for agricultural land. The duration of the year mentioned, for example, in this contract does not mean its usual meaning,

according to the Gregorian calendar, but rather an agricultural period. Furthermore, it includes the winter and summer crops, and the unique agricultural custom is considered. Moreover, custom plays a role in determining who is responsible for the expenses of the sharecropping contract because the rule stipulated by the Iraqi legislator is interpreted and not peremptory, which includes the farmer bearing the costs of cultivation, repair of tools, and minor repairs. Non-minor maintenance is on the lessor, and then the person responsible for these expenses can be changed according to the agricultural custom. Finally, tradition has a significant effect in determining the type of leased mode of transport in the event of an agreement to rent a vehicle of the usual kind. It will go to the medium that witnesses typical stability in its use.

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