

Right of reply of sale of a defect comparative study in civil evidence

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Abstract:

The contract of sale is of great importance because it is the oldest and most common contracts. Therefore, the old and modern legislations are concerned. The seller is required to provide the buyer with a quiet and beneficial possession. A hidden defect is influential and old found in it or accept the price named.

Thus, the right of the sale of the defect is a remedy that limits the disadvantages of the manual restriction system and can not be dispensed with in order to secure the stability of transactions. It is fair that the presence of this right gives an opportunity to those who were in the safety of the enemy of his opponent. The proof of this defect, and oath sworn that he did not satisfy the defect explicitly or as an example of his behavior, the behavior of the owners or the arrest of the sale after learning the defect, because it He may have been satisfied with it, so he should strengthen the evidence It is a complete right to swear by the fact that it did not satisfy the defect. The evidence is essentially the full evidence in the case. However, the law is incomplete and must be supplemented by an additional complementary right to prove the buyer's refusal to sell the defect.

An introduction

The contract of sale is generally one of the most important contracts known and oldest and most common at all, so interested in legislation old and modern, and provided him with a wide area, so it came to be committed seller to the buyer not only to achieve a quiet possession, but also be useful, so There is a need for a system to ensure hidden defects, as the buyer is a choice between the return of the sale of the defect or accept the price named.

The fact that there is a defect in the sale prevents the beneficial use by the buyer. It requires the beginning of the seller guaranteeing the buyer that the sale is free of

these. If there is a hidden defect in the sale, the buyer would then have the right to return it under certain conditions, and if he wishes to accept it at its stated price, if the buyer refunds it, he has to sworn to the right, which the judge directs to himself after proving his claim to prove this defect. If he has been satisfied with him, he must strengthen the evidence It is the responsibility of the seller to ensure the hidden defects, provided that the defects are inherent in the substance of the sold item itself and are present at the time of receipt of the buyer and that the value of the value is reduced by purpose Which is prepared for him and that the buyer proves that he can not find out by himself if the sale was carefully examined by the usual man unless the seller has assured him that the sale is free or deliberately conceal it from him.

This is the importance of this study by answering questions that are raised constantly, trying to answer the question on the philosophy of this right in the civil judiciary in particular? Of course, there are a number of questions under this problem: what is meant by the right of the sale of a defect in it, what are its characteristics and scope, and the position of Islamic jurisprudence and laws, and what are the characteristics of others and what are the conditions of their guidance and the implications thereof? In addition to the Iraqi law of proof, we find that there are laws such as the Syrian Evidence Act and the Jordanian Evidence, as well as our adoption of the applied approach that strengthens the legislative and jurisprudential positions in the relevant judicial decisions related to the Arab courts.

Finally, the research section was divided into three sections. The first topic dealt with the question of what is the right of the sales response to the defect in the first two demands: the definition of the right of the sales response to the defect; , And the second part: the right of the sale reply to the defect of the suspected, while the third topic: the legal rules to respond to the sale of the defect, in the first two demands: the right conditions of the sale of the defect, and the second: the effects of the right of reply Sale of the defect, and there was a conclusion that included the conclusions and recommendations.

The first topic / what is the right of the sale reply to the defect

The right of the sale reply to a defect is that of the right, which is sworn by the buyer when he claims that there is an old defect in the sale, and he wants his answer, and he claims that he did not satisfy the defect explicitly or implicitly, and to know

the meaning of this oath we should know its meanings and then deal with its characteristics according to the following demands : -

The first demand / definition of the right of the sale reply to the defect. The second demand / characteristics of the right of the sale of the defect.

The first demand / definition of the right of the sale reply to the defect

There is no doubt that the term "right of return of sale" is a rich term that has its linguistic, legal and legal connotations, and because of the richness of the article and its diversity in the definition of this term, we should have identified it according to the following sections: Section II / Definition of the right of the sale back to the defect of Sharia. Section III / Definition of the right of the sale back to a legally defective.

Section 1 / Definition of the right of the sale reply to the language defect

The right is one of the common words that show multiple meanings, which is at the origin of its position, but it is made to indicate the power and ability (1), as well as the section. This was called because if they were allied they would strike each of them with his right hand to the right of his owner. (4), but the defect is the language of the "single defect: the collection of defects for non-Muslims. The source is: 1 - the source of the abus - the stigma, the defect, the flaw, the guilt, the poverty is not a defect - showed the disadvantages of others - the defect of the industry - from looking at the same defect worked for the defect of others - and appointed satisfaction for every blemish flaw, It is flawed, and the object is defective, because it is flawed. It is made flawed and delusional by showing its disadvantages, ascribing it to the defect "(5).

The defect is flawed, defective, defective, and defective, 7 any defect. The choice of a defect is that the seller chooses to return the sale to his seller with a defect. 8 The disadvantage is that what is lacking in the amount of what comes under the valuation of the valuers, In the shows in the top ten, half, and in the animal AED, and in the property two dirhams, gross disadvantage: unlike the disadvantage, which does not enter under the calendar evaluation Almqumin (9).

It is stated that "the slave's custody is three days; it is that the slave buys, and the seller does not require the defect from the defect, so what is wrong with the buyer in

the three days is from the seller's money and he is given without proof. If there is a defect after the three, "(10).

This means that the right to repel the sale for a language defect is the oath in God that the sale is defective, so the buyer chooses to return the sale to the seller with a defect.

Section II / Definition of the right of the sale back to the defect of Sharia

"If the buyer wants to return the sale to the defect of his ruling alliance that he did not satisfy the defect words or an indication of his behavior, the angel acted as stated in Article 344 ..." (11)

This text of the article is a fact is the historical source of what the Iraqi legislator went to when he put the legal article that belongs to the right of the sale back to the defect in it, it is derived mainly from them.

In this case, if the buyer wants to return the sale on the basis of his defect, and the seller denies the defect, the buyer proves his claim, and the purchaser will be sued by the judge before the court decides to reply that he did not satisfy the defect, / 344. If an alliance decides to respond with a defect, and if the court decides to dismiss the case, it is possible that the buyer may have complained of the defect on that face, and the seller could not claim this because he did not stand the buyer's satisfaction. If the seller said that he knew that the buyer did not drop the option of his fault, Right on this face, it seems that the buyer does not swear ... " (13).

Article 1782 of the magazine also states that "If the salesmen differ after the sale has been damaged by the buyer or a defect has occurred in the buyer's hands, the alliance will not be carried out and the buyer will be executed only." He explained the following: "I know that there is no alliance if there is a difference In the price if he dies after the arrest and no alliance if a difference in the sale after the loss or departure from the property of the buyer or his fault with what is not returned by the buyer's swindle only if consumed in the hands of the seller other than the buyer, they are allied to establish the value of the eye and if the consumer is a buyer, If this is the price, we have a trade-off, because a sale is a contract The rest of the rest of them will remain if Halfa returns like a deceased if it is moral or worth it if it is a value and not an alliance either after the loss of some of the sale or its departure from the king of the

buyer but to satisfy the seller to leave the share of the deceased originally so they ally themselves in the selected dir and his entourage to Tahtawi and in the end and the difference occurred Between the heirs of the seller and the purchaser or between the heirs of one of them and the neighborhood. If before the seizure of the commodity they are united by consensus, but the right of the heirs to the flag, if after the arrest, so also when Mohammed and they do not ally and say the words of the buyer or his heirs after his death as explained in the Tahawi. The price does not change If the agent of the arrest does not swear, and the king of the dispute is with the imam, then the buyer shall pay the price he has given him, and if the direct agent comes to the contract and asks him to increase, then they shall enter into agreement. "(14)

As stated in the explanation also that "if the Almtayaan differ after the damage of the sale in the hands of the buyer both or some after the occurrence of defective defect to respond as an option defect or after the sale of the property of the buyer, if it was not the sale of a swap, but it was for a price is not a coalition and the buyer only because the alliance after Constant arrest by analogy text ... "(15).

In this regard, the imams of the Hanafis and Shaafa'is have stated that if the buyer finds a defect in the sale and wants to return it to the seller, in this case the oath will be sworn after proving the defect in the sale before the purchase. It was directed by the court without a request from the adversary, but Abu Hanifa and Imam Muhammad went on to say that it was directed only at the request of the opponent.

It should be emphasized that the Muslim jurists originally did not respect the oath in general in the case before the judge definition, they knew the right a comprehensive definition of all types, has known Imam Bagawi oath as "to achieve the order or emphasis on the name of God or a description of his qualities"), As defined by Al-Hafez Ibn Hajar as "the confirmation of the thing by mentioning the name or attribute of God" (18), and we emphasize here the universality of all these definitions and lack of jurisdiction right to respond to the sale of the defect in the subject of research and study, and what is required in the definition to be inclusive of any All qualities of knowledge and prevents at the same time from entering the qualities of others in it with brevity And it is in fact not the general oath that the jurists talk about in the sections of faith and vows in the books of Islamic jurisprudence, It is clear from the foregoing that the definition of the right of the sale reparation is legally flawed. It

should be noted that there are two definitions: First: - Definition: Year-old is (pan section to confirm mother), And secondly: - a special definition (which are right for discounts and lawsuits).

Finally, the definition chosen for the right of reply to the sale of a defect with our modest estimate is "confirmation of the thing at the request of the judge to mention the name or character of God in the form of special ribbons that the sale has a defect that did not satisfy him choose the return of the sale to the seller of the defect," and this definition includes definitions public and private definition, That the definition of the chosen has addressed the statement of what is the right: it is the (confirmation of the thing) as its corner: which is to be mentioned (name or character of God Almighty) and referred to its own conditions: by saying (tapes specific) and bound this alliance to the most important characteristic: (To be at the request of the judge), that the sale is a defect that did not satisfy him and chooses to return the sale to the seller Flawed. "

Section III / Definition of the right of the sale back to a legally defective

It is noteworthy that this article / 1746 - III of the Journal of Judicial Judgments was quoted literally to Article / 124 - III of the Law of the Judiciary. The Iraqi proof, which stipulated that "III - if the buyer wants to return the sale of the defect of the alliance of the court that he did not satisfy the defect explicitly or indication" and identical article / 123 - C of the Syrian Evidence Act, and Article / 54 of the Jordanian Evidence Act came in the same sense But its wording is different only, and this text is similar to what is stated in article / 83 of Of the Jordanian Civil Code, and Article 120-2b of the UAE Civil Transactions Law, and no similar provision was provided in other comparative laws.

In the above, we refer to the Jordanian Civil Code, the Jordanian Evidence Law, and the UAE Civil Transactions Law. It took the right to reply the sale, and it was sworn by the court, even if the opponent did not ask for it.

The buyer, where the sale is found to be defective, provides proof of such defect, which is likely to have been satisfied with him. He must reinforce his proof with a complementary right that he did not satisfy the defect explicitly as he said: Satisfied,

or as a sign of his arrested sale after learning of the defect. (20). The decision of the Egyptian Court of Cassation stated that "the responsibility of the seller for ensuring hidden defects is conditional upon the defects being inherent in the object of the sale object itself and are present at the time of the receipt of the buyer and reduce the value according to the purpose that was prepared. And if the seller proves that he can not find it himself, if the sale is carefully examined by the usual man, unless the seller has assured him that it is free of it or deliberately hiding it from him, a material of 447 civilians. "

Thus we can define a definition of this right as: a legal right and a right directed by the judge on his own to the buyer if he wanted to return the sale of the defect, and proved his claim that he did not satisfy the defect explicitly or signifying.

The second demand / characteristics of the right of the sale of the defect

The right-of-sale margin is characterized by several characteristics that can be summarized as follows:

1. The repayment of the sale of a defect is essentially a known legal means of proof.
2. It is usually performed by one of the litigants in the case, namely the buyer, and may not be the seller because it is the right that it pays the damage to the buyer and is not damaged by the alliance if he is honest.
- 3 - It is directed by the court and on its own, as the judge asks the buyer to swear oath that he did not satisfy the defect explicitly or meaning, after he proved his claim.
- 4 - It is a legitimate right that is the source of Islamic law is legitimate in Islamic jurisprudence.

It is a legal right, that is, it is usually in the civil case, which is performed exclusively in the Judicial Council. It is a judicial right because it is a confirmation of the matter at the request of the judge by mentioning the name or. And this is certainly a fundamental characteristic of this right from the rest of the non-judicial belief - which is not brought before the courts, which usually agreed by the parties to perform outside the Council of the judiciary did not regulate the law in general terms of the agreement is subject to the general rules which are often common and result. On its

alliance results T agreed Alpartyan- as they are usually within the civil case, which leads from a buyer who has proved his right and exclusively at the request of the judge.

7 - it is an integral right and right, ie, the right of the sale back to the defect in our humble estimate is a special image of the right wing complementary usually in certain circumstances, we have attached to the right complementary to come to complete the evidence seen by the law is incomplete to be completed, as well as that directed by the judge, It is called the legal oath because it is the law that imposed it and therefore it is obligatory. In other words, the judge is obliged to direct it in certain circumstances to one of the particular adversaries appointed by the law and has no discretion in directing it not to direct it. The judge needs to direct it on his own initiative. Incomplete in the case law And it is necessary to reinforce it with an additional right and a right, which is the right of the sale back to a defect in which the buyer is sworn that he did not satisfy the defect explicitly or implicitly.

8 - The objective of the right to respond to the sale of the defect is to show the right is the right to protect the rights from loss, and is one of the most important legal and legal means that were found in order to protect the right of the dispute or abuse, so the right to protect rights from loss and non-aggression .

The second topic: The scope of the right to reply to the sale of a defect and to distinguish it from what is suspected

The original is as it may be that the right of the sale reply may be directed to a defect. The exception is that there are certain specific cases in which the buyer can not return the sale to the seller, but rather his right to demand a decrease in price. The right has several advantages that distinguish it from the others. The first demand / right range of the sale reply to the defect.

Requirement I / Scope of right of sale reply for defect

In the field of determining the scope of this right, it is necessary to begin to overlook the contract of sale, reviewing the importance and place of legislation in general and two centers rather than the seller's commitment to guarantee hidden defects. Hence we will start to get into the subject and determine its scope. Contracts and financial transactions were generally known to the Arabs before Islam, The various

compensations from the sale and lease and mortgage, and when Islam came to recognize the Arabs on a large part of what they deal with while the other section is invalidated.

The contract of sale is the most important contracts named and oldest and most common at all so the legislation was interested in general sales contract, including Iraqi legislation, specifically the Iraqi civil law has been allocated to the first chapter of the first section of the second book Articles 506-600, 22, But the work was to include in the sales contract a condition under the name of the delivery clause that the seller delivered the matter to the buyer and that the buyer Has received it (24), and then approved The French Civilization Act of 1804 was a stage of development. The sale itself became the transfer of ownership if the seller made an obligation to transfer it to the buyer. Article 1583 of the French Civil Code of 1804 stated that " Their agreement on the sale and price, even if the sale was not delivered and the price did not pay, "as the Egyptian law followed the approach and lines of French law became a contract of sale itself and without the need for another procedure.

We have observed through the extrapolation that Islamic law has preceded all progressive legislation in making the contract of sale a transfer of ownership so that the purchaser of the property or the movable becomes the owner of the sale by contract. 26 The Code of Judgments defines the contract of sale in Article 105 as " "As defined by Article 343 of the Guide of the Hieran to the knowledge of the human condition of Mohamed Kadri Pasha that" the ownership of the seller money to the buyer money is a price for the sale, "and these definitions, we find that selling in Islamic jurisprudence either to be selling the eye cash, Or selling the eye by the eye, which is barter or selling cash In cash, the exchange or the sale of deferred money at an urgent price, namely peace.

The sale was defined as article 506 of the Iraqi Civil Code, which states that "the definition is a definition derived from Islamic jurisprudence and in particular from Article 105 of the Code of Criminal Procedure referred to in article 507 of the Iraqi Civil Code. It is also derived from the Islamic jurisprudence, and in particular from the text of Article / 120 of the Code of Judicial Judgments, as noted in the definition of "selling the eye in cash" The sale contained in the Iraqi Civil Code did not refer to the effects that ensue Li this contract, namely Sales transfer of ownership to the buyer

once the sale was completed, and the necessity of the fact that the price required by the buyer a sum of money, because this is what distinguishes it from barter.

Thus, we reach the conclusion that in the contract of sale the seller is committed to the buyer not only to achieve the latter a quiet possession of the sale by paying the exposure he may be subject to, but also under this main obligation to achieve beneficial possession, and there is no defect in the sale Prevents the beneficial use by the buyer and therefore the seller in this case ensures that the buyer is free from such defects.

Islamic jurisprudence also defines the system of hidden defects and has established an integrated approach to it, as the jurists say that this option is a sale option that proves to the buyer without the requirement of the contract because the safety of the sale of the defect is an implied condition in the contract.

In fact, the Iraqi Civil Code defined the hidden defect in Article 558-2 as "what is lacking in the price of the sale at the traders and the experts, or if it fails to achieve a valid purpose if it is often in the example of the sale or not ..." (30) The defect is "Such as is usually lacking and whose existence is less valuable or useful".

The position of the Egyptian legislator will not deal with the hidden defect in the definition, but it has been defined by the diligence of modern has been known by the Egyptian Court of Cassation in a decision that "the defect resulting from the claim to ensure the hidden defects in accordance with Article 313 of the old Egyptian rationing is an emergency pest that lacks the common sense of sale If the buyer complains that the sale is made of material other than the agreed article, it is not considered a hidden defect of the guarantee. "32 It is noted that the Egyptian Court of Cassation took this definition from the Islamic jurisprudence, specifically from the Ibn Abidin footnote in the Hanafi jurisprudence, The defect is absent from the origin of the As well as the soundness of the pests. "33

The law of Lebanese obligations and contracts did not define the hidden defect, but the Lebanese jurisprudence defined it as "a bug that exists hidden in the sale of its importance and gravity, which makes it useless for useful use in the form desired by the buyer." 34 This definition shows that Lebanese jurisprudence The guarantee of the hidden defect is not limited to a specific category of defects. The definition is fully

stated for every problem that is not realized by the benefit after completion of the contract of sale and the transfer of ownership of the premises. The buyer's knowledge of this defect is a problem found in the agreed sale, which makes it useless for the agreed benefit. .

Thus, there are the conditions of the positive defect of the guarantee. 36 In order for the seller to guarantee the defect that appears in the sale, there must be certain defect in the conditions without which the buyer can not return to the seller with the guarantee because if we take into account any defect in the sale regardless of If the defect is serious or trivial, it leads to instability, instability in transactions and waste of force binding on contracts. 37 Under articles 558 and 559 of the Iraqi Civil Code, the following three conditions must be met: first, to be hidden, second, to be Third, it should be old, and it must be considered as defective According to the provisions of article 559 of the Iraqi Civil Code, the buyer is not aware of its existence at the time of sale or if it can not prove it if it examines the sale with the necessary care. It is identical to article 447-2 of the Egyptian Civil Code and article 460 of the Civil Code (38), the buyer can not claim to conceal the defect even if it is hidden if he knows of the defect or has been informed of his personal experience or used by an expert.

The seller does not guarantee the defect unless it is old and the foot here means that the fault is present in the sale at the time of delivery is referred to in Article 558-2 of the Iraqi Civil Code saying: "The defect shall be old if it exists in the sale at the time of the contract or after it It is in the hands of the seller before delivery ... ". Article 447 of the Egyptian Civil Code stipulates that "the seller shall only guarantee the defects existing at the time of sale in a particular kind or at the time of delivery, if the sale is comparable and sold by weight or by analogy or by Description "(40).

In its decision No. 881 / H / 956 of 21/6/1956, the Iraqi Court of Cassation went on to state that "the plaintiff had stated in a petition that the plaintiff had sold her the car and assured her that the sale was void of the defect. The court had to instruct the plaintiff to prove this. Has the right to invoke its rightist opponent that he did not confirm to her that the sale is free of defects ... "(41).

The Court of Cassation also ruled that "it was found that the privileged judgment was incorrect because the court ruled that the claim was rejected on the ground that the plaintiff's claim of fraud by the plaintiff by concealing the defect was merely a case of

evidence and the court considered it incapable of proving it. The plaintiff's agent explained in the pleadings that his client after receiving the car appeared to have a warp in the clothes because of its coup. It also appeared that the plaintiff changed the color of the car from yellow to white. The plaintiff's agent indicated that the two cases could not be found by the plaintiff Upon receipt For a car because it is hidden defects involving fraud and since paragraph 2 of Article / 570 of the Civil Code prevents the seller from holding on to the passage of time in the guarantee of defects by the expiration of six months from the time of delivery of the sale if it is proved that the concealment of defect was cheated it was the court and this case to use In the opinion of people of experience to find out the truth of the facts mentioned and whether it is considered to be carried out by the seller cheating or not and in light of what you reach is separated in the case and issued a distinctive judgment otherwise, which violated his health and decided to revoke it ... "(42).

If the above conditions of defect are available, the buyer can refer to the seller with the guarantee, but the buyer must take some measures in order to preserve his right of guarantee:

First / Examination of the sale and notify the seller of the defect. In the event that the defect is met with its previous conditions, and if the buyer fails to notify the seller of this defect within the reasonable period, the seller has the right to return the guarantee to the seller. Article 558-1 of the Iraqi Civil Code specifies this guarantee by saying: If he wants his reply and if he wants to do so before him, he will pay his price. "

It is clear from the text of the above paragraph of Article 558 of the Iraqi Civil Code that the buyer has the choice between replying the sale by canceling the contract and retrieving the price and maintaining the price, but at the price mentioned in the contract that this provision was derived by the Iraqi legislator from the Islamic jurisprudence, (43), while the other jurists of the law, they allow the buyer between the dissolution of the sale or spend with the claim for the price part of the part of the sale of the sale of a defect in it (44).

As for the Egyptian legislator, if the defect is serious, the buyer shall have the choice between annulment or retention of the sale with compensation for the defect as required by the general rules, and if the defect is not serious, the buyer shall only be compensated for the harm suffered. Thus, it is clear to us that the Iraqi legislator does

not The defect of the sale or sale at all costs The Iraqi Court of Cassation ruled in its decision that "if the car appears defective, the buyer is willing to refund it and if he wishes to pay it at its stated price and not to demand a decrease in price or price difference ...").

If the purchaser is in accordance with the first paragraph of Article 558 of the Iraqi Civil Code between the dissolution of the contract and the return of the sale and keeping it at all costs, there is nothing to prevent the buyer from asking the seller to carry out the seller's obligation to guarantee in kind in accordance with the general rules, The sale is defective at the expense of the seller if possible.

In general, the rule is that the sale may be repaid for a defect in it, and the exception is that there are certain cases, if they are achieved, that the seller can not return the sale to the seller, but his right to demand a decrease in price is limited. -

The first case: - A new defect in the sale after the delivery: - Article 562 of the Iraqi Civil Code states that "1 - if the sale of an old defect and then a new defect in the buyer does not have to respond to the old defect and the new defect exists in it, To demand the seller to reduce the price unless the seller satisfied by taking the defect and there is no objection to the response. 2 - If the defect defect returned to the buyer the right to return the sale of the old defect to the seller "(48).

The second case: - Increase the sale of the buyer's money: - The increase that prevents the response based on the text of article / 563 of the Iraqi Civil Code and allow the buyer to refer to the low price either to be a continuous increase is not generated as construction and plant or a separate increase generated as the price either increase Discrete and non-generated items such as wages and the increase generated do not prevent the response.

The third case: - The loss of the sale is defective in the hands of the buyer: - Article / 564 of the Iraqi Civil Code states that "if the sale of the sale is defective in the hands of the buyer and his property is due to the seller to reduce the price.

The buyer shall act with the defective sale before he is aware of the defect. If the buyer does the wrong thing, the landlord shall act before he is aware of the defect in which he is due to the seller for the low price. This provision is derived from the concept of violation of article 566 of the Iraqi Civil Code.

Second demand / right-of-sale distinction for suspected defect

The right of the sales repudiation is flawed from the rest of the faith, which is similar in aspects and differs from it in aspects such as the complementary faiths of the bourgeois and the meritorious. They are similar in different places and differ in other places. Therefore, our study requires clarifying these matters through the following two sections: Response of the sale of the defect of the complementary faith of the bourgeois. Branch II / discrimination right of the sale of the defect of the right of memorization.

Section I / The distinction of the right of the sale of the defect of the complementary faith of the bourgeoisie

We can explain the most important differences between the right of the sale of the defect and the complementary faith of the bourgeoisie as follows:

First: the similarities between the right of the sale of the defect and the complementary faith of the bourgeoisie:

That each of them has been attached to the complementary right as it comes to complete the incomplete evidence either that the law is incomplete and wants to complete it and complete it with the right to reply the sale of a defect imposed by the law or the judge may see it incomplete and need to be completed by the juridical complementary complementary right and its discretionary power Wide and a very positive role in directing the case and related evidence and investigating the facts to complete his conviction and complete the lack of evidence to move in an effort to reach a fair government and ensure the proper application of the provisions of the law.

2 - that each of the right of the sale of a defect in it - which is one of the images of complementary faith obligatory - with the complementary faith of the bourgeois agree in the most important aspects, it can not be sworn to the other opponent because it is a form of the right complementary and thus apply to the provisions of Article / 123 Of the Iraqi Law of Evidence, which stipulates that "the opponent to whom the court has directed the complementary right is not allowed to respond to the other opponent," which is identical to Article 120 of the Egyptian Evidence Law, Article 252 of the Lebanese Code of Procedure, Article 124 of the Syrian Evidence Law , Article 70 of the Jordanian Evidence Act, and Article 349 of the Law Article 49 of the UAE Law of

Evidence 49 is not part of the decisive oath that allows the right of the opponent to be sworn in. It is directed by the judge rather than the adversary, because it is a means of complementing the conviction of the judge, This may be its response to the conscience of its adversary to whom the judge is sworn, as in the case of the decisive right.

Second: The differences between the right of the sale of the defect and the complementary faith of the bourgeoisie:

1. The right of the sale is different from that of the bourgeois complementary faith that the judge is obliged to direct it in the case specified by the law and does not have the discretion to direct it, as is the case in the complementary faiths of the bourgeoisie.

(2) The judge has no right to repudiate the sale in the right to return the sale. The judge may direct the complementary right to one of the litigants in the case - the plaintiff or the plaintiff - depending on the odds of the ratification of the interest of one of them, except on the right of the calendar. The law sets the right of appreciation to the plaintiff only demanding the recovery of the thing, and thus here is similar to what is in the pictures of faith The finite complement of determining which opponent is SEO The right to repudiate the sale of the right to repudiate the sale, or to deny it, is binding on the judge, contrary to the complementary faith of the bourgeoisie.

The right of the sale reply shall not be subject to a defect unless the buyer proves his claim, but the law considers it imperfect to be supplemented by this oath, whereas in the complementary right, which is part of the bourgeois complementary faith, it is directed only if there is incomplete evidence that includes the principle of legal certainty, Any incomplete legal evidence which would make the existence of the alleged right probable, the judge may complete his partial conviction and complete it with the supplementary right to serve as a complete guide and then build his judgment on the merits of the case. 51 The evidence is essentially the full proof at the right of reply The sale of the defect in it, however the law requires the judge to be dissolved In this right to the realization of the right.

The second destination / distinguishing the right of the sale reply to the defect of the right of memorization

We can clarify the most important differences between the right of the sale of the defect and the right of memorization, as follows:

First / the similarities between the right of the sale of the defect and the right to memorize: -

1. Each of them can be categorized by our humble assessment in the obligatory complementary faiths because they are indeed legal beliefs imposed by the law, and they are a right and a right because they oblige the judge to direct them and have no discretion in directing them or not. The judge needs to direct them on his own. The case shall be considered in the eyes of the law and shall be reinforced by an integral right.

2 - Both are judicial, ie they are in civil proceedings in the Judicial Council exclusively, they are confirmation of the thing at the request of the judge to mention the name or character of God as a specific tape, and this is certainly a fundamental characteristic of these beliefs from the rest of the faith is not judicial, One of the two adversaries to the validity of what the opponent claims at the request of the judge exclusively, it is either the right of invocation that the plaintiff did not meet his right in any form of the picture, the deserving of money but provides evidence relative to the King and remains to strengthen this guide with complementary right and complement legal Juba is The right of invocation is that the money did not come out of his property in the face of the In which the right of the seller's right to reply to the sale has been proven to be defective in that he has not satisfied the defect expressly or Indication.

3 - both right and legal right directed by the judge on his own to the plaintiff - at the right of invocation to the plaintiff of the right to the estate, which proved his right that he did not meet the right himself or the other deceased and his father and not transferred to others or fulfilled his religion from others and not the deceased in exchange for this The right to pledge - either in the case of the right of return of the sale of a defect in it to the buyer to the fact that he did not satisfy the defect explicitly or indication, and both were known in Islamic jurisprudence (52).

Secondly: The difference between the right of a salesman's response to a defect and the right to memorize it:

1. In cases where the sale is repugnant, the judge must direct the oath to the buyer without the need for a request from one. The judge will automatically assign a right to the buyer who has proved his claim that he has not satisfied the defect explicitly or substantively and reinforces the original evidence he has obtained. To the author of the right to the estate, which proved his right that he did not meet the right himself or the other person of the deceased and does not transfer it or transfer it to others Or he has fulfilled his debt from third parties and not to the deceased in return for this right.

3 - One of the effects on the right of the sale of the defect is that if the buyer who has proved his claim, he earns his right and ordered him to refund the sale to the defect to the seller, because this oath is actually a proof of the judge to strengthen the original evidence, The evidence presented to him, this oath is not a guide in the judgment, and does not reach to the alliance only after proven right, but if the right of the oath did not swear by the buyer lost his claim, because this oath is legal imposed by the law, and the evidence here is fundamentally deficient in the eyes of the law And it came to complete the evidence that the law considers incomplete and is intended to be taken The judge is obliged to direct them in certain circumstances to one of the particular adversaries appointed by law, while the right-of-memorization oath proves his right to the estate as an effect, but if the right-wing and did not swear the plaintiff lost his claim also.

The third topic / legal rules to the right of the sale of the defect

There is no doubt that Limin's response to the sale is a flaw in which there are legal rules that distinguish it from others. It should usually have legal conditions. Therefore, it is necessary to look into these conditions and to identify them, and then to address the implications thereof, according to the following demands: Terms of the right of the sale of the defect.

The second demand / effects of the right of the sale of the defect.

The first demand / conditions of the right of the sale reply to the defect

It is usually necessary to direct the right of the sale reply to the defect of the availability of several conditions that can be clarified as follows:

- 1- The buyer shall request a refund of the sale for a defect in it.
2. The buyer shall assess the defect and prove its existence.
 1. The judge may, on his own motion, ask the buyer to swear oath if the buyer wishes to return the sale to a defect.
- 4- The right of the sale refund shall be done by one of the two adversaries exclusively, the purchaser, without the need of a request from his opponent, by mentioning the name or description of Allaah. The wording of the right shall be deemed by the purchaser to be not satisfactory.

The second demand / effects of the right of the sale of the defect

On the right of the sale reply, there are a number of effects that are defective:

First: - The right of the sale of the right of the sale of the defect.

If the buyer submits the evidence proving his claim that there is a defect, the court makes it on its own right to return the sale to a defect in it because he did not satisfy the defect expressly or explicitly, such as saying: Satisfied, or indication: If the court does not issue this oath, then its ruling shall be subject to appeal by the Court of Cassation.

Thus, if the buyer, who has proved his claim, wins his right and orders him to return the sale to the seller for a defect, because this oath is actually a proof to be sworn by the judge in order to reinforce the original evidence that he drew from him.

Second: The effects of the right-of-sale on the right of the sale of a defect.

However, if the buyer distorts the oath of this oath explicitly or implicitly, he loses his claim and rejects it, because this indicates that he has been explicitly or implicitly disqualified, and thus the evidence remains in the eyes of the law incomplete, because this oath is legal and is imposed by law. . Therefore, the right was legally imposed as it came to complete a guide that the law deems incomplete and intended to be completed. The judge is obliged to direct it in certain circumstances to one of the particular adversaries appointed by the law, the buyer.

In this regard, he said in article 1746 of the Code of Judicial Judgments that "... if a member of the court decides to respond with a defect, and if the court decides to dismiss the case, it is possible that the buyer may have complained of the defect on that face. If the seller says that he knows that the buyer has not dropped the option of his defect and therefore does not ask to be sworn in on this face, it seems that the buyer does not swear ... "(53).

Conclusion

Through the study we have reached several results, which we have installed in the places of study, and I will suffice here to refer to the most important of these findings and recommendations that we reached, as follows:

First: Results:

1 - It turned out that the subject of the right of the sale of the defect of an important subject was not given the right of research and study did not discuss the subject in sufficient and thorough research specialized in depth.

2 - It turns out that the Muslim jurists, although they knew the right to respond to the sale of the defect in it, but they did not belong to a specific definition, and reached the definition chosen for this right.

3 - It turns out that the right of the sale of the defect is characterized by several characteristics distinguish them from the rest of the faith, as we concluded to identify the terms and effects.

4 - we have reached two parts of the first right: includes the complementary faiths juridical judicial, where the judge may direct or not, according to his discretion and conviction of the evidence before him, the second: the complementary faith mandatory legal, where the judge is obliged to direct as long as the situation has been identified Law, that is to say, it has no discretionary power to direct it.

5 - We have discovered that the hidden defects have some of the defect to be old and hidden and influential as we find that all the laws of comparison were conducive to it.

Second: Recommendations:

1. We propose that the text of article 558-2 of the Iraqi Civil Code be amended and that the word "other" should be added to the following wording: "What is lacking in the price of the sale by traders, experts and others, or what is missing a proper purpose if it is most often in the example of sale or not ..." Because the old text lacks precision because it restricts them to traders and experts.

2- We suggest that the Egyptian Civil Law should follow the example of the Iraqi Civil Code and the Lebanese Obligations and Contracts Act to grant the buyer the right to return the sale, although the defect is not serious by not conforming to the specifications agreed upon in advance with the seller to settle the contractual relations.

3 - We recommend intensifying comparative legal studies by laws and returning legal legislation in the Islamic world to Islamic jurisprudence to guide them through its methodology and rulings.

4. We call upon the legislators of the comparative laws to regulate the provisions of this oath within the provisions of the laws of evidence in order to avoid controversy, and follow the example of the Iraqi law of evidence by stating explicitly.

5 - Return legal legislation in the Islamic world to the origins of Islamic jurisprudence to guide them from his approach and take the provisions of which are characterized by justice and equity.

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46. The Lebanese legislator preferred to give the buyer a claim to refund the sale or to reduce the price to consider: Article 49 Lebanese obligations and contracts, as stipulated by the French legislator in article 1644 of the amended French Civil Code 1804. On the same judgment. Quoting: Jafar al-Fadhli, op. Cit., P. 140
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- 48 - In order to achieve justice, there must be a distinction between two cases: First case / If the new defect arises because of the old defect, such as buying a person car and then turn during the use and injury new defects and then the technical examination shows that the accident occurred due to an old defect of its position For example, the buyer should be given the choice between the refund of the sale and its full refund or acceptance of the sale with the claim of a lower price equivalent to the damage suffered by the accident arising from the old defect. The second case is if it appears that the new defect occurred by the buyer and has nothing to do with the defect The old or grew up because of Force majeure. In this case, the buyer is not

entitled to claim refund Sales, but only the right to claim the price decrease of the equivalent of the old defect. For more detail see: Jafar al-Fadhli p. 142.

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