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E-ISSN: 2707-188X

The Invalidity of Legal Actions (The Action Of Partner On A Detached Part Of The Common Real Estate)

*Dr. Nadia AbdulAly Kathim Kathim*¹

E-mail: nadia.k@dau.edu.sa

Received: 21 June 2020, Revised: 25 June 2020, Accepted: 21 July 2020

Published online: 6 Oct. 2020.

1.0 Introduction

Common ownership is one of the things that raises many problems between partners, as it is the participation of several people in one money without setting shares, meaning that each partner has a percentage or share of this money without knowing the location of this share or percentage, and given their multiplicity and desire of each of them in Realizing his interest through selling or benefiting from this joint money, and for each partner's desire to achieve his personal interest, it may harm his partners or others, and the dispute does not arise between the partners if they collectively agree on a specific behavior such as selling or renting or even destroying this money if it is constructive so this agreement It is true, just as the behavior of one of the partners within the limits of his non-certain share in a material

¹ College of Law, Prince Sultan University, Riyadh, Kingdom of Saudi Arabia.

designation does not give rise to any dispute between the rest of the partners as long as this procedure does not cause harm to the rest of the partners, the buyer will replace their partner as much as his partner had the seller, but what if he identified or appointed one Partners share this common money without knowing the rest of the partners and made it?

What should not be valid of the actions that are expected to be implemented by the partner in common are what is considered as a detached part i.e. a specific part of the real estate, or if the action of the partner has been performed on the entire common real estate. In these two assumptions, even if they have been considered between its parties, the one who performed the action and the one who the action was performed for, as right actions- as we will see later. However, their correctness does not mean that they are valid for the (share) of the rest of the partners who their rights shares were related to the place of the action. Therefore, it is obligatory to declare its correctness because a property owner issued it-as any action issued by a property owner on what he owns. In addition, it is obligatory to declare its invalidity in the share of the rest of the partners who are not taking actions unless they approve it and declare it as valid or approve the escheat of the part under the action for the partner implementing the action. I will explain as follows, the case of one of these actions: the action of partner on a detached part of the common real estate in two requirements respectively:-

The first part: considering the action in an excretory capital asset before distribution

we must consider that any action has been done by one of the partners in their excretory capital asset is acceptable as it is done by an owner in which he owned. However, other partners may not accept the

action. Moreover, any partner may use his power on what he owned if it does not affect what other partners own. Because, the right of the act on an excretory capital asset is confined on the relationship between the alienator and the alienator to. Therefore, the other partners who are not part of the deal the action is impermeable on them. Consequently, if the one of the partners decided to sell, demonstrate or to establish another right in rem in a specific part of the common property the buyer, the mortgagee or the owner of the right in rem has no right to complain on the other partners either before or after the deal. Although it is a correct action between its two parties. Other partners may pass their action based on non-considering the action made by one of them in excretory part.

According to article (2/1301) from the Jordanian local law “If the action was on a part of the excretory capital assets and this part did not occur when division as alienator's portion, the right of the ownership transfers to the alienator to since the time of the action to the part which led to the alienator when dividing, and if the alienator is unaware that the alienator does not have the ownership of the used premise when contracting then he has the right to repeal it”

Therefore, the article did not show the consideration of the action on an excretory asset only between its parties. Under it in fact is not to force the disposition of one of the partners in confrontation of other partners. Perhaps what confirms this that the legislator had approved the transmission of the right of the alienator to of the part that went to the alienator during the division process. it will be saved for a partner who has not involved in the disposal action the final outcome of the division that is free of any cost or right arranged by the

alienator partner without the proper right, it means that the legislator did not legalize the action in the excretory part in confrontation the partner who had the disposal part under his ownership after the division which is regarded as a natural result of this act this is because the act is considered as unenforceable in the right of other partners(Aljamal 1985).

Despite the difference of jurisprudence in conditioning the released act from the partner in an excretory part, there is no disagreement on not legalizing the disposed act on the other partners. As a result, those partners have the right to object on the action disposed from their partner in the excretory part and may not consider the alienator to as a partner in the property transferring actions with the other partners. and this is what will be discussed in two main parts. The first part will cover the right of the other partners in entitlement lawsuit. And the second part will cover none considering the alienator to as a partner with the other partners.

The first section: The right of other partners in entitlement lawsuit

Under it in fact unenforceable the act of the partner in an excretory part in the face of the other partners, it is their right in the objection on the issued act by their partner to determine unenforceable it on them. The objection can be done through entitlement lawsuit which shows their intent in confirmin their common right of the used excretory part.

Not to demand obtain a material part of the sold property, which is the excretory part, because it is only determined by distribution which has not been yet. Therefore, the right of the partners in entitlement lawsuit is proved for them even before the distribution and resolve the fate of the used part. Which makes

the alienator to be aware of the alienator's matter and to be prepared if he did not request to repeal the action on the possibility of occurrence of the used excretory part in the portion of other partner rather than the alienator and takes what it takes to save his right. Because, this part will rid of the non alienator partner from any rights made by the alienator partner. Therefore, the adversarial in the entitlement law suit should be directed to the seller and the buyer together with considering that the seller partner may deliver the sold excretory part as long as the action in excretory happens normally after the deal between the partners equipped which specializes each partner with excretory part of the common property or all of the property to a suitable period of time and his portion in it. Although the partners have the power to object an action made by their partner in an excretory part, they also have the power to approve the action and apply it on themselves as it has been taken by all of them. Also, it becomes forcible if the if all the common property or the excretory used part devolved to the alienator partner due to any earned reason(Alsadda 1982).

The second section: The alienator is not considered as a partner with the other partners

The buyer of an excretory part of a common property - other than the buyer of a common share - does not become a partner in the common with the other partners even with the excretory disposed part, because the act in an excretory part although it is correct between its parties it stays invalid among the other partners and cannot invoke them. So the partners have the right to issue their acts on the common property including the excretory disposed part considering this act as it has not been issued, and the reason of the invalidity of the act is keeping the describing of the partner stable to the seller partner do not slough to the alienator to the buyer, then the rights of this partner in issuing and taking actions among the common property and his obligations in terms

of keeping this property and ensuring its maintenance and other remains as they were without any slightest change as a result of the act in the excretory part, and we may sum up the results which consequences of not considering the alienator to a partner in the common property as follow:-

A- The buyer of an excretory part - or the alienator to by transferring the ownership of this part generally - does not have the right to share the benefits of the common property or the authority of issuing acts among it, but it remains the right of the alienator partner where is calculating the total of the shares which he owns of the disposed property concerning the required majority to manage the common money - ordinary and extraordinary in the Jordanian law -, this shares is also calculated regarding the required consensus to determine disposition of the common property to sell, mortgaging, managing beneficial right or mortgage common property(Alshaikh 1998).

B- The buyer of the excretory part does not have the right to request taking back the sold common share by emption, emption is an adopted license of the partners in the common property that a common share has been sold from it where the alienator to in an excretory part in not a partner to the other partners because the issued sale to him is not valid among them.

C- The buyer of the excretory part or the alienator to does not have the right to request distributing the common property, as this right is not proved to a partner in the common money, if the distribution was consensual the common partners including the alienator partner not the alienator to, however if there distribution was judicial the right of requesting it is proved to the alienator partner claiming on the rest of the

partners or to be requested from a partner other than him then the lawsuit is concluded, and then the alienator to does not have the right in requesting distributing the common property and he should not competence in its lawsuit, also his intervention is not accepted as he is considered partner, the alienator to is the shared that the distribution is being between him and the rest of the partners, however considering the alienator to non-partner does not preclude among his rejection to complete the distribution without his intervention, but not as a partner but as a creditor as we will be discussing later.

D- If one of the partners made a maintaining work of the common property or paying the taxes or removing the hands of the usurper he has the right to request the costs form all of the partners according to article (1037, 1036) including the alienator partner not the alienator to, however if the alienator to was the one who paid the costs without power of attorney from other partners he does not have the right to return on them on what he paid unless if he was gainfully employed, then he has the right to get back what he paid for according to the base of the unjust enrichment.

Second part: considering the action in an excretory part after distribution

There is no doubt that the distribution has a major impact in determining the fate of the action made by a partner in an excretory part of the common property, we figured to demonstrate it importance in this regard while others have viewed -as we discussed- in considering this action as a suspended condition which is the occurrence of the used part in the ownership of the alienator by distribution. We must consider segregation between considering the act in an excretory part after distribution and the relationship between its parties and its fate in the face of other partners(Al Sanhoury n.d.).

The first section: considering the action in an excretory in the relationship between its parties

Normally the distribution puts the distributed excretory part under the ownership of the subdivided alienator or to put this part under the ownership of the other partners and these two assumptions will be discussed as follow:-

First assumption: the occurrence of the distributed excretory part under the ownership of the subdivided alienator

It appears where the occurrence of the distribution puts the distributed part under the ownership of the subdivide alienator does not cause any issue. The action is obviously confirmed and settled on this share. As long as the Jordanian legislator did not discuss this decision in article (2\1031), it is because the decision is clear and there is no need for it to be discussed.

Accordingly, if the distributed part has fallen under the ownership of the alienator, this will prevent the alienator to from calling for a repeal of the action, without distinction between being aware or ignorant about the case of common, because to his knowledge the alienator owns the distributed property which is the common excretory part. Ending up that act like this is considered to be valid between its parties because the decision has been taken by the owner, and the right of the alienator to is limited to a repeal only in a case of a mistake. Hence, knowledge will prevent the right to repeal the action as with knowledge mistake will be denied.

However, if he was unaware of the common condition despite this unawareness is counted as defective on the will and the right of invalidating the act was held before the distribution, it loses this right

after conducting the distributed excretory part to the subdivided alienator, and this in fact is only because what his will tend to form the excretory part has been stabilized to him. Despite falling in mistake because after that it became part of the excretory part owned by the distribution, then there is no justification to hold on repeal. On this Article (156) from the Jordanian civil law has stated “1-Not for those who fall in mistake stick to it when it conflicts with the goodwill. 2-he is binding with the contract which he aimed to conclude if the other partner shows his willingness for the implementation of the contract”.

Based on the above even in the situation when the alienator to has fallen in a fundamental mistake in reality of the nature of the ownership of the alienator, it devolution this part as a result of the distribution to refrain upon him the revocation if he has not requested. However, if he has requested for a revocation but it has not been effective yet before the distribution then the claim does not have to be continued on as long as the action has been settled down on itself. However, the alienator does not have the right to repeal the action In application of the rule that who abide guarantee is abstain by exposure, he will be refuted if he sought to overturn what has been done by him(A3, article 238 Jordanian civil law).

Second assumption: The occurrence of the distributed part in under the ownership of the subdivided partner who is not alienator

if the distribution assigned the distributed part under the portion of other partner who is not the alienator, we wonder about the fate of the act then?

the Jordanian legislator has viewed this hypothesis and clarified it judgment according to article (2\1031)”If the action was on a part of the excretory capital assets and this part did not occur when division as alienator's

portion, the right of the ownership transfers to the alienator to since the time of the action to the part which led to the alienator when divining, and if the alienator is unaware that the alienator does not have the ownership of the used premise when contracting then he has the right to repeal it” (Al Sanhoury 2000).

it is clear from this article that the legislator approves the action between it partners despite that the distribution placed the excretory part under the ownership of a shared partner who is not the alienator, which decides transferring the right of the alienator to since the action’s time to the part that distributed to the alienator as a result of the distribution. Any action made by a partner in an excretory part is an action made by an owner in what he owned, the legislator in this situation to change the disposed which resulted from the distribution, he decided to replace the act from its original place, and it did not give the alienator to the right of repealing the act only with an exception of mistake.

in the light of this, we will discuss the right of the alienator to in requesting to act because of a mistake, also to the legal provision that transfers the right of the alienator to in what has been distributed to the alienator as a result of the distribution as follow:

1- The right of the alienator to in requesting to repeal the act because of mistake

Article (2\1031) has restricted the right of the alienator to in repealing the act because of his unawareness only under the situation that distributes a different part other than the excretory part from the common property. Then it should be in this regard, the distinguish between the situation when the alienator to is aware that the alienator does not own the distributed part as an excretory ownership, and the situation when he is not aware.

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However, if he was unaware of the common condition despite this unawareness is counted as defective on the will and the right of invalidating the act was held before the distribution, it loses this right after conduction the distributed excretory part to the subdivided alienator, and this in fact is only because what his will tend to form the excretory part has been stabilized to him. Despite falling in mistake because after that it became part of the excretory part owned by the distribution, then there is no justification to hold on repeal. On this Article (156) from the Jordanian civil law has stated “1-Not for those who fall in mistake stick to it when it conflicts with the goodwill. 2-he is binding with the contract which he aimed to conclude if the other partner shows his willingness for the implementation of the contract”.

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The first situation: The awareness of the alienator to in common

It is clear when the alienator to is aware of reality of the nature of owning that is a common ownership not an excretory. therefore, he is not allowed to request repealing the action, the legislator explicit in limiting the right of the alienator to in repealing only in the case when he is unaware of the establishment of commonality in the distributed part, and his will at that time will be tinged with sustainable mistake, and this mistake provides him the right to request repealing the act, and when he is aware of the ownership of the alienator he does not have the right to request repealing the act despite that the distribution has place the distributed part in the share of other shared partner other than the alienator as long as the legislator has decided misplacing the action from its original place. Therefore, he judges the transmission of the right of the alienator to the part that transferred to the alienator. This is what will be discussed later.

The second situation: The unawareness of the alienator to of the establishment of common in the distributed part

There is no doubt if the alienator to is unaware that the alienator in only an owner on the common to request revoking the act, so if the alienator to thought that the alienator is an owner of the distributed part an excretory ownership without a partner, his will is going to be defective and based on this defect, it is the mistake that marred his will therefore the legislator approved his right in revoking the act if the distribution placed the distributed part under the ownership of a shared partner other than the alienator, also the alienator to for the reason of this mistake has the right to repeal the act even before the distribution as we discussed.

Thus, if the distributed part has transferred as a result of the distribution to another partner other than the shared alienator, if the alienator to if he is unaware that the alienator does not own the distributed part an excretory ownership he has the choice to either accept the transmission of the right under the ownership of the alienator or to revoke it. As stipulated in article (2\1031) “, and if the alienator is unaware that the alienator does not have the ownership of the used premise when contracting then he has the right to repeal it“because the transmission of his right in a different part other than the distributed part, may miss his purpose of the deal, and the purpose that made him sign the contract. This predominantly on the transferring of ownership acts such as selling, bartering, and in terms of right to benefit as it relies the beneficiary on the distributed part to earn its benefits. while in kind insurance mostly the alienator to although if he was unaware of the case of common he accepts the transmission and prefer it on revoking the act as long as the intended of these insurances and mortgages is not the particular asset but the monetary equivalent

of the mortgaged, even if the new asset is less value than the original asset as long as the mortgagee creditor has the right to obtain guarantees which obtain his full right. also, it should be noted in this regard that the time which consider the unawareness of the alienator to of the reality of the ownership of the alienator is the time of the act and this is what the mentioned article noted with the phrase (when contracting), and this is the pure of the application of the general rules concerning the clearance of the will of the defects that may marred by the time of contracting, the revocation must fall back to a defect caused to the contract by the time of contracting, therefore it does not affect the right of the alienator to in repealing the act his subsequent knowledge of the conclusion of the contract, that the alienator owns the distributed part on commonness. and if the right of the alienator to in requesting to revoke the act in the case of his unawareness on the ownership of the alienator either before the distribution or after it, when the distributed part is placed under the ownership of a shared partner other than the alienator but it is a pure application of the general rules Concerning the validity of consent and clearance will from defects which may be marred by mistake, but the care of the legislator has contained the text in article (1031/2) to actually intend the right of the alienator to when requesting to repeal the act on the basis of the mistake only and then denying his right in repealing the act on the basis of issuance of a non-owner as the explanatory memorandum has inaccuracy estimated in civil law, saying: (if the act occurred on an excretory part of the common capital, and if the owner of the common share sold or mortgage an excretory part then the selling or the mortgaging is valid if the share when distributing was placed under the ownership of the owner who took the action, however if it was not under his ownership then the act has occurred from a non-owner and it takes it consideration(Tawfeq 1997).

Therefore, this exposition in clarifying the act of the partner in an excretory part from the side of the Explanatory memorandum is in conflict with the aim of the legislator and it is not proper with the acclamation of the common partner both. We suffice that we can supply in this regard if the legislator intend to consider the act in this concern as inactivated act as a result of issuance from a non-owner, when he limited the right of the alienator to in repealing the act only in the case of mistake, when he is unaware that the alienator is an ownership on commonness. There is no point of this text as long as the issued by act from a non-owner allows the alienator to annulment the act as considering it unnecessary to him, without distinction between the situation of knowing the case of common and the description of the ownership of the alienator or the situation of unawareness (A5 Article (550) from civil law says that: (1-if someone sold the Possession of others without their permission, the buyer may terminate the sale. 2-and the sales does not apply to the rights of the owner even if the buyer agrees.) This text allows the buyer (the cancelation of the sale is disposed to him, without being required to deny that the seller does not have the unsold thing. What is stated in the second paragraph means that if the buyer agreed to sell then the contract will be necessary in his case, then he cannot revoke it.).

2 The transmission of the right of the alienator to what has been distributed to the alienator

We have provided that the alienator to may accept the transmission of his right to the part that transferred to the alienator as a result of the distribution although of his unawareness of the reality of the ownership of the alienator if he saw in this transition what accedes

his interest and purpose of the deal. And the (alienator to) is forced on this transmission where the legislator did not give him the choice if he is aware of the establishment of common, and the decided result in both cases that the act cannot be continued accrual and producing its impact on the distributed part. and this is avoided because this part is the particular asset for the act which has been distributed to another shared partner other than the alienator, and because the action in an excretory part although of the accuracy of the act between its partners it does not apply on the right of other partners, and because of the consequence of the distribution and its normal effect in transferring to each shared partner his share clear from any affect of any act that one of the partners have arranged on it.

Therefore, the legislator undertook the act on other than the particular asset and in fact this is only a confirmation of the act between its parties before the distribution and after it therefore it fulfill the right of the alienator to the part that transferred to the alienator as a result of distribution according to article (2\1030) from civil law.

It is clear from the generality of the text phrase and what has been mentioned in the explanatory memorandum in particularly that it deals with all other acts such as selling, donation and bartering.

The establishment of the beneficial right or mortgage the excretory part by insurance or by lien. But it is limited on the acts of act and it does not apply on the acts of administration such as renting the excretory part of the common property, because considering that the intended convention act which was mentioned in the previous text article (2\1030), not the action or the legal act in general, but it is an act

of the disposition acts therefore it comes out depending on the range of the rent, however, it is valid by measurement applying the previous article on renting the excretory part of the common property, so that if it comes out in the share of the alienator an excretory part other than the distributed part when distributing that property the right of the alienator is transferred in the lease (leaseholder) to this part¹. If it is more accurate from the legal point of view to dispose of the act from the rent, however, the application of the rule of Advanced transition on rent is easier in practice (A7, in this meaning, Sanhoury – mediator – C6 previous reference – paragraph 52 page 64.). Accordingly, when a partner in common sells an excretory part of the common property and then another part transfers under his ownership as a result of the distribution, the right of the buyer - either if he knew the status of the common or if he did not and he did not want to revoke the sale - it transfers to this part as well as any act whatever its kind according to the commonness of the text and the phrase of act which was general.

As the transmission of the right of the alienator to on the aforesaid manner may lead in practical terms sometimes to unacceptable results, and even misled justice, if we suppose that someone bought an excretory part of the vast common land in order to build on it, and another part of the same land transferred to the ownership of the seller but it does not fit in with the construction because of the distance from the urbanism or because the construction is prohibited, the right of the buyer transfers to this part, and about the fact that he knew the case of

1 (A6, looking in the same meaning, Ismael Ghanem –previous reference – Page 151 in the footnote abd almonem faraj alsadda – page159, Sanhoury – mediator in explaining the new civil law - C6 – the first volume – sales and metaphor – Halabi human rights publications – Baruit – 3rd edition – year 2000ad – paragraph 52 page 64.)

common while contracting, as it is assumed that the buyer must accept the judgment although of the inflicted apparent damages(Yaken n.d.).

However, it does not apply on this if the buyer knew the case of common that the seller does not own the excretory sold part an excretory ownership only for him that he accepts buying what will be grounded on the common share of the seller after the distribution, considering that he had expected this outcome - or it is supposed to be expected - therefore he must accept it, as this say makes the sale possible in fact on a common share not in an excretory part, to say otherwise carries the will of contractors over what they can bear as it moved to transferring the ownership of an excretory part not a common share of the property.

and if it is unavoidable in fact of the legal verdict actions which has been confirming the transmission of the alienator to its right to the part that transferred to the alienator as a result of distribution, despite the damage to the alienator to as a result of this and a the cause of missing the purpose of contracting, however the unacceptable results which may result in the transmission decision. Therefore, I believe in the necessary of amending the text of article (1031/2) which consistent with the fact of the principles of justice and fairness as the fundamental jurisprudential (A8, Subject (533) from Indian civil law, and subject (2/1153) from emirate's law.) : (There should be neither harming nor reciprocating harm) it is suggested in this regard placing controls for this transition so it does not be approved at all, and perhaps the most important in this regard is granting the trial judge a discretionary authority (in the exact text) enables him to judge if he was asked to do it to revoke the act in

each case demonstrates the damage to the alienator to a serious damage which the justice and the usual practice refuses to bear, as in the previous example, when the transmission miss the main purpose of contracting it is decided to be revoked by the request of the alienator to (the buyer), if he does not accept the transmission of his right to the part that transferred to the seller by distribution.

Then the objection won't be valid, as the first case making the act issued by the partner an act issued by a non-owner, and then report the right of the alienator to in revoking the act, without distinguishing between his knowledge of the establishment of the common or his unawareness of it, so this say violates the intent of the legislature from a side, and it is not compatible with the nature of the right of the common holder on the other side, however considering the act issued by an owner then is the valid judgment, but because what could be resulted from the transmission order a non-acceptable results we suggested to grant the court the governance power to revoke the act as this transmission cause the alienator to a serious damage we assume that the legislator won't be aware of it before it happens (A9, Especially since the Jordanian legislator may quote this provision (Transmission right disposed to him) from the Egyptian civil law, contrary to the historical origin which is the Islamic jurisprudence, and this fiqh does not recognize this transition, the transition is the right of the person disposed for, even if he did not want to replace the contract not sactionated by Islamic law only if the transaction was with a new contract. – alshaikh Ali alkhafef – previous reference – C2 page 74).

It then remains conditioning the act issued by the partner in an excretory part as an act issued by the owner, but the transmission of the right of the alienator to as it may cause very serious damage to him, then the judge orders to revoke the act as a result of the damage and the bond of the powers which he will be given -after amending- the article in this regard, where it remains in return the ability to force the alienator to on the transmission of his right in the case where the judge found that there won't be any damages caused be the transmission, or the damage is simple and normally be tolerated.

Therefore, the suggested adjuster goes out on the discretionary power of the judge to the sales and bartering and establishing a beneficial right as well. However, the mortgage insurance for instance there is no necessary for it where the intended from it not to get the mortgaged thing or to benefit from it, but it is the monetary equivalent of the mortgaged money, and then there is no barrier prevents the transfer of the right of the mortgagee to the part that transferred to the mortgagor as a result of distribution, as long as distributing the common property does not be valid among the creditors if the partners did not allow them in all of the procedures, and where the mortgagee is normally required to provide a sponsor or to mortgage other properties to ensure the result of the distribution and what may result from it, and then the mortgagee should assured his right in case if the part which the mortgage has transferred to is less value than the mortgaged part originally, while noting that the mortgagee does not usually give more than 75% of Estimated property value by him.

But what if it has not been distributing to the alienator partner an excretory part of the property? This question will lead us to search in the different results which will be caused by the distribution, as if the alienator partner distributed another property or an excretory part from a different property other than the distributed one also if the shared alienator has been specialized by an amount of cash.

As in the first case where it is distributed to the alienator another property different from the property which he acted in a part of it, and this is in the case where the partner owns common in many properties, in this hypothesis and in front of the lack of the text in article (1031/2) from civil law in the case of the act on an excretory part then distributing to the alienator another part of the same property and then the right of the alienator to transfers to this part. In fact, there is no possibility to consider the transmission of the alienator to its right to the new property, because when the multiplicity of common properties, it should not be considered as constituting a single unit, , despite the fact that the implementation of the rule of transition in this regard may not cause a damage to both parties of the act and not to the alienator to only also it may even achieve their interests, so if the common subject is a several properties which are lands specific for planting and when a partner made an act on an excretory part in one of it, and then distributing to him another land different from the previous land which has been acted on as a result of the distribution, then the transition and the occurrence of the buyer's right on this distributed land to the seller is valid in the situation where the purpose of the buyer from the deal is known and the purpose from it won't be missed with the transition as if

his purpose from the deal is only exploiting it by leasing it to others and it is suitable for it.

Therefore, the consideration of not considering the transition order in the case of the multiplicity of the common properties, and then considering this generalized order also when distributing another part from the property to the alienator, in fact it is an exaggerated say, and then it must be allocated to consider the circumstances of each case, in this regard, it seems that what we have proposed on the need to modify the text due to the rule of the transition is very important where the judiciary becomes the fair separative and the sponsor of all the rights on the final word.

Even in the presence of the article the judiciary should not expand its functions but only when the purpose of the transition has been established which is keeping and protecting the right of the alienator to, but where it does not bring revenue to the right of the alienator to on devolve of the distribution to the alienator, as in the lease which we permitted the application of the transition order by measurement therefore the right of the tenant should not be transformed unless if there was a protection to his rights. However, if the shared (the alienator) was specialized with an amount of money as a result of the distribution; therefore, the judgment varies depending on the type of the act. For instance, if the act was selling the result of the distribution should not affect the validity of the act between it is partners, although it does not prevent the alienator to the buyer from requesting to revoke the sale because the seller did not implement its commitment to give the sales thing, however if the act was mortgage the right of the mortgagee relates

to the amount which the shared partner was specialized in by measurement on what antedated concerning the common share, and in front of the practical judgment, which was decided under Article (1331/2) of the civilian law where: “allocating the amounts which are deserved by him (the mortgagor) of the equivalent of the quotas and the price of the property to pay off the mortgage debt” however if it decided to transfer the right the alienator to what devolve to the alienator as a result of the distribution, we have the right to wonder about the nature of this transition?

The common opinion in the literature is to consider this transition the application of the idea of in-kind solutions and pursuant it (A10, In this meaning , Zahdi – property and rights in rem – previous reference – paragraph 109 page 153 , Ismael Ghanem – CA – previous reference – paragraph 77 page 171 , Sanhoury – mediator –C4 – paragraph 168 page 103 , abd almonem faraj alsadda – previous reference – paragraph 124 page 182 , Mansour Mustafa Mansour – previous reference – paragraph 69 page 175 that prefers the saying that the law has done the implementation by applying the property transaction or by generally giving the right.). although I appreciate this opinion but it should be noted in this regard that in-kind solutions do not contain within it the binding force which may bind the parties to obligate with the result of the distribution, and this is clear when it is situated in the portion of the alienator a part lesser than what the has act has fallen on inception, in this case obtaining in-kind solutions does not obligate the alienator to, because he has the right to either request to revoke the entire act or to recover a part of which he paid for, and if a part occurred in the portion of the alienator which is larger than what the act has been on inception

he is not forced to give the alienator to the entire part or its benefits, therefore he has the right to force the alienator to pay the value of the difference between this and that estimated the time of act not the time of distribution, thus the transfer of the right of the alienator to must be bound to subject to certain guidelines distancing it from the unacceptable results that his work leads to, so if it decided to transfer the of the alienator to which accrues to the alienator as a result of the distribution should be transferred in the range of the act's value at the act's time. Hence, there is no doubt that if it transferred to the alienator as a result of distribution another excretory part of the same property which has been disposed therein. Then the transmission of the right of the alienator to is allocated on the basis of the idea of the unity of the asset rather than the idea of the in-kind solutions, the whole common property including the excretory disposed part, and the excretory part which transferred to the right of the alienator to. Was an asset to the right of the alienator partner? Perhaps this foundation archives the interests of both parties the alienator and the alienator to as long as we finished to the validity of the act between its parties and is not affected by the result of the distribution, because the act which is on an excretory part of the entire common property, where this entire property is considered as an asset to the right of the alienator partner, if the distribution has occurred and the alienator got as a result an excretory part of the property the right of the alienator to transfers to a part of this asset equal in its value the disposing part by the time of act. we conclude from the above that the action of the partner in an excretory part is proper between it parties as it issued by who has the right to issue and this adjustment should be applied on this act with the existence of the

text of article (1031/2) of the civilian law when there is no existence of any text approves this judgment. Because this act is considered as valid between its parties not force able against the other partners unless they approve it or the ownership of the common property or the excretory disposed part transfers to the alienator for any reason it is the appropriate conditioning to the right of the common partner considering that it is a property right which implicates throughout the common among the entire common money, and then this provision applies (A11, In this meaning , Zahdi – property – previous reference – paragraph 109 page 153, Tawfeq Faraj – previous reference – page 175 – abdulmanem alsadda – previous reference – paragraph 124 page 179) and what the consequent determined results arranged according to the nature of the right of the common partner and taking into account the logical and practical justifications which dictated such a provision, specially what keeps and protect the right of the alienator to.

The Second section: The fate of the disposition of the excretory part in facing of other partners

If dividing the common property was conducted, it's either place the excretory disposed part in the share of the shared alienator, then the action is approved among everyone, as the stability of the disposition of the asset depends on placing it on the share of the alienator. Or the distribution may either place the excretory disposed part in the share of another partner other than the shared alienator, in this case the excretory disposed part is placed to the shared partner as a result of the distribution without any result of the current action made by the partner before the distribution it then becomes ineffective in the face of the other partners. Consequently the sherd who got the disposed part as a

result of the distribution has the right of raising the entitlement suit on the alienator and the alienator to get back the ownership of it from their hands, and the alienator to does not have any right to request revoking the act which has been done by the shared alienator, as this act although its validity between its parties it is not valid in the face of the partners before the distribution, and it continues to be unenforceable against the shared who got the asset of the act as a result of it. Nor does the alienator to eliminate in the face of the eligible of the sevenfold gaining time, because the protest on the short statute of limitation presumably the issuance of the act by a non-owner, and the act of the common partner in an excretory part before the distribution is considered not valid to lead the alienator to earning the ownership of the excretory part. Because, it is an action issued by an owner and this consideration should not be changed after the occurrence if the disposed part in the share of another shared partner other than the alienator, and for the foregoing reason of the validity of the act in an excretory part as it is issued by an owner the alienator to is not allowed to request implementation of his right on the excretory disposed part which transferred to another shared other than the alienator as a result of the distribution, because the legislature has decreed transferring of the right of the alienator to the part that transferred to the alienator as a result of the distribution according to article (1031/2) of civilian law his right the transfers pursuant to this provision to what transferred to the shared partner, the original asset of the act to the shared (non-alienator) free from any costs or effects of this act, and the clearance of disposed part to the shared partner as a result of the distribution free from any influence of the act it is in fact the goal of the distribution and it is function. As the goal of

the distribution is only the change of the right of the common partner so his common share before the distribution is concentrated in an excretory part of that property and the goal of its current repercussions on determining the scope of the material right of the shared corresponds in its symbolic share value that he had during common, thus the distribution does not entitle the shared partner a new bond of the ownership but it reveals a consistent right since the start of commonality, the thing which lead to not consider the shared a descendant to any of his previous partners in the common property, it is not valid to obligate them with any of their previous acts, then where its concentrated the right of the partner in an excretory part it would be excluded necessarily every effect to compete with his previous partners with their acts on the asset which is distributed for him, where his share has concentrated.

The fate of the act which has been issued by a partner in an excretory part of a common property in the face of the partners after the distribution assimilates in clearance of this disposed act to what distributed cleared from this act or any impact of it. and the goal of the appropriate adjustment to the right of the common partner and considering his act in an excretory part valid between its parties unenforceable among the other partner unless they approve it or the ownership of the common property transfers to the alienator partner under any condition.

And the unenforceable act of the partner in the face of the other partners is decided by the time of common and before the distribution, and it stays unenforceable a fortiori after placing the disposed part in the

share of a shared partner other than the alienator, but the right of the alienator to contains what has been distributed to the alienator partner, then it conveys his right to the distributed part of the alienator and according to article (1031/2) of the civilian law, this judgment applies even if there is no specific article about it as the proper adjustment of the right of the common partner and applying the general rules which has been established in the common as we discussed.

2.0 Conclusion

We conclude that there is nothing will negatively affect the partner's behavior in an excretory part of the common property as it has been issued by an owner. However, this act is not valid among the other partners, because the partner does not have the power to determine a part of the property by his own willing to be a disposed of his act; for this causative the Land Registry circles refrain to register such act, but this hypothesis remain valid in the property which are not restricted by the system of the Land Registry. Then the partners before the distribution has the right to raise Entitlement lawsuit to confirm their common rights among an excretory used part; therefore, to expel the exposed to in their ownership (the buyer).

After the distribution the fate of the act is determined on its outcome: if the distributed excretory part has been placed in the share of the subdivided alienator the act is settled right as it was before the distribution and it is forced among everyone, yet the alienator to won't have the right to request revocation. Because what he wanted from the alienator has concluded to him as the same as the outcome of the distribution, as well as the case when all or few of the common part

transfers to the alienator partner the distributed part the act remains producer of its effects in what equals the excretory distributed part. But if another part of the property transferred to the subdivided alienator the right of the alienator to transfers to this part, and the distributed part conclude to its owner clear from the effects of the act, and the alienator to then has the right to request revoking the act as a result of the mistake, also he has the right of the annulment as a reason of the non-implementation, and the transference of the right of the alienator to as referred, and it is the decided judgment in the Jordanian law (civilian 1031) is not applied to the effect of in-kind solutions also the jurisprudence almost agrees on that it is the realization of the idea of uniting the asset, both parts (the excretory distributed part and the part which the transference has been decided) both are one asset to the right of the alienator partner.

Although this judgment is not mention in the Lebanese law there is nothing to prevent it from being reported according to the proposed regulations in this regard.

In the same direction it cannot be imagined an action from a partner in all of the registered common property or more of his common share, and cannot be settled between this act and the partner's act an excretory part the judgment varies on them, where the act of the partner in an excretory part is subjected under a the privet text in this regard, however his act in all the unregistered common part is subjected under the judgment of the general rules. Which means considering it proved act suspended on the approval of the partners, if they approve it then it becomes approved since the time of the issuance - also in the same case

that leads the property under the ownership of the alienator by any reason which gains it- otherwise it will be invalid.

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