
Condition inhibitor from Acting in light of the Saudi Civil Transactions System and comparative legislation

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Research Abstract:

Ownership is the basis of real rights and A Expand its scope, and in order to perform its social function, it isRestrictedNot to harm the interests of others or affect the public interest,These restrictions vary between restrictions:LegalIt is stipulated by law.,and restrictionsVoluntaryBack todealPeopleAnd their wills forLimit the owner's actions inOwns it, And this type is based onPeople's willwhatIt is called "the condition preventing action."

Contemporary laws have differed in their adoption of it, because it constitutes a restriction on the most specific elements of ownership, which is the owner's right to dispose of his property, and because its effect affects economic movement and the circulation of money. Therefore, the principle was to prohibit it and permit it under certain conditions. This study comes to shed light on this topic under the title: The condition preventing disposal in light of the Saudi Civil Transactions System and comparative legislation.

Where you knownnThe condition preventing disposal, its legal classification, the conditions necessary for its validity, and the effect of the absence of any of these conditions,Then the effects of the condition preventing action,This was done by using the descriptive, analytical, and comparative approach. The study concluded with a number of results, the most important of which are:

- 1- A condition preventing disposal is a voluntary restriction on the owner's actions, whether it is due to the will of the contracting parties, such as a sale, or due to a single will, such as a will.
- 2- The condition preventing disposal must be for a reasonable period.,To protect the legitimate interest of the disposer, the disposer or a third party;So that it is permissible, and it is invalid if any of these conditions are not met.
- 3- The system decided to protect others.-who isGood faith-When dealing with a person prohibited from disposing of a transaction, he has the right to compensation.
- 4- Islamic jurisprudence preceded in explaining the provisions of the condition preventing disposal;Whether in a contract of exchange or donation,andJurists have mentioned its various applications.

Keywords:Preventive condition, ownership restrictions, civil transactions system, legislation.

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Research introduction:

The owner's powers include his right to dispose of his property in all types of lawful dispositions, whether the disposition transfers all or part of the ownership, and whether the disposition is permanent or temporary. However, the system may impose restrictions on some of the owner's dispositions, whether permanent or temporary, to take into account a specific situation or condition, after which the disposition returns to its original state.⁽¹⁾One of the temporary restrictions included in the Saudi Civil Transactions Law is the "condition preventing disposal," which is the source of the will and agreement of the people. It is a condition that contradicts the original principle, which is the freedom of the owner to dispose of his property. It limits the circulation of money and disrupts its movement, which harms economic activity. The property system is connected to the public order of society, and therefore the adoption of this condition was not welcomed in the laws and the judiciary at first.⁽²⁾However, the reality of practical life and the conditions for implementing this type of restrictions have led the laws and the judiciary to allow it to be adopted with its conditions.⁽³⁾This research aims to shed light on this topic in accordance with the provisions of the Saudi Civil Transactions System, entitled: "The condition preventing disposal in light of the Saudi Civil Transactions System and comparative legislation," using the comparative analytical research method. and The research plan consisted of an introduction, four sections, a conclusion, and a list of references, as follows:

The requirement the first:Definition On condition inhibitor from Act and adapt it.

The requirement the second:legitimacy Condition inhibitor from act, And conditions His health.

The third requirement:Invalidation of the condition preventing disposal.

The requirementfourth:Effects of the condition preventing disposal, and compensation therefor.

Research conclusion

bibliography

The requirement the first:Definition On condition inhibitor from act, And its adaptation, And in it Two branches:

Branch the first: identification Condition inhibitor from Action:

The condition is generally "the obligation of one of the contracting parties to the other, due to the contract, to do something that benefits him."⁽⁴⁾As for the definition of the condition inhibitor from Action, we find in legal jurisprudence several similar definitions, including:

1- he condition Reply in a contract or commandment It is forbidden Owner from Act in money specific from His money, such as if the donor stipulates in the gift contract that the donee shall not dispose of the gifted money throughout his life or until he reaches a certain age, or the testator stipulates the same from the legatee, or the seller stipulates to the buyer that he shall not sell the item until the remainder of the price is paid.⁽⁵⁾

2- he Voluntary restriction on authority Owner in a contract or commandment, And it is forbidden Owner Accordingly Act in money specific from His money.⁽⁶⁾

Branch the second: Air conditioning Regular condition inhibitor from Act⁽⁷⁾.

I have Varied Opinions Legal jurisprudence in to set nature Condition inhibitor from act, and find this Contrast Cause in that Recognition With this Condition And specify Foundations And the rules that Control it He grew up in the bosom of Judiciary Before settling Texts The legislation that approved it, So he took Jurists They basically feel For this condition And that from during Reply to One Systems Legal The list showed the following opinions:

The first opinion: And gold to that condition Ban from Act he derogation from Eligibility Conditional attic(Owner), and criticize this Opinion That Rules Eligibility from order The year No It is permissible For the will Individuals that Modify In it.

The second opinion: It has gone to that condition Ban from Act Includes Commitment By refraining on a job, The owner According to condition Ban from Act He has no control over queen, So if He conducted Acting Prevents him Condition counting In breach of commitment Arrange in His conscience And it is right For the manager Original that Requests Cancel Act that Conducted by So if Decide Cancel it He came back the money to The administrator Original when To cancel from effect retroactive, And this was criticized Opinion That the implementation an idea Termination It is interpreted With money Forbidden Act In it to The administrator Original that situation Condition, This exceeds border Purpose What is meant? from The condition if the motive for the condition is to take into account the interest of the person to whom the transaction is made.

The Third Opinion: And gold to that condition Ban from Act Makes The thing not Acceptable To act, This opinion was criticized for its ambiguity because it does not take the thing out of the scope of dealing, but rather what Still valid For rights Financial, and others may gain it due to a legal fact such as inheritance.

The fourth opinion: that condition Ban from The disposition represents a restriction on the owner's powers by virtue of the will and agreement of the persons, to achieve a legitimate interest for them, and this purpose is taken into consideration in the provisions of this condition, and this opinion is preferred by many jurists.⁽⁸⁾ Therefore, the study of the condition preventing disposal is mentioned in the context of discussing restrictions on ownership, as it is a restriction on the owner's actions based on the will and agreement of the persons, which is what the Saudi system adopted, as it addressed the provisions of the condition preventing disposal in the context of restrictions on ownership.

The requirement the second: legitimacy Condition inhibitor from act, And conditions His health, In it Two branches:

Branch the first: Legitimacy of the condition inhibitor from Acting on comparative legislation:

Understand from text The material (617) that origin he to forbid Condition inhibitor from The action, and that its approval was in accordance with the text of the system, and the laws were late in legislating it and the judiciary hesitated to implement it For two reasons One of them legal The other is economic.

As for the reason Legal Because from I specialize Elements Ownership that He is For the owner right Act in queen, So if to forbid from that Deprived from I specialize Elements His right, and because the ownership system and its branches are connected to the general economic system, it is not permissible to amend its provisions based on the will of individuals without a legislative document.

And as for the reason Economic Because Trading Money from Things that Stimulates the economy and investment, And preventing money circulation affects that. No It is permissible this Ban unless For justification strong⁽⁹⁾.

The jurists of Sharia preceded contemporary laws in discussing the ruling on the condition preventing the disposal of the sold item, and they differed on three opinions: the invalidity of the condition and the contract together, the invalidity of the condition and the validity of the contract, and the validity of the condition and the contract, which is the one that appears to be preferred.⁽¹⁰⁾ Then the jurists who say that the condition preventing disposal is valid differed regarding the effect of violating it on the contract, and they have two opinions: One of them is that the buyer is forced to fulfill the condition, and the other is that he is not forced and the seller has the option to cancel.⁽¹¹⁾

The jurists of the Maliki and then Hanbali schools of jurisprudence were the most expansive of the schools of jurisprudence in the extent to which they adopted the condition preventing disposal, whether the condition was issued by a single will as in a gift, loan, or easement, or was issued by multiple contractual wills as in a sale or mortgage.⁽¹²⁾

Contemporary laws have varied in their position on the condition preventing disposal; French law still prohibits the condition preventing disposal except in exceptional cases that do not represent a general principle, and Egyptian civil law concluded that the condition preventing disposal is valid with its conditions (Article 823), which is what Syrian civil law (Article 778), Kuwaiti civil law (Articles 815-817), and Jordanian civil law (Article 1028) adopt, while Iraqi and Algerian civil law did not stipulate its prohibition or permissibility, and the appropriate ruling for the condition is determined in light of the general rules.⁽¹³⁾

Branch the second: conditions health Condition inhibitor from Action: We present these conditions in accordance with Article (617/1). From the system where it says: The owner may not stipulate in his disposal - whether a contract or a will - a condition that prevents the recipient from disposing of the property unless this condition is for a reasonable period.,It is intended to protect the legitimate interest of the disposer, the disposer, or a third party."And its statement is as follows:⁽¹⁴⁾:

The first condition: That the condition be included in a contract or will: whether it was A donation contract such as a gift or a promise of a prize, or a barter contract such as a sale. Or the will, It is noted that it is a condition of the disposition that it transfers ownership to another, because the owner may not decide by his own will that it is not permissible to dispose of any of his money and keep it for himself, because that would result in the money being removed from the general guarantee of the creditors, because it is not permissible to execute on the money that was prevented from being disposed of with respect to it.⁽¹⁵⁾

According to the text of the article, there is no objection to the condition preventing the disposal of money in general, whether it is real estate or movable property. Just as it is a restriction on the right of ownership, it may also apply to the rights branching off from

it, such as the right of usufruct, such as when a person grants to another the right to use a specific property and stipulates that he not dispose of this right.

The second condition:The condition must be limited to a reasonable period: Saudi regulator text Provided that the condition preventing disposal is limited to a “period of “reasonable”, which is the period required to stipulate the prohibition of action.⁽¹⁶⁾And so that the interests of the person to whom the transaction is made are not harmed by the long duration of the condition that strips him of his authority to dispose of it.⁽¹⁷⁾.

Therefore, the condition is inhibitor from Act He should that He is temporarily, If it is life imprisonment, it is invalid because it violates the general economic order. A perpetual condition is not permissible except by a statutory text, as in the case of an endowment, for example. The period may be long in some cases or of unknown duration, such as if it were for life.

In the event that the period is not specified, Article (617/2) stipulates the court’s authority in this regard and the basis on which it bases its assessment of the period, and it states:If no period is specifiedPreventing the recipient from disposing of the property;The court may appoint it according to custom.,The nature of the transaction,The purpose of the action".

The third condition:The condition must be intended to protect a legitimate interest of the person making the transaction. or The administrator To him or Other, this Condition It has been mentioned Frankly speaking The material (617/1) It is a condition required to correct the work of the condition preventing the disposal that is considered a departure from the principle (the freedom of the owner to dispose of), and this interest is estimated by the judge according to the circumstances and conditions, and whether it was The intended protection interest legitimate To the administrator, or an interest The administrator To him, Or interest Other, And to clarify that⁽¹⁸⁾:

- 1- protection interest legitimate For the manager, He was Gives father To his son Money It is required in a contract The gift that Leads The son has Revenue Periodically life(any life father)It includes in The contract Condition By preventing Son from Act in the money All the way life Father to ensure continued revenue, Examples of this include if he sold The administrator Real estate For a price delayed It is required on the buyer (The assignee) not Act in For sale Until pay complete The price, until avoids procedures Track For sale And implementation attic under hand Other With what for him from right privilege attic.
- 2- protection interest legitimate For the manager To him, example that: that Gives father To his son Money, The father is afraid that Spend Son this the money in not For example, it is a benefit for his recklessness and extravagance, so it is required father in a contract The gift on Son non Act in the money a period Certain, or All the way His life is to protect the interest of the recipient, and it is a worthy interest. On condition Ban From the action.
- 3- protection interest legitimate For others, Example That's like Gives father To his son Real estate It is required attic performance salary bezel life To his wife old, To ensure performance this Salary For the stepmother it is required On the son unless Acting in the money Talented All the way life

This is amazing wife, It is a legitimate interest protected by a condition. Ban from Act.

The fourth condition:It is specific to the case where the subject of the condition preventing disposal is a real estate; in order for it to be enforceable against third parties, it is required that the condition be registered in the real estate registry, in accordance with Article (13) of the Real Estate Registration System issued by Royal Decree (M/91) dated 3/19/1443 AH.It states: "All actions subsequent to the first real property registration, which would create any of the original or subsidiary real rights, or transfer, change or terminate them, or amend the property data, as well as the final rulings establishing any of that, shall be registered in the real estate registry. These rights shall not be effective and produce their judicial and administrative effects except with this registration. These actions include real estate division, wills, endowments, inheritance, mortgages, grants, and the like."His saying (changing it) includes the condition preventing action.

The third requirement: the invalidity of the condition preventing disposal:

If any of these conditions are not met, Article (617/3) stipulates that the condition preventing disposal is invalid, and it states:Any condition that prevents the recipient from disposing of the property shall be null and void unless it meets the provisions of Paragraph (1) of this Article.If the condition is based on an unlawful motive, the condition is void. If the period is unreasonable, does the judge have the right to reduce it to a reasonable period?

The text of the Saudi system mentioned the judge's intervention in estimating the period in the event that it was not specified, but in this case it was not mentioned, which appears⁽¹⁹⁾The system has given him the right to estimate the period if it has not been determined from the beginning, so he has the right to reduce the period to a reasonable limit according to the bases stipulated by the system for estimating the reasonable period, which are:custom,The nature of the transaction,The purpose of the action"

A jurisprudential trend holds that it is safer for the judge to nullify the prohibitive condition and not to reduce its duration to a reasonable period because the law has not set a maximum limit for it that he may not exceed in his estimation.⁽²⁰⁾.

It seems that this opinion finds justification in Egyptian law, which did not establish a basis for estimating this period, although it set a maximum limit for it according to Article (823/3). As for the text of the Saudi Civil Transactions Law, it stipulated the basis for estimating the period when it was not specified, and therefore it seems that the judge's authority to reduce the period to a reasonable amount is preferred based on those bases.

As for the effect of the invalidity of the condition preventing disposal, according to the text of the article, it is limited to the invalidity of the condition itself, and does not extend to the original disposal that was accompanied by the condition preventing disposal.

The requirementfourth:The effects of the condition preventing disposal, and protecting others when it is violated. It has two branches:

The first branch:Effects of the condition preventing action.

It statesThe material(618) As it isIf the condition preventing the disposal is valid according to Article (617)From this systemAny action contrary to it shall be void,

without prejudice to the right of the successor of the person prohibited from acting if he gains it through compensation in good faith."

If the condition preventing disposal meets the previous conditions, then the condition is valid and it is not permissible to violate it, and any transaction that violates it is invalid, and the invalidity does not extend to the original transaction. If the donor stipulates that the donee shall not dispose of the gifted money and the donee violates this condition, then his transaction is invalid, and the prohibition on disposal includes:

- Regular actions that transfer ownership, such as sale and donation.
- And also the actions that create a right for others over something, such as a right of usufruct, easement, or mortgage, because they affect the owner's right and limit his actions.

On the other hand, there are actions that do not fall within the condition preventing action, including:

- Actions that do not transfer ownership or create a real right for others may be undertaken by the owner as management actions because they do not lead to the loss of all or part of his right.
- Physical actions on a thing, such as demolition and modification, unless the condition explicitly states that.
- Statutory facts that transfer ownership without the owner's will, such as inheritance and expropriation for public benefit.⁽²¹⁾

If this article stipulates the invalidity of the action that violates the condition preventing it, then what is the nature of the invalidity in this case? And what is the ruling on the original action that was accompanied by the condition preventing the action?

First: The nature of the invalidity of the action that violates the condition preventing it⁽²²⁾:

There are two trends in legal jurisprudence regarding the type of nullity of an action that violates the condition preventing it. One trend sees it as absolute nullity, so the parties to the action and even those who have an interest other than them, such as creditors, adhere to it, and the court rules on it on its own. Another trend sees it as relative nullity to protect a private interest, which the interested party alone adheres to, and this is what is consistent with the intended purpose of the prohibitive condition, which is to protect a private interest.

Second: Cancellation of the original transaction that was accompanied by a condition prohibiting the transaction.⁽²³⁾:

If the transaction is a sale or gift contract and is accompanied by a valid condition preventing the transaction, what is the ruling for the sale or gift contract accompanied by a condition preventing the transaction if the buyer or the donee disposes of it in violation of the valid condition preventing the transaction?

The article stipulates that the action that violates the condition preventing the action is invalid without addressing the original contract in which this condition was included. The position of the Sharia scholars on the issue has been previously indicated. According to the general rules (Article 107), if the condition preventing the action is one of the basic conditions of the contract and constitutes a fundamental obligation for the person making the action, he may request the annulment of the binding contract if

the person to whom the action was made fails to fulfill his obligation, based on the general rules of annulment. Otherwise, the original action remains in effect.

Section Two: Protecting others in case of violation Condition inhibitor from Act.

if The action was taken in violation of the condition preventing it, so it is invalid.- As mentioned above, since the penalty of invalidity may result in harm to the rights of others who dealt with the person to whom the transaction was made, it is necessary to protect the third party in good faith, and the system has called him (the successor of the person prohibited from disposing of the transaction).

An example of this is that a person in good faith deals with the recipient of the transaction in a transaction based on exchange, such as a sales contract, for example.- Who violated the condition preventing the disposal - and this transaction takes place without the knowledge of others-Good faith - with a condition preventing disposal, so the third party here (the successor of the one prohibited from disposal) has the right to claim his right, either by the validity of the disposal, in which case the condition preventing it is not taken into account and cannot be used as evidence against the third party in good faith.⁽²⁴⁾ Or compensate him for the damage he suffered.

Main results:

- 1- A condition preventing disposal is a voluntary restriction on the owner's actions, whether it is due to the will of the contracting parties, such as a sale, or due to a single will, such as a will.
- 2- The condition preventing disposal must be for a reasonable period.,To protect the legitimate interest of the disposer, the disposer or a third party;So that it is permissible, and it is invalid if any of these conditions are not met.
- 3- If the condition preventing the action is invalidated, or the action that contradicts it is invalidated, then the invalidity is limited to the condition and the action that contradicts it.,It does not extend to the original contract.YOr the will.
- 4- The system decided to protect others.-who isGood faith-When dealing with a person prohibited from disposing of a transaction, he has the right to compensation.
- 5- Islamic jurisprudence preceded in explaining the provisions of the condition preventing disposal;Whether in a contract of exchange or donation,andJurists have mentioned its various applications.

References:

- (1) Al-Sanhouri 8/501.
- (2) French jurisprudence attacked this condition when it appeared in practical life, and the judiciary followed it in that, as it ruled that this condition was invalid at first, and the Egyptian judiciary followed them, which later adopted what the French judiciary concluded in ruling that this condition was valid if its conditions were met, and then codified what the judiciary was doing in Article (823), (Al-Sadah, p. 134).
- (3) Faraj p. 172, Sadah 134.
- (4) The End of Wills 2/286, Al-Rawd Al-Murabba' 2/230.
- (5) Dr. Abdel Moneim Farag Al-Sadda, Original Property Rights, p. 134.
- (6) Dr. Tawfiq Hassan Faraj, The Original Sample Rights, p. 172.
- (7) The echo p145

- (8) Faraj p. 172,
(9) The echo p. 134.
(10) The details of the statements and evidence for them are examined in a published research: Saleh bin Nasser Al-Subaihi, "The condition preventing disposal of the sale, a comparative jurisprudential study," Journal of Jurisprudential and Legal Research, Faculty of Sharia and Law, Al-Azhar, Damanhour, Issue (41), April 2023 AD, pp. 1461-1538.
(11) The previous reference, p. 1510.
(¹²) Al-Abbadi 2/198-227.
(13) Ibrahim Saleh Attia, The Condition Preventing Disposition in Comparative Civil Laws, published on the Internet, Mahmoud Karboub, Adda Alian, The Condition Preventing Disposition, A Comparative Study, Journal of Comparative Legal Studies, Algeria, University of Glizan, Volume (7) Number (1) 2021 AD, pp. 653-677.
(14) Al-Sanhouri 8/, Al-Sadah p. 136, Farag p. 173, Al-Bakri 11/451, 456.
(15) It should be noted that non-enforceability does not aim to achieve a purpose independent of the purpose intended by the condition preventing disposal, but rather is based on it and contributes to achieving it. Therefore, the condition preventing disposal does not entail non-enforceability if it is intended to circumvent the creditors' guarantee or if the purpose intended by the prevention does not conflict with the permission of execution. To clarify this, see: Al-Bakri 11/463.
(16) The echo p141.
(17) Faraj p176.
(18) Dr. Ahmed Shawqi Muhammad Abd al-Rahman, Original Real Rights, Property Rights and Rights Branching Out from It, 2004 edition, p. 59, Dr. Abd al-Razzaq Ahmad al-Sanhuri, Al-Wasit in Explaining Civil Law, Part Eight, Property Rights, 2006 edition, p. 477, al-Bakri 11/447.
(19) This is what some legal scholars see, Faraj, p. 178, Al-Sadah, p. 171.
(²⁰) Al-Bakri 11/455.
(²¹) Al-Bakri 11/456,
(22) Faraj p179.
(23) The resentment, p. 144, Al-Bakri 11/470.
(²⁴) Explanatory note to the Unified Arab Civil Law, p. 312.