

The impact of the Transfer of Ownership on the risk of Loss

"Comparative Study"

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Abstract

The subject of the study in this research is the impact of ownership transfer on the risk of loss, and the research has stood on comparison between the Journal of judicial judgments and Jordanian, Egyptian and French civil law in addition to the Palestinian civil law "applied in Gaza".

The study is divided into three chapters: The first chapter deals with the risk of loss in binding contracts of two sides(the contract of sale), where who should bear the risk of loss have been studied. Should it be the seller (the debtor) or the buyer (the creditor), and in order to answer that question what is linked to the risk of loss have been studied and the answer was: The issue of the risk of loss in the Jordanian and Egyptian civil law and the draft of the Palestinian civil law "applied in Gaza" is related to extradition. Extradition here means the extradition that takes place after the transfer of ownership as the ownership is transferred once the contract is concluded, except in cases where ownership is not transferred as soon as the contract is concluded. The French Civil Law also establishes that the risk of loss is linked to extradition in terms of the text of article 1138 and therefore the standard must be the same for the laws under the study. Therefore, if the loss prior to extradition is due to force majeure or sudden accident, the contract will be dissolved by the force of law and the buyer has the right to retrieve the price that he has paid and therefore the seller is the one who will bear the risk of loss. The Egyptian Civil Law provided that except in case that the buyer has a reason not to take over the sale. This is one of the cases of judgmental extradition in Jordanian law, but if the loss is partial, then the buyer chooses to terminate the contract or to take the remaining amount of the price, the option of annulment is the right of the buyer without

the seller. If the cause of the loss is from the creditor (the buyer) alone then this is not the responsibility of the debtor (the seller) and he should take over the sale and pay the price, and the standard of fault is the ordinary man's care, so if the creditor's behavior is consistent with the behavior of the ordinary man, he is not mistaken, but if the fault is shared between the creditor and the debtor, then both the creditor and debtor are responsible for the loss equally, only if the judge is able to determine the magnitude of each fault alone, But if one of the two faults takes the other mistake, the fault that exceeds the other one should be reckoned. And if the cause of the loss is the action of others alone, there is no responsibility on the debtor, and the buyer has the right to annulment and if he wants he can overcome it and he has the right to recourse to damage by warranty. If the loss was partial, the buyer had either to terminate the contract or take the remaining of his share of the price or to sign the contract of the whole sale at the price named and recourse to the damaged by warranty, If the sale is completely lost after delivering it to the buyer or his representative, the risk of the loss shall be on the buyer, Also, if the loss is partial, the buyer shall bear the loss of some of the sale, and the judgment shall not differ if the cause of the loss is force majeure or sudden accident.

The second chapter included the study of the risk of loss in binding contracts to one side (the gift contract). Who is to bear the risk for loss in contracts binding to one side have been studied. The original is that the gift contract is free of charge. If, however, the grantor asks the gifted person for a charge, this will be a binding contract to two parties and follows the provisions of the risk of loss in the binding contracts of two sides, In gift contracts, the contract is not valid until the gifted person takes over what is granted for him, therefor who bears the risk of loss is the gifted person (creditor) whatever the loss cause is. As well as in the French law, but if the loss is partial and the grantor has an acceptable excuse to return the gift, it is permissible for the grantor to return the remaining part, But if there is no acceptable excuse, the gift remains, and of course if the loss is caused by the grantor, such as grabbing the gifted thing without the satisfaction of the granted person, the grantor is responsible of that loss. The

Egyptian Civil Law provided that the fault should be significant. If a judgment is issued to return the gift and the loss happened when the gifted thing is in the hands of the gifted person after his excuse for extradition, the gifted person will be responsible for this loss, even if it is due to an alien.

The third Chapter included application on the risk of loss in the laws under study and the loss with retention of ownership clause have been studied, in the installments sale if the sale was lost it is the responsibility of the buyer because he took over the thing even if the ownership has not been transferred yet, and he is allowed under the rules of enrichment without reason to maintain the amount suits the buyer's use of the thing, And if it was agreed to postpone the transfer of ownership until the liberation of the official contract and the thing was lost, the buyer bears the responsibility of the risk of loss if he took over the sale. In described sales such as sale of the gazaf and sales with experience clause and sales with taste clause, the risk of loss responsibility is on the buyer if he took over the sale even if the ownership has not been transferred yet, because when he declares his acceptance, the effect of the contract is due to the time of conclusion of the contract and not from the time of the declaration. The issue of the risk of loss in online sales have been studied. The risk of loss in an electronic sales is as in normal sales. As for the sale of files, consultations and others, it is considered as a hidden defect with its terms (to be old, hidden and influential), so the seller is responsible for this defect, If the defect is apparent or the seller made his statement at the time of purchase, and the buyer can accept the defect after knowing it, the seller is not responsible for that. The judiciary refused to restrict the consumer to a period called "warranty period" and acknowledged that the producer could not be exempt from liability.