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The concept of a warranty defect in lease contracts according to Algerian civil law

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Abstract---Explaining the concept of a defect that causes security in the civil lease contract is very important, as it is not possible to investigate the extent of the landlord's commitment to his guarantee unless it is certain that what is tainted by the leased eye is considered a defect that requires guarantee, so the texts of Law No. 07/05 amending and supplementing the Algerian Civil Code have clarified the provisions of defects of the leased eye, and in accordance with this law, we try to shed light on what is meant by the defect that causes the guarantee and the conditions for obliging the lessor to guarantee it. The lessee shall have the right to guarantee the full use of the leased property in return for the rent he pays if it appears to be defective in the legal sense.

Keywords---Lease Contract, Commitment to Guarantee, Defects of the leased property.

Introduction

All of the lessor's obligations revolve around the main idea of enabling the lessee to make quiet and full use of the leased property, which requires the lessor to deliver the leased property in a usable condition and undertake maintenance for the duration of the lease, but these obligations are not sufficient to achieve the tenant's goal of using the leased property as intended, but the lessor must also ensure the defects of the leased property that may occur after the deliveryIf defects of the leased property appear during the period of its use, the tenant may demand the landlord for his guarantee.[1]

The obligation to guarantee in the lease contract is of a dual nature, as in addition to the obligation of the lessor to guarantee the exposure, it is also committed to the guarantee of defects of the leased

[1] This obligation has been called the guarantee of the hidden defect, and in this Dr. Ahmed Ali Khalif Al-Owaidi believes that the condition of concealment is not necessary in the obligation of the lessor to guarantee the defect, see Ahmed Ali Khalif Al-Owaidi: The Lessor's Obligation to Guarantee in Egyptian and Jordanian Laws, Ph.D. Thesis, Faculty of Law, Cairo University, Egypt, 2005, p. 37.

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property, and the landlord's guarantee for the defects of the leased property is very close to the seller's guarantee of defects in the sale.[2]

The Algerian legislature has taken a positive view of the landlord's obligation to enable the tenant to use the leased property, which stipulated the obligation to guarantee the defects of the leased property as part of the series of positive obligations imposed on the lessor in general, and considered this obligation as a derivative of the lessor's obligation to deliver the leased property in a state fit for its intended use, and its obligation to maintain.

The [3]lease contract makes the lessor and the lessee in constant contact throughout the duration of the lease, which calls for precision in setting rules that would control the continuous relationship between the two parties and the rights and duties of each of them. Defects of the leased property that may prejudice the tenant's use of it.

We will address the concept of the defect guaranteed by the landlord within the framework of its obligation to guarantee by posing the following problem: What is the concept of a defect in the guarantee in light of Law No. 07/05 amending and supplementing the Algerian Civil Law?

In this study, we relied on the analytical method through the analysis of legal texts as well as the descriptive method by describing the legal facts as they are, and for this purpose we divided the study into two topics, the first topic was devoted to what is meant by the defects of the leased property , and in the second topic, we dealt with the conditions of obliging the landlord to guarantee these defects.

The first topic
Intended by Defects of the leased property:

Select Intended by Defects of the leased property**.** This is very important, as it is not possible to investigate the extent of the landlord's obligation to guarantee it unless it is certain that the leased property is**.**It is considered a defect that is positive for the guarantee, and this determination is also important in promoting balance and restoring confidence between the parties to the lease contract, and the tenant has the right to guarantee the full use of the leased property in exchange for the rent he pays, if it appears to be defective in the legal sense.

The lessor is deemed to have failed to fulfil its obligation to enable the lessee to benefit from the leased property if there is a defect therein that prevents its use or significantly diminishes such use; [4]For more detail , we will deal with what is meant by defect in the sense of a leased property, and then we will deal with the issue of the failure of the qualities that the landlord has pledged to exist in the Defects of the leased property.

The First Requirement: The Defect in the Sense of the Scourge

The Algerian legislature stipulates the principle of the lessor's guarantee of the defects of the leased property in the first paragraph of article 488 of the Civil Code, stating: **"The landlord shall guarantee to the tenant, with the exception of defects in which the custom has been tolerated, all defects in the leased property that prevent its use or that significantly reduce such use, unless there is an agreement to the contrary."**[5]

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[2] Collart, f, dutilleul, ph, contrats civils et commerciales, éditions Dalloz Paris, France, 1996, p394.
Official Gazette of the People's Democratic Republic of Algeria, No. 31, forty-fourth year.[3]

[4] Abd El , Fattah Abd El , Baqi: Lease Contract General Provisions, Part One, Dar Al-Kitab Al-Arabi, Egypt, 1984, p. 301.

[5] It should be noted in the wording of this article that the legislator has replaced the term "usufruct" with the term "use" in line with the amendment to the previous articles, and the text of the article before the amendment was as follows: "The lessor shall guarantee to the lessee all defects in the leased property that prevent the use thereof or

The use of the lessee will not be completed as intended in the contract if it is defective during the period of its use, in which case the lessor is responsible for the violation of the tenant's use of the leased property, and the liability here is based on the principle of good faith in contracts, as the lessee arranges his affairs on the basis that he has rented an eye that meets the use intended in the contract, and on the basis of this, the rental allowance is determined. There is no doubt that the landlord does not meet the legally agreed rent allowance, and in this regard, some jurists prefer to use the term "liability" instead of the term "guarantee" in the case of a hidden defect in the leased property, considering that the defect corresponds to the element of error in civil liability, as well as the absence of the defect from the existence of the defect. The validity of the leased property for its intended purpose corresponds to the element of damage.[6]

It can be said from the opinion of another side of jurisprudence that the fault is incorrect to match the defect to the element of fault in liability, because the defect often exists in the leased property for reasons beyond the knowledge of the contractor, and based on that, the fault cannot be attributed to him, so it is necessary to exclude the opinion that the defect is in itself a mistake because the fault is an act contrary to the law or the contract and attributed to a legal person.[7]

The Algerian legislator, as we have been accustomed to in most of the previous laws and legislations that it has promulgated, does not define terms around a specific legal concept, but rather clarifies the provisions related to it, leaving the definition to jurisprudence and jurisprudence, which is the case of the defect guaranteed by the lessor, as the legislator did not define it in relation to the rules governing the guarantee in the lease contract, and in the first paragraph of article 488 of the aforementioned Civil Code, he only described the defect as preventing the use of the the leased propertyor a significant decrease in this use.

The majority of jurisprudence tends to define the defect that causes the guarantee as: "the emergency pest that is devoid of common sense defects by the leased property or its accessories that prevent the use in the leased property or significantly decrease from this use", and common sense refers to the original state of the thing, and the principle is that the leased property is not considered defective unless it is afflicted by a pest that is not usually found in the property Similarly, this scourge has the effect of preventing the use of the property as intended or reducing such use in a perceived way.[8]

However, some jurists say that the previous definition of a defect is inaccurate, and this is due to two main reasons:

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that there is a noticeable deficiency in such use, but it does not guarantee the defects in which the custom has been tolerated and shall be responsible for the absence of the qualities expressly pledged or the absence of qualities necessary for the use All this unless there is an agreement to the contrary.

However, the landlord does not guarantee defects that the tenant was aware of or was aware of at the time of the contract."

6 Abdel Rasool Abdel Reda Mohamed: The Obligation to Guarantee Hidden Defects in Egyptian and Kuwaiti Laws, Ph.D. Thesis, Faculty of Law, Cairo University, Egypt, 1974, p. 36_ Effects of the Lease Contract, Dar Abu Magd Printing, Faculty of Law, Tanta, Egypt, 1989, p. 95_ It is necessary to differentiate between the provisions of the guarantee of defects and liability, despite the common use of the word liability instead of the word guarantee in the workplace often, but this does not mean that there is no separation between the liability system and the system of guaranteeing defects. or guarantee in general, they are separate systems and are dealt with independently by law. See Mansour Mustafa Mansour: Identifying the Idea of the Defect of the Guarantee in the Contracts of Sale and Lease, Journal of Legal and Economic Sciences, Ain Shams University, First Issue, First Year, January 1959, p. 554.

7 Ali Ibrahim Al-Jassim: The Lessor's Obligation to Guarantee Exposure and Entitlement, Ph.D. Thesis, Unpublished, Faculty of Law, Ain Shams University, Cairo, Egypt, 1999, p. 36.

8 Hilal Shawa: Al-Wajeez in the Explanation of the Lease Contract in the Civil Code according to the latest amended texts of it, "Law No. 07/05 dated 13/05/2007", First Edition, Dar Josoor for Publishing and Distribution, Al-Mohammadiya, Algeria, 2010, p. 135_ Abdel Nasser Tawfiq Al-Attar: Explanation of the Rent Provisions in Civil Legalization and Legislation for the Rental of Places, Third Edition, Modern Arabic Press, Cairo, Egypt, undated, p. 479_ Ahmed Sharaf Al-Din: Lease Contract in Civil Law and Built Premises Lease Laws, Third Edition, Without Publishing House, Egypt, 2013, p. 205.

The first reason is that the defect is not limited to the emergency pest only, but it may also be an accidental pest, and the accidental pest may take the form of a pest in creation and formation, and the pest in creation is the pest that accompanies the formation of the thing, while the emergency pest is the pest that occurs after the formation of the thing, for example, the manufacture of a machine in an inaccurate manner may result in a pest in creation and formation, while the breaking of the machine after its manufacture is an emergency pest, and this definition is limited to the pest While the pest in creation and the emergency pest are both defective.

The second reason : is that the defect is not that which is devoid of common sense, rather it is that which is devoid of the origin of common sense, for example, fruits have a sound nature that does not have any bad in them, but the origin of their sound instinct makes them hesitate between quality and mediocrity, which is not considered a defect in it, because it is not devoid of the origin of its sound instinct.[9]

Based on this basis, it is considered a defect that the seeds do not germinate and decay, break in the machine, withdraw the license of the shop, weaken the foundation of the building or the fact that the building is out of order, and so on.

A defect in security is defined as: "a condition in which the leased object is usually devoid of or which would prevent or substantially reduce the use of the lease by the lessee in the intended manner of the lease."[10]

The defect is also defined as "a deficiency in the character of the thing sold or lessor that the buyer or lessee is unaware of at the time of the conclusion of the contract, and is the cause of the security suit that is filed against the seller or lessor", and[11] it is noted that the defect in the lease is similar to the defect in the sale, as it is on the one hand an emergency pest that is devoid of the common sense of the leased property and its accessories, and on the other hand, it includes the quality that the lessor undertook to exist, and in this case the same provisions of the sale apply.[12]

As for the correct meaning of guaranteeing the defect, according to Dr. Hamdi Abdel Rahman, the defect means "the emergency pest that is devoid of the common sense of the thing or that violates the intended purpose of the contract."[13]

There are many examples of the defect in the leased property, such as the fact that the land rented for the purpose of agriculture contains a lot of water in its depths that would impair its suitability for

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[9] Ahmed Ali Khalif Al-Owaidi: Ibid., p. 168 ff.

[10] Muhammad Labib Shanab: Al-Wajeez in Explanation of the Provisions of Rent, Dar Al-Nahda Al-Arabi, Cairo, Egypt, 1967, p. 173.

[11] Mohamed Sherif Abdel Rahman Ahmed Abdel Rahman: The Lessor's Guarantee for the Defects of the Leased Eye, Najm Law Library, Cairo, Egypt, 2001, p. 39_ It is noted that the landlord's obligation to insure the defects of the leased eye is different from the seller's obligation to guarantee the defects of the sale, because the lessor's obligation is not limited to guaranteeing the old defects that are already in the leased eye before delivery, but goes beyond them to include defects that occur afterwards, i.e. during the period of validity of the lease contract, while on the contrary, the seller only guarantees the defects The reason for the difference is that the lease is one of the term contracts, where the lessor remains a guarantor for the full benefit of the leased property, and this is unlike the sale contract, which is an immediate contract, where the seller does not guarantee the defect that occurs in the sale after delivery, but the buyer bears the consequences of it. Jamila Dawar: The Lease Contract in Algerian Civil Legislation: A Theoretical Study According to the Latest Amendments, First Edition, Dar Toledo, Algeria, 2011, p. 68_ Abdel Razzaq Ahmed Al-Sanhouri: The Mediator in the Explanation of the Civil Law, Rent and Nudeness, without edition, Dar Ihya Al-Turath Al-Arabi, Beirut, Lebanon, undated, p. 436.

[12] The rules of guarantee for defects in the lease contract extend to the leased property and its accessories, and to the common parts between the beneficiaries of the property in which the leased property is located.Amr Ahmed Abdel Moneim Dabsh: Al-Wafi fi Explanation of the Guarantee of Hidden Defects "in the Contract of Sale", First Edition, Dar Al-Fikr Al-Arabi, Cairo, Egypt, 2012, p. 97_ Hossam Al-Din Kamel Al-Ahwani: The Lease Contract in the Civil Law and the Laws of the Lease of Places, Third Edition, Egypt, 1998, p. 138.

[13] Hamdi Abdel Rahman: Explanation of the Laws of Renting Places, First Edition, Dar Al-Nahda Al-Arabiya, Egypt, 1982, p. 279.

agriculture, as well as the presence of cracks in the walls or ceiling that threaten the rented house to fall or lead to the entry of rainwater into the house and damage the tenant's movables, or the presence of moisture in the rented apartment to a greater degree than usual, or contamination with harmful microbes, or the presence of insects in an unusual abundance that make it uninhabitable from a health point of view. It is a hidden defect because the iron barrier placed in the window is not sufficiently fixed to the person who relied on it.[14]

The second requirement: the qualities that the landlord has pledged in the leased property are backward.

The second paragraph of article 488 of the Civil Code provides that: "He shall also be responsible for the qualities expressly undertaken." The text of Article 488 of the Civil Code before its amendment differs in that the old text is considered to be merely devoid of the qualities necessary for its use in the absence of the qualities that the landlord expressly undertook to have in the leased property.

It is clear from the text of the second paragraph of Article 488 of the Civil Code with regard to the provisions regulating the defects of the leased property, that the legislator has associated the two issues of hidden defect with the backwardness of the qualities that the lessor expressly undertakes to exist in the leased property, and thus both are subject to the same legal system, and the retardation of the character is considered to be in the judgment of the defect, and we believe that this has led to the lack of distinction between the two issues, despite the importance of distinguishing between them.

Part of the jurisprudence argues that the failure of the attributes in the leased property is irrelevant, as the lessor's liability for it falls within the ordinary and general concept of the execution of the contractual obligation, and there is nothing more than the application of the rule of the contract in the law of the contractors, and that the existence of these attributes is related to the condition of the leased property and the descriptions that the lessor is obliged to provide upon delivery, and thus the legislator has made the determination of the defect dependent on the nature of the thing, the intention of the contractors and the purpose of the use.[15]

From the point of view of legislative policy, it can be said that the Algerian legislature has done a good job of not differentiating between the two issues, as the distinction between the defect and the defect of the character that the landlord has pledged to exist is often knocked down and raises many difficulties.

Although the legislator has considered the issue of the defect as a defect and has made provisions for recourse to it by guaranteeing the defect, it is always necessary to take into account the differences between the defect in its technical sense and the defect of the attribute that the lessor expressly undertook to exist in the leased property, because combining the two into one idea, which is the idea of the defect and giving them a single judgment, is not always correct.[16]

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[14] Ahmed Sharaf Al-Din: Ibid., p. 205_ Mohamed Hassan Qasem: Civil Law, Contracts Called: "Sale, Insurance, Rent", Third Edition, Al-Halabi Human Rights Publications, Lebanon, 2013, p. 890_ Jawad Kazem Jawad Smeisem: Legal Balance in the Rental Relationship, First Edition, Zain Human Rights Publications, Beirut, Lebanon, 2011, p. 173_ Saeed Saad Abdel Salam: The Mediator in the Law of Renting Places according to the Latest Constitutional Amendments, First Edition, Modern Al-Walaa Presses, Egypt, 2005, p. 311_ Suleiman Markoz: Al-Wafi fi Sharh al-Qanun al-Madani, Volume Two Lease Contract, Fourth Edition, Dar al-Kitab, Egypt, 1993, p. 423.

[15] Samir Tanago: Lease Contract, Alexandria Knowledge Facility, Egypt, 2008, p. 199_ The hidden defect can be inflicted on the self-damage (arising from a defect specific to the object), as well as the defect of the object or the self-defect, as well as the hidden defect, as well as the latent defect, as well as the old defect, as well as the defect in the construction is attached to the hidden defect. Muhammad Sharif Abdel Rahman Ahmed: Explanation of the Civil Law, Effects of the Lease Contract, First Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2005, p. 731.

[16] Nabil Ibrahim Saad: Contracts Called: Rent in Civil Law and Laws of Renting Places, without edition, Ma'arif Foundation, Alexandria, Egypt, 2003, p. 427.

Dr. Ahmed Ali Khalif Al-Owaidi believes that subjecting the defect and the retardation of the attributes to the same ruling does not justify not distinguishing between them, as the defect is that which the origin of common sense is devoid of the pests that are prone to it, and therefore the presence of the pest is what makes us say that the defect exists, while in the case of the retardation of the attribute, the matter is different, the leased property may not be tainted by any pest, but the tenant is looking forward to a certain attribute that may be a luxury or it may be a joke, and it may even be different However, the tenant's desire for the existence of a certain attribute pushes him to stipulate it in the contract, and it may be an attribute in form or color that does not exceed the degree of its entry into the formation of the essence of the thing, and therefore its backwardness does not entail the infliction of the leased property, but if this attribute is connected to the origin of the thing, then its backwardness means that the origin of the good sense of the thing has been inflicted on it.[17]

If the landlord explicitly undertakes the existence of a certain characteristic in the leased property that the lessee stipulates in the contract, and then it turns out that it does not exist, the landlord must guarantee it, and accordingly, the agreement of the two parties on a certain characteristic indicates that it is necessary for the benefit of the tenant, such as the suitability of the agricultural land for a certain type of crops, or the fact that the leased house directly overlooks the seashore, or contains The leased property, so the landlord's obligation to guarantee lies in the conformity of the leased property to the agreement of the parties on the grounds that the lessee is not obliged to accept an object that differs from that agreed in the contract.[18]

According to the second paragraph of Article 488 of the aforementioned Civil Code, the quality whose failure entails the landlord's obligation to guarantee is that which has been expressly agreed upon between the parties to the lease contract, by the landlord expressly undertaking the existence of one or more certain features in the leased property. The leased property and its nature, which is usually devoid of the character that the landlord undertook to exist, its failure is not considered a defect in the leased property, [19]and in both cases it can be said that there is no practical importance in considering the defect of the attribute as a defect or not, because the lessor is obliged to guarantee as long as the character that is expressly pledged to exist is not available in the leased property.

We have seen in the foregoing the differing opinions of the jurists in defining what is meant by the defect that the landlord has expressly undertook to have in the leased property, but the legislator has attached it to the defect, even if it is not a defect in the correct sense, and it does not require what is required in the defect that gives rise to the guarantee, according to the second paragraph of Article 488 of the Civil Law.

The provision of a defect that is due to security applies to the defect of the title, without the need to prove the condition of effect, and a dispute has arisen as to the extent to which the landlord is obliged to guarantee the defect of the character that he expressly undertook if no damage is caused to the tenant, Dr. Suleiman Markus argued that the failure of the status is considered an influential defect even if the tenant is not deprived of the use of the leased property.

Or there has not been a significant decrease in this benefit, because the lessor's undertaking of the existence of a certain feature makes its failure in itself an influential defect, even if the damage caused to the tenant is minimal.[20]

It should be noted that the claim that the landlord guarantee is a failure of the character that is expressly promised to exist in the leased property.

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[17] Ahmed Ali Khalif Al-Owaidi: Ibid., p. 173.

[18] Maurice Nakhleh, Al-Kamil fi Sharh Civil Law: A Comparative Study, Part Six, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2007, p. 212.

[19] Ahmed Ali Khalif Al-Owaidi: Ibid., p. 173.

[20] Ahmed Ali Khalif Al-Owaidi: Ibid., p. 174.

Even if the damage is minor, it violates the principle of the guarantee of the defect in which it is tolerated, but the statement that the condition of effect is not necessary in the case of failure does not contradict the requirement that the claimant of the guarantee be harmed.[21]

Dr. Ahmed Ali Khalif Al-Owaidi takes Dr. Suleiman Markus to the view that the failure of the attribute is considered an influential defect, although he does not agree with his use of the term defect in the context of saying that "the retardation of the attribute is an influential defect...", because he has previously said that it is necessary to differentiate between the retardation of the attribute and the defect, and accordingly, the failure of the character is considered a breach for which the landlord is liable even if it does not affect the tenant's use of the leased property. [22].

Second Topic
Conditions of Defective Warranty:

The landlord is obliged to guarantee the defects of the leased property that would violate the tenant's use of it, and the jurists differed in enumerating the conditions of the defect that causes the guarantee, some of them consider them to be two conditions, some consider them three, and some consider them four, [23]and for his part, the legislator has mentioned in the text of Article 488 of the Civil Code some of these conditions, and we review below the conditions mentioned by the jurists without neglecting any of them in order to reach the truth of these conditions in accordance with the text of the law,[24] which are: The defect must not be apparent to the tenant or cause of its occurrence, and the defect must be afflicted.

The first requirement: The defect should not be apparent to the tenant or cause it to occur

The principle is that the defect guaranteed by the lessor must not be apparent, that [25]the lessee should not be aware of it at the time of concluding the lease contract, and that the defect should not occur as a result of the tenant's act , meaning that there is no causal link between the lessee act and the defect that may occur on the leased property during the period of its use.

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[21] Abd al-Rasool Abd al-Rida Muhammad: Ibid., p. 46.

[22] Ahmed Ali Khalif Al-Owaidi: Ibid., p. 175.

[23] Muhammad Labib Shanab: Ibid., p. 173 ff., he believes that there are two conditions for the defect guaranteed by the lessor, namely influence and concealment, Abdel Moneim Farag Al-Sada: Lectures on the Lease Contract, Mustafa Al-Babi Al-Halabi & Sons Library and Printing Company, Egypt, 1955, p. 203 ff., he says that there are three conditions, namely that the defect must be effective, hidden, and not known to the tenant at the time of the contract. The same reference, p. 33, says that there are three conditions, namely the condition of seriousness, invisibility, and footing, Abdel Fattah Abdel Baqi: The Lease Contract, General Provisions, Part One, Dar al-Kitab al-Arabi, Egypt, 1984, p. 307 ff., he says that there are four conditions, namely that the defect must be effective, that it should be hidden, that the tenant's knowledge of the defect should not be proven at the time of renting, and finally that the violation of the tenant's use of the leased property did not occur as a result of his act. The previous reference, p. 424 ff., argues that the defect guaranteed by the lessor requires four conditions: that the defect must be an accidental pest on the common sense of the lessee's eye, that it should be influential, that it should be hidden, and that the tenant should not know it.

[24] Saying this or that condition is very important, as expanding and tightening these conditions constitutes protection for the lessor, which may be at the expense of the tenant, and the narrowing of these conditions and their alleviation is in the interest of the tenant, and this may be at the expense of the lessor. Other times. Abd al-Razzaq Ahmed al-Sanhouri: Ibid., footnote, p. 436.

[25]The concealment of the defect of the leased property is still a condition required in the defect that causes the lessee to guarantee the lessor, although it is not expressly stipulated therein, in application of the general rules in the guarantee of the defect. Essam Anwar Selim: Al-Wajeez in the Lease Contract, No Edition, Part One, University Publications House, Egypt, 2000, Footnote, p. 310_ This condition is mentioned on the occasion of the sale contract in Article 379, the second paragraph of the Civil Code, stating: "However, the seller is not a guarantor of the defects that the buyer was..... He could have seen it if he had examined the sale carefully by the common man", and the legislator did not mention the condition of secrecy in the lease texts, as it is specific to a detailed matter governed by the general rules.

First: The Condition of hidden Defect

The jurists who say[26]that this condition adds that the defect is considered hidden if it is not apparent at the time of the tenant's receipt of the leased property, and the tenant cannot detect its presence when the property is carefully inspected by the common man, but if the defect is apparent at the time of delivery and the tenant does not object to its existence but agrees to receive the leased property defectively, the lessor does not guarantee the defect because the tenant has forfeited his right to invoke the guarantee because he sees the defect and is satisfied with it.

However, the tenant's inspection of the leased property. The buyer's examination of the sale is different, as the buyer resorts to the ordinary man of experience, while the tenant does not resort to the ordinary or the extraordinary man of experience, and therefore the defect is considered hidden if it is not apparent to the ordinary man, even if the specialized expert can detect its existence.[27]

The standard of care required in the examination of the leased property
If the special circumstances of the tenant and his lack of experience lead him to not identify a defect that appears apparent to other people, then the latter cannot refer to the landlord by guaranteeing the defect, even if it is in fact hidden from him, and the decision as to whether the defect is hidden or apparent is a matter of circumstances and circumstances and is left to the discretion of the trial judge in accordance with the aforementioned criterion.[28]

The defect is apparent if the tenant can detect its presence if he or she has made an inspection of the leased property. The concern of the ordinary man, even if he is not already aware of it, is not in the tenant's ignorance of the defect, but in his inability to detect it when examining the eye with the care of the average man, for example, the high humidity of the rented house adjacent to the seashore is not considered a hidden defect, even if the tenant is unaware of it, because he could have detected the presence of moisture if the care of the ordinary man had been taken into inspecting the house, and on the other hand, the good or bad intention of the landlord, i.e., his knowledge of the defect or His ignorance of him over his commitment to the guarantee.[29]

If the principle is the condition of concealment in the defect that causes the guarantee, then the same jurists who say[30]that there are two cases in which the lessor guarantees the defect, even if it is apparent, namely:

First: If the landlord confirms to the tenant that the leased property is free of defects.

Second: If the lessor has deliberately concealed the defect in order to cheat the tenant, because cheating spoils everything according to the general rules, and the fraud may take physical forms from the lessor, such as if he painted the exterior of the ceiling of the rented apartment because there were cracks in it, which led to rainwater falling on the tenant's furniture, which deprived him of its use. Use defects the leased property or reduce this use.

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[26] Abd al-Razzaq Ahmed al-Sanhouri: ibid., p. 440 ff. - Abdel Nasser Tawfiq al-Attar: previous reference, p. 481 - Ramadan Muhammad Abu al-Saud: Explanation of the provisions of the civil law, named contracts, first edition, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2010, p. 912 - Khamis Khader: Lease Contract, first edition, Dar Al-Hammami Printing, Egypt, 1973, p. 236 - Suleiman Markos: previous reference, p. 426 - Samir Tanago: previous reference, p. 202.

[27] Ahmed Ali Khalif Al-Owaidi: Ibid., p. 208, Hamdi Abdel Rahman: Ibid., p. 281.

[28] Abdel Fattah Abdel Baqi: Ibid., p. 309.

[29] The inability to show the existence of the defect despite the wisdom of the calm man is sufficient to consider the defect to be hidden, as it is not necessary for it not to be known to a specialized man with experience.

[30] Abd al-Razzaq Ahmed al-Sanhouri: previous reference, p. 442 - Abd al-Nasser Tawfiq al-Attar: previous reference, p. 481 - Ramadan Muhammad Abu al-Saud: previous reference, p. 913 - Khamis Khader: previous reference, p. 236 - Suleiman Markus: previous reference, p. 426 ff. Samir Tanago: previous reference, p. 203.

Those who say that there should be a condition of concealment in the defect guaranteed by the lessor are based on the general rules in the contract of sale, as they were influenced by the inclusion of this condition in the contract of sale, and there are those who do not agree with this trend, considering that the rules contained in the contract of sale are rules specific to this contract and are applied only if referred to them by the legislator, and the provisions of the sale by analogy may not be applied to the rent, given the clear difference between the nature of the and the provisions of each of the two contracts.

The legislator did not stipulate the condition of secrecy, but only the provision of notification or knowledge of the defect in accordance with the third paragraph of Article 488 of the Civil Law**,** This text is explicit and cannot be interpreted, as it stipulates that the lessor does not guarantee the defect that the tenant was aware of or the latter was aware of at the time of the contract, and the concealment of the defect is different from ignorance of it, because the defect may be hidden and the tenant knows it, but the landlord does not guarantee it, and it may be apparent, but the tenant does not know it and is not notified of it, and the landlord guarantees it.

Second: The Tenant's Ignorance of the Defect

Article 488, paragraph 3, of the Civil law provides as follows " However, the landlord does not guarantee the defects that the tenant was aware of or of at the time of the contract."

According to this text, the landlord does not guarantee the defect that the tenant was aware of or the latter was aware of at the time of concluding the lease contract, and some commentators argue[31]that it is stipulated that the defect guaranteed by the landlord should not have the lessee be aware of it at the time of receiving the leased property, but this opinion does not agree with what the legislator said for the following reasons:

1 The text of the article is clear and explicit in that the defect guaranteed by the landlord is the defect that the tenant does not know when concluding the lease contract, the lesson in the landlord's failure to guarantee the defect is that the tenant was aware of it at the time of the contract, but if he is aware of it afterwards, he has the right to uphold the guarantee.[32]

2 The principle according to Article 476 of the Civil Code is that the landlord is obliged to hand over the leased property to the tenant in a state that is fit for use, and this requires that it be free of defects, and it is assumed that the tenant has contracted a property free of defects, taking this into account when agreeing on the determination of the rental allowance, and therefore the lesson [33]is that the tenant is aware of the defect at the time of the contract and not at the time of delivery.

3 The legislator authorized the tenant in Article 489 of the Civil law, as the case may be. , He may request the termination of the lease, a reduction in the rent allowance, or the repair of the defect, as well as compensation, if necessary, in the event of a defect that is met by the guarantee, and we understand from this that the tenant can receive the leased property despite knowing of the defect at the time if he deems that his interest requires it, relying on the exercise of his rights granted to him by the legislator under this article.

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[31] Abd al-Razzaq Ahmed al-Sanhouri: Ibid., p. 442, Tariq al-Tantawi: Lease Contract in Civil Law, Center for Legal Research and Studies, Egypt, 2006, p. 191.

[32] Knowing the lessee of the defect after the contract does not relieve the lessor of his obligation to guarantee, but the lessee must take the initiative to revoke the guarantee as soon as the defect is identified, or at least have reservations about his right, so that his silence after the defect appears is not interpreted as a waiver of his right to recourse against the landlord by guarantee. Abdel Fattah Abdel Baqi: Ibid., p. 310.

[33] Abdel Moneim Faraj Al-Sada: Ibid., p. 205 - Tawfiq Hassan Faraj: The Lease Contract, without Edition, University House for Printing and Publishing, Beirut, Lebanon, 1984, p. 692.

Third: The absence of the causal link between the tenant's act and the defect

Some jurists stipulate[34]that the defect that causes the guarantee should not be caused as a result of the tenant's action, because the defect is an emergency pest that is inflicted on the leased property, but what is issued by the tenant is not a defect in the leased property, but rather damage or destruction to the property, and the tenant is personally obligated to repair it without the lessor.

Dr. Ahmed Ali Khalif Al-Owaidi does not agree with this condition, as he believes that there is a clear confusion between the defect as a pest inflicted on the leased property and the tenant's act that results in the leased property being damaged or defective, which gives the landlord the right to recourse to the tenant by requesting the repair of the property, compensation, or request the eviction of the leased property.

The second requirement: that the defect be influential

It is understood from the text of the first paragraph of Article 488 of the Civil low that the legislator was clear in stipulating that the defect must be effective until the landlord guarantees it, and the defect affecting the rent is the defect that prevents the use of the leased property or reduces this use in a tangible way, so that if the tenant was aware of the defect, he would not refrain from contracting or paying a lower rent The defect applies not only to the leased property but also to its accessories, and the same provisions apply to the accessories as to the defects of the leased property and to the defect.[35]

However, Article 488 of the Civil low does not specify the criterion for determining the use that the defect prevents or significantly reduces it, and it may happen that the lessee specifies in the contract the intended purpose of renting the property, in which case the purpose is to use the property according to what it was prepared for and in accordance with the agreement of the parties.[36]

The trial judge shall have the authority to estimate the degree of effect of the defect in each case on a case-by-case basis, taking into account the nature of the leased property and the purpose for which it was prepared, and the example of a defect that prevents the use of the leased property, such as the high percentage of salts in the leased agricultural land so that it becomes unfit for agriculture, or at least unfit for the type of cultivation agreed upon in the contract, and an example of a defect that reduces the use of the lessee The leased property is a noticeable decrease and does not amount to depriving it of such use, if the engine temperature of the rental car rises so rapidly that it cannot be driven for a long continuous distance.[37]

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[34] Mohamed Azmi Al-Bakri: The Lease Contract in the New Civil Regulation, Second Edition, Dar Mahmoud for Publishing and Distribution, Cairo, Egypt, 1997, p. 577. Abdel Fattah Abdel Baqi: Ibid., p. 311.

[35] Mohamed Labib Shanab: Ibid., p. 173_ Abdel Hamid Al-Shawarbi: Provisions of the Lease Contract, without edition, Ma'arif Foundation, Alexandria, Egypt, 2004, p. 229_ Ahmed Sharaf Al-Din: Previous reference, p. 206_ Saeed Saad Abdel Salam: Previous reference, p. 312_ Dr. Ahmed Ali Khalif Al-Owaidi believes that the degree of effect of the defect on the leased eye is different from the degree of effect of the defect on the sold eye, due to the different nature of both the lease contract and the sale contract and the effects of each, and as long as the sale contract is a contract of ownership According to which the ownership of the sale is transferred from the seller to the buyer, the defect has an impact and importance on the buyer, regardless of its degree, while in the lease contract, the ownership of the leased property does not transfer to the tenant but is returned to the use of it for a specific period, so the defect does not harm the tenant unless it reaches a certain degree. Ahmed Ali Khalif Al-Owaidi: Ibid., p. 202.

[36] In this regard, we would like to point out that the use affected by the defect is the use for which the property was made, in accordance with the text of article 476 of the Civil Code, as amended by Law No. 07/05 on the obligation of the lessor to deliver, the first paragraph of which stipulates the following: "The lessor is obliged to deliver the leased property to the lessee in a condition fit for the use intended for it in accordance with the agreement of the parties".

[37] Hilal Shawa: Ibid., p. 138, Abdel Hamid Al-Shawarbi: Ibid., p. 229, Al-Sayyid Eid Nayel: The Lease Contract in Civil Law and the Laws of Renting Places, Dar Al-Nahda Al-Arabi, Cairo, Egypt, 2000, p. 154, Ahmed Sharaf El-Din: Ibid., p.

The lack of use of the leased property due to the presence of the defect must be a perceived deficiency, but if the deficiency is slight, the landlord is not obliged to guarantee it, and for this reason the legislator stipulated that the landlord should not guarantee the defects that have been customarily tolerated, the defect may be influential, but the custom has been to tolerate it, and in that case it is not a defect that is warranted, [38]and one of the examples of defects in which the custom has been tolerated is the humidity of the rented house if it is a familiar humidity or if it is of the It is possible to overcome them by means of heating, or to tolerate weeds that may be present in the rented agricultural land if it is not difficult to remove them, or the presence of a crack in the wall of the rented house, or the breaking of a piece of tile, or the disabling of one of the additional water taps, or the presence of some stones in the rented land, or the ink of the mattresses of the rented car.[39]

If the defect is one of the things that is customarily tolerated, then the lessee bears it because it leads to a slight deficiency in his use of the leased property, although the rules of law in exchange contracts usually require that the lessor bear the responsibility of guaranteeing the defect even if the lack of use is slight, this result contributes to the instability of the transactions and leads to a large number of disputes filed to the courts, so that it opens the way for the lessee to claim any defect in the leased property However minor it may be, even if it is ineffectual, it is conceivable that there is no custom on a particular matter, in which case the judge has the power to assess whether or not the deficiency in the use of the leased property is felt in the light of the circumstances relating to the conclusion of the contract itself, without taking into account the personal considerations of the tenant. [40]

It should be taken into account that the assessment of whether the defect is effective or not is an objective rather than a subjective matter that varies according to the circumstances, and it is expected to be decided on knowing the type of use intended to be provided to the tenant and the identity of the entity, for example, the presence of insects in the rented house may be an influential defect if it is in a high-end and poor residential area, and it may not be so if it is in a remote area, and what is considered a defect in a rented house with a high rent may not be considered a defect in another rented house If the defect is affecting the tenant's personal eyes, there is no reason to do so as long as the defect does not affect the nature of the property, for example, if the tenant is sensitive to humidity, the house is not considered defective if its humidity is normal and does not affect the average person.[41]

If the defect affects the tenant's use of the leased property, there is no difference between whether this defect is positive or negative, and the positive defect means that something appears in the leased property that prevents the tenant from using it or reduces this use in a tangible way, such as the high intensity of the heat of the rented house or its high humidity which harms the health of the tenant, or the corruption of its basic facilities such as the permanent failure of the elevator, or the blockage of water drainage pipes or the leakage of water from the ceilings and basements, or the presence of A type of weed that is harmful to the rented land that prevents it from being cultivated intentionally, or the presence of odors in the rented house that emits its its sides, or harmful insects such as fleas and cockroaches, or that it has the germs of a contagious disease that has not been disinfected, and other examples.[42]

207, Saeed Gabr: Lease Contract "General Rulings", without a publishing house, Faculty of Law, Cairo University, Egypt, 2000, p. 155.

[38] Hilal Shawa: Ibid., p. 138, Tariq Tantawi: Ibid., p. 191, Saeed Jabr: Ibid., p. 156.

[39] Amal Sherba, Ali Al-Jassim: The Lease Contract, No Edition, Dar Al-Millions for Printing, Publishing, Translation and Distribution, Damascus University Publications, Syria, 2014, p. 177.

[40] Ahmed Ali Khalif Al-Owaidi: Ibid., p. 202 - Ramadan Muhammad Abu Al-Saud: Ibid., p. 912.

[41] Muhammad Labib Shanab: previous reference, p. 173 - Muhammad Azmi Al-Bakri: previous reference, p. 571 - Abd al-Razzaq Ahmed Al-Sanhouri: previous reference, footnote p. 437 - Jawad Kazim Jawad Smeisam: previous reference, p. 174.

[42] Muhammad Hassan Qasem: Ibid., p. 891 - Abdel Fattah Abdel Baqi: Ibid., p. 307.

As for the negative defect, it means that the leased property is devoid of a quality necessary to use it intentionally, and the backward attribute is necessary for the use of the leased property in two cases:
The first case: If the lessor expressly undertakes its presence in the leased property, such as acknowledging that the property is a sea façade and it becomes clear otherwise, the failure of the title in this case gives the lessee the right of recourse against the lessor by guarantee, and this right is established even if the defect does not prevent the use of the property and does not significantly reduce its use.[43]

The landlord's explicit undertaking of the existence of a certain characteristic in the leased property makes its failure an influential defect, even if the damage resulting from its inwardness is minor, and even if the failure of this character is not considered an emergency pest of common sense, and this case is stipulated in the second paragraph of article 488 of the aforementioned Civil law.[44]

The statement that the lessor is obliged to guarantee the failure of the character that he has expressly undertaken, even if the damage is minor, violates the principle of guaranteeing the defect, which has been customarily tolerated, while the statement that the condition of effect is not necessary in the case of the defect is not necessary does not contradict the condition of the tenant's damage, and Dr. Abdul Rasool Abdul Redha Mohammed believes that what is meant by the attribute here is the opposite of the defect, while the requirement of a perfectionist attribute in the leased property is a different matter because its failure is a breach of the obligation to deliver.[45]

The second case: If the intended benefit provided to the tenant requires the existence of this characteristic, such as renting an apartment in an upscale or medium neighborhood and then it becomes clear after the rent that it is free of water, or if a building is rented for the establishment of a factory and then it becomes clear that the building does not bear heavy machinery when it is operated, and this requires an increase in the durability of the building to make it able to withstand the weight of the machinery and its operating force, if this is not possible, the tenant has the right to refer to the lessor with the guarantee of the defect.[46]

Some prefer to say that the defect that causes the security in the lease is a pest that is inflicted on the use and not the leased property, under the pretext that the object of the contract in the lease is the usufruct and not the leased property, [47]and others believe that this statement is not true, as the defect cannot be attributed to the usufruct, which is not a thing but a temporal fact and not a spatial reality, and here it is quite clear that the defect is independent of the condition of effect, as the defect responds to the leased property, but the effect responds to the Expected benefit.[48]

Conclusion of the study:

We conclude from the fact that the legislator, in its amendment to Article 488 under Law No. 07/05 amending and supplementing the Civil law, deleted the phrase "or lacks the qualities necessary for its

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[43] The failure of the attribute that the lessor expressly pledged to exist in the leased property takes the ruling of the affective defect, so the effect is not required for the defect of the attribute, because the tenant's goal in stipulating a certain attribute is understood to be a loss of the use he intended, and therefore the failure of this attribute is sufficient to refer to the lessor with a guarantee, whether this affects the tenant's use of the property or not. Ahmed Ali Khalif Al-Owaidi: Ibid., p. 204.

[44] Abdel Fattah Abdel Baqi: Ibid., p. 307. Abdel Hamid Al-Shawarbi: Ibid., p. 229.

[45] Abd al-Rasool Abd al-Rida Muhammad: Ibid., p. 46.

[46] Abdel Fattah Abdel Baqi: Ibid., p. 307, Abdel Moneim Faraj Al-Sada: Ibid., p. 204, Muhammad Hassan Qasem: Ibid., p. 891.

[47] Abdel Nasser Tawfiq Al-Attar: A research entitled "An Extrapolation of the Nature of the Defect and the Conditions of its Guarantee in Egyptian Law", Journal of Legal and Economic Sciences, Ain Shams University, First Issue, Thirteenth Year, July 1971, p. 318.

[48] Abd al-Rasul Abd al-Rida Muhammad: Ibid., p. 44.

use" that it did not need to stipulate that the liability of the lessor would arise in the event that the leased property does not have the qualities required to use it, and it can be said that the legislator succeeded in this amendment because it is inconceivable that the defect in the use of the leased property is independent of the leased property Therefore, it can be said that this phrase is an exaggeration, and thus the legislator has agreed with the view that the devotion of the leased property from the qualities required for its use is a form of defect in the sense of a pest.

We have seen that there is a difference between the tenant's ignorance of the defect and its concealment, as the lack of knowledge is a personal matter, the defect may be apparent and yet the tenant does not know it, while concealment is an objective matter related to the same thing, and the lesson in the text of the third paragraph of Article 488 of the Civil law is the lack of knowledge and not concealment, and accordingly it can be said that there is no condition of concealment to guarantee the defects of the leased property in the Algerian Civil law. Whoever says that this condition exists is protecting the interest of the lessor at the expense of the tenant.

We also conclude that the legislature has not changed its view of the defect by virtue of the amendment by Law No. 07/05, so it still takes into account the broad concept of the defect, which includes, in addition to the defect, in the strict sense, the qualities that the lessor expressly undertakes and the failure of which the guarantee has consequences. The contractual concept is achieved by the absence of an attribute in the leased property, which the lessee expressly undertakes to exist in, so the defect of the attribute is the defect, even if the leased property is free of any pest.

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