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Jurisprudential Adaptation of the Pledge on Behalf of Others and Its Effect a Comparative Jurisprudential Study

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Abstract

Contracts aim to achieve a number of gains for their parties, and these effects extend directly to the contracting parties, as they are whose will was directed to creating the contract. However, in cases such as a pledge on behalf of the others, this contract includes an attempt to bind a third party to a contract to which he was not a party, and this violates the principle of authority and the relative effect of the contract. The research came to clarify the pledge on behalf of others, its jurisprudential adaptation, its effect, and the extent to which others are obligated to do so, the research reached a number of results, the most important of which is: that a pledge on behalf of others is a contract that has its elements like all other contracts and creates an obligation on the part of the pledger represented by compelling others to contract, and its elements are the two contracting parties, the pledger and the pledgee, and the formula and place, as for the other person on whose behalf the pledge is made, it is not considered a pillar. his conditions are that the pledger must contract in his own name and not in the name of others, and that its purpose be to commit the pledger personally and not to oblige others, and that the object of his obligation be to perform an act that is to get the third party to accept the pledge, and its adaptation in Islamic jurisprudence is that it is contract that includes a commitment to work, which is valid and enforceable, its elements and conditions are met, and it has its effects that are considered by law like all other contracts, a pledge on behalf of others in Islamic jurisprudence and Jordanian civil law does not bind others, as it has a choice between acceptance or rejection, and the acceptance or rejection of others results in effects, including in research

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In the Name of God, the Most Gracious, the Most Merciful

Praise be to God, Lord of the Worlds, and may blessings and peace be upon our Messenger Muhammad - may God bless him and grant him peace - and upon all his family and companions.

Now that the will is of great importance in contracts; It is the basis on which contracts are built, and it is considered one of the most important sources of obligations, so Islam was keen to pay attention to it, It is not possible, in terms of general principle, to bind anyone to a contract whose will was not drawn up and who was not a party to it. If a person contracts with another person, pledging to make the third party to contracts with him - and this form of dealing is referred to in the Jordanian Civil Law - Here the question arises: Can a contracting

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party oblige a third party to accept and whether the third party's acceptance or rejection has certain effects? This study came to explain the jurisprudential adaptation of the pledge on behalf of third parties and its impact on Islamic jurisprudence and Jordanian civil law.

Research Problem

The problem of the research is to clarify the jurisprudential adaptation of the pledge on behalf of others and the extent to which others are obligated to do so, and its impact on jurisprudence and Jordanian civil law. Therefore, the problem of the research is summarized in the following questions:

1. What is the jurisprudential adaptation for a pledge on behalf of others?
2. What is the impact of pledging on behalf of others in Islamic jurisprudence and Jordanian civil law?

Research Aims

The research aims to reach the following results:

1. Adapting the pledge Jurisprudentially on behalf of others.
2. Explaining the impact of a pledge on behalf of others in Islamic jurisprudence and Jordanian civil law.

Research Importance

The importance of the research from a jurisprudential perspective lies in the lack of literature that dealt with the undertaking on behalf of others to undertake a specialized jurisprudential study, moreover, the jurisprudential studies that dealt with it in research did not show its jurisprudential adaptation, but rather suggested alternatives to the so-called contracts that were compatible with the contract in its aforementioned form, the term is of legal origin, and most of the research that dealt with it was characterized by its Legal studies whose framework was Arab laws other than the Jordanian civil law, and from here its importance emerged in explaining the jurisprudential adaptation of the pledge on behalf of others and comparing it with the Jordanian civil law, pledges on behalf of others, like other contracts, are important to individuals, as they are closely linked to their financial rights.

Previous Studies

There are jurisprudential studies that have dealt with undertaking on behalf of others in a specialized jurisprudential manner, including:

The concept of pledging on behalf of others and related expressions, by researcher Saqr Helwan Munir Al-Azmi, research published in the Journal of Arab Studies, Faculty of Dar Al-Ulum, Mina University, Issue 6, Volume 44, pp. 3005-3030, 2021 AD;

He dealt with the concept of a pledge linguistically and idiomatically, the concept of a third party, the concept of a pledge on behalf of a third party, and the related words: commitment, fulfillment, contract, promise, sale, guarantee, and liability, and all of that from a jurisprudential standpoint.

Pledge on behalf of others, a comparative jurisprudential study regarding sales as a model, by researcher Khalid Marzouq Al-Azmi, research published in the Journal of Islamic Studies and Academic Research, No. 106, Volume 18, 2023 AD; He discussed the concept of pledging on

behalf of others and the concept of sale. Pledge on behalf of others in the section on selling falls under the category of a curious sale, so it is permissible and subject to the owner's approval.

It is noteworthy that contemporary jurisprudence books that dealt with the topics of contracts and commitment referred to the pledge on behalf of others briefly when talking about the effect of the contract on others, in line with the legal classification.

As for the legal studies that dealt with the pledge on behalf of others, research in a specialized manner; of which :

The extent to which others are obligated to do what they do not commit to, a study of the problems of undertaking on behalf of others, by the researcher, Mahmoud Abdul Rahim Al-Deeb, in 1996. The book dealt with its concept, its pillars, and distinguishing a pledge on behalf of others from something similar, while mentioning its problems in the law and comparing it with Islamic jurisprudence in a comparative legal context, It concluded that if a pledge on behalf of others is intended to benefit others, then, within certain controls, it can be said that others are obligated as an exception to the general rule, and it indicated even though Islamic jurisprudence does not know this form, it does know promise and virtue, and in jurisprudence it is possible to get out of the problems through the option of breaking up the deal.

-The legal nature of the pledge on behalf of others in the Algerian civil law, by researcher Hamdawi Noura, a master's thesis in contracts and responsibility at the University of Algiers, in the year 2001/2002 AD. The thesis dealt with the legal nature of the pledge on behalf of others according to the Algerian civil law, where it concluded that the pledger is obligated to create the obligation and not to implement it, It is a consensual contract, and its two parties can agree on the contractor's obligation to guarantee the implementation of the obligation in the event of a third party's refusal, which puts him in the position of a sponsor and entails a contractual liability requiring compensation in the event of a breach by the contractor.

The legal adaptation for the others and pledges on behalf of others, by researcher Bournan Al-Eid, Damen Abdulqader, a research published in Al-Turath Magazine, Issue 26, Volume 2, 2017, and it dealt with the concept of third parties and the transfer of the effect of the contract to others, the pledge on behalf of third parties, and the effect of the pledge on behalf of third parties on third parties, according to the Algerian civil law and between Islamic jurisprudence replaced it with the curious contract.

-Provisions of pledging on behalf of others according to the Civil Law, by researcher Mohammadi Khairallah, a master's thesis in the Department of Private Law, Abdelhamid Ibn Badis University of Mostaganem, in 2019 AD, and it dealt with the legal status of the pledging on behalf of others and that the pledge is a stand-alone system and the legal value of the pledge before the approval of the third party and after the approval of the third party, this is according to the Algerian legislator and the French jurisprudence, which concluded that the contractor is obligated to create the obligation and not to implement it, It is a consensual contract, so its two parties can agree on the obligation of the contractor to guarantee the implementation of the obligation in the event of a third party's refusal, which puts him in the position of a sponsor and entails a contractual responsibility requiring compensation in the event of a breach by the contractor.

We note the emergence of the comparative legal aspect while neglecting the fundamental jurisprudential aspect. Which prompts to work on addressing the issue in a jurisprudential

formulation, and to work on framing it from the jurisprudential side, in addition to the fact that it is not in Jordanian civil law.

General Outline of the Research

Introduction

Topic One the Jurisprudential Adaptation of the Pledge on Behalf of Others

Topic Two: the Effect of the Pledge on Others in Jordanian Jurisprudence and Civil Law

Branch One: The effect of a pledge on behalf of others in terms of the extent to which others are obligated to do so.

Branch Two: The effect of the pledge on behalf of others in terms of compensation in the event that the third party refuses the pledge

Branch Three: The effect of the pledge on behalf of others in terms of retroactive effect in the event that the third party accepts the pledge.

Introduction

Pledge ¹means commitment, and a third party ²represents someone who is outside the contract and whose will is not directed towards the contract, as for a pledge on the others in terminology, it means a pledge by a person to force a third person to commit to a specific thing for his benefit.³

The jurists did not discuss the pledge on behalf of others as a term because it is of legal origin. as for books with a legal nature, there are several definitions, most of which revolve around:

It is “an agreement whereby a person undertakes to do something that is to force another person to accept a specific obligation,⁴” or it is a contract whereby one of its parties undertakes to make another person accept a contract with the other contracting party in a specific matter, It is a contract whereby one of the contracting parties undertakes to obtain the approval of a third party for a contract or for a legal transaction concluded on his own behalf without acting as a representative of others.⁵

It is a contract according to which one of its parties - called the contractor - commits himself to the other party - called the stipulator - to make others commit to a specific matter in the face of the stipulator.⁶

A contract of undertaking on behalf of others is represented by an agreement between one person and another to force a third person to contract with the first person on a specific matter or to oblige him to do so.⁷

We note that these definitions were influenced in their formulation by the legal article as in the Jordanian Civil Code, the Jordanian Civil Law stipulates in its articles the concept of a pledge on behalf of others.

Article (1/209) stipulates that: “If a person pledges to make another person commit to something, the third party is not obligated to fulfill his pledge. If the third party refuses to commit, the pledger must compensate the person with whom he pledged.”⁸

Since a pledge on behalf of a third party is an agreement between two parties, it has the same elements as other contracts, which are the form, the contracting parties, and the subject of the contract, and creates an obligation for the pledger to force the third party to contract.

The contractor is one of the parties to the contract who undertakes, in the face of the contracting party, to make a third party accept to bear a certain obligation for the benefit of the contracting party.⁹ the contractor is the other party to the contract on behalf of the third party, and he is the one for whose benefit the undertaking is obtained. As for the contractor, he is the one for whom the contractor is obligated to make him accept the obligation for the benefit of the pledgee,¹⁰

As for the pledgee, he is the one whom the pledger is obligated to make accept the obligation for the benefit of the pledgee, and he is not considered a party to the pledge process on behalf of others, but rather he is considered the third party himself, and the third party¹¹ is not considered a party to this contract.

There is a need for such a pledge from a practical standpoint.¹² Al-Attar considered making a pledge on behalf of others a rare occurrence in practical life, and it is common in work for the idea of making a pledge on behalf of others to be presented in the form of a promise or a favor. As for Al-Sanhouri, he pointed out the opposite, as a pledge is considered possible and is usually intended to treat a situation in this case, it is not possible to obtain consent from the person concerned, so someone else is obligated to do so, as in the case of joint partners who dispose of the common thing and among them is a minor and they want to avoid judicial procedures, or among them is an absent person and it is not possible to wait for him for fear of losing the deal, in such cases, the partners who are eligible to contract to enter into contracts, not those who they cannot do that and they pledge to force the rest to contract.¹³

It is clear from the text of Article (209) of the Jordanian Civil Law that there are three conditions for a pledge on behalf of others, which are:

The First Condition: The contractor must contract in his own name and not in the name of a third party who remains foreign to the contract because the pledge is a legal process that has two parties.¹⁴

The Second Condition: The purpose of the pledge must be to commit the pledger personally, not to oblige others, because the third party is not obligated unless he approves the pledge.¹⁵ If he had wanted to oblige others, the contract would have been invalid due to the impossibility of the matter, as it is not legally possible for another person to commit to a contract to which the obligor was not a party.¹⁶

The Third Condition: The subject of his obligation is to carry out work, and this work is to get others to accept the pledge, the pledger's commitment is not an obligation to exercise care, but rather to achieve a result, in executing his obligation, it is not sufficient for him to exert his utmost effort; rather, it is necessary to obtain the actual acceptance of the pledge by others only, and it does not include ensuring that the third party implements the pledge he accepted, and that is, if the third party accepts the pledge, the pledger's obligation expires.¹⁷

If the above-mentioned conditions of undertaking are met, a valid contract is established between the contractor and the contracting party, the subject of which is to perform an act that is to force the third party to accept the undertaking, the aim of the contract is to achieve the third party's pledge personally of what the original contractor pledged on his behalf, the contracting party, and thus the goal of the pledge contract is achieved, as for the third party,

he can accept it. The pledge can also be rejected because it is completely foreign to the contract and the contract does not bind him to anything and does not have any effect on him.¹⁸

This is a simple form of pledge on behalf of others. The pledge on behalf of others has two forms:¹⁹ simple - which is the one we will talk about - and compounded from the meeting of two contracts.²⁰

Topic One

The Jurisprudential Adaptation of the Pledge on Behalf of Others

Several attempts have been made to adapt the pledge to others, including:

First: it is a curious contract

When examining the previous form referred to in the Jordanian Civil Law, we find that the pledger is not considered curious, because curious sale, in Islamic jurisprudence differs from the form of a pledge on behalf of a third party in Western jurisprudence in many respects, the curious partner concludes a complete sale on behalf of a third party, as for the pledger on behalf of a third party, he concludes a contract in place of obligation to force the third party to contract, and if the minor approves in the form of the curious sale, then he approves the same sale contract that was issued by the curious, but if he authorizes in the form of the pledge on behalf of the third party, then a new sales contract is concluded, and if the minor does not authorize the curious sale, the curious partner is not responsible towards the buyer, as he presented to the buyer as a curious person and the buyer is aware of that, however, if the minor in the form of a pledge on behalf of others does not accept it, then his partner whose behalf he pledged will be responsible towards the buyer for compensation or for implementing the pledge himself.²¹

If there is a place for obligating others, it is based on another basis, such as a loan, for example, if its conditions are met, but in this case, we leave the system of pledging on behalf of others to another system,²² and the idea of a pledge may appear in the form of a loan, as the pledger does not act in his own name, but rather acts in the name of others without his behalf, and here provisions of manager sale apply.²³

Likewise, there is a difference between a pledge on behalf of a third party and manager²⁴, and in business management one contracts in the name of another person without on his behalf.²⁵

It turned out that the jurists considered the pledge on behalf of others in the matter of sell under what is called the sale of the manager, and they differed regarding buying and selling it.²⁶

But we note that the manager contracts in the name of a third party, while the pledger contracts in his name and he is the one who is bound, not the third party. In the event of the third party's approval, a new contract is created between the third party and the pledgee, and it is not retroactive effect or permissible because it was not suspended, but rather it is a contract that was validly concluded and enforceable against its parties.

Second: It Attorney of Power Contract

When examining the previous picture referred to in the Jordanian Civil Law, we find that the pledger is not considered an agent,²⁷ because he is not entrusted with disposing of the property of others and does not have authorization to do so. Likewise, there is a difference between a pledge on behalf of a third party and an agent.²⁸ in attorney of power, he contracts in the name of a third party on his behalf,²⁹ because the agent contracts in the name of a third party, as for

a pledge on behalf of a third party, the pledger contracts in his name, so the pledge on behalf of a third party differs from the contract that the representative conducts in the name of the principal,

the representative is not obligated, but he is obligated to the principal, and if the representative exceeds the limits of his representation, then he is not obligated to the representative because he is not a party to it, and he is not obligated to the principal due to the lack of representation and If the principal approves it, it becomes effective against him, but the representative's contract in such a case is often added to it a pledge on behalf of others that the representative concludes in his name, so this pledge will be binding on him personally, even if it is not binding on the principal.³⁰

Third: It is a Guarantee Contract

As for considering the contractor as a guarantor,³¹ the matter is not correct, because the guarantor joins his liability to the liability of the one who sponsored him, and here the picture is not like that, so the pledge from others differs from the guarantor, the guarantor guarantees the implementation of the debtor's obligation after it exists and does not guarantee its existence, as for the pledger on behalf of others, he guarantees the existence of the obligation under the responsibility of others and does not guarantee its implementation, this is because the guarantor's obligation is a subsidiary obligation and the obligation of the pledger on behalf of others is a primary obligation.³²

Hence, the distinction between the pledge from a third party and the guarantor emerges, as the guarantor guarantees the implementation of the debtor's obligation after it exists and does not guarantee its creation, and the pledger not only guarantees the creation of the obligation under the responsibility of others, but also guarantees the implementation of the offer.³³

Fourth: It is Deception That Requires a Guarantee

The pledge may be considered deception requiring a guarantee, i.e. compensation,³⁴ and the contract is invalid due to the existence of deception and is subject to the rules of deception in Islamic jurisprudence, We believe that there is no deception because the contracting party knows who he has contracted with and the subject of the contract is known, which is to perform an act, which is to force others to contract, so deception is absent.

Then, after reviewing these attempts at adaptation, we see that the ruling on contracting a pledge on behalf of others is in its simple form referred to by the Jordanian Civil Law in Islamic jurisprudence, and within the previous conditions is permissibility and validity, and it takes into account the provisions of the Ju'ala contract in Islamic jurisprudence, with some differences between jurisprudence and law, and this is supported by a group of evidence includes:

1-Relying on the general principle in transactions and contracts, which is permissibility; One of the characteristics of the jurisprudence of financial transactions is that the principle is that it is permissible. It is based on taking into account reasons, interests, customs, and combines religion, jurisprudence, stability, and flexibility, nothing is forbidden from it except what is forbidden by a clearly stated text that is proven and if it contradicts the ruling of the Shari'a, everything else remains on the principle of permissibility,³⁵ new transactions for which there is no text in the Qur'an and Sunnah or consensus are permissible if they are not prohibited by the general rules and objectives of Sharia. ³⁶Contracts were legislated to meet people's needs and are based on consent, goodwill, freedom of contracting, purposes and intentions, Contracts must be respected and fulfilled.³⁷ It is not necessary to stipulate all forms of contracts

because the forms are multiple and renewable, so contracts remain in their general origin with the totality of general rules, justice, and taking into account people's interests in a way that does not conflict with the will and rights of others.

If we present the idea of pledging on behalf of others to the rules of Islamic jurisprudence, we will find that this is possible and that it is considered a valid agreement since contracts are not mentioned exclusively in Islamic jurisprudence, accordingly, if a third party accepts the pledge, there is no problem and the third party contracts with the one who contracted with the pledging party, If he does not accept it, we will find several problems.³⁸

2- The Almighty's saying: "And fulfill [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned."³⁹ And the Almighty's saying: "O you who have believed, fulfill [all] contracts."⁴⁰

The noble verses call for fulfilling the covenant and contract upon commitment. These verses generally include every obligation upon which the parties agree, in a way that does not contravene Islamic law, and they do not specify a specific type of obligations or contracts.

3- God Almighty says: "O you who have believed, do not consume one another's wealth unjustly [179] but only [in lawful] business by mutual consent."⁴¹

Contracts are built on consent, and this is the basis of contracts in Islam, dealings and obligations.

4- Availability of the terms and conditions of the contract, whose elements are met is valid. The substitute for this contract is an obligation to do something, which is to force others to enter into a contract. Article (262) of the Murshid al-Hiran stipulates: "The contract is an association of the offer issued by one of the contracting parties with the acceptance of the other in a way that proves its effect on the contracted party, and the contract results in the obligation of each of the contracting parties to do what he has obligated to the other."⁴² in terms of the subject, it is an obligation to do something.

Article (266) indicates that: "It is permissible for the contract to refer to an industrial work or certain service,"⁴³ and Article (306): "The provisions of the contracts apply only to the two contracting parties and no one else is bound by them, and it is not permissible to cancel the necessary contracts except by their mutual consent in the circumstances in which it is permissible to cancel them."⁴⁴ The effect of the pledge is between the contracting parties and it does not bind the third party because he is foreign to the contract and cannot be applied to him.

Contracts are divided according to the subject matter into several sections, including contracts for a specific work or a specific service,⁴⁵ as in a pledge on behalf of others, if we consider that forcing others to contract is the service that should be implemented by the pledger.

5- This contract is considered a royalty contract and the provisions of this contract in Islamic jurisprudence apply to it. Whereas, according to Sharia law, "as a royalty contract the obligation of compensation for a specific act, whether known or unknown."⁴⁶

"And a royalty making a reward is what is given to a person for something that he does,"⁴⁷ which is making something known, such as a wage, and it is valid as unknown for someone who does a work for him that is permissible or unknown and for a period, even if it is unknown: whether he makes it for a specific person or not, then the contract is valid and the reward is entitled to be returned,⁴⁸ and according to the Malikis: "any contract in exchange for the life of a human being, compensation that does not arise from its place in it is only obligatory in its entirety and not in part."⁴⁹

The definitions of a royalty contract revolve around what a person is given for the work he does, and by completing the work, he is entitled to the amount stipulated in the contract, otherwise he is not entitled to anything. Its pillars are the contractor, the contracted for, and by it, and the formula.⁵⁰

Its ruling is valid according to the Shafi'is,⁵¹ as well as to the Hanbalis⁵² and Malikis. It is also valid according to them⁵³, but according to the Hanafis, it is not valid due to ignorance.⁵⁴

The Jordanian Civil Law discussed the ruling on royalty in the section on promising a reward in its discussion of unilateral action in Article (255).⁵⁵

Jurisprudence has dealt with common forms in work, as for the pledge on behalf of others in its known form in Arab legislation, if we present it to jurisprudence, it can be said that it is a valid agreement, which is what Al-Attar suggested, because contracts are not mentioned exclusively in Islamic jurisprudence.⁵⁶

There is an opinion that considers a pledge on behalf of others to be an invalid agreement because it is a commitment that is not obligatory,⁵⁷ It is not permissible in Islamic jurisprudence to make a pledge on behalf of others such that the third party is bound by this pledge, as in Western jurisprudence.⁵⁸

It can be said that a pledge on behalf of a third party, according to the legal description, is an obligation to do something, which is to force others to contract. This means that it is a royalty contract, like all other valid contracts, that is linked to the contracting parties only and its effect is not extended to third parties. It has the same effects as the royalty contract, so it is a valid contract in which all the elements of the contract are met, the conditions for validity and enforceability entail that the contracting party who pledged must do what he pledged, which is to force others to contract.

The Jordanian Civil Law has dealt with the idea of committing to do something or abstaining from doing something if the subject is such. Article (1/356) stipulates that "if the subject of the right is work and its nature or the agreement stipulates that the debtor perform it in person, the creditor may refuse to fulfill it out of "others,⁵⁹ and also the article (2/356/2) stipulates that: "If

the debtor does not carry out the work, the creditor may request permission from the judiciary to carry it out at the debtor's expense or implement it without permission if necessity requires it."⁶⁰ Article 357 stipulates that "The court ruling takes the place of implementation if the subject of the right is pursuant to its nature,⁶¹ the pledge on behalf of a third party is in the law according to what it indicated, and in the event that the third party does not accept it, it is subject to the previous rules of compensation.

There are those who called for dealing with the matter in Islamic jurisprudence through the option of dividing the deal. ⁶²If the third party does not accept the pledge, we find several problems, and therefore we call for the necessity of obliging the third party if certain conditions are met, such as achieving a benefit for the third party and preventing harm on his behalf, but jurisprudence includes a treatment of the matter by having an option to divided the deal⁶³ given by the pledger if the conditions are met. It can also be treated by considering it as deception that requires guarantee,⁶⁴ as it is possible to get out of problems by deciding on the option of dividing the deal, If this option does not meet the conditions for its application, there is no escape from referring to the general rules and the necessity of including the pledger in this case due to his lack of caution in this issue and his failure to know all its aspects, which led to harm to the contracting party, which requires a guarantee.⁶⁵

We also note that it is not a successful proposition because the differentiation of the deal includes a contract on two matters, which is valid in the correct case and invalidated in the invalid case, and this pledge includes only one deal that can either be implemented or not implemented in the event that the third party is non- foreigner in the simple form of pledge referred to by the law, which only includes One thing is to force others to enter into a contract.

As for the pledge on behalf of others, if it includes two matters in the contract, as in the case of common funds, and the delivery is made and the third party's right is attached to it, then here we are faced with another matter, if he was a party to the contract and contracted for his funds and funds of others, in this case, it includes contracting for two things, so the matter of the contract differs in this case the option to divided deal or manager provisions are applicable depending on the matters that have been contracted.

Topic Two

The Effect of the Pledge on Others in Jurisprudence and Jordanian Civil Law

Branch One: the Effect of a Pledge on Behalf of Others in Terms of the Extent to Which Others Are Obligated to Do So

Article (208) stipulates that: "The contract does not impose anything on the third party, but it may give him a right."⁶⁶

If the effect of the pledge on others is that it does not bind him, then the third party has the freedom to accept or reject the pledge, because the foreign to the contract, the contract does not bind him to anything,⁶⁷ and the pledge is considered an offered offer to others, and the third party is free to accept or reject it.⁶⁸

This confirms that the provisions of this contract are merely an application of the general rules in limiting the effects of contracts to the contracting parties and those of similar status. If a person pledges to make another person commit to something, then the effect of this pledge is not to oblige this third party, rather, it follows that the pledger undertakes to fulfill the obligation by doing something, which is to obtain the approval of the pledge by others, It is not sufficient when a third party refuses to acknowledge it by saying that this pledger has done everything in his power to obtain it.⁶⁹

If the third party rejects the pledge, he is not responsible because he was not a party to it and he is not bound by it. It is the pledger's duty to implement his obligation, either by compensating the other contracting party in whose interest the promise was issued, or by fulfilling in kind the pledge upon which the promise was made, if this is possible without causing harm to the creditor, this is the same as if the pledge is related to an obligation to transfer a real right or to do or abstain from doing something.⁷⁰

The pledge, which is a contract between the pledger and the contractor with him, is considered an offered offer to others by the contractor with the pledger, If the third party accepts the pledge, he has accepted this offer and a new contract is concluded between him and the contractor with the pledger, different from the contract between the pledger and the contractor, the two parties to the new contract are the contractor with the pledger and the third party, the subject of the contract: The pledge contract creates an obligation to do something, and the new contract creates an obligation on the part of a third party, Its place may be the transfer of a real right, an act, or an abstention from an act, therefore, the pledge on behalf of a third party is only a mere application of

the general rules, as the third party did not abide by the first contract to which it was foreign, but rather committed in the new contract to which he was a party,⁷¹ and if the third party accepts the pledge, the pledger's obligation stops at this point, meaning that it is not the pledger's duty to ensure that the third party implements the pledge.⁷²

The general rule is that the pledge is only binding on the pledger, If he achieves the result by obtaining the acceptance of the pledge by others, his obligation ends, however, if the third party refuses to accept the pledge, the pledger is considered negligent in implementing his obligation, and his responsibility is occupied.⁷³

The pledger is released from his obligation as soon as the third party acknowledges the pledge, in fact, in this case, the pledger's obligation is terminated through fulfillment, and the acknowledgment results in the third party becoming a direct debtor to the other contract, not on the basis of the pledge made by the pledger, but rather on the basis of a new established contract a priori from the date of this acknowledgment, unless It turns out that he intended, explicitly or implicitly, for the effect of the acknowledgment to be based on the time at which the undertaking was issued, It goes without saying that the acknowledgment is considered to be an acceptance of this new contract.⁷⁴

The pledge is based on the commitment to reach a goal and not the effort of care. It is not enough for the pledger to do everything in his power to get others to accept the pledge, but rather it is his definite duty to get others to accept and achieve the result required of him.⁷⁵

However, the pledger can be held accountable if he remains responsible for the contract concluded between him and his contracting party, the pledger cannot be freed from his contractual obligation unless he proves that he was unable to perform it for foreign reason, meaning that the third party has become in a state where he is unable to issue a valid acceptance from him, after he was able to do so at the time of the undertaking, such as if he had been quarantined or had died, and the obligation was related to his person and his heirs could not fulfill it, in all cases, a third party's rejection of the undertaking results in contractual liability for the contractor towards his contracting party, such that the latter can oblige the contractor to pay equivalent compensation for the damage sustained by the contractor as a result of a third party's refusal to pledge, the report of this compensation is subject to the general rules related to this issue.⁷⁶

A third party has absolute freedom to accept or reject the pledge issued by the pledger, and his rejection does not entail any responsibility for him, even on the basis of the idea of abuse of the right because it is foreign to the pledge contract.

The subject of the contract of pledge on behalf of a third party is to make this third party commit to a contract, and this contract is limited to the contractor and his successors. If the pledge behalf of a third party does not bind this third party, then it is binding on the pledger himself. The pledge is a contract concluded by the pledger with whomever he has contracted with, and he concludes it in his name personally, It is not in the name of others, and therefore its effect extends to him as a party to it.⁷⁷

According to jurisprudential adaptation, the contract is a royalty contract between the contractor and the recipient, and the contractual relationship exists between them, and no third party has any relationship with the contract, and the effects of the contract of pledge extend only to its contracting parties and do not affect others.

Branch Two : the Effect of the Pledge on Behalf of Others in Terms of Compensation in the Event That the Third Party Refuses the Pledge

Article (209/1) of the Jordanian Civil Law stipulates that: “If a person undertakes to make another person abide by a matter, the third party is not obligated to undertake it. If the third party refuses to abide, the pledger must compensate the person with whom he pledged.”⁷⁸

Article (2/209) states: “He may, however, get rid of the compensation by implementing the obligation he undertook.”⁷⁹

As for compensation in civil law, it is resorted to if one of the contracting parties refuses to perform his obligation in the contract, either the failure to perform is due to the obstinacy of the abstainer, or the failure to perform is for a reason beyond his control or a divine cause, as jurists express it, or force majeure or emergency circumstances according to the expression of the jurists,⁸⁰ If the purpose of the contract or the purpose of the contract is achieved, as in some contracts, the contract ends.⁸¹ as for the guarantee of the contract, it means the liability arising from violating the provisions of the contract or one of its conditions, because God Almighty obligated the fulfillment of contracts, If one of the contracting parties violates and does not fulfill his contractual duty, it results, therefore, there is harm caused to the other party, and this harm is guaranteed,⁸² The meaning of the legal obligation to fulfill contracts is that the duty of the contracting parties is to implement the contract in everything it contains, unless the two parties agree to amend the provisions of the contract or terminate it by dismissing it or The obligations required by the contract are types, including the obligation to do something, as in a pledge on behalf of others.⁸³ If the contracting party does not perform his obligation, the other party may force him to do so or implement it at his expense.⁸⁴

However, if the third party rejects the pledge , the pledger remains responsible under the contract of pledge and must compensate the contracting party for the damages he suffered as a result of the third party's rejection of the undertaking, the pledger cannot be forced to implement the undertaking that he intended the third party to accept because he only committed himself to getting the third party to accept this undertaking, which is a commitment to work, but the pledger may, if he wishes, implement the undertaking if its implementation is possible ⁸⁵and is not connected to a third party. The pledger's obligation to implement this undertaking is a substitute obligation, as his original obligation is to pay compensation, but he can absolve himself of compensation by implementing the aforementioned pledge.⁸⁶

If the third party refuses to accept the undertaking and the pledger 's responsibility is fulfilled, it is not permissible to force him to implement the obligation that the third party intended to do and reject, because the obligation of the undertaking is to force the third party to accept the pledge not to implement the obligation, therefore, the obligation of the pledger turns into compensation in accordance with the general rules that stipulate that the obligation, if impossible implementing it through the fault of the debtor turns into compensation. However, the contractor may avoid being sentenced with compensation by implementing the obligation that he pledged to be performed by others if its implementation by him is possible and without causing any harm to him. However, the pledger's implementation of the obligation may not always be possible in particular. When the identity of a third party is taken into consideration, unless the other contracting party accepts the fulfillment of the obligation from someone who pledged it to him on behalf of a third party, therefore, the obligation of the contractor is usually considered an example of the substitute obligation established under the law, as the principle is that the obligation of the contractor is an obligation to compensate the other contracting

party to whom it is pledged, but the contractor may fulfill it in a way other than compensation. It is represented by the concrete implementation of the obligation, thus absolving the pledger of his obligation. What is strange about this substitute obligation is that the principle in it is compensation, and the substitute is the concrete implementation that is the original, and compensation is the exception.⁸⁷

A pledge on behalf of a third party does not obligate the third party to do anything. If he wishes, he agrees, and thus the pledger has implemented his pledge, but if he wishes, he refuses. In this case, the responsibility of the pledger falls upon the pledger when he does not implement his pledge, which is to make the third party commit.⁸⁸ The first contract that was concluded between the pledger and the person he contracted with does not oblige the third party to anything, even if it is a commitment, the third party shall be under the new contract that arises as a result of his acceptance of the pledge, and thus the pledge shall be on behalf of the third party in application of the general rules.⁸⁹

As for Islamic jurisprudence, according to the royalty contract, it is a permissible contract and compensation is not due except after the work is completed as stipulated by the contracting party. If the required work is not accomplished, he is not obligated to receive the compensation specified in the contract,⁹⁰ and if it is in accordance with the royalty contract, he does not incur compensation, but he is not entitled to the agreed amount upon that he did not perform the required work, which is to force a third party to contract. If the third party refuses to contract, the pledger is not entitled to the specified compensation.

Branch Three: The effect of the pledge on behalf of others in terms of retroactive effect in the event that the third party accepts the pledge

Article (3/209) of the Jordanian Civil Law stipulates: "If a third party accepts this pledge, his acceptance will only have effect from the time of its issuance unless it becomes clear that he intended, explicitly or implicitly, for the effect of this acceptance to be based on the time at which the pledge was issued."⁹¹

As for the time of completion of the contract, the contract is concluded when the offer and acceptance from the pledger and the contracting party meet, and the new contract is not concluded except when the acceptance is issued by a third party, the acceptance does not have a retroactive effect unless it becomes clear that the third party explicitly or implicitly intended for the effect of the acceptance to be based on the time at which the pledge was issued. If the partners in common contract as a pledge on behalf of a minor among them and the minor accepts the pledge after reaching the age of majority, it is implicitly understood that the minor intended for his acceptance to have a retroactive effect.⁹²

However, if the third party refuses to accept the undertaking, the pledger is considered negligent in carrying out his obligation, and his responsibility is occupied.⁹³

However, if a third party accepts the contract in a manner in which the pledger being committed to it, then he is obligated to contract based on his acceptance and from the time of this acceptance in the first place, unless it becomes clear that he intended, explicitly or implicitly, for the effect of the acceptance to be based on the time of issuance of the undertaking. If the third party accepts the contract, the undertaking ends, and it is not required to acceptance of third parties is a special form, unless the contract undertaken is a formal contract.⁹⁴

It is the obligation of the pledger, when a third party refuses to fulfill his obligation, either to compensate the other contracting party in whose interest the promise was issued, or to fulfill

in kind the promised order if possible without causing harm to the creditor, this is the same as if the pledge is related to an obligation to transfer a real right or to do something or refrain from doing it.⁹⁵

As for the retroactive effect stipulated by the law, it is not interpreted jurisprudentially or even legally, Although there are legal attempts to explain it, they are still incapable of doing so. However, we note that it is a valid and enforceable contract, and it is not subject to approval, as approval attaches to the suspended contract, It can be said that the exception here is It may be that if the pledge is accompanied by an act of taking someone else's money while pledging the matter, then here we are dealing with manager pledge and contract that may be approved by some jurists.

If the third party refuses to accept the pledge , the contractor is responsible towards the person with whom he contracted, as refusal means that the contractor has failed to implement his obligation to force others to accept the undertaking resulting from the contracting of the pledge on behalf of others, because his obligation is a commitment to achieving an end and not to exerting care, so he cannot bear the responsibility on his own behalf. Unless he proves that his failure to implement his obligation to force others to acknowledge and accept the undertaking is due to a foreign reason, knowing that the mere rejection of the undertaking by others is not considered a sufficient foreign reason to pay responsibility for him.⁹⁶

If a third party accepts the pledge , his acceptance will have no effect except from the time of its issuance, unless it becomes clear that he intended, explicitly or implicitly, for the effect of this acceptance to be based on the time at which the pledge was issued.⁹⁷

A pledge on behalf of a third party includes an offer directed to the third party, If the third party accepts, a new contract is established between him and the person who contracted with the pledger, the third party's acceptance of the pledge and its approval of him is not required for it to take a special form or to be completed in certain terms, rather, it is sufficient to indicate the third party's intention to accept, as it may It may be explicit, or it may be implicit, and it may also be derived from silence or clothing. Express acceptance is expressed by saying, "I accept the pledge," or "I approve of it," or similar expressions and words, as for implicit acceptance, it is inferred from an act issued by a third party, such that it can only be interpreted as an acceptance of the pledge, such as the third party implementing the obligation, where the pledger pledged as if he received the price or started constructing the building. as for acceptance, a special form may be required if the law requires a specific form in the disposition that a third party is intended to accept, as in formal contracts such as the dispositions contained in real estate, only formal contracts are excluded from this rule as if acceptance was intended to conclude an insurance mortgage, because an insurance mortgage cannot be concluded without registering it, in this case, the acceptance must be explicit, and since the third party's acceptance of the pledge creates a new contract, it is required for its validity to have the necessary qualifications in one from whom it is issued, as is the case with any other contract, and it differs, the new contract that arose as a result of a third party's acceptance of the pledge for the first contract that was concluded between the pledger and the person with whom he contracted, in several aspects in terms of the two parties to the contract, the obligations arising from them, and in terms of the date on which each of the two contracts was concluded.⁹⁸

In terms of their parties, the two parties to the first contract are the pledger and the contractor, while the two parties to the new contract are the contractor with the pledger and others Pledged about him. It is noted that there is a common party in the first and second contract, which is

the contractor with the pledger, as for the second party, it is different in both contracts: the first is the contractor and the second is the third party.⁹⁹

As for the difference in terms of the obligations arising from them, the first contract creates an obligation to carry out a specific work under the obligation of the pledger, which is a commitment to achieving a specific goal, and this goal or result is to get others to accept the undertaking and approve it for him, as for the second contract, the new contract, it creates an obligation under the responsibility of others whose place varies according to what it is intended for others to commit to it, It may be a commitment to carry out an action or to abstain from an action.¹⁰⁰

The difference is in terms of the date on which each of the two contracts was concluded, the first is concluded upon the agreement of the pledger and the person with whom he contracted, while the second is concluded at the time when the third party's acceptance of the pledge is issued, and the acceptance issued by the third party does not have a retroactive effect unless it becomes clear that the third party intended, explicitly or implicitly, for the effect to be based on its acceptance up to the time when the pledge was issued, such as if a person sold his joint share to another and pledged at the same time to get the other partner to accept the sale, and then after that the partner accepted the pledge, in this case it is implicitly understood that he intended his acceptance to have a retroactive effect, meaning that his acceptance is based on the time of completion of the sale, not on the time of issuance of acceptance, however, if one person pledged to another person to make a third person sell him furniture and the third person approved and accepted the pledge, then his acceptance takes effect immediately and from the date of its issuance and is not retroactive unless he expressly or implicitly intended that his acceptance be based on the time of sale completion.¹⁰¹

Some commentators believe that this retroactive effect of a third party's acceptance of the pledge cannot harm one who gained a right from that third party before his acknowledgment and acceptance of the pledge. Others criticize the presentation of the solution in this manner despite acknowledging its validity and calling it inaccurate, because the right of the person who dealt with others in this matter remains in this situation the acceptance is due to the fact that if a third party disposes of something he owns and then later accepts a pledge regarding the same thing, then his acceptance of the pledge is considered a disposal of the property of others, and the idea of retroactive effect in the pledge lacks a legal basis despite serious attempts to establish this based on the rules of real estate registration and the rules for proving customary papers.¹⁰² These commentators believe, despite the fairness of opinion, that the rules of real estate registration and proving the date of ordinary bonds are not enough to invalidate the provision of the special text contained regarding the pledge on behalf of others, with the permissibility of a third party accepting the pledge retroactively, if the ruling is coupled with a text states that the retroactive effect will not prejudice the rights of those who contract in good faith with third parties before acceptance is issued by him, it is clear from the above that the first contract that was concluded between the contractor and the person with whom he contracted does not oblige the third party to anything, and the third party is not obligated to do anything similar, and if the third party commits to it, his obligation will be in accordance with the new contract, second contract that is concluded after his approval and acceptance of the pledge, and thus the pledge is on behalf of the third party, in application of the general rule stipulating that the effect of the contract should not be transferred to third parties,¹⁰³ if the pledge was specific to obtaining the acceptance of one of the owners in common for the sale issued by the rest, then its acceptance is based on the time of completion of the sale and not on the time of issuance of the acceptance.¹⁰⁴

Some have tried hard to explain the idea of retroactive effect by distinguishing between two assumptions that the subject of the pledge is related to a future matter, as if he pledged to obtain someone's approval for a specific matter, here, the acceptance of others does not have a retroactive effect, as it produces its effect from the date of acceptance only, and the second is that the subject of the pledge of the past and usually occurs when the pledge is subordinate to another contract, such as division, here, the acceptance of the pledge by others has a retroactive effect based on the date of the pledge, because this is consistent with the intention of the concerned parties and is suitable for interpreting the legal article related to retroactive effect.¹⁰⁵ We note that the idea of retroactive effect in the law is not valid, in addition to the fact that it has been placed in the hands of others to control it without any controls as well¹⁰⁶.

The contractor is considered negligent simply because the third party did not accept the pledge, and his claim that he made every effort to force the third party to accept the pledge. Rather, the contractor's responsibility arises even if the third party misuses his right to accept the pledge, or to reject it, because the third party is not absolutely obligated to acknowledge and accept the pledge. However, the pledger's obligation ends as soon as the third party accepts the pledge, and the pledgee does not have to guarantee the third party's implementation of his pledge after that, because the pledger is neither a guarantor nor a guarantor for others to perform what he has committed to,¹⁰⁷ provided that there is nothing that prevents an agreement that the pledger's obligation will be merely an obligation to exercise diligence to obtain the approval of others to abide by the intended contract, in this case, the contractor's responsibility is not achieved merely by the third party's refusal to abide by the contract, but rather it must prove that he did not exercise the contracted diligence.¹⁰⁸

As for Islamic jurisprudence, the royalty contract is valid and its effects are arranged since its conclusion, so there is no basis for the idea of retroactive effect, the first contract is a contract of pledge according to the adaptation, a separate royalty contract from the second contract, in the event that a third party accepts the pledge, then a second contract is concluded that has no relation to the first contract except from Whereas the approval of third parties is considered the pledger's implementation of the matter he contracted, which is to force the third party to contract, and from here we see that there cannot be a retroactive effect, but rather a new contract is concluded between the pledger and the third party.

Conclusion

The study reached a number of results, the most important of which are:

1- A pledge on behalf of a third party is a contract that has its elements like all other contracts and creates an obligation on the part of the pledger, which is to force the third party to enter into a contract. A pledge on behalf of a third party has elements like all other contracts, which are the two contractors (the pledger and the pledgee), the form, and the subject, as for the third party on whose behalf the pledge is made, it is not considered a pillar, and the pledge on behalf of others has three conditions, It is that the pledger contracts in his own name, not in the name of a third party who remains foreign to the contract, and that the purpose of the pledge is to commit the contractor personally, not to oblige others, and that the object of his commitment is to perform an action, and this action is to get others to accept the pledge, and the pledger's commitment is a commitment to achieve a result.

2- The adaptation of the pledge on behalf of others in Islamic jurisprudence is that it is royalty contract that includes a commitment to work, and it is valid and enforceable, its elements and conditions are met, and it has its effects that are legally considered like all other contracts.

3- A pledge on behalf of others in Islamic jurisprudence entails that it does not bind others, it has the choice to accept or reject, If he accepts, a new contract is created between him and the person to whom he is pledged, different from the first contract, If he refuses, the pledger does not get the specified price in the contract.

4- A pledge on behalf of a third party in law means that a third party is not obligated to fulfill his pledge. If the third party refuses to commit, the pledger must compensate the person with whom he pledged, and he may nevertheless get rid of the compensation by fulfilling the obligation he pledged, however, if the third party accepts this pledge, then his acceptance has no effect except from the time of its issuance, unless it becomes clear that he intended, expressly or implicitly, for the effect of this acceptance to be based on the time at which he created the pledge.

5-The compensation referred to in the law has no basis on which it can be based jurisprudentially, because in Islamic jurisprudence it is a royalty contract.

6-The retroactive effect of the contract stipulated in civil law has no evidence in Islamic jurisprudence because the contract of pledge is royalty contract that has no connection to the other contract.

Recommendations

1- Formulating the pledge on behalf of others is a fundamental and applied jurisprudential formulation.

2-Reformulating the legal article related to the pledge on behalf of others, specifically with regard to retroactive effect and compensation.

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