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## **The legal Limits of the Tenant's Legislative Permission to Change the Leased Property**

**"Comparative study"**

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### **ABSTRACT**

The rental relationship aims to achieve solidarity between its two parties from a social aspect and complement their interests from an economic perspective. Where, the rights of the lessor of the property shall not be neglected in favor of its lessee, and it is not permissible for the lessor to exceed the lessee's rights. Likewise, by regulating these relationships, the legislator may not prejudice the rights of landlords and tenants or favor one party over another to achieve a legal equilibrium between them. From these perspectives, the importance of this research is evident, as the issue of the tenant's legislative permission to change the leased property is given great care in practical life without the rest of the legislative permissions granted to him. This permission is the means through which the legislator grants its protection to the tenant, the weak party in the lease contract, by enabling him to change the leased property to benefit from it in all respects and without any obstacle to the lessor. For the legislative permission to be granted to him, he must adhere to the conditions of the contract until the equilibrium of power in the lease contract returns to tilt again in favor of the lessor, whom the legislator has always given him the right to request compensation for the damage he suffers as a result of the lessee violating the terms of the legislative permission or to recover the leased property if the compensation fails to remedy the harm suffered.

**Keywords:** Lease Contract , Legislative Permission , Damages , Leased Property .

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## الحدود القانونية للرخصة القانونية للمستأجر في تغير العين المؤجرة (دراسة مقارنة)

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### الملخص

الأصل في مجال العلاقات الإيجارية هو ان يتحقق التضامن بين طرفيها من زاوية اجتماعية . وان تتكامل مصالحهما من زاوية اقتصادية , فلا تُغبن حقوق مؤجر العين ايثارا لمستأجرها , فيصبح مغبون الامس وهو المستأجر غابناً اليوم , ولا يجوز ان يتجاوز المؤجر على حقوق المستأجر عاصفاً و محدداً مجال المطالبة بها . وذلك بغية تحقيق التوازن العقدي . كما لا يجوز للمشرع من زاوية تنظيمية لهذه العلاقات ان يحفف بحقوق المؤجرين والمستأجرين او يتعننت في تنظيمها او يتجاوز لصالح فئة على حساب اخرى , وذلك تحقيقاً للتوازن القانوني . ومن هذه الزوايا مجتمعة بدأت اهمية الدراسة , اذ يحظى موضوع الرخصة التشريعية للمستأجر في تغيير العين المؤجرة بعناية بالغة في الحياة العملية دون باقي الرخص التشريعية الممنوحة له . حيث تعد هذه الرخصة الوسيلة التي اضفى المشرع من خلالها حمايته على المستأجر وهو الطرف الضعيف في عقد الايجار ,بتمكينه من تغيير العين المؤجرة تحقيقاً للانفتاح بها من جميع الوجوه ومن دون اي عائق للمؤجر . وحتى تثبت الرخصة التشريعية له عليه ان يلتزم بشروطها حتى يعود ميزان القوى في عقد الايجار ليميل من جديد لصالح المؤجر الذي طالما اعطاه المشرع حقاً في طلب التعويض عن الضرر الذي يلحقه جراء مخالفة المستأجر لشروط الرخصة التشريعية او استرداد العين المؤجرة ان لم يفلح التعويض في جبر الضرر الذي أصابه.

الكلمات المفتاحية : عقد ايجار ، رخصة تشريعية ، تغيير ، ضرر ، العين المؤجر.

## 1. Introduction

The research on the boundaries of the legislative permission granted to the tenant in changing the leased property is of utmost importance, as it is characterized by a sense of renewal and continuity driven by changing circumstances and the evolving movement in society due to the emergence of housing crises caused by overcrowding in cities with large populations and displaced individuals seeking employment opportunities and financial prosperity due to financial or military crises. Additionally, every family desires to live in independent houses, and all of these factors require housing for living or working purposes. Consequently, property owners, particularly those needing the leased property, are often compelled to either alert tenants to vacate the leased property at the end of their lease agreements, terminate the contracts, or significantly increase the rent they charge. This results in an excessive rise in rental prices.

### 1.1 Research Problem

Several aspects of the research pose challenges and raise critical technical issues, which have been analyzed and discussed. One of these issues is the problem of defining the purpose of using the leased property and the concept of damage, which the law needs to define and rely upon clearly. Another issue is the standard for changing the leased property, whether based on the criterion of impact or the criterion of compensation method when determining the change. What is the ruling on the permission granted to the tenant and the possibility of reclaiming the leased property through an urgent request? How compatible is this with the principle of contractual obligations in the law of contracting parties? Furthermore, there still needs to be more clarity surrounding the legal basis of this legislative permission.

Studying the tenant's obligations in general and their obligation not to make changes to the leased property is of great significance. This topic combines theory and practice, as evidenced by the numerous judicial disputes related to lease agreements. Therefore, it was necessary to seek judicial rulings representing the practical reality of the subject matter to understand the judiciary's role. Additionally, examining the legal texts, which represent the theoretical aspect, was essential to understanding the role of legislation in the application, ensuring that the assessment matches the context and saving time and effort for the study's participants. By simply reviewing the research, one can grasp the verdict of the presented issue, case, or relevant legal text without the need to review all the provisions of the law to find the required text.

Therefore, this research aims to restore equilibrium in the landlord-tenant relationship by granting the tenant legislative permission to change the leased property, conditioned upon not abusing its use, and to provide fair compensation to the landlord in case of a breach of its conditions.

### 1.2 Scope of Research

The scope of the research is limited by two factors: formal and substantive. The formal limitation states that the comparison will primarily focus between **the Iraqi Civil law and Egyptian civil law**, as it represents the latest developments in our research topic. The legislative approach in Iraq differs from its Egyptian counterpart regarding the conditions and provisions of the legislative permission, indicating a specific legislative policy on this matter. Additionally, certain special legal For rent provisions in laws, regulations, and instructions are consulted when the general rules lack the legislative text on a particular issue or to confirm the provisions of Civil Law in a specific matter.

The substantive limitation encompasses several aspects. The legislative permission is limited to those granted to the tenant to change the leased property under the lease contract. It does not include permissions outside the framework of the lease contract, permissions granted under administrative contracts, or work contracts. This is the case with the lease of residential units attached to facilities and premises occupied by workers due to their employment. Instead, a separate lease contract must be subject to the rules of a particular Law. Since these permissions are numerous, making them difficult to enumerate, the rules and provisions applicable to this form of legislative permission cannot be applied to those we should have addressed in the research.

Regarding the concept of the leased property, we will adopt a broad understanding that does not limit this concept to places but also includes parts of places. Thus, it does not include those related to movable property. As for civil liability, the research will be limited to the contractual liability of the tenant resulting from violations of the conditions of the legislative permission. We will not extensively discuss the liability

established according to the general rules of contractual liability. However, this does not prevent addressing its provisions and the necessities it entails when needed.

## 2. The Concept of the Tenant's Obligation to Use the Leased Property of the Intended Purpose

The relationship established through a lease agreement gives rise to various obligations that have significant implications for both parties. Among these obligations, the tenant's responsibilities hold particular importance. One of the essential obligations imposed on the tenant is to utilize the leased property for its intended purpose.

Attempting to confine the concept of the tenant's obligation to use the leased property within the prescribed limits of its intended purpose poses inherent challenges. This notion often becomes entangled with other intertwined legal commitments, making it arduous to discern between them. Moreover, the alterations made to the property can manifest in diverse forms. At the same time, the criteria for evaluating these changes may fluctuate based on the property's physical alterations, manner of utilization, or the extent of compensation for resulting damages. Consequently, it becomes imperative to establish a comprehensive understanding of the intended purpose of using the leased property, categorize the types of alterations that can be made, and define the criteria employed to determine the materiality of such changes.

The following discussion will delve into these intricacies, dividing our analysis into three sub-sections. The initial sub-section will be dedicated to elucidating the definition of the intended purpose of using the leased property. The subsequent sub-section will outline the changes that may be introduced to the leased property. In contrast, the final sub-section will focus on establishing the standard for evaluating alterations made to the leased property.

### 2.1 Definition of the Purpose of Using the Leased Property

The tenant is responsible for utilizing the leased property per the terms specified in the lease agreement. In cases where the agreement lacks explicit guidance regarding the manner of utilization, the tenant must employ the property in line with its intended purpose. This sub-section will be subdivided into two parts to ascertain the fundamental essence of the intended purpose of using the leased property. The first part will illustrate the intended purpose of utilization as mutually agreed upon by the parties. In contrast, the second part will elucidate the intended purpose of using the leased property when no explicit agreement has been reached.

#### 2.1.1 The Agreed Purpose of Using the Leased Property

The obligations of tenants resulting from lease contracts have attracted significant attention from legal scholars due to the numerous practical disputes between lessors and tenants. Within legal terminology, the concept of the intended purpose of the leased property has been employed, often expressed as "according to its intended use" or "for the purpose it was designated for." While the precise wording and meaning may vary, the essence lies in the purposes and meanings attributed to it. The intended purpose refers to the specific use for the leased property.

In Egyptian jurisprudence, the intended purpose of the leased property is defined as the constraint on the tenant's use of the leased property within the limits of the agreed-upon purpose specified in the lease contract.<sup>1</sup> Some legal scholars have further defined the intended purpose as the particular use of the leased property as stipulated in the contract<sup>2</sup> or agreement, thereby determining the nature of the property's intended use.<sup>3</sup>

In Iraqi jurisprudence, legal scholars and commentators have predominantly focused on elucidating the provisions outlined in Article 762 of **the Iraqi Civil Law No. 40 of 1951, as amended**, states, "**Regardless of the consideration, the tenant is obligated to use it in the manner specified in the lease contract**". However, they have not explicitly defined the leased property's intended purpose. Some definitions describe it as the prohibition against using the leased property contrary to what is stipulated in the lease contract.<sup>4</sup> Another definition suggests that the intended purpose constitutes the agreement between the lessor and the tenant regarding the intended use of the leased property, explicitly stated in the contract and deposited with the Tax Body.<sup>5</sup> This description implies that the intended purpose of using the leased property is encompassed within the written terms of the lease contract.

In most cases, the lease agreement explicitly or implicitly states the intended purpose of using the leased

property. This implies that the agreement determining the intended purpose can be of two types: explicit or implicit.

An explicit agreement defines or prohibits using the leased property for a specific purpose.<sup>6</sup> Practical applications exemplify this distinction. For instance, if the leased property is a residential unit, the tenant is prohibited from using it as a school, factory, or clinic. Similarly, if the property is leased as furnished rooms, the tenant cannot convert it into a private residence. Likewise, in the case of a commercial space leased for a specific business or trade, the tenant is restricted from altering it for another business or trade.<sup>7</sup>

On the other hand, an implicit agreement pertains to lease agreements where the intended purpose of the leased property is not explicitly defined. Instead, the implicit agreement is inferred from the contract's circumstances, such as the tenant's profession or occupation within the leased property. From these circumstances, a judge may deduce that the parties intended to use the property for a specific purpose, even if it is not explicitly mentioned in the contract. For instance, if individual rents out their apartment to a doctor who practices medicine, the judge may conclude that the parties intended to use the apartment as a medical clinic or a diagnostic center.<sup>8</sup>

Suppose the definition of the intended purpose of the leased property, as agreed upon in the lease contract, falls under the jurisdiction of jurisprudence and the judiciary rather than the legislator for various considerations, including preventing legislative confusion between the definition and the legal text. In that case, some legislations have unconventionally defined the agreed-upon purpose. One such example is **the Egyptian Civil Law No. 131 of 1948**, which specifically addresses the tenant's obligations in the chapter on lease contracts. Among these obligations, **Article 579** states, "**The tenant shall use the leased property as agreed upon**". Similarly, the Iraqi Civil Law, made the tenant's use of the leased property conditional upon the agreed-upon purpose in the lease contract. **Article 762** states, "**Regardless of the consideration, the tenant is obligated to use it in the manner specified in the lease contract**".

The Iraqi Property Lease **Law No. 87 of 1979** indirectly addresses the definition of the agreed-upon purpose in **Article 17**, which discusses the reasons for eviction, including paragraph (h), which states, "**...if the tenant uses the property contrary to the agreed-upon purpose in the lease contract**".

Regarding the judiciary, in Egypt, courts have clearly defined the intended purpose of the leased property in some of their judgments, stating that "...the determination of the intended purpose of the use of the property usually relies on what has been proven regarding its lease contract,"<sup>9</sup> and "**...whether the purpose of the lease has been specified in the written lease contract itself or modified by the explicit or implicit agreement of the parties, as all of this is done under the contract**". However, we have yet to find a judicial ruling in Iraq that explicitly defines the intended purpose of the leased property as agreed upon.<sup>10</sup>

### **2.1.2 The Unagreed Purpose of Using the Leased Property**

In cases where there is no explicit or implicit agreement regarding the intended purpose of the leased property, the tenant is bound to utilize it in accordance with the specific purpose for which it was designed. Within jurisprudence, the unspecified intended purpose constrains the tenant's use of the leased property to align with its intended purpose.<sup>11</sup>

However, no specific criterion determines whether the tenant's use of the leased property conforms to its intended purpose. Instead of focusing solely on the use, objective factors are considered when ascertaining the intended purpose. These factors include customary practices, the nature of the leased property, and its location. Collectively, these factors establish the circumstances and likely indicators that restrict the utilization of the leased property in a particular manner. Such considerations that determine the intended purpose of the leased property while also exploring the legislative and judicial perspectives will be examined as follows:

#### **Firstly, Customary Practices**

Customary practices play a pivotal role in determining the intended purpose of the leased property in instances where it is not explicitly stated in the lease agreement. Often, the intended purpose is derived from customary practices. Here, the term "custom" refers to the prevailing local customs within a specific area, which significantly contributes to defining the purpose for which the leased property is intended. Generally, the customs of a particular area govern the intended purpose of the leased property, as commonly understood in lease agreements within that region.

The influence of customary practices is particularly pronounced when determining purposes associated with horizontal proximity instead of vertical proximity. Establishing a universal rule for determining the intended purpose of shared areas in multi-story buildings and apartments is challenging when leased. However, such difficulties are not encountered when considering horizontal proximity. Specific locations may have commonly accepted purposes in certain areas, while different customs may prevail in other locations. For example, leasing a field for poultry farming or livestock grazing in rural areas may serve a specific purpose, but the same purpose may not be applicable in urban areas.

Regarding the legislative stance on customary practices and their role in determining the intended purpose of the leased property in the absence of an agreement in the lease contract, some laws have addressed the influence of location circumstances in defining this purpose. One example is the Egyptian Law on Public Shops, **Law No. 154 of 2019. Article 24** of this Law specifies the reasons that may lead to the closure of a public shop, including paragraph 4, which states, "**Engaging in commercial activities outside the boundaries of the designated shop, whether on public roads, adjacent sidewalks, or elsewhere...**". From this provision, it can be inferred that customary practices consider restaurants, cafes, and similar establishments that sell food and beverages as places initially designated to serve the customers of these establishments. They are situated to prohibit the keeping and breeding of animals inside cities, districts, and rural areas, as stated in **Article 73**, paragraph (1). The customary practices of the location explain the prohibition or permission to allocate the leased property for animal breeding and housing within cities and rural areas.

Moreover, Egyptian judicial rulings have affirmed that the use of the leased property, as determined by the customary practices and traditions of the place, defines the intended purpose. For example, it has been stated that "the tenant's use of the rooftop of a house does not exceed the intended purpose of the lease or increase the enjoyment, as customary practices allow tenants to use the rooftop, which is considered complementary to the enjoyment of the dwelling."<sup>12</sup>

### **Secondly, The Nature of the Leased Property**

The nature of the leased property is considered one of the objective circumstances the judge relies on to determine its intended purpose. By the nature of the leased property, we mean its type, which establishes the designation of the property as a residential house, a school, a factory, agricultural land, construction land, or vacant land, among other standard designations that reflect the nature of the property.

It should be noted that the role of the type of leased property in determining its intended purpose is not fixed but varies depending on the type of property. It is well-known that the nature of houses is for residential purposes. For the tenant to enjoy the leased property designated for residential use, they are entitled to use it or its shared parts in the manner intended by the property or those parts, according to their nature.

On the other hand, commercial establishments, public shops, and workshops are naturally designated for conducting commercial and professional activities that generate profits for their owners.<sup>13</sup> Similarly, the nature of agricultural land implies that it should be used for cultivation, as the purpose of leasing the land is its cultivation.<sup>14</sup>

One crucial legislative application indirectly referring to the role of the nature of the leased property in determining its designated purpose is the Iraqi Law on the Lease of Agricultural Reform Lands, **Law No. 35 of 1983. Article 4, paragraph (2)** of this Law prohibits using the land for purposes other than those for which it was leased. This means that the tenant is obliged to utilize the land for cultivation, which is the customary purpose for which it was leased.

The Egyptian judiciary has established the obligation to refer to the nature of the leased property to determine its intended purpose. This is evident in a ruling by the Court of Cassation, which states, "It is sufficient that the beneficiary's stay in the leased property for vacation purposes aligns with the nature of the purpose of this lease. The provision in the lease contract that designates the property for residential use does not change the fact that using the leased property for vacation purposes is still considered within the scope of its use as a residence."<sup>15</sup> This ruling clearly shows that using the leased property for vacation aligns with its nature as a residential property.

The Iraqi judiciary has also emphasized that the nature of the property is what affects its designation for a specific purpose. In one decision by the Federal Court of Cassation, it was stated that installing towers and

power transmission cables on agricultural land caused damage to the land due to the impact of the power lines.<sup>16</sup> This indicates that the damage occurred due to the implementation of power transmission projects despite the land being designated for agricultural purposes.

### **Thirdly, The location of the leased property**

One objective circumstance that assists the judge in determining the intended purpose for which the leased property is prepared for use is its location. The consideration of the location of the leased property becomes more apparent in distinguishing between residential, industrial, and commercial neighbourhoods. While the intended benefit of renting houses is predominantly for residential purposes, the intended benefits of leasing industrial and commercial facilities vary depending on the activities, professions, and trades carried out therein. Consequently, the suitability of the leased property for a specific purpose is influenced by the location of these activities, trades, or professions. For instance, if the leased property is in a quiet residential area, it contradicts its use as an automobile painting workshop. However, the same designation would be acceptable if the property is in an industrial zone. Similarly, it is used as a restaurant in a peaceful residential neighbourhood. In that case, it conflicts with its location, unlike if it is situated in a densely populated famous district, where it would be considered permissible and customary.

Legislation in various instances has indicated the significance of determining the intended purpose of the leased property based on its location. For example, **Article 34** of the Executive Regulations of the Egyptian Environmental **Law No. 338 of 1995** stipulates the consideration of distance from urban areas when selecting the project's location. The Iraqi legislator also implicitly addressed the impact of the location of the leased property in determining its intended purpose. **Article 14** of the Instructions for Classifying and Operating Tourist Facilities **No. 1 of 2004** explicitly excluded cinema exhibition venues from residential areas, designating them for entertainment and leisure purposes.

Finally, it is necessary to consider the general character that a specific area or neighbourhood possesses, whether a residential, industrial, or commercial area, when utilizing the leased property for a specific purpose, especially when seeking to address damage after its occurrence. This principle has been established by the Egyptian Court of Cassation, holding the Petroleum Gases Company responsible for damages resulting from the supply, delivery, and marketing of natural gas in residential areas.<sup>17</sup> Similarly, the Iraqi Federal Court of Cassation ruled that if a lessee uses the property for automobile repair purposes despite its designation as a residential area, and damage occurs, the lessee is held liable for the damage.<sup>18</sup>

Regarding objective considerations, if we follow the provisions of the Egyptian Civil Code and the Iraqi Civil Code, we find that **Article 579** of the Egyptian Civil Code states, "**The lessee shall undertake to use the leased property... If there is no agreement, he shall use the property according to its intended purpose**". Similarly, **Article 762** of the Iraqi Civil Code states, "**Regardless of the lessee's profession, he must use it... If the contract is silent, he must use it according to its intended purpose and in accordance with customary practices**". Thus, the formulation of the Egyptian legislator is better than that of the Iraqi legislator in terms of using the phrase "**according to its intended purpose**", without specifying any objective condition to determine the purpose, unlike the Iraqi legislator, who explicitly mentions customary practices among these conditions.

## **2.2 Types of Changes to the Leased Property**

Changes to the leased property can be categorized into three types. Firstly, it can be a material change that focuses on the physical substance of the leased property. Secondly, it can be a moral change related to how the leased property is used. Lastly, it may not fall into either of these categories but instead involves the installation of devices within it. To explain these types in more detail, we will divide this issue into three branches: addressing material changes in the first branch, clarifying moral changes in the second branch, and specifying changes involving the installation of devices in the third branch.

### **2.2.1 Material Changes**

Civil jurisprudence does not provide a specific definition for material changes to the leased property. Several approaches have emerged to define such changes. One approach defines material changes as modifications that affect the appearance of the leased property, improving its use and increasing its value, whether in whole or in part.<sup>19</sup> Another approach expands this definition to include modifications that alter the identity of the leased property, changing its form.<sup>20</sup> If we examine these definitions, we find that they describe material

changes when they affect the substance of the leased property and do not merely encompass any change that occurs to the property. Another approach defines material changes as modifications that affect the entity of the leased property and its accessories.<sup>21</sup> Notably, this definition indicates that material changes, when directed towards the entity of the leased property, also encompass its accessories. Material changes to the leased property can take various forms, which can be categorized into two main types:

1. **External Material Changes:** This type encompasses any modifications to the predominant characteristics of the external appearance of the leased property. For example, if the leased property is a house, such changes may involve performing material works that alter the external design of the building while preserving its internal design. This type of change can be achieved by adding or removing new features.
2. **Internal Material Changes:** This type pertains to any modifications to the internal arrangement and coordination of the leased property. Similar to external material changes, it involves adding new features that were not present before or removing existing features. For instance, it could involve dividing a large store into two smaller ones if the leased property is a shop or removing machinery if the property is a factory.<sup>22</sup>

The Egyptian legislator addressed material changes when discussing the effects of the lease contract in **Article 580** of the Civil Code, which states, "**The lessee is not allowed to make any changes to the leased property...**". This means that **Article 580** of the Egyptian Civil Code is a provision that generally restricts the lessee's use of the leased property from making any changes, thus referring to material changes through the use of the term "**changes**". Most Egyptian jurists support this interpretation when explaining this provision, considering that material changes are the intended meaning. As for the Iraqi legislation, there is no counterpart to **Article 580** of the Egyptian Civil Code in the Iraqi Civil Code. Therefore, the Iraqi legislator should add a new provision to the civil code that specifies the material changes that the lessee can make to the leased property.

On the one hand, the Iraqi legislator compensates for this deficiency in general rules and indirectly refers to material changes in **Article 17** of the Lease Law, which states, "**The lessor shall not demand the eviction of the property subject to the provisions of this law unless for one of the following reasons... 4- If the lessee has made a substantial change to the rent**". The phrase "**substantial change**" in the last sentence of the Article implies that it includes any material changes made by the lessee to the property, as the term is used in its general sense. Egyptian courts have quickly defined material changes as modifications that affect the entity of the leased property.<sup>23</sup>

### **2.2.2 Other Material Changes**

The nature and variety of disputes arising from changes to the leased property and their connection to the lessee's use of the property have made moral changes one of the most essential. Other material changes are considered the common understanding of changes and align with the broad legal concept of changes to the leased property. In civil jurisprudence, Other Material changes have been defined as modifications to how the leased property is used or the activity carried out within it.<sup>24</sup> It is also defined as modifications that do not affect the substance of the leased property but rather restrict its use in a certain way.<sup>25</sup> It is evident from the above that other material changes do not affect the entity of the leased property, as explicitly mentioned in the definition of material changes. Instead, other material changes pertain to using the leased property and impose certain limitations. **Other Material Changes** can take two forms:

**Partial Other Material Changes:** The understanding of partial other material changes is associated with the method followed in modifying a specific part of the leased property for a specific purpose while maintaining the use of other parts of the property for their designated purpose and, for example, erecting a fence around the house to provide privacy from outside view.<sup>26</sup>

**Comprehensive Other Material Changes:** This form of other material change involves modifying the use of all parts of the leased property for a specific purpose, thereby rendering it impractical to continue using the property for its original purpose. An example would be converting a residential property into a non-residential one, making it impossible to use the remaining parts for residential purposes. Egyptian courts

have noticed other material changes affecting the use of the leased property. For instance, establishing a wooden and glass partition by the lessee on the house's balcony to use it as a room is considered a partial other material changes. On the other hand, if the lessee changes the use of the property from a residence to an office for a press agency, it would be considered a total other material changes.<sup>27</sup> In the Iraqi legal system, the scope of other material changes is broader, as changing the use of the property from a residential house to a commercial centre is considered a valid reason for eviction.<sup>28</sup>

### 2.2.3 Changes in Installing Devices

Changes in installing devices refer to ordinary and customary modifications that the tenant deems beneficial to the leased property, in line with its nature and intended use.<sup>29</sup> Changes in installing devices can be divided into two categories:

1. Direct Changes: These are modifications closely related to the leased property, such as installing water, electricity, and gas pipes.
2. Indirect Changes: These are modifications not directly related to the leased property, such as using devices like televisions, satellite dishes, heating and cooling systems, elevators, surveillance cameras, doorbells, ventilation systems, and water tanks.<sup>30</sup>

The Egyptian Civil Law explicitly addresses this change in **Article 581**, which states, "**The tenant is allowed to install devices in the leased property for water, electricity, gas, telephone, radio, and similar purposes**". However, the Iraqi legislator still needs to specifically address the issue of changes in the leased property through installing devices, as there is no equivalent provision to **the Article mentioned above 581 of the Egyptian Civil Law**. Nevertheless, it is suggested that the Iraqi legislator adds a new paragraph to **Article 762 of the Civil Law**, specifying changes in installing devices necessary for the beneficial use of the leased property. Additionally, the phrase "devices for achieving beneficial use" could replace the enumeration of devices mentioned by the Egyptian legislature to encompass all devices without specific naming. It is also recommended to replace the phrase "the lessee" with "the tenant" to clarify that these devices are limited to the real estate and do not include moveable property. The proposed text could be as follows:

**"1. The tenant is allowed to install devices in the leased property for achieving beneficial use, provided that the installation method does not violate legal principles unless the lessor proves that installing these devices threatens the safety of the property. 2. If the lessor's intervention is necessary to complete any of the above, the tenant may request the lessor's involvement on the condition that the tenant bears the expenses incurred by the lessor."**

### 2.3 Standard for Changes in the Leased Property

The standard for changes in the leased property falls within the tenant's obligation to use the property for its designated purpose, whether it is a material or moral change. This standard can be based on two different criteria: the impact of the proposed change on the property, referred to as the "impact criterion," and the method of compensating for the damage resulting from the change in the use of the leased property, known as the "compensation criterion." In this research, if these two criteria do not align, we explore each criterion separately in two subsections: the impact criterion and the compensation criterion.

#### 2.3.1 The Impact Criterion

Based on mutual solidarity, an underlying principle in lease contracts, the lessor is expected to tolerate reasonable changes that do not damage the leased property. At the same time, the tenant should not exceed the permissible limits in utilizing the property. However, the lessor is not obliged to bear changes that go beyond these limits and affect the substance of the leased property. Therefore, the standard for regulating the lease relationship should consider the general nature of changes to the property rather than focusing on the specific nature of each change. This necessitates the establishment of an objective description of changes in the property, which remains constant and unchanging. Accordingly, the relevant consideration in the impact criterion is the consequences resulting from the changes in the leased property. Unusual changes that affect the substance of the leased property are considered material changes, while changes that do not affect the substance of the property are considered other material changes.

The concept of unusual changes pertains to material changes, whereas the concept of moral changes relates to changes that do not affect the substance of the property. It is worth noting that the jurisprudence in Egypt and Iraq did not explicitly address the impact criterion. However, scholars have established a standard for the impact criterion by considering modifications to the form of the leased property. They applied this criterion in cases where the tenant establishes or removes specific amenities in the leased property. They argued that if the tenant's construction or removal of such amenities leads to a noticeable alteration in the leased property, it constitutes a material change either by increase or decrease. For example, dividing a ground-floor apartment into multiple shops or dividing a floor in a building into two separate apartments, each with its utilities, would create a new space within the leased property.

On the other hand, if the establishment or removal of these amenities does not result in any alteration to the form of the leased property but rather involves a change in the type of use, it is considered a moral change. For instance, it divides a large hall into two rooms using a wooden partition.<sup>31</sup> The impact criterion is not solely based on categorizing changes as **material or other material changes**. However, it also serves as a basis for determining whether the other material changes is partial or total. It is necessary to consider the concept of parts within the leased property to address this question, as there is a close relationship between understanding these parts and their role in applying the impact criterion to describe other material changes .

The impact criterion for other material changes is based on a specific rule: the area of the part affected by the change. Some jurists have interpreted the term "part" to include half of the area of the leased property. Therefore, if the change affects half of the leased property's area or less, it is considered a partial change, even if it is limited to one room, as long as it is less than half of the property's total area. For example, it is changing the use of a room to a lawyer's office or a doctor's clinic without affecting the other rooms. If the change affects more than half of the property's area, it qualifies as a total change<sup>32</sup>. In Egypt, and not in Iraq, the legislation in one of the housing laws and a court ruling adopted the impact criterion implicitly, as stated in **Article 19 of the amended Rent Law No. 136 of 1981: "1- In cases where the use of the property is changed to non-residential purposes, the legal rent shall increase by 200% for buildings... 2- In the case of partial change of use, the owner is entitled to half of the mentioned percentages"**. The criterion relied upon in determining the additional rent percentages is likely the area of the part of the leased property affected by the change, indirectly leading to the distinction between the types of moral changes. Similarly, it was ruled that "the text of **Article 19 of Law No. 106 of 1981** indicates that the legislator allows the tenant of the leased property for residential purposes to change its use to a different purpose, provided that this change does not cause any damage to the building or its occupants, whether it is a total or partial change, and the landlord is entitled to an increase in the legal rent according to the percentages determined for him."<sup>33</sup>

### **2.3.2 Compensation Criterion**

The description of the change in the leased property may be determined according to another criterion that does not assess the consequences of the change on whether it affects the form of the leased property. Instead, it is determined based on the method followed in compensating for the damage resulting from the use change. This method, in turn, is determined by how the leased property is used in terms of time and place, as well as the fate of the improvements and buildings made by the tenant in the leased property after the expiration of the lease contract. It should be noted that compensation in this context takes on a more specific meaning than in the context of penalties resulting from violations.

The compensation criterion takes on a unique nature that can be seen from several perspectives. Firstly, it is evaluated based on the type of compensation for the damage resulting from the change in the use of the leased property, whether in monetary or in-kind compensation. Secondly, it is determined according to the specific form associated with each type of compensation, whether it involves a specific action, restoring the situation to its previous state, or removal.

To clarify, the change in the leased property is described as a moral change if the compensation for the damage resulting from the change is non-monetary. Whether the non-monetary compensation takes a specific action or restoring the situation to its previous state does not alter this description.

Regarding the specific action as a form of compensation, it can take several means that, as a whole, agree on the use of the leased property at a specific time. For example, prohibiting the practice of a problematic activity in the leased property during certain times, such as at night, early in the morning, or during rest

periods. It can also involve specifying working hours in the leased property or suspending a part of it. The judge's use of non-monetary compensation proves the change was moral. The latter relates to how the leased property is used for a specific activity.

Restoring the situation to its previous state, which plays a role in describing the moral change, involves two aspects—firstly, making modifications to the object causing the damage without the need for its removal, and secondly, removing the source of damage without causing any damage to the leased property, without affecting its form. As a result, any physical change is eliminated, and only the moral change remains, which is the intended meaning. In other words, it is about specifying the use of the leased property in a specific location.

Accordingly, obligating the tenant to remove the wooden or glass partition that divided the room into two rooms is considered a moral change.<sup>34</sup> With this, the leased property can be restored to its original state before the modification by removing what was added to facilitate its use with ease and convenience, whether the removal occurs during or after the expiration of the lease contract, as its placement was temporary.

When the change to the leased property is described as material, the compensation for the resulting damage is provided in kind. This means that one form of compensation requires the complete removal of the source of damage, which ultimately affects the appearance of the leased property. This alteration is considered a material change, such as demolishing a concrete wall separating two buildings within the leased property, which may result in partial or total damage to that property. Another example is when the lessee introduces modifications to the leased property, such as changing the farming method or irrigation system, which fundamentally affects the property even after the lease agreement expires. These modifications become inseparable from the agricultural land and cannot be removed without causing damage.<sup>35</sup>

In Egyptian and Iraqi civil law, we find provisions that support compensation application as a criterion for assessing and describing material changes to the leased property. **Article 592/2** of the first Law and **Article 744/1** of the second Law indicate a close connection between the type of change to the leased property and its compensation, affecting its description. Therefore, the mentioned changes are described as material changes when the lessee is obliged to demolish any structure built on the leased property, uproot planted trees, and remove other improvements. The first Article states, "**...if those improvements were made without the lessor's knowledge or despite their opposition, the lessor also has the right to request their removal**". The second Article states, "**...if the lease expires and the lessee has constructed a building, planted trees, or made other improvements that increase its value, the lessee is obliged to demolish the building, uproot the trees, and remove the improvements**".

**When weighing the two aforementioned criteria**, we find that the criterion of compensation is unacceptable, as it is an unregulated standard; it is a remedial criterion, and the award of compensation is based on it only if the injured party has suffered harm. It also requires consideration of the compensation itself, which is a relative matter that is difficult to rely upon; due to its many forms and the variation in its amount depending on the circumstances affecting the injured party during the period between the occurrence of the damage and the award of compensation, Consequently, the standard varies depending on the circumstances. For all these reasons, we support the necessity of evaluating the standard for changes to the leased property based on an objective criterion—namely, the criterion of impact—which provides general guidelines for determining the changes occurring to the leased property, whether such changes involve altering the form of the property or changing its method of use, which leads to the stabilization of legal positions in the lease contract .

### **3. Legislative Permission to Change the Leased Property**

Since the general rule is that the lessee cannot be held accountable for changes to the leased property based on the legislative permission granted, it is natural for this permission to be limited to specific conditions for changes and nothing more. However, examining the effects of such permission and its legal basis goes beyond this limit. It requires investigating the consequences of the permission and its legal foundation, which the judge relies on to justify contractual liability and exclude defects and shortcomings in causation. The detailed conditions of the legislative permission and its effects and legal basis will be divided into three sub-sections, addressing the conditions of the legislative permission for changing the leased property in the first sub-section, discussing the effects of the legislative permission for changing the leased property in the

second sub-section and clarifying the legal basis of the legislative permission for changing the leased property in the third sub-section.

### **3.1 Conditions of the Legislative Permission to Changing the Leased Property**

The legislative permission for the lessee to change the leased property is only established if certain conditions are met, sometimes related to the changes made to the leased property and other times related to the lessee who is granted permission for the change. A detailed explanation of these conditions will be presented by dividing this sub-section into two branches. The first branch will cover the general conditions of the legislative permission for changing the leased property. In contrast, the second branch will address the specific conditions of the legislative permission for changing the leased property.

#### **3.1.1 General Conditions of the Legislative Permission to Changing the Leased Property**

The legislative permission granted to the lessee to change the leased property has its distinct character, which sets it apart from other legislative permissions granted to them within the scope of their obligations arising from the lease agreement in general. This requires specific conditions in this permission that reflect this character and apply to the types of changes. These conditions consist of the absence of an agreement to change the leased property and the absence of damage upon making the change. The examination of the general conditions of the legislative permission for changing the leased property will be divided into the following two paragraphs:

##### **First: Absence of an Agreement to Change the Leased Property**

The law not only imposes restrictions on the use of the leased property but also on changing it. When explicit contractual restrictions are required, whether they are express or implied, or when objective circumstances require the lessee to restrict their use of the leased property in a specified manner or refrain from using it for a particular purpose, they must comply with these restrictions and refrain from making any changes to the leased property, whether material or immaterial, even if the change is in the lessor's interest.<sup>36</sup> It is well established that these restrictions or circumstances are reasonable conditions in the lease agreement, making the lessee responsible for any violation.<sup>37</sup> This necessarily grants the lessee the right to change the leased property when the restrictions and circumstances that prevent such change cease to exist in order to achieve the full intended benefit.

The Egyptian Court of Cassation referred to this condition in one of its judgments, stating, "...there should be no specific agreement between the lessee and their partners regarding the regulation of the use and exploitation of the premises. If such an agreement exists, it governs the relationship between the parties."<sup>38</sup>

##### **Secondly, It should not cause damage to the lesser**

This condition is linked to the preceding condition, as more is needed to establish the legal permission of the lessee to make changes to the leased property that the agreement for such changes is absent. However, it also requires the absence of damage upon making the changes.

The critical question in this context is what constitutes a change that causes damage and that the lessee is prohibited from carrying out? Answering this question requires distinguishing between two forms of damage that can befall the lessor, which are:

**The first form is damage from positive use**, the damage that befalls the lessor due to the lessee's actions on the leased property. This damage can take various forms, which can be categorized into two forms:

1. **Material damage:** Its scope extends to include the damage of being deprived of benefiting from the leased property. This includes the lessor being deprived of using their property, such as obstructing light and air or blocking the view due to the lessee raising the building or making substantial changes to its design that significantly impede the intended initial benefits of the leased property. It also includes damage that affects the leased property and its attachments, leading to partial or complete deterioration or destruction.<sup>39</sup>
2. **Moral damage:** Moral damage that befalls the lessor due to changing the leased property does not go beyond psychological pain that affects their honour, emotions, feelings, financial consideration, or social status. The aspect of affecting the lessor's financial consideration becomes more evident in cases where their money is subject to loss as a result of changing the leased property, causing them

distress and sadness as a consequence. Such damage does not destroy any property but rather its devaluation. Additionally, the use of the leased property for unlawful purposes or actions that contradict good morals and are inconsistent with the spiritual, religious, and societal values, or using it in a disturbing or harmful manner to comfort or health, which can cause damage to the lessor and violate the dignity and feelings of other residents and necessitate their harassment.

**The second form, the damage resulting from harmful use**, refers to the lessee's failure to take necessary precautions to preserve the leased property, keep it usable, and refrain from any act that intentionally or negligently causes damage. This is evident from the examples provided by the jurists of civil law, such as the case of a tenant who rents a residential house but leaves it unoccupied for a long time without living in it or taking responsibility for maintenance, which can lead to damage due to lack of cleanliness, ventilation, or conditions that make it a breeding ground for rodents and insects. Similarly, tenants renting a shop should operate their business to maintain its rental value and retain customers.<sup>40</sup> However, if a justifiable reason allows the tenant to leave the leased property without use, the lessor's liability for any resulting damage is eliminated. The concept of a justifiable reason encompasses situations where the tenant can leave the leased property without use due to prevailing customs or contractual provisions, such as leaving during the summer season, inventory, or in an emergency circumstance like a flood that submerges the agricultural land.<sup>41</sup>

Examining the stance of laws regarding eliminating damage to the lessor, we find that the Egyptian legislator explicitly referred to this condition in **Article (580/1) of the Civil Code**. This determines the scope of the legal permission granted to the tenant to make changes to the leased property, specifically by stating that **"the tenant is not allowed to make changes to the leased property without the lessor's permission unless such changes do not cause damage to the lessor"**. The Iraqi legislator's position on this condition is limited to restricting the tenant's use of the leased property to customary use that does not cause damage. This understanding can be inferred from the second paragraph of **Article (764) of the Civil Code**, which states, **"The tenant's unusual use of the property constitutes damage arising from it"**.

The Egyptian judiciary has ruled to grant legal permission to the tenant to make appropriate changes to the leased property, provided that no damage is caused. This aligns with the stance of jurisprudence and legislation. In this regard, the judiciary ruled that "the use of the rooftop of a house does not exceed the purpose of renting it... as long as the leased property does not suffer damage from this use and as long as the lessor's legitimate interest is not compromised".<sup>42</sup> The Iraqi judiciary also implicitly referred to this condition in one of its judgments, stating, "...the tenant used the rented property for repairing and accommodating cars, along with the residential area designated for housing purposes, causing damage..."<sup>43</sup> This implies that any changes to the leased property are permissible if the damage to the lessor is eliminated.

### **3.2 The Conditions of the Legislative Permission to Changing the Leased Property**

**Firstly, there are special conditions for material changes (obtaining the lessor's permission):** Obtaining the lessor's permission is necessary to grant the tenant's legislative permission when changing the leased property materially. The majority of civil jurisprudence considers one of the essential conditions for determining the legislative permission for making material changes is that the tenant's behaviour is lawful, which includes obtaining the lessor's permission.<sup>44</sup>

The requirement for obtaining permission can be justified by the fact that the lessor is the rightful owner with the authority to grant it. Furthermore, the principles of justice necessitate balancing the lessor's right to preserve the leased property from any infringement and the tenant's right to enjoy that property fully. Additionally, conditioning material changes on the lessor's approval provides the lessor with the option to refrain from entering into the lease agreement if they become aware of the tenant's intention to make substantial changes to the leased property that would alter its essence or design, mainly if it is in a condition that does not allow for such modifications, such as being old or having some parts in a deteriorated state. Even if this requirement is not fulfilled, the lessor, even if not objecting to such changes, by stipulating the need to obtain their consent when determining the terms of the agreement, especially those related to repairs and duration, ensures protection against the consequences resulting from the changes, primarily the risk of loss.<sup>45</sup>

In civil jurisprudence, it is commonly accepted that the lessor's permission constitutes explicit consent, and

the tenant's right is established after obtaining such permission to carry out material changes. Jurisprudence does not prohibit the presence of implied consent from the lessor, where explicit consent to change the leased property materially is not explicitly specified for a specific purpose. This includes cases where the lessor remains silent despite being aware of the changes and not objecting within a reasonable period, receiving rent after the changes have taken place, or renewing the lease agreement without objecting to the changes made by the tenant.<sup>46</sup>

Legislative texts emphasize that obtaining the lessor's permission is permission for the tenant to make material changes to the leased property. If we consider **Article 580/1** of the Egyptian Civil Code, the Egyptian legislator explicitly requires the lessor's permission for any material change to the leased property. The Article states, "**The tenant is not allowed to make any changes to the leased property without the lessor's permission...**". Similarly, the Iraqi legislator adopted the same approach in the Rent Law, as **Article 17** states, "**The lessor is not allowed to demand the eviction of the property except for one of the following reasons: 4- If the tenant makes a substantial change to the rental property without the lessor's consent**".

Courts in Egypt have established that the lessor's explicit or implied permission is a necessary condition to authorize material changes, whether the purpose of the lease is specified in the written lease contract itself or modified by the agreement of both parties (56). In Iraq, court rulings have concluded that if the tenant's use of the leased property causes damage, it is necessary to verify whether the lessor had given permission or consented to such use when the contract does not specify the type of benefit.<sup>47</sup>

#### **Secondly: The conditions related to other material changes (increasing the rent).**

Such conditions are specific to other material changes. It was mentioned in the previous Egyptian Law of Renting Places. **Article 19** stated the following: "**1. In cases where the use of the leased property is changed to non-residential purposes, the legal rent shall increase by a percentage... 2. In the case of partial changes, the owner is entitled to half of the mentioned percentages**". When explaining this Article, most jurists in Egypt believe that among the conditions for using the legislative permission is an increase in the legal rent in case of a change of use from residential to non-residential purposes, not vice versa. In the case of partial changes in use, the tenant is entitled to half of the additional rent according to the mentioned percentages.<sup>48</sup> The wisdom behind this increase is that some leased premises may not be used for residential purposes, and tenants may utilize them for non-residential purposes such as trade, industry, freelancing, handicrafts, and so on, generating significant profits. If the lessors only had the option to request eviction of these premises if they can prove such non-residential usage and if the eviction is deemed to cause substantial damage to the tenant, to the extent of impacting the national economy without providing significant benefit to the lessor, then the lessor would mostly be forced to re-lease the premises at the legal rent, which is not legally encouraged. Therefore, the legislator believed that allowing the owner to agree with the tenant on changing the use of the leased property to non-residential purposes while charging a legal rent increase would serve the interests of both parties, the lessor and the tenant, and avoid damage to the national economy.<sup>49</sup>

#### **Thirdly, the conditions related to changes in the installation of devices**

To establish the legislative permission for the tenant to install the necessary devices in the leased property, the tenant must adhere to the following conditions:

1. The introduction of these modern devices into the leased property should not pose a threat to the safety of the building. If the building is old, there may be concerns about the electrical connections with high loads or the installation of water pipes.
2. The tenant should consider the lawful principles in installing these devices, ensuring that the required changes and works do not exceed the necessary technical requirements.
3. The tenant should reimburse the expenses incurred by the lessor if the latter's intervention is necessary to assist the tenant. For example, the tenant should reimburse the expenses incurred by the lessor for roof repairs or strengthening of walls unless the tenant has already carried out these works at their own expense. It is not permissible to agree to prohibit the installation of modern devices in the leased property without the

lessor's consent.<sup>50</sup>

When these conditions are met, the tenant benefits from the exceptional legislative provision stated in **Article 581** of the Egyptian Civil Code, which states: "**1. The tenant is permitted to install devices in the leased property as long as the method of installation does not violate lawful principles, provided that the lessor does not prove that the installation of these devices threatens the safety of the property. 2. If the lessor's intervention is necessary to complete any of these installations, the tenant may require the lessor's assistance, provided that the tenant bears the expenses incurred by the lessor**".

### **3.3 Effects of the Legislative Permission to Changing the Leased Property**

If the lessee violates the terms of the general or special legislative license, he must compensate the lessor for the damage he suffers. Here, the question arises: Is this compensation subject to the general rules of contractual liability? The answer to this question requires explaining the penalty according to the general rules first and the penalty according to the special rules second.

#### **3.3.1 Penalties By General Rules**

Since compensation is a consequence of violating the conditions of the legislative permission, and the purpose of compensation is to remedy the damage, the judge of the case is the one who determines how this remedy should be according to the circumstances and details of each presented case, ensuring that it is commensurate with the proven damage to the lessor. The ideal method of compensating for the damage suffered by the lessor is through actual restoration, where the leased property is restored to its previous condition before the occurrence of the damage. However, sometimes, it may be impracticable to provide actual restoration, and in such cases, the judge has no choice but to resort to compensation in monetary form. To clarify the method of compensation according to general rules, this branch will be divided into the following two paragraphs:

**Firstly, Actual Restoration:** Actual restoration is one of the methods of compensation that obliges the tenant to compensate the lessor for the damage suffered. Actual restoration is the optimal solution in contractual liability judgments because it eliminates and removes damage. Actual restoration of the damage suffered by the lessor can take two forms:

**The first form is actual restoration, which involves the physical repair of the leased property.** This means repairing any damage to the leased property and restoring it to its original condition at the time of the contract. For example, if the tenant's failure to comply with the obligation to preserve and maintain the property leads to its collapse and damage, the restoration would involve returning the property to its previous state. The tenant may be required to refrain from using the property for commercial purposes and restore its use for residential purposes once again.<sup>51</sup> This physical repair aims to restore the property to its functional state and prevent repeated violations.

**The second form is removing the source of damage, which entails completely prohibiting any harmful use of the leased property and eradicating all its effects.** This can be referred to as complete actual restoration. Removing the damage in this manner permanently eliminates its source and prevents its recurrence. It differs from the previous physical repair, as it enables the tenant to resume enjoyment of the property while the lessor's enjoyment remains intact. The importance of completely removing the damage and its source is evident in cases where the tenant is unable to take necessary precautions to prevent damage to the lessor or in situations where temporarily ceasing the harmful use of the property is impossible, mainly if such use inherently generates permanent damage.<sup>52</sup>

The texts of civil laws have referred to the removal of damage that befalls the lessor as a form of direct compensation in the **Egyptian Civil Code Article 580/2**, which states, "**If the tenant makes a change to the leased property exceeding the limits of the obligation... he may be obliged to restore the property to its original condition...**". Similarly, the **Iraqi Civil Code Article 774** stipulates, "**If the lease expires and the tenant has made improvements to the property... the tenant shall be obliged to demolish the construction, uproot trees, and remove the improvements**".

The Egyptian judiciary has established restoring the leased property to its previous condition before the occurrence of damage as a form of specific performance compensation, without burdening the tenant with removing the damage if it is possible to implement the specific performance. One of its judgments states, "The tenant who changes the use of the property from residential purposes to other purposes shall be obliged

to restore it to its original condition by resuming its use for residential purposes" .<sup>53</sup> On the other hand, the Iraqi judiciary has adopted removing the source of damage as a form of specific performance compensation for the damage suffered by the lessor. In one of its judgments, it was decided that the exploitation of residential areas for commercial purposes should be prohibited, and the municipality has the right to request the closure of a hairdressing salon located in the claimant's house.<sup>54</sup>

**Secondly, compensation in payment:** The principle of compensation in contractual liability is specific performance. However, if specific performance becomes impossible, compensation is only available when removing the damage does not provide a remedy. Compensation in the form of payment for the damage suffered by the lessor can take two forms:

**The first form is monetary compensation.** It is considered one of the most suitable methods for repairing and mitigating the damage suffered by the lessor when restoring the leased property to its previous condition before the occurrence of damage is impossible. Removing the damage could significantly impact the tenant and cause considerable fatigue, primarily if the tenant is engaged in an economically significant activity. Halting the operation, such as closing a factory or commercial establishment, would result in significant economic losses. Therefore, shifting from specific performance compensation to monetary compensation is necessary to preserve this essential economic activity. Consequently, the tenant has to pay the lessor a specific amount as compensation for the damage suffered.<sup>55</sup>

**The second form is non-monetary compensation.** This compensation involves the tenant taking necessary precautions to prevent damage to the lessor in the future while continuing to use the leased property. It is expressed through a specific action or performance. However, this performance has a specific application in the context of the damage suffered by the lessor, which involves changing the harmful method of using the leased property, both in terms of time and place, as a form of non-monetary compensation. In terms of time, the method of using the property is regulated by prohibiting harmful use during specific periods. In terms of place, the method of use is determined by making technical modifications to the source of damage to prevent its continuation.

The civil texts explicitly addressed monetary compensation for the damage suffered by the lessor, as stated in Article 580 of the Egyptian Civil Code, which states, "**If the lessee makes changes to the leased property, the lessee may be obliged to restore the property to its original condition and provide compensation if necessary**". The drafting of the Egyptian legislator was better in this regard than that of the Iraqi legislator. The right of the lessor to own these modifications is limited to their demolition value if their removal causes damage to the leased property. Article 744/1 of the Iraqi Civil Code states, "**The lessee must demolish the building, uproot trees, and remove improvements. If this damages the lessor, the lessor is entitled to acquire what the lessee has created at its demolition value**".

Therefore, the wording of the Egyptian legislator may be more precise and more comprehensive regarding the rights of the lessor in monetary compensation.

### 3.3.2 Penalties By Special Rules

Firstly, Termination of Lease Agreement: "Termination of the lease agreement," in the context under discussion, refers to the conclusion of the lease agreement and the return of the leased property to the lessor as a result of the lessee's failure to comply with the conditions of the statutory permission when making changes to the said property. Termination is considered one of the penalties that lessors resort to terminate the lease agreement when a violation occurs. While jurists of civil law agree that if the lessee causes damage to the lessor, they are obligated to compensate for it, they differ in their views regarding the lessor's right to request the termination of the lease agreement and the consequences that arise from exercising this right. Their perspectives in this regard can be categorized into two directions.

**The first perspective: Prohibition of Lease Termination:** Supporters of this perspective argue that the lessor should be restricted from exercising their right to terminate the lease agreement. They argue that the lessor should be prevented from terminating the contract. They base their argument on the premise that the lessor's right to request specific performance or compensation needs to be established since the lessor cannot demand the return of the leased property to its original state as long as the lease period has stayed the same. Therefore, they argue that the lessor cannot request the termination of the lease agreement before the expiration of this period because termination is considered a precautionary penalty sought before the end of

the lease agreement. It is inconceivable for the right to be established at a time when the original penalty, which is specific performance, cannot be claimed because the period has yet to expire.<sup>56</sup>

**The second perspective: Permissibility of Lease Termination:** Supporters of this perspective argue for the permissibility of requesting the termination of the lease agreement. They rely on evidence to support the lessor's right to terminate, including that the penalty mentioned in **Article (580/2) of the Egyptian Civil Code** is limited to specific performance and compensation only, which states, "**If the intervention of the lessor is necessary for the completion of any of these installations, the lessee may call upon the lessor to intervene, on condition that he undertakes to pay the expenses incurred by the lessor in this connection**". The text shows that the lessor is not granted the right to request termination. However, the absence of an explicit provision in the law that grants the lessor the right to request termination does not mean that the lessor is deprived of this right. Instead, it establishes the right to termination based on general principles without distinguishing between the presence or absence of an explicit provision granting the right to request lease termination.

Furthermore, suppose the legislator specifically mentioned the restitution of the leased property to its original state. In that case, it is because it is the natural penalty, and returning the property to its previous condition is a form of specific performance. This means that the lessor can demand either of the two penalties: termination before the expiration of the lease period or specific performance upon its expiration.<sup>57</sup> Based on the specific rules outlined in the Civil Law regarding the termination of lease contracts and their dissolution, **Article 782** of the Iraqi Civil Code states that if either party breaches the obligations imposed by the lease contract, mainly by changing the leased property in a manner inconsistent with the legal conditions, it leads to the dissolution of the lease contract. This has resulted in less severity of disputes compared to the jurisprudential and legislative stance in Egypt due to the absence of a specific provision that determines this particular penalty, as explained earlier. The Federal Cassation Court has ruled in some of its decisions that significant damages caused to the leased property due to the installation of generators on the roof justify the lessor's request for lease termination, provided that the request for dissolution is made before the expiration of the lease term.<sup>58</sup>

**Secondly, "eviction of the leased property"** refers to the lessor's right to reclaim the leased property from the lessee based on the reasons and conditions specified in the lease laws exclusively. Eviction, in this context, represents the most severe and decisive penalty against the lessee since it leads to the termination of the lease contract due to the lack of the intended premises. This is done by reclaiming the leased property. The eviction lawsuit is the natural consequence of evicting the leased property. For the lessor to file this lawsuit, two objective conditions must be met, which we will discuss alternately:

**1- Proof of harmful use by the lessee:** The issue of harmful use must be examined to determine its legislative and judicial position. In this regard, the Egyptian legislator, in Article 18/d of the Places Lease Law, specified the grounds for eviction due to harmful use, stating, "**If it is proven by a final court judgment that the lessee has used the premises or allowed their use in a manner that disturbs tranquillity or poses a threat to the safety of the building, public health, or for purposes contrary to public morals**". Upon careful examination of this provision above, we find that the Egyptian legislator has limited the grounds for eviction due to harmful use to four situations: use that disturbs tranquillity, use that threatens the safety of the building, use that poses a threat to public health, and use that violates public morals. On the other hand, the Iraqi legislator has specified these grounds in **Article 17** of the Lease Law as follows: "**The lessor shall not be entitled to request the eviction of the property subject to the provisions of this law except for one of the following reasons: 3- If the lessee intentionally or negligently causes significant damage to the leased property. 6- If the lessee's use of the leased property damages the lessor's reputation**". Thus, we have a legislative provision that must be followed. We can only suggest amending it by adding new clauses to its content that are similar to the Egyptian legislative text, including harmful use that disturbs tranquillity and harmful use that threatens public health, with the condition that the use of the property remains within reasonable limits while leaving room for the judiciary to assess each ground for eviction individually. The rulings of the Egyptian judiciary have established that harmful use of the leased property is a justifiable reason for eviction. This is evident in one of its rulings, which states, "If changing the use of the property to non-residential use causes damage to the

building or its occupants, the lessor is allowed to request the eviction of the leased premises, excluding the occupants".<sup>59</sup> As for the position of the Iraqi judiciary, we can infer from one of the judgments of the Federal Cassation Court that the use of the leased property in a manner contrary to public morals or that it damages its safety constitutes sufficient grounds for eviction. The ruling states, "The lessee changed the use of the property from a real estate brokerage office to a store selling construction materials, but this change does not, in itself, constitute a reason for eviction unless it leads to damaging the lessor's reputation or causing damage to the property".<sup>60</sup>

**2 - Proof of harmful use and by a final judgment:** The occurrence of harmful use of the leased property is proven by a final and decisive court judgment regarding the dispute, establishing the existence of the damage and attributing it to the tenant. It is permissible to prove the damage through an expedited judgment if the matter to be proven is likely to be subject to a dispute before the court to avoid losing its essence. The tenant who engages in harmful use of the property is not entitled to more excellent protection than the landlord who has invested effort in building their wealth and constructing the property, which is part of the national economy. Requiring proof of harmful use through a final and decisive judgment is not unfair to the landlord at the expense of the tenant, who may continue the harmful use while the litigation process is slow and complex. This can have an impact on the tenant's continued occupancy, especially if the harmful use poses a threat to the building's safety. Therefore, the damage does not need to persist until an eviction judgment is issued in the lawsuit, but rather, eviction should occur once the damage is established.<sup>61</sup>

The Egyptian legislator has emphasized this essential condition in **Article 18/d of Law No. 136 of 1988**, which states, "**...if it is proven by a final judgment that the tenant...**". This condition is necessary for accepting an eviction lawsuit by the landlord against the tenant, unlike the Iraqi legislator, who did not include this condition in **Article 17** of the Lease Law, which corresponds to Article 18/d. Instead, the Iraqi Law considered eviction lawsuits urgent cases. It granted the tenant up to three months to vacate the leased property, according to Article 22 of the same Law. This is an excellent move to alleviate the severity of the provision and prevent arbitrary actions by the tenant, who insists on proving the damage through this sole means. In this regard, the judicial stability in Egypt has not deviated from the legislative stance that eviction lawsuits for harmful use of the leased property require proof of such use through a final judgment by **Article 18/d of Law No. 136 of 1988**.<sup>62</sup> The Iraqi judiciary has also adopted the same approach, emphasizing the necessity of obtaining a definitive eviction judgment to consider the lease contract terminated.<sup>63</sup>

### **3.4 The legal basis for legislative permission to change the leased property.**

Despite the legislative permission allows to tenant to make changes to the leased property, this legislative approach is not sufficient to clarify the legal basis for the tenant's right to make changes. Although causing harm to the lessor as a result of the changes constitutes sufficient grounds for holding the tenant responsible, it is not enough as the basis for holding them accountable and obligating them to compensate. Therefore, the legal basis for the tenant's right to make changes to the leased property will be discussed first, and the legal basis for holding the tenant accountable for violating the conditions of the legislative permission will be discussed second.

#### **3.4.1 The legal basis for the tenant's right to change the leased property**

It can be determined through two interconnected concepts, with one concept being favoured over the other: The first concept is a unilateral will; some jurists in Egypt suggest that the basis for the tenant's right to make changes in the leased property lies in the lessor's unilateral will. However, determining this right can only be done by considering the impact of the changes, namely the possibility of an eviction lawsuit.<sup>64</sup> Therefore, by their unilateral will, lessors grant tenants the right to make changes in the property to avoid potential eviction lawsuits that the lessor may file for the same reason: the changes themselves. This opinion cannot be accepted as it is subject to several criticisms, including the flawed connection between the basis of the right and the effect resulting from granting it. The unilateral will only bind its owner in cases explicitly provided for by the law, and proving the tenant's right to make changes through unilateral will would require a legal provision that imposes this right. Thus, the legal provision cannot be considered the basis for granting the tenant's right; otherwise, all legal texts would become the basis for any legislative permission, whereas they are the legislative source of such permission.

The second concept is legitimate use. Another approach in Egyptian jurisprudence suggests an alternative

basis for the tenant's right to change the leased property, which is the concept of legitimate use. This approach is based on the general principles stating that legal permission contradicts liability. This perspective attempts to find the legal source for this right in some provisions of the Civil Code, including **Article 5** , which states, " **The exercise of a right is considered unlawful in the following cases: a) if the sole aim thereof is to harm another person; b) if the benefit it is desired to realize is out of proportion to the harm caused thereby to another person;c) if the benefit it is desired to realize is unlawful** " , and **Article 580** , which states , "**The lessee may not, without the permission of the lessor, make any alteration to the leased property unless no damage is thereby occasioned to the lessor**".

If the lessee makes alterations to the leased property in excess of the limits prescribed in the preceding paragraph, he may be compelled to reinstate the property in its original condition and to pay compensation if compensation is due..

The first provision establishes a general principle that if an act is legally permissible, it has no liability. The second provision establishes a specific principle stating that if the tenant has legitimate permission from the lessor and no damage is caused, the tenant is not liable. The same rule in Article 580 can be applied here through analogy and on the basis that the specific provision restricts the general provision. Especially since the legislator explicitly adopted this rule when he allowed the tenant, who did not intend to damage the lessor, to make changes. In both cases, a change combines the absence of damage. Unless the lessor is interested in preventing the tenant from making changes, denying the tenant the right to exercise this would be arbitrary.<sup>65</sup>

The concept of legitimate use has significantly contributed to establishing the basis of the tenant's right to make changes to achieve a balance between the rights of both parties in the lease relationship. On the other hand, the lessor has the right to preserve their property, and the tenant has the right to make necessary changes for their benefit. We call upon the legislator and the Iraqi judiciary to clarify this concept in their legal texts and judicial rulings.

When considering the relationship arising from personal rights, it has two aspects: the positive aspect is called a right, and the negative aspect is called an obligation. The contractual relationship arising from the lease contract is no different. Additionally, this contract is binding on both parties, imposing mutual rights and obligations between the lessor and the tenant. If we look at this relationship from the lessor's perspective, we can see that they have established rights in their favour, including the right to prevent any changes in the leased property. This right corresponds to an obligation on the tenant to preserve the property and refrain from making any changes that would damage the lessor, as the tenant is obliged to return the property to its owner after the lease contract ends. If we look at this relationship from the tenant's perspective, we find that they have established rights for their benefit, including the right to change the property as they deem appropriate. This right corresponds to an obligation on the lessor to enable the tenant to use and enjoy the property according to the agreed-upon terms or as prepared for the tenant's purpose. Therefore, the tenant has the right to change the leased property if there is no intention to damage the lessor and if the tenant does not have a minor or unjustifiable interest that they seek to achieve through this change.

### **3.4.2 The legal basis for the tenant's responsibility for violating the conditions of the legislative permission.**

Understanding the legal basis for the tenant's responsibility when he violates the conditions of the legislative permission is of particular importance in Egyptian civil law, especially in interpreting the landlord's right to claim against the tenant in light of the explicit legal provision that establishes their liability, which is Article 580. Failure to comply with the conditions of the legislative permission can be grounds for appealing a judgment through cassation. This importance is also evident in Iraqi civil law. However, Article 762, which corresponds to the Egyptian provision, does not explicitly establish the tenant's liability, requiring an appeal based on differentiation. The prevailing opinion in the jurisprudence of Egypt and Iraq is that the basis for the landlord's claim against the tenant, according to the provisions of the law, is the tenant's fault.<sup>66</sup> Those have attempted to find an obligation that falls on the tenant, and the violation of which constitutes the foundation of their contractual liability. Sometimes, they attribute it to the tenant's breach of the contract and other times to the breach of a legal obligation related to the lease. However, when does the tenant breach the lease contract regarding the obligation at hand, which is the obligation not to change the leased property after

meeting its conditions? What are the forms of this breach that establish their liability? To answer this, we say: If the source of the tenant's obligation is the lease contract, and their obligations are established by agreement, then they must adhere to them, and failure to do so would constitute grounds for their liability. Accordingly, the contractual liability of the tenant is based on their failure to comply with the conditions of the legislative permission when making changes. If the tenant makes changes despite the explicit agreement prohibiting it, if they cause damage to the landlord if they do not obtain permission from the landlord when making physical changes, or if they refuse to increase the legal rent paid to the landlord when making moral changes.

Additionally, they must maintain the property by exercising the due care that an ordinary person would exercise in their affairs. In that case, the method of using the leased property is determined by the contracting parties' will as long as it does not violate the applicable laws on leases. Therefore, their agreement within this scope is legitimate and obliges them to act accordingly to avoid any resulting damage. Since the contract is the law between the parties and is implemented according to its provisions, the contract becomes the source of contractual liability, which can be mitigated or enhanced as long as it is within the scope of legitimacy. This agreement in the lease contract entails the consequences of its violation. However, when the source of the tenant's obligation is a legal provision, and their obligations are established by the general provisions related to the lease contract or those required by the rental laws, then they must adhere to them. Therefore, their failure to act by any obligation arising from those legal provisions results in their contractual liability based on the breach of a legal obligation by either refraining from doing what the law commands or what it prohibits.<sup>67</sup>

The responsibility of the tenant for breaching the contract and the landlord's entitlement to compensation in case of damage resulting from this breach, in the absence of any excuse for the non-performance of the obligation, arises from the tenant's refusal to comply with the conditions of the legislative permission when changing the leased property, despite their ability to do so. They cannot be forced to do it. **Article 168 of the Iraqi Civil Code states, "If the obligor becomes unable to perform the obligation, he shall be ordered to pay compensation for non-performance of his obligation, unless he proves that the impossibility of performance arose from an external cause beyond his control. The same shall apply if the obligor is delayed in performing his obligation "** , the tenant's liability is based on breaching the contractual obligation. However, **Articles 163 and 204 of the Iraqi Civil Code** establish his liability based on breaching the legal obligation, as the term "**fault**" is mentioned in both articles without any restrictions. The first Article states, "**Any fault that causes damage to others shall oblige its doer to pay compensation**" , while the second states, "**Any act that causes damage to others, other than what is mentioned in the preceding articles, shall require compensation**". From the meaning determined by these two articles, we understand that any fault committed by the tenant that causes damage to the landlord obliges them to pay compensation. This leads us to conclude that their responsibility for violating the conditions of the legislative permission is rooted in their breach of the contractual or legal obligation, and they must compensate for it. The tenant who violates the obligation by breaching the contract and the law has committed a fault in the known sense as defined by **Articles 168 and 204 of the Iraqi Civil Code**.

### **Conclusion**

After completing our study entitled "The Legal Limits of the Tenant's Legislative Permission to Change the Leased Property," it became apparent that studying the legislative permission granted to the tenant to change the leased property is considered an essential legal study because it is characterized by renewal and keeping pace with movement and changing circumstances in society. This study shed light on the housing crisis problem due to the overcrowding of cities with large numbers of residents and displaced people seeking employment opportunities, in addition to every family's desire to live in independent houses, all of whom need housing for living or working. This has led to the exploitation of tenants by property owners, especially in many cases where they need rent payments by vacating the leased property at the end of their lease agreements, terminating them, or doubling the rent. This has resulted in a skyrocketing increase in housing costs.

The study also analyzed and defined the purpose of using the leased property, established criteria for determining the damage caused by one of the parties, and determined the standard for changing the leased

property and its legal basis. It also determined when the tenant can reclaim the leased property and the extent to which it aligns with the principle of contractual fairness. The aim was to restore balance in the lease relationships between the lessor and the tenant by granting the tenant a legislative license to change the leased property, conditioned on not abusing its use and providing fair compensation to the lessor in case of non-compliance with its conditions. Ultimately, the researcher arrived at several recommendations, the most important of which are as follows:

1. Equilibrium of the tenant's interests in using the leased property by trying to protect them and minimizing the cases in which the lessor can insist on vacating it. The lessor's interests must also be considered through specific laws for their protection.
2. The law reflects the reality in which it is applied, and it must continually evolve and change to suit the evolving circumstances and changing reality. The legislator needed to intervene in regulating the exploitation of multi-story buildings characterized by vertical construction in our current era. This architectural trend emerged to meet the society's need for housing units.
3. the Iraqi legislator should add a new clause to **Article 762 of the Civil Law** that specifies the changes in the installation of necessary devices for the use of the leased property. We propose the following text: **"1. The tenant is allowed to install devices in the leased property to enable their use as long as the method of installation does not violate the permissible principles unless the lessor proves that installing these devices threatens the safety of the property. 2. If the lessor's intervention is necessary to complete any of these installations, the tenant may request such intervention, provided that they bear the expenses incurred by the lessor"**.
4. It is suggested that the Iraqi legislator and the Iraqi judiciary, in their judicial rulings, adopt a standard for determining the changes made to the leased property, as it is an objective and flexible criterion.
5. It is suggested to add new paragraphs to the content of the Rental Law similar to what is stated in the Egyptian legislative text regarding the reasons for the eviction of the leased property. These reasons should include disturbing use that affects comfort, harms public health, and the requirement that the use of the property be within reasonable limits. Additionally, "rent" should be replaced with "leased property," allowing the judiciary to assess each eviction reason individually.
6. The Iraqi legislator and judiciary should establish the tenant's right to change the leased property based on the legitimate right in its legal texts and judicial rulings. This is valid to achieve a contractual balance between the lessor's right to preserve their property from any encroachment and the tenant's right to make changes that they deem suitable to benefit from the leased property, on the other hand, fully.
7. those in the Egyptian legislative text regarding grounds for eviction from the leased property, including use that disturbs the peace and use that is harmful to public health, and that the use of the property be within reasonable limits; furthermore, the word "lessor" should be replaced with the phrase "the leased property," while leaving room for the courts to assess each ground for grounds for eviction individually.
8. We call upon the Iraqi legislature and judiciary to establish the tenant's right to alter the leased property, based on the principle of exercising a legitimate right, as reflected in their legal texts and judicial rulings. This is appropriate for achieving a contractual balance between the lessor's right to preserve his property from any infringement, on the one hand, and the lessee's right to make changes he deems appropriate to fully utilize the leased property, on the other hand.

**Conflicts of Interest:** There is nothing to be declared.

### **Footnotes:**

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- <sup>2</sup> Abdel Wahab Arafa, *Reasons for Eviction from the Leased Premises* (National Center for Legal Publications: Lebanon, 2009), p. 75.
- <sup>3</sup> Saeed Saad Abdel Salam, *Contractual Balance in the Property Rental Law in accordance with the Latest Constitutional Amendments* (Dar Al Nahda Al Arabiya: Cairo, Egypt, 2003 – 2004), p. 273 - 274.
- <sup>4</sup> Jaafar Al-Fadhli, *Al-Wajeez in Civil Contracts, Sale - Rent - Contracting*, (House of Culture, Publishing and Distribution: Amman, 1997), p. 276.
- <sup>5</sup> Raqia Abdul-Jabbar Ali, *the lease contract in the Iraqi civil law and the amended real estate lease law: a comparative study with reference to some Arab laws* (Al-Sisban Library: Baghdad, 2015), p. 226.
- <sup>6</sup> Ahmed Abdel-Al Abu Qurain, *The legal system for ownership of apartments and strata and the rights of owners over their separate and shared parts: an applied study* (University Culture House: Cairo, 2001), p. 63-65.
- <sup>7</sup> Nabil Ibrahim Saad, *Furnished Rental Restrictions, Regulation, and the Supreme Constitutional Court's Ruling and Evaluation* (Mansha'at Al-Ma'arif: Alexandria, 1998), p. 572.
- <sup>8</sup> Ahmed Abdel Razzaq Al-Sanhouri, *The Mediator in Explanation of Civil Law , Contracts , Lease Contract* (Arab Heritage Revival House: Beirut, Lebanon), p. 519.
- <sup>9</sup> Khaled Shehab, *Encyclopedia of Provisions and Principles of Cassation in Civil Law, Parts One and Two* (Center for Legal Research and Studies: Dar Al-Nahda Al-Arabiya, Cairo, 2008), p. 34.
- <sup>10</sup> Ibid
- <sup>11</sup> Ahmed Abdel-Al Abu Qurain, p. 63.
- <sup>12</sup> Nabil Ibrahim Saad, 577.
- <sup>13</sup> Zakaria Shalash, *Taxes and Fees on Built Real Estate, first edition* (Dar Al-Nahda Al-Arabiya: Cairo, 1999), p. 73.
- <sup>14</sup> Ali Hadi Al-Obaidi, *Named Contracts, Sale and Rent, and the Law of Owners and Tenants According to the Latest Amendments with the Judicial Applications of the Court of Cassation* (Dar Al-Thaqafa for Publishing and Distribution: Amman, Jordan, 2014), p. 312.
- <sup>15</sup> Khaled Shehab, p. 44-45.
- <sup>16</sup> Decision No. 2493 / Appellate Body, Real Estate / 2009 (unpublished)
- <sup>17</sup> Bar Association of the Arab Republic of Egypt, *Law Journal*, Issue Four, (2003): 563 - 564
- <sup>18</sup> Ibrahim Al-Mashahidi, *Legal Principles in the Judiciary of the Court of Cassation, Civil Law Department* (Legal Research Center: Ministry of Justice, Baghdad, 1988), p. 472.
- <sup>19</sup> Muhammad Ali Muhammad, *Ownership of Multi-Owner Buildings (Stories - Apartments - Shops), a comparative study between the Yemeni Civil Law, the Egyptian Civil Law and Islamic Jurisprudence* (Dar Al-Nahda Al-Arabiya: Cairo, Egypt, 2010), p. 339; Raqia Abdul-Jabbar Ali, p. 224.
- <sup>20</sup> Ahmed Sharaf El-Din, *Lease Contract in Civil Law and the Laws of Renting Built Places* (Dar Al-Nahda Al-Arabiya: Cairo, Egypt, 2011), p. 126; Ibrahim Sayed Ahmed, p. 18.
- <sup>21</sup> Ramadan Abu Al-Saud, *Contracts Named - Lease Contract* (Mansha'at Al-Ma'arif: Alexandria, 1996), p. 413; Mahmoud Abdel Rahman Muhammad, *Al-Wajeez In the Lease Contract* ( Dar Al-Nahda Al-Arabiya: Cairo, Egypt, 2010), p. 192
- <sup>22</sup> Ahmed Abdel Razzaq Al-Sanhouri, p. 243; Nabil Ibrahim Saad, 578.
- <sup>23</sup> Muhammad Hossam Mahmoud Lotfy, *General Provisions for the Lease Contract* (Dar Al-Nahda Al-Arabiya: Cairo, Egypt, 2008), p. 97.

- <sup>24</sup> Hassan Hussein Al-Barawi, *Civil Contracts in the Qatari Civil Law :Sale and Rent* (Dar Al-Nahda Al-Arabiya: Cairo, 2013), p. 318; Ahmed Sharaf El-Din, *Lease Contract in Civil Law*, p. 124; Mahmoud Abdel Rahman Muhammad, p. 189.
- <sup>25</sup> Thanoun Younis Saleh Al-Muhammadi, *Legal Regulation of Ownership of Classes and Apartments in Buildings - A Legal Study in Light of the Provisions of the Law Regulating Ownership of Classes and Apartments in Iraqi Architecture No. 61 of 2000 and Comparative Laws* (Dar Al-Nahda Al-Arabiya: Cairo, 2008), p. 81.
- <sup>26</sup> Hassan Hussein Al-Barawi, p. 318.
- <sup>27</sup> Khaled Shehab, p. 104, 118.
- <sup>28</sup> Babylon Court of Appeal / 57 / Jurisprudence / 1980. February 2, 1980 (unpublished decision)
- <sup>29</sup> Ahmed Sharaf El-Din, *Studies on the Rules for Extending the Lease Contract and Renting Non-Residential Places (Law No. 6 of 1996), second edition* (Dar Al-Nahda Al-Arabiya: Cairo, 2005), p. 126.
- <sup>30</sup> Ramadan Abu Al-Saud, p. 595; Ahmed Abdel Razzaq Al-Sanhouri, p.529.
- <sup>31</sup> Ahmed Sharaf El-Din, *Studies on the Rules*, p. 141.
- <sup>32</sup> Muhammad Ibrahim Al-Mangy, *Legislative Permissions for the Tenant, first edition* (Mansha'at Al-Ma'arif: Alexandria, 1988), p. 99.
- <sup>33</sup> Khaled Shehab, p. 104.
- <sup>34</sup> Muhammad Hossam Mahmoud, p. 97.
- <sup>35</sup> Muhammad Ibrahim Al-Mangy, p. 99.
- <sup>36</sup> Ghazi Abdul Rahman Naji, *Ownership of Apartments and Floors* (Almaaref Press: Baghdad, 1987), p. 57.
- <sup>37</sup> Khalaf Muhammad, *The Termination of the Lease Contract in the Light of Jurisprudence and Modern Cassation Rulings, first edition* (The Legal Library: Cairo, 1993), p. 80.
- <sup>38</sup> Khaled Shehab, p. 57.
- <sup>39</sup> Ali Hadi Al-Obaidi, *Al-Wajeez in the Explanation of the Jordanian Civil Law, Named Contracts for Sale and Rent, first edition* (House of Culture: Amman, Jordan, 1997), p. 261.
- <sup>40</sup> Tariq Muhammad Al-Amawi, *Explanation of the Provisions of the Relationship between the Owner and the Tenant in Agricultural Lands* (Dar Al-Nahda Al-Arabiya: Cairo, 1993), p. 175; Ahmed Sharaf El-Din, *Studies on the Rules*, p. 175.
- <sup>41</sup> Ahmed Jadoua Hussein, *Explanation of Civil Law (Lease Contract), Part One* (Dar Al-Warith, Holy Karbala, 2017), p. 37
- <sup>42</sup> Nabil Ibrahim Saad, 577.
- <sup>43</sup> Federal Court of Cassation Decision No. 345 / Appellate Body / 2009 (unpublished).
- <sup>44</sup> Abdel Majeed Omran, *Reasons for Eviction in the Property Rental Law and Commentary on its Texts* (University Press House: Alexandria, 1983), p. 55; Ahmed Sharaf El-Din, *Studies on the Rules*, p. 124.
- <sup>45</sup> Muhammad Al-Sheikh Omar, *Rent Restriction Law* (Dar Al-Elm: Khartoum, 1975), p. 241.
- <sup>46</sup> Tariq Muhammad Al-Amawi, p. 171 ; Nabil Ibrahim Saad, p. 576.
- <sup>47</sup> Judicial Bulletin, Technical Office of the Court of Cassation, fifth year, second issue, 1974, p. 93.
- <sup>48</sup> Ashraf Othman Youssef Al-Basri, *Legal Fees for Places Used for Commercial and Industrial Activities* (World of Law Library: Cairo, 1998), p. 19; Nabil Ibrahim Saad, p. 56.
- <sup>49</sup> Muhammad Ibrahim Al-Mangy, p. 97.
- <sup>50</sup> Ahmed Abdel Razzaq Al-Sanhouri, p.530; Hassan Hussein Al-Barawi, p. 322.
- <sup>51</sup> Tariq Muhammad Al-Amawi, p. 170.
- <sup>52</sup> Abdel Wahab Arafa, p. 73.

- <sup>53</sup> Khaled Shehab, p. 182.  
<sup>54</sup> Ibrahim Al-Mashahidi, p. 467.  
<sup>55</sup> Raqia Abdul-Jabbar Ali, p. 145.  
<sup>56</sup> Muhammad Ali Muhammad, p. 193.  
<sup>57</sup> Ahmed Abdel Razzaq Al-Sanhouri, p. 345.  
<sup>58</sup> Khaled Shehab, p. 15.  
<sup>59</sup> Ibid.  
<sup>60</sup> Raqia Abdul-Jabbar Ali, p. 144.  
<sup>61</sup> Abdel Majeed Omran, p. 18; Saeed Saad Abdel Salam, p. 283.  
<sup>62</sup> Khaled Shehab, p. 103.  
<sup>63</sup> Federal Court of Cassation Decision No. 829 / Lease Contract / 2008. 5/4/2008 (unpublished).  
<sup>64</sup> Abdel Majeed Omran, p. 543.  
<sup>65</sup> Muhammad Hossam Mahmoud, p. 96.  
<sup>66</sup> Muhammad Hossam Mahmoud, p. 96; Raqia Abdul-Jabbar Ali, p. 144.  
<sup>67</sup> Muhammad Al-Sheikh Omar, p. 238; Saeed Saad Abdel Salam, p. 273-274.

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