Contractual liability for the act of others in the finance lease contract

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Abstract:
The researcher dealt with the subject of Contractual liability about the act of others in the finance lease contract. It was discussed about the most important conditions that must be met in order for Contractual liability to abstain from the actions of others in the first requirement of the research. Then to talk about the most important forms of contractual liability on the act of others in the finance lease contracton the part of the lessor or the lessee, in accordance with what was stated in the finance lease law in the second requirement of this research. Contractual liability and the extent to which it includes contractual liability for the act of others, and the extent to which the principle of relativity of the effect of the contract conflicts with Contractual liability over the act of others in the finance lease contract. The researcher followed the descriptive analytical approach to answer the problem posed in the research by describing the problem under study and analyzing the legal texts regulating the subject using jurisprudence opinions and jurisprudence of the courts.
Keywords: Others, Contractual Liability, Contractual Liability, Assignment of Contract, Subrogation, Financial Leasing Law.

Introduction:

Civil liability in its two parts (contractual and non-contractual) in general, which is regulated by law for many purposes, including the stability of transactions and the creation of legal trust between the contracting parties, if the source of this responsibility is a contract. Also, one of its goals is to maintain societal security through responsibility for the harmful act and the natural state that Contractual liability arises when one of the parties to the contract fails to implement one of his obligations according to the relativity of the effect of the contract and the availability of the pillars of contractual responsibility.

However, in some cases, contractual liability may be established towards one of the parties to the contract over the act of others. What is meant here by others is “not every person is a stranger to the contract, but rather every person who is involved in the implementation of the contract without its parties, whether by law or by agreement.”

The jurists differed on the basis of responsibility; some of them assessed it on an assumed error that cannot be proven otherwise. And some of them arrange it on the idea of carrying dependency. And some of them build it on the idea of a third party replacing the original, so he is considered his representative in the mistake he committed, and some of them base it on the idea of guarantee (1).

It should be noted that Contractual liability over the act of others is not taken for granted, but rather it must meet several conditions that we will review in this research in detail. It should be pointed out here that the idea of contractual liability over the act of others is subject to a jurisprudential dispute, as part of the jurisprudence has gone to the non-acceptance of it (denial) of this responsibility. And the other side went to the introduction or approval of it. Perhaps the reason for the doctrinal dispute is the absence of a text in a lot of legislations for this responsibility.

And accordingly; the subject of our study will be about the finance lease contract by dropping the terms of Contractual liability over the act of others on the finance lease contract.

Research problem:

The problem in this research is about the adequacy of the legal texts regulating the provisions of contractual liability and the extent to which they include contractual liability for the act of others and the extent to which the principle of relativity of the effect of the contract conflicts with the contractual liability of the act of others in the finance lease contract. :

1. What is meant by others?
2. What are the terms of liability for the act of others in the finance lease contract?
3. What is the legal basis for contractual liability for the act of others?
4. What is the scope of Contractual liability over the act of others in the finance lease contract?

Research importance:

The importance of the research lies in studying the subject of contractual liability from the act of others in the finance lease contract from various aspects. This is Due to the frequent conclusion of such type of contracts, and also for the absence of legal legislation for contractual liability for the act of others in the finance lease contract in most Arab legislations.

Research objectives:

As the objectives of this study are summarized as follows:

1. Clarifying the concept of others in contractual liability about the actions of others.
2. A statement of the most important terms of Contractual liability about the act of others in the finance lease contract.
3. Statement of the legal basis for Contractual liability for the act of others in the finance lease contract.
4. Statement of the most important applications of contract liability for the act of others in the finance lease contract.

Research Method:

The researcher will follow the descriptive analytical approach by describing the problem under study and

referring the legal texts related to the subject of the research in addition to analyzing the jurisprudential opinions and jurisprudence of the courts in this regard.

Research division:

The first requirement: the terms of Contractual liability for the act of others in the finance lease contract

Section one: The valid contract between the lessor and the lessee

Subsection Two: Involvement or interference of others in the implementation of one of the contractual obligations

Section Three: The existence of a contractual error by others

The second requirement: Contractual liability for the act of others in the finance lease contract

Section one: The tenant's contractual responsibility for the act of others towards the lessor

The second subsection: the lessor's contractual liability for the act of others towards the lessee

The third subsection: the contractual liability of the supplier for the actions of others

The first requirement

Contractual liability for the act of others in the finance lease contract

Contractual liability, in general, is one of the effects of the correct contract. It is not possible to imagine that Contractual liability exists except within the framework of the correct contract. With reference to the principle of the relativity of the effect of the contract, the effects of the contract go to the contractors without others, because their free will is the one that established the obligation. Thus, the rights and obligations fall on the shoulders of the parties, but one of the parties can be asked about the act of others, where he meant by others "everyone who was not a party to the finance lease contract but participated in its implementation as an assistant to one of the parties or a substitute for it or had a certain privacy that made its breach It does not amount to a foreign cause by which the debtor is relieved of liability. But in order for Contractual liability to be based on the act of others, several conditions must be met, which are (the existence of a valid contract, the entry or intervention of others, the commission of a contractual error on the part of others), and this is what we will explain in this requirement.

First branch:

Right contract:

The correct contract is the foundation of contractual liability, whether this responsibility is for a personal act or responsibility for the act of others, the construction of liability on a legal basis in terms of extent does not differ in its effect according to the difference in its source, but rather the consequences of it differ. Accordingly, the Jordanian legislator defined the valid contract, and from this definition it is understood that it is a contract complete with conditions and elements, and it is a contract that arose out of consent and then on the place and reason correctly (2). It is stated in this proposition that according to the provisions of the valid contract in Jordanian law that there are Several conditions for the contract to be considered valid, perhaps their basis is

that the contract has been concluded with valid consent in all the elements of this consent and a valid place in accordance with the conditions specified for it in the law.

It is clear from the foregoing that what distinguishes a valid contract from a void contract is the legality of its place and its cause, and that the other ranks of the contract in the Jordanian civil law are other than the invalid contract, even if they are marred by defects that affect part of it, such as the corrupt contract or its enforcement, such as the suspended contract, except that if the reason was removed or authorized, then it is returned for the correct contract (3).

Accordingly, the researcher finds that what completely denies Contractual liability and cannot be researched definitively in one of the cases stipulated in the Jordanian Civil Code is the invalid contract. As it does not have any effect arising from its existence and as it is known that liability in one way or another is an effect of the contract. Finally, it must be pointed out that the contract must be mandatory, and liability cannot be established without an obligation (4).

As for the finance lease contract; the provisions of this contract in Jordanian law were regulated in a special law called the Financial Leasing Law.

The Jordanian legislator defined the finance lease contract in the finance lease law in the text of Article 2 of the law so that its definition as follows: "The finance lease contract that is regulated and concluded in accordance with the provisions of this law (5)."

Based on the foregoing, we find that the legislator's definition of the finance lease contract is not clear and contains ambiguity, which calls for reference to (fiqh) to clarify the concept of the finance lease contract. Whereas part of the jurisprudence sees that the definition of the finance lease contract is "every contract under which the lessor undertakes to lease to the lessee real estate or facilities owned by the lessor or to establish them at his expense with the intention of leasing them to the lessee, according to the terms, conditions, specifications and the rental value determined by the contract" (6).

We conclude from the above, in order for us to be in front of a valid financial lease contract, there must be general objective conditions and special objective conditions in the finance lease contract. As for the general objective conditions, we will talk about them in a hurry, which are (satisfaction, place and reason).

Where the element of mutual consent is the basis and foundation of the contract, and the civil law defines the element of mutual consent in the text of Article 90. The text of the article is as follows: "The contract is concluded as soon as the offer is linked to acceptance, taking into account what the law decides above that of certain conditions for the conclusion of the contract" (7).

In the field of consensual agreement, it is required that the contract be issued by someone who is qualified to contract, whether in terms of the lessor or the lessee. It is a

contract revolving between benefits and harm in terms of origin. It requires the person from whom the disposition is issued to be distinguished (8).

With regard to the corner of the place, in order for it to be valid and existing, it must meet several conditions, namely, that the place be present and existing or possible to exist, that the place be specific or definable, and that it is subject to the rule of the contract (9).

Mention must be made here in the previous talk about the subject matter of the obligation and by dropping these conditions on the finance lease contract, the location in the finance lease contract is a benefit. It is stipulated that the contract be usable and it is stipulated that all descriptions related to the lease are specified, whether it is real estate or movable. In addition, the rented property must be one of the things that may be dealt with.

As for the corner of the reason for it to be valid and valid, it must fulfill several conditions, which are that the reason be legitimate and that it is present at the time of the contract (10).

With regard to formality, the legislator has stipulated as a general principle in some contracts a specific formality, whether this formality is the registration of the contract, emptying it into a specific template, or writing, so that the purpose of registration is a desire of the legislator to inform the contracting parties of the importance of the legal action they perform, as it leads to an effect. in their financial liability (11).

By dropping this element on the finance lease contract, Article 15/A of the Finance Lease Law stipulates:

"A. The lease contract related to any of the real estate and private movables must be registered in the competent official departments under pain of nullity, and this registration does not entail any fees and taxes" (12).

Referring to the previous paragraph, we find that the legislator required the registration of the finance lease contract with any of the real estate and private movables, and by reference to the text of Article 2 of the Financial Lease Law, we find that what is meant by private movables are those movables that the legislation in force requires that they be registered in the competent departments, such as cars. With regard to real estate, if the finance lease contract relates to real estate, it must be registered with the competent department, which is the Land Department, under penalty of nullity.

However, if the finance lease contract does not refer to real estate or private movables, it must be registered in a register called (Movable Property Register), in which registration is optional and aims to inform third parties of the existence of a property right related to the movable leases. This is stipulated in Article 16/A from the Financial Lease Law, as it came as follows: "A. 1. A register called (Movable Property Register) shall be organized in the Ministry, in which registration is optional and aims to inform others of the existence of a property right related to movable property. 2. Real estate, private

movables, lease contracts and related legal actions are not subject them for registration in the Register." (13).

Second branch:

Involvement and interference of third parties in the execution of the contract

As we mentioned before, the conditions must be fulfilled in order for the contractual liability to be established, and in this regard we will talk about the second condition of the conditions that must be met in contractual liability in order for it to be established. It is the contractor's use of a third party (alternative, assistant) in executing the contract. In such a case, it is considered a form of interference or the involvement of others in the implementation of the contract.

It is possible that the parties to the lease contract willingly involve others in the implementation of the lease contract, and therefore the party who entered them is asked in the event of their breach of the lease contract, and his responsibility here is contractual responsibility for the act of others. A third party may intervene in the finance lease contract by nature, however, the party on whom the law is imposed shall be required to guarantee the actions of the third party if the third party breaches his obligations arising in the finance lease contract.

First: Involving others in the implementation of the finance lease contract.

The parties to the finance lease contract may charge a third party to perform the obligations arising from the contract, or this assignment may be limited to merely assisting the parties to the lease contract in carrying out the obligations arising from the contract. In this case, the parties to the finance lease contract are those who voluntarily assign others to carry out the obligations generated by the finance lease contract, so the debtor (the lessor or the lessee) becomes responsible for the act of others based on this assignment and their responsibility here is contractual liability for the act of the third party.

Accordingly, the researcher believes that there are some forms in which the parties to the contract resort to assigning others to implement the obligations generated by the lease contract. They are many and varied, including, for example, but not limited to, assigning the engineer and the contractor to carry out the necessary repairs and other forms in which the lessor may enter others as an assistant or alternative, since their breach here is based on the lessor and he is responsible for contractual responsibility for the actions of others (15).

Here, a question arises at the rule of entering a third party into the contract, as his entry is imposed by the creditor on the debtor, and that is through the assistance of a certain person to implement the contract?

Where we answer the following question that the liability resulting from the breach of this situation rests on the creditor and not on the debtor, in the case if the role played by the third party falls within the category of substitutes, as the alternative performs the work independently and without being subject to the direct supervision or direction of the debtor Accordingly, the creditor is

the one who bears the responsibility because he is the one who chose it and imposed it on the debtor, who had no objection to this choice (16).

Second: The interference of others in the lease contract (by virtue of the law).

The researchers find that one of the parties to the finance lease contract may be asked about the act of others if a third party is involved in the execution of the contract against one of the parties (by virtue of the law), and for example, guardianship over the youngster. Between benefit and harm, and therefore the rule of the contract is dependent on the guardian's or minor's permission when he reaches maturity, and therefore if the guardian is based on the authorization of the contract, the guardian and guardian in this case is considered a change in relation to the contract (by virtue of the law) in the implementation of contractual obligations for the act of others.

This is with regard to the entry of a third party to perform the contractual obligations either by the lessor or the lessee by agreement, but if the third party intervenes voluntarily without being assigned by one of the parties, the finance lease contract. If the debtor is prevented from carrying out his obligation, the third party in this case is considered a foreign reason that exempts the bona fide debtor from carrying out the obligation according to the general rules, and accordingly, there is no contractual responsibility towards the debtor, but he asks the third party for a tort liability (17).

Third branch:

The existence of a contractual error on the part of others

Contractual error is one of the most important pillars of contractual liability. If the act does not rise to the point of error, then there is no contractual liability in this case. Contractual liability does not exist merely because the debtor fails to implement his obligation, but rather the failure to perform must be due to the debtor's error. A distinction must be made between commitment to a result (achieving an end) and commitment to a means (taking care). With regard to the first type, it is imposed on the debtor to achieve the desired result, such as the carrier's obligation to deliver the transported goods safely without delay. Reserving the debtor's right to pay Contractual liability by proving that performance has become impossible due to a foreign cause such as force majeure. As for the second type, which is the obligation of a means, the debtor does not commit to more than exerting a certain effort or diligence, and if he does so, he is considered to have fulfilled his contractual obligation (18).

By dropping this condition on the finance lease contract, it is envisaged that there will be a contractual error issued by a third party in several cases, including:

If a finance lease contract is concluded, provided that the lessor leases a vehicle to the lessee for use during a contract period and the lessee operates the vehicle by a driver and the driver causes damage to the vehicle, then it is considered a breach on the part

of the lessee that he did not maintain the leased property. In this example, the fault is also imagined on the part of the lessor If he nominates a person to hand over the vehicle to the lessee and is late in delivering the leased property to the lessee or handed it over to his subordinates, then in this case the contractual responsibility towards the lessor for the actions of others.

It should be noted in this regard that the Jordanian legislator in the financial lease law in the text of Article 2 stipulated that the lessor be an exclusively legal person, while the lessee may be a natural or legal person (19).

The second requirement

Contractual liability on the act of others in the finance lease contract

In the previous requirement, we talked about the terms of Contractual Liability and the act of others in the finance lease contract. If the above-mentioned conditions are met, the responsibility rests with one of the parties to the contract. Either Contractual liability is based on the act of others on the lessor towards the lessee.. Or the responsibility is on the lessee towards the lessee, or the liability of the supplier is based on the lessor or the lessee, and we will talk about these images, each in a separate branch.

First branch:

Contractual liability of the tenant for the actions of others:

The principle is that the tenant performs his contractual obligations on his own voluntarily, according to the principle of binding force of the contract, so that the parties are the ones whose wills are directed to establish this contract and therefore they must abide by its implementation, but sometimes the tenant may entrust another person (others) to implement one of his contractual obligations. Third parties make an error in the implementation of these obligations.

The Jordanian legislator regulated in the financial lease law the obligations of the lessee, as stipulated in Article 10/b as follows:

B. The tenant is obligated to the following:

1. Receipt of the rented property in the condition agreed upon in the lease contract.

2. Paying the lease payments on the dates agreed upon in the lease contract.

3. Using the leased property according to its nature and in the usual manner of its use, taking into account any special provisions in the lease contract.

4. Maintaining the property in the condition in which it was received, taking into account the changes that may occur to the property as a result of normal use and any other changes agreed upon by the two parties.

5. Maintaining the leased property at his expense in accordance with the lease contract or any technical standards and bases for maintaining and maintaining the leased property.

6. Returning the property to the lessor in accordance with the provisions of the lease contract or in the cases specified in this law (20). ".

And because the finance lease contract may be attached to the

property, it is similar to a lease contract that enjoys privacy and falls within the category of contracts of a social (family) nature, where there is permanent friction with the leased property through the lessee and his family members living with him or his assistants. If one of them causes damage to the leased property, the lessee shall be held responsible for contractual liability for the act of the third party.

In the finance lease contract, the lessee may ask about the act of others in the case of a sub-lease. The legislator has authorized the sub-lease in the text of Article 9 of the Finance Lease Law which states:

a. The lessee, with the written consent of the lessor, has the right to sub-lease the leased property, and the sub-lessor and the sub-tenant are considered as lessor and lessee in accordance with the provisions of this law and they enjoy the rights of the parties to the lease contract and bear their obligations.

NS. The sub-lease contract is void if there is no written consent from the lessor.

NS. Subletting the leased property does not affect the rights and obligations of the lessee as specified in the lease contract vis-à-vis the lessor.

Dr.. The term of the sub-leasing contract may not exceed the term of the original lease contract.

e. The termination of the original lease contract entails the legal termination of the sub-lease contract, unless agreed otherwise. In this case, if the lessor wishes to continue renting the property, the sub-tenant shall have the priority right to rent according to the terms and conditions contained in the rescinded original lease contract and for the remainder of the lease term Sub-leasing contract.

And. The invalidity of the original lease contract, in accordance with the provisions of this law, results in the invalidity of the sub-lease contract.

A distinction must be made here between the assignment of rent (solutions), which is stipulated in Article 11 of the Financial Lease Law (21), and sub-lease.

In the event that the tenant assigns the lease to a third party, the latter shall replace the assigning lessee in the lease contract and become the lessee. The relationship between the two parties is governed by the transfer contract, because the assignment of the lease includes a transfer of a right in relation to the rights of the tenant towards the lessor and a transfer of a debt in relation to his obligations towards the lessor (22).

Accordingly, the researcher considers in the assignment of the lease that the relationship between the assigning tenant and the non-assignee is a transfer relationship and not a lease relationship. Therefore, if a third party erred in implementing his obligations, he does not ask the assigning tenant a contractual responsibility for the act of others, but asks the third party who assigns him towards the lessor directly, provided that The assignment must be based on the written consent of the lessor, otherwise the assignment will be void.

However, the Egyptian text (23) states that the responsibility of the first tenant remains in place as he is a guarantor of the second tenant assigned to him, unless the consent of the landlord is formulated to the contrary. Where it came in Article 16 of the Financial Leasing Law as follows: "The lessee, with the consent of the lessor, may assign the contract to another lessee.

In the case of sub-lease, it is defined as: "A contract issued by someone who has nothing over the property except a personal right that entitles him to use it for a certain period. The sub-lease contract results in the effects of the lease contract between the lessor and the sub-tenant, and the relationship between its two parties is that of a lessor and a lessee (24). "

Accordingly, the researcher believes that the original tenant is contractually liable for the act of others (the new tenant) for the mistakes he makes in implementing obligations, such as failure to pay the rent, for example, or causing any damage to the property. This is taking into account that the sub-lease is void if it is made without the written consent of the landlord, and his responsibility does not negate unless there is a written agreement from the landlord that the tenant is not responsible for the actions of the new tenant.

Second branch:

Contractual liability of the lessor for the actions of others:

As we mentioned earlier, the legislator stipulated in the finance lease law that the lessor be a legal person unlike the lessee, and accordingly, the obligations of the legal person are carried out by his delegates "who are appointed by the company." Thus, whoever implements the obligations of the legal person may err in implementing one of the obligations, which calls for a contractual responsibility to be asked by the lessor if its elements are available. Here the responsibility is contractual for the lessor to be asked about the act of others (which was entered by the lessor to carry out the obligations) and we will review in this section the most important cases in which the lessor is asked for contractual responsibility for the act of others:

First: the obligation of the lessor to deliver the leased property.

The general rules stipulated that the landlord is obligated to deliver the property and its accessories in a condition that is suitable for the full benefit, and this is what was stated in the text of Article 677 of the Jordanian Civil Code, which states: "1- The lessor must deliver the property and its accessories in a condition that is suitable with it to meet the intended benefit in full. 2 - It is recognized that the lessee is able to take possession of the rent without an impediment to its use, while remaining in his possession continuously until the lease term expires (25).

And the Financial Lease Law stated in the text of Article 12/c/2 (that if the landlord fails to fulfill his obligations without reason repeatedly, the tenant shall have a legal compensation of 9% annually of the

value of the rent as it is on the date of the failure of the landlord to implement his obligations until they are fulfilled, in addition to The right of the tenant to claim any failure or other damage to him in accordance with the provisions of the legislation in force).

There may be another obligation of the lessor; It is the obligation to maintain the property. Therefore, the landlord is obligated to maintain the property to make it fit to achieve the intended benefit. At the same time, carrying out maintenance work is a right of the landlord over the tenant in some cases because these works preserve his property (26).

As for the finance lease contract, the obligation to maintain the lease falls on the lessee in terms of Article 10/B/5, where the text of the article is as follows (Maintenance of the lease at his own expense in accordance with the lease contract or any technical standards and bases for maintaining and maintaining the lease).

Accordingly, if the tenant performs maintenance of the property by a maintenance technician, for example, and causes damages to the property, the tenant is responsible for contractual liability for the act of others towards the lessor.

But if the landlord expresses his desire to carry out maintenance of the property, the tenant may not prevent him from doing so in the light of Article 696/a in the Jordanian Civil Code, which states (a- the tenant may not prevent the landlord from performing the necessary work to maintain the property).

It is learned from the previous text that maintenance and repair work necessary to preserve the property is a right of the owner, as the tenant may not prevent him from carrying out them on the pretext that these works prejudice his use of the property because preserving the property takes precedence over the tenant's use of it (27).

The researcher believes that it is permissible to refer to the Jordanian civil law in this case, because the finance lease law did not address this case considering that the civil law is the general Sharia.

Third branch:

Contractual liability of the supplier for the actions of others:

The supplier is the most important party to the finance lease contract, since it is the lessee who chooses him to obtain the benefit, and it is expected that during the implementation stages of the contract, the supplier will err in performing one of his obligations. Since the relationship of the resource is between the lessors, it is logical that the lessor is responsible to the lessee for the fault of the resource, given that the relationship is direct between the resource and the lessor.

Accordingly, the researchers believe that if (A) concludes with (B) a finance lease, provided that (B) rent materials from (C) and lease them to (A), in this case if (C) breaches his commitment, then (A) He returns to (B) in Contractual liability.

But the finance lease law went to the contrary in the text of Article 13, which states:

A. Unless the lease contract stipulates otherwise, the lessor is not responsible to the lessee for the supplier's failure to implement his obligations under the provisions of the supply contract except in the following two cases:

1. If the supplier's failure to fulfill his obligations resulted from a reason belonging to the lessor.

2. If the lessor is the one who chose the supplier.

NS. In all cases, the lessee shall have recourse to the supplier directly to request him to fulfill his obligations under the provisions of the supply contract. The lessor shall provide the lessee with all documents and information available to him and take any other necessary measures to enable the lessee to refer to the supplier in accordance with the provisions of this paragraph. Otherwise, the landlord is directly responsible to the tenant for the implementation of these obligations.

NS. The lessor and the supplier shall jointly and severally bear any expenses incurred by the lessee as a result of his return to the supplier in accordance with the provisions of paragraph (a) or paragraph (b) of this article. "

Referring to the text of paragraph B of the previous article, we find that the legislator allowed the lessee the right to recourse to the resource directly if it breached the implementation of one of its obligations, and we find that the legislator obliged the lessor to provide the lessee with all the documents and information necessary to enable the lessee to refer to the resource (28).

On the other hand, we believe that in order to preserve the principle of stability of legal transactions in the finance lease contract and to create legal security between the contracting parties, the legislator granted this right to the lessee to prevent collusion between the lessor and the supplier to harm the rights of the lessee. We also see that this saves time, effort and costs for the tenant and leads to speeding up the repair of defects and benefiting from the leased property.

However, the legislator mentioned in paragraph C of Article 13 of the Financial Lease Law a provision that made the supplier and the lessor jointly liable for any expenses incurred by the lessee in recourse to the supplier (29).

The researcher believes that the legislator was not fair in this; because, in the beginning, the lessee was permitted to refer directly to the resource without the consent of the lessor, it is logical to include the supplier the full fees and expenses without the lessor.

Accordingly, the researcher believes that in this case, the resource is considered different from the lessor and the lessee. If the supplier erred in the implementation of one of his obligations, the lessee may recourse to the lessor for contractual liability for the act of others in the event that the committed error was caused by the lessor as stated in the text of the article 13 of the Leasing Law. The lessee or the lessor may also refer to the supplier

for contractual liability for the act of others if the person entrusted by the supplier commits a mistake during the implementation of one of the supplier's obligations.

Conclusion:

After studying the subject of Contractual liability on the act of others in the finance lease contract, the researcher reached several conclusions and recommendations, which were as follows:

Findings and Recommendations:

1. The finance lease contract is defined as "every contract under which the lessor undertakes to lease to the lessee real estate or facilities owned by the lessor or to construct them at his expense with the intent of leasing them to the lessee, according to the terms, conditions, specifications and rental value determined by the contract."

We recommend that the legislator should amend the finance lease law and provide a sufficient and clear definition of the finance lease contract.

2. For the establishment of Contractual liability over the act of others, several conditions are required, namely (the valid contract, the entry or intervention of others and the error of others).

The researcher recommends the legislator the necessity of amending the provisions of Contractual Liability and expanding them to include Contractual liability over the act of others and explicitly stating that.

3. There is a jurisprudential dispute about the legal basis for contractual liability for the act of others, but the most correct opinion was that its basis was supposed error in order to protect the injured party.

4. There are several cases in which Contractual liability is based on the act of others in the finance lease contract, which is (either it is based on the lessee towards the lessor, or it is based on the lessor towards the lessee, or it is based on the resource towards the lessor or the lessee).

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3. Egyptian Tenancy Law No. 95 of 1995.

The Court of Cassation decided:

1. Decision of the Court of Excellence in its capacity as a Jurist, Ordinary Body, No. 2686, 2019, Qastas Publications.

Footnotes:

1 - Abdul Razzaq Al-Sanhoury, Mediator in Explanation of the New Civil Law, Volume Two (The Theory of Commitment in General) - Sources of Obligation, p. 752.

2 - Article (167) of the Jordanian Civil Law No. (43) of 1976 states: "A valid contract is a legitimate contract with its origin and description, that it is issued by its people, added to a place subject to its judgment, has an existing, valid and legitimate purpose, and its descriptions are valid and not accompanied by a spoiling condition. for him ".

3 - Youssef Muhammad QasimObeidat, Sources of Commitment, third edition, Dar Al Masirah, Amman, 2016, p. 143.

4 - Abdul Qader Al-Far, Sources of Obligation, Eighth Edition, House of Culture, Amman, 2016, p. 143.

5 - The Twilight Lease Law No. 45 of 2008 published on page 3422 of the Official Gazette No. 4924 dated 17/8/2008.

6 - Walid Ali Maher, Financial Leasing Contract, Arab Studies Center for Publishing and Distribution, Giza, 2017, p. 20.

7- Yousef Obeidat, Sources of Obligation in the Jordanian Civil Law, previous reference, p. 35.

8 - Muhammad Mansour, Provisions of the Tenancy Law, 1st Edition, Mansha'at al-Maaref, Alexandria, p. 29.

9 - Yousef Obeidat, Sources of Obligation in the Jordanian Civil Law, previous reference, pp. 122-133.

10 - Abdel Qader Al-Far, Sources of Obligation, previous reference, p. 94 and p. 95.

11 - Yousef Obeidat, Sources of Compliance in the Jordanian Civil Law, previous reference, p. 139.

12 - Financial Lease Law No. 45 of 2008.

13 - Financial Lease Law No. 45 of 2008.

14 - Atheer Abdul-Jawad Hussain Al-Mehna, Contractual liability for the act of others in the lease contract, a university thesis (Master's thesis), Karbala University, Iraq, 2013, without page number.

15 - AmerGhanemAlwan, The responsibility of the lessor and the lessee for the actions of their subordinates, research published in the Journal of the Faculty of Law, Al-Nahrain University, Volume Ten, Issue Eighteen, June, 2007, p. 182.

16 - Yassin Al-Jubouri, Al-Mabsoot in Explanation of Civil Law, Part One (Sources of Personal Rights), Volume One (Contract Theory), Section One (Contract Contract), Wael Publishing House, Amman, Jordan, first edition, 2002.

17 - Dr. Hassan Ali Al-Thnoon, Al-Mabsoot in Explanation of Civil Law, Part Three (Causal Link) - Part Four (Responsibility for the Action of Others), Wael Publishing House, Amman - Jordan, first edition, 2006, p. 51.

18 - Yousef Obeidat, Sources of Compliance in the Jordanian Civil Law, op. cit., p. 195.

19 - See the text of Article 2 of the Financial Lease Law No. 45 of 2008, the definition of the lessor.

20 - Financial Lease Law No. 45 of 2008.

21 - See Article 11 "A. The tenant has the right to transfer his rights in the lease contract to a new tenant who replaces him with the written consent of the landlord. In this case, the following will follow: 1. The new tenant shall be responsible for paying the rent due in accordance with the lease contract directly to the landlord, from The date of his notification in writing by the lessor of his approval of this assignment 2. The new tenant shall enjoy all the rights and obligations of the first tenant unless other terms are agreed upon between the lessor and the new tenant.

NS. If the tenant transfers his rights in the real estate or any of the private movables to a new tenant in accordance with the provisions of Paragraph (A) of this Article, in the event of transferring the ownership of that leased property or any part of it in the name of the new tenant to the competent registration department, it is not necessary to transfer its ownership in the name of the first tenant. "

22 - Ali Al-Obaidi, Contracts Named Sale and Rent, previous reference, p. 344.

23 - Egyptian Financial Leasing Law No. 95 of 1995.

24 - Atheer Al-Mihna, Contractual Liability on the Action of Others in the Lease Contract, previous reference, without page number.

25 - Ali Al-Obaidi, Contracts Named Sale and Rent, previous reference, p. 270.

26 - Ali Al-Obaidi, Contracts Named Sale and Rent, previous reference, p. 276.

27 - Ali Al-Obaidi, ibid., p. 280.

28 - Decision of the Court of Cassation in her capacity as a human rights defender No. 2686 of 2019, Qestas Publications.

29 - Article 13 of the Financial Lease Law No. 45 of 2008.