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Guarantee of Hidden Defects in the Sale in the Jordanian Civil Law

Dr. Talal Hussein Mohammad Abumalik

Lecture, Department of Law, Philadelph University, Jordan

Dr. Enad Atieh Oqla Al Saidat

Lecturer, Private Law and Customs Legislations, Jordanian Customs, Jordan

Dr. Abedullah Mohamad Awdah Al-Shudaifat

Lecturer, Department of Law, College of Sharia, Al al-Bayt University, Jordan

Abstract:

This research aims to study the topic (guarantee of the hidden defect in the sale in Jordanian civil law), which is an important and worthy research topic that has not received sufficient attention in the civil law literature. There is no doubt that the sale contract is one of the most common and used contracts in daily life in all countries of the world. The sale contract is also considered the only contract that a person concludes daily and even a number of times per day. This contract is the basis for the exchange of funds and the link between production on the one hand and consumption on the other. Hence, the Jordanian legislator has dealt with the provisions of guaranteeing hidden defects in Articles (512-521) of the Jordanian Civil Code to achieve stability in financial transactions and cultivate confidence and trade exchange. The study of this research was divided into two main sections: the first section deals with the nature of the hidden defect and the conditions for guaranteeing it, and the second section deals with the provisions of the lawsuit guaranteeing the hidden defect. I have discussed this topic in detail. This study included a set of results and recommendations.

Keywords: Sales contract, sale, hidden defect, warranty suit, termination of the contract

1. The Introduction

The sale contract is considered one of the oldest and most important contracts named and the most developed, as the contractual relations of the parties are organized by it to define the rights and obligations of the contracting parties. It should be noted that the buyer, whoever he is, enters into a contract whereby he buys a specific commodity or commodity, and this is done through the sale contract, provided that these commodities or commodities are free from any hidden defect in the sale.

It should be noted that the defect of the sold item cannot be detected and appear except after the sale has been delivered to the buyer, and this defect cannot be limited except by the nature of the sale, whether it is movable or immovable.

Moreover, in the event that a hidden defect affecting the sold item appears, it would make the sale unfit for the purpose for which it was prepared and would be a breach of the seller's obligation. Then, the buyer may request termination of the contract. He does not know it, and if he knew it, he would not have entered into the sale contract. The buyer also has the right to request the annulment of the sale due to a fundamental error in the sold item.

However, the truth lies in the fact that there are some legal issues that still raise many questions before jurisprudence and legal legislation, including the issue of guaranteeing hidden defects in the sale, which is one of the important topics that must be studied and researched because of its great importance in our daily life.

1.1. Research Importance

The importance of studying the hidden defect in the sale contract lies in the fact that the latter is one of the netting contracts, as it enjoys accuracy and great importance. Therefore, stress must be given to the importance of the hidden defect in the sale and its effects on the rights of the buyer and whether he can refer to the seller to return the sold item or recover the price. If there is a hidden defect that the buyer is not aware of at the time of concluding the contract or before or after delivery, especially since this hidden defect has an effect on the thing sold, such as reducing its price or making the desired benefit from its purchase non-existent, and thus we are facing legal protection for the rights of the buyer.

1.2. Research Problem

The research problem lies in the case when the buyer receives the sold item from the seller; he must verify the condition of the thing sold as soon as the buyer is able to do so. However, the Jordanian legislator specified only the period for filing a claim for the hidden defect guarantee, as he specified it as six months from the delivery of the actual sold item,

and this period may not be sufficient in some sales due to circumstances beyond the control of the buyer. This prompts us to know the hidden defect that requires the guarantee. Moreover, what are the conditions for the positive defect of the guarantee? What are the provisions of the hidden defect warranty claim?

2. Research Methodology

The study of this research is based on the analytical descriptive approach, so the researcher focused on studying and analyzing the legal texts in Jordanian civil law, citing some judicial rulings issued by the Jordanian Court of Cassation and as we are in the process of studying a subject that mainly needs extrapolation of the legal texts that govern it, Analyzing them, presenting and discussing jurisprudential opinions, reviewing general and objective provisions, ensuring the hidden defect in sales in the Jordanian Civil Law, and drawing conclusions and recommendations.

In the study of guaranteeing hidden defects in sales in Jordanian civil law, the researcher adopted the following plan:

- The first topic: The nature of the hidden defect and its conditions.
 - The first requirement: What is the hidden defect?
 - The second requirement: The conditions of the hidden defect.
- The second topic: The claim of guaranteeing the hidden defect.
 - The first requirement: The parties to the hidden defect guarantee suit.
 - The second requirement: The effects of the warranty claim.

2.1. What Is The Disease of Death and a Statement of Its Conditions?

Determining what the hidden defect is in the sale requires that it first be presented to define it, and then we explain the conditions of the defect. We will divide this topic into two requirements as follows:

- The first requirement: What is the hidden defect?
- The second requirement: The conditions of the hidden defect.

2.2. The First Requirement

2.2.1. What Is The Hidden Defect?

And here arises several questions:

- What is the disease of death?
- What are the types of diseases?
- What is considered a disease of death?

To answer that, we will divide this requirement into two separate branches as follows:

- Section one: Definition of hidden defect.
- Section two: The basis of the obligation to guarantee the hidden defect.

2.3. First Branch

2.3.1. Definition of Hidden Defect

There is no definition of a hidden defect in Jordanian civil law. However, the Jordanian Court of Cassation, the Egyptian Court of Cassation and legal jurisprudence have spared no effort in defining and defining the meaning of hidden defect. The Jordanian Court of Cassation defined it by a decision in which it stated: "...the hidden defect is the defect that the contracting party is ignorant of and is not known by witnessing the apparent appearance of the contract, or is not noticed by the ordinary person, or is not revealed except by the expert, or does not appear except by experience." The Egyptian Court of Cassation defined it as: "... the emergency pest that the common sense of the sale is devoid of."²

A part of the legal jurisprudence defined it as "the emergency pest that is devoid of the sound creation of things, and which is attached to the sold, so it detracts from its value or from its use, an influential decrease that is not tolerated by the exchange or current dealings according to the usual dealings and uses of the thing."³

The Jordanian civil law regulated the guarantee of hidden defects in the first chapter related to the sale contract, from the first chapter on ownership contracts, in Articles (512-521) of the civil law, making the sale contract in relation to the hidden defect, considering the sale contract as one of the most important contracts transferring ownership. The scope for establishing general rules for guaranteeing hidden defects, and these general rules stipulated by the Jordanian Civil Law and decided for the sale contract are not limited to the sale contract only but extend to include all contracts transferring ownership, exchange contracts, and contracts for the usufruct of the thing, whether the sale contract is limited to real estate or is focused on Movable, or focused on a material or moral thing. Therefore, it is noted here that the Jordanian legislator resorted, in relation to other contracts, to refer to the general rules stipulated in the sale contract with regard to hidden defects, with an indication of what he added to these rules in other contracts in terms of specificities for each contract, As required by the nature of that contract. Based on the foregoing, it can be said that the guarantee of hidden defects applies, in principle, to sales, regardless of their place.⁴

2.4. Section Two

2.4.1. The Basis for the Obligation to Guarantee the Hidden Defect

The basis for the obligation to guarantee hidden defects can be found in the nature of the sale contract, the nature of things, the logic of matters, and the common intention of both the seller and the buyer. It was mentioned in the explanatory memorandums of the Jordanian Civil Law: "Safety is conditional in the contract as an indication, so unless the thing sold is delivered, the sale is not obligatory."⁵

Article (512/1) of the Jordanian Civil Code stipulates that: A sale is considered concluded on the basis that the thing sold is free of defects, except for what is customarily tolerated.

It is clear from the text of the above article that the sale contract is deemed to be concluded on the basis that the thing sold is free from defects, except for what is customarily tolerated. It was stated in the explanation of the Journal of Judicial Rulings according to the text of Article (336) that it says: (The absolute sale requires the integrity of the thing sold from defects, meaning that Selling property without acquittal of defects and without mentioning that it is defective or intact requires that the thing sold be sound and free of defects. It is clear from this that it is usually a desirable description and customary as a condition text.⁶

Accordingly, whoever buys a car does not intend, behind its purchase, to purchase its structure and entity but rather intends by purchasing it to use it normally, meaning that it must be fit for use and for the performance of the obligation from it, and that it is usable according to the desire of the buyer according to the normal and natural course of things, but if the car does not achieve the purpose required by its nature or the purpose that the buyer intended to achieve, so that the use of it becomes non-existent or incomplete in the required manner, which leads as a result to a decrease in the value of the sale, then that seller is identified with a hidden defect that leads to the realization of the seller's responsibility, and then their commitment to guaranteeing that is fulfilled.⁷

2.5. The Second Requirement

2.5.1. Hidden Defect Terms

In order for the seller to guarantee what appears in the sold item, certain conditions must be met in the defect, without which the buyer would not be able to return to the seller for the guarantee because if we took into account any defect that appears in the sold item, regardless of whether the defect was gross or not trivial, this would lead to Turmoil, instability and waste of the binding force of contracts. The legislator who wanted the guarantee to help the buyer did not want at the same time to protect his haste and lack of foresight. The protection condition necessitates that the defect be concealed and not the purchaser's lack of sight. To clarify this, we will divide this requirement into three branches, as follows: (that the defect is old) in the first branch, (that the defect is hidden) in the second branch, and (that the defect is effective) in the third branch, as follows:

2.6. First Branch

2.6.1. The Defect Must Be Old

Article (513) of the Jordanian Civil Code stipulates that: (1 - If an old defect appears in the sold item, the purchaser has the choice whether he wishes to return it or accept it at the specified price, and he does not have the right to retain it and demand what the defect decreased from the price. 2 - The defect is considered old if it is present. In the thing sold before the sale or occurred after it while it was in the hands of the seller before delivery. 3 - The defect that occurred with the buyer is considered old if it is based on an old reason existing in the thing sold by the seller).

The sale is considered old in the thing sold if it was present in it before the conclusion of the sale. If the sale came to a car, and it had a hidden defect and the seller concealed it from the buyer and it was difficult for the latter to discover it despite his assistance from the experts, then it is said that the defect is hidden and old from the sale. In the event that the thing sold and upon contracting was sound, but it happened that the thing sold was exposed to a defect while it was with the seller and before receiving it from the buyer, then the seller bears the responsibility for the hidden defect. But if the purchaser actually received the sold item or received it constructively, then the purchaser bears the responsibility for the loss of the sold item or the defect that befell it.⁹

The Jordanian Court of Cassation ruled in a decision in which it stated: "...and the old defect is the defect present in the object of the contract, before or after the contract, but before delivery. It was mentioned in Articles (513/2 and 3) of the Civil Code. As for the defect that affects it, it is the one that reduces the value of the thing contracted for by merchants and those with experience, Article (338) of the Code of Judicial Rulings..."¹⁰

2.7. Section Two

2.7.1. The Defect Is Hidden

Article (4/513) of the Jordanian Civil Code stipulates that: (The old defect is required to be hidden, and the hidden is that which is not known by sight of the outward appearance of the thing sold or is not discerned by an ordinary person or is not revealed by anyone other than an expert, or is only apparent by experience).

It is clear from the above text that the Jordanian civil law stipulated in the old defect that the defect be hidden, and it is considered hidden when it is not known by observing the apparent appearance of the thing sold or it is recognized by the ordinary person, or it is not discovered by anyone other than an expert, or it appears only by experience.¹¹

Accordingly, the Jordanian Court of Cassation ruled in a ruling that stated: "...as for the requirement that the defect be something that the contracting party is ignorant of, what is meant by it is that the defect is hidden, and the hidden defect is that which is not known by observing the phenomenon of the object of the contract, or is not detected by an ordinary person, or is not detected by anyone other than an expert or Article (513/4) of the Civil Code does not appear except by experiment. In addition, the disposer (the seller) does not stipulate his innocence of the defect unless he fraudulently conceals the defect and stipulates the innocence of it in accordance with the provisions of Article (514) of the Civil Code.¹²

In order for the seller's guarantee to be fulfilled, the defect must be hidden. The seller is not liable for the apparent defect that the buyer could have known about at the time of the sale. Whoever buys something without examining it to discover its defects is considered negligent, and he must bear the consequences of this change or assume that he has accepted the thing sold for its defects. The defect is hidden if the purchaser proves that he would not have been able to discover it himself if he had examined the sold item with the care of an ordinary man unless the seller assured him that the sold item was free of this defect.¹³

2.8. Section III

2.8.1. The Defect Is Effective

In order for the seller to guarantee the defect in the thing sold, in addition to being an old defect, it must be a defect affecting it, and this condition, Article (194) of the Jordanian Civil Code stipulates: That the buyer is ignorant of it, and that the seller did not stipulate his innocence from him.

Article (338) of the Code of Judicial Rulings stipulates the following: (A defect is what decreases the price of the thing sold for merchants and experts).

The Jordanian legislator did not specify the meaning of an effective defect, but the effective defect is a serious defect, and by a serious defect, what is meant is a defect that decreases the value of the sold item or diminishes its utility, and therefore it is the defect that decreases the value of the sold item or reduces its benefit.¹⁴

It goes without saying that the defect may diminish the value or usefulness of the thing, and it may decrease the value of the thing without detracting from its usefulness, as if it were a car that is valid for all its intended uses but has a defect in the parts that do not affect its validity to move, such as the seats. If the shortfall in value is obscene, the buyer may return to the seller a warranty for hidden defects. The defect may reduce the benefit without the value as if the matter is related to a mechanical machine that has a hidden defect that does not affect its value even if it is known so that if the decrease in the benefit was significant, the buyer would not be able to return the guarantee of the hidden defects.¹⁵

Undoubtedly, we can know about the intended benefits of the sale from three things, namely: the contract, the nature of the thing and the purpose for which it was prepared. The purchaser may clearly state in the contract the purpose he aims for from the sale, in which case this purpose must be an intended benefit from the thing sold so that if this purpose is not met or there is a major breach, the buyer has the right to return to the seller to guarantee the hidden defect even if the intended benefits are from this. The purpose is not the familiar benefits that people know.¹⁶

2.9. The Second Topic

2.9.1. Hidden Defect Warranty Claim

If the conditions for a hidden defect are met, as previously mentioned in the first topic, the buyer has the right to refer back to the seller with a claim of guaranteeing the hidden defect. In order to clarify the hidden defect warranty claim, we will divide this topic as follows:

- The first requirement: (the parties to the hidden defect warranty claim) and
- The second requirement: (the effects of the warranty claim).

2.9.2. The First Requirement

2.9.2.1. Parties to a Hidden Defect Warranty Suit

Any lawsuit brought before the judiciary must have a plaintiff, who is the creditor, and a defendant, who is the debtor and the creditor here is the buyer, while the debtor is the seller. Warranty claim) in the second section as follows:

2.10. First Branch

2.10.1. The Debtor in the Warranty Claim

It is axiomatic that the debtor in a warranty suit has to be the seller. The sale contract, like the rest of the contracts, only binds both parties. Identifying the debtor (the seller) is not always easy. In the case of multiple characteristics of sellers, as in the case of intermediaries and commercial representatives, which is behind the ambiguity in the reality of their legal capacity in order for them to disassociate themselves from the warranty claim. They claim that they do not have the capacity of the seller, in contrast to the appearance in which they appeared to the buyer at the time of the sale.¹⁸

In the event of the death of the seller, the debt under the guarantee is not transferred to his heirs because they do not complete his identity, and his legacy is the one that remains responsible for the results of the guarantee. The heirs of this estate only return to what remains after the implementation of the guarantee obligation, in accordance with the Sharia rule: There is no estate before debts are paid.

Article (266) of the explanatory memorandum of the Jordanian Civil Law for Articles (353) and (354) states that the creditor does not inherit the debt owed by the estate. That of the estate is what remains to pay the debts).

It goes without saying that the buyer shares with the rest of the seller's creditors in distributing the value of the general mortgage with the participation of strangers because he becomes a creditor in turn. As for the seller's guarantor, he is equally bound by the guarantee, and the buyer claims against him in accordance with the rules governing the provisions of the guarantee.

The Oman Court of First Instance ruled in a decision that stated: "... the counter-defendant is preoccupied with her obligation to the counter-claimant with the amounts referred to above, as a result of the plaintiff's guarantee, and since the agreement included the obligation of the seller and his guarantor to compensate the guarantee, and accordingly the plaintiff is obligated to pay an amount compensation."¹⁹

If there are several debtors, the purchaser may claim the guarantee against them, each according to his share in his ownership of the sold property. It is not permissible to refer to each one of them for the entire guarantee, except in the case where the sellers are jointly committed to their obligation towards the buyer.²⁰

2.11. Section Two

2.11.1. Creditor in a Security Suit

The creditor by guarantee, according to the rights arising from the sale contract, is the purchaser, and this right is transferred to the general successor and to the special successor. This is what was stipulated in Article (520) of the Jordanian Civil Code, which stated: The right to guarantee the defect shall be transferred upon the death of the purchaser to the heirs.

It should be noted that whoever possesses the thing sold or uses it in a capacity other than that of a purchaser cannot benefit from the obligation to guarantee the hidden defect. Likewise, he who uses or possesses the sold item under a void contract does not benefit because permitting does not correct a void contract. Therefore, the buyer of the real estate or the car who did not register the sales contract with the competent registration departments cannot claim a claim for a hidden defect guarantee.²⁰

There may be multiple creditors, and the guarantee becomes divisible among the creditors, each according to his share in the ownership of the sold property. It is also not permissible if the deal is indivisible.²¹

There is no doubt that the creditors must agree among themselves to return the entire thing sold because they are jointly liable to each other according to the return, and accordingly, their right to guarantee cannot be divided because the thing sold itself cannot be divided.²²

2.12. The Second Requirement

2.12.1. Effects of a Warranty Claim

When the guarantee conditions are met, and the purchaser performs the procedures imposed by the law on him, multiple options are opened for him to fulfil his right in the guarantee. It may be in his interest to request the rescission of the contract in whole or in part when this sale has become, due to the defect, unfit for the purpose for which it was originally intended or according to what was agreed upon. The buyer may consider maintaining the contract by only reducing the price, especially if the defect did not affect the purpose for which the sold item was prepared but rather affected its value. The buyer's right to claim does not stop at this point, but he may also seek compensation for the damage he suffered when a few conditions are met, the most important of which is the seller's knowledge of the defect. According to these rights granted to the buyer, we will show through this requirement the effects of the warranty claim. We will divide this requirement into two branches as follows: The first branch (the real implementation of the seller's obligation to guarantee the defect) and the second branch (the termination of the contract).

2.12.2. The Real Implementation of the Seller's Obligation to Guarantee the Defect

Execution in rem means the implementation of the obligation in the manner agreed upon in the contract, and it may be fulfilled even if the debtor does not perform it. However, the creditor "with permission from the judiciary" performs it at the expense of the latter.²³

In the event that the source of the warranty obligation is the existence of a defect in the thing sold, then the real implementation of it is to remove this defect or replace the defective thing with something healthy and free of defects.²⁴

The text on the demand for real execution was explicitly stated in the Hague Convention on the International Sale of Moveable Objects, where Article (1/42) of it stipulates that: (The buyer has the right to take action against the seller in the following cases:

- If the sale is for something produced or manufactured by the seller, that is, by repairing the defect, provided that it is within the seller's ability to do so.
- If the sale is for homosexual things, present an alternative to them if this is not contrary to custom and is possible).

Article (355) of the Jordanian Civil Code stipulates that the debtor, after being notified to perform the execution, is obliged to implement what he is obligated to implement in kind whenever possible and to limit the creditor's right to monetary compensation if this does not cause him serious harm.

The Jordanian Court of Cassation ruled in one of its decisions that stated: "... Whereas, it is judicially established that the method of compulsory execution of both types, whether in kind or through compensation, is an absolute option for the creditor unless execution is not possible in application of the provisions of Articles 355 and 364 of the Civil Code. And that Article 355 of the Civil Code included that specific implementation is not possible and did not stipulate the inclusion of the term "impossibility".²⁵

2.13. Section Two

2.13.1. Termination of Contract

The return of the buyer with a guarantee of the defect may be by requesting the termination of the contract, which is the dissolution of the contractual bond, and one of its cases is if the buyer receives a defective thing. If the conditions for guaranteeing the hidden defect are fulfilled, and the buyer performs the procedures required by the law, the buyer has the right to file a warranty claim against the seller, and the buyer expresses his opinion on the termination of the contract by his unilateral action.²⁶

It should be noted that the contract is rescinded before receiving the thing sold with everything that indicates it, whether explicitly or implicitly, without the need for the seller's consent or suing, but on the condition that he is aware of the rescission. If the arrest is made, the termination must be done by mutual consent or by litigation before the courts. If the contract is rescinded due to the defect, the buyer must return the thing sold to the seller and recover the price.²⁷

Article (195) of the Jordanian Civil Code stipulates that:

1- If the defect fulfills the conditions set forth in the previous article, the contract is not binding for the option holder before taking possession, subject to rescission thereafter.

2- The contract shall be rescinded before taking possession with all evidence without A need for mutual consent or litigation, provided that the other contracting party is aware of it. As for after receiving it, it is only done by mutual consent or litigation).

Article (196) of the Jordanian Civil Code stipulates that: (The termination of the contract due to a defect shall result in the return of its place to its owner and the recovery of what was paid).

It is clear from texts (195) and (196) of the Jordanian Civil Code above that if the buyer has not received the price and it is proven that it has an old and influential defect, then the termination of the contract takes place with all that indicates it without the need for mutual consent or litigation, provided that the seller is aware of that, i.e. The purchaser can rescind the sale explicitly or implied, and its rescission is expressly for him if he informs the seller of his desire to rescind the sale by any means that makes him aware of the rescission. Its revocation is implicit for him if he does not go to the seller at the specified time to complete the deal or if he does not send him the agreed down payment or returns papers related to the sale to him.²⁸

In the event that the purchaser takes possession of the sale, the rescission must take place either with the consent of the seller or against his will through the judiciary. In the beginning, the buyer must announce to the seller his desire to cancel the contract. If he accepts that, then he receives the thing sold and returns the price to the buyer. If he refuses, the buyer resorts to the judiciary, filing a lawsuit to oblige the seller to receive the thing sold and return the price. A ruling obliges the seller to receive the thing sold and return the price, and that refusing to receive the thing sold will be deposited at his expense in his name, and the consequence of its destruction will be on him. He is also forced to return the price to the buyer, and if he refuses, it can be carried out on his money to be sold at a public auction so that the buyer will fulfil his right from its price.²⁹

3. Conclusion

Praise and thanks be to God Almighty, and after completing the writing of the research and its title guaranteeing the hidden defect in the sale in the Jordanian civil law, I have reached a set of results and recommendations, which we mention as follows:

- The hidden defect is an emergency scourge devoid of common sense, and because of its prevalence in transactions, the Jordanian legislator regulated it in the Jordanian Civil Code.
- The Jordanian legislator did not stipulate the meaning of an effective defect, although this meaning was specified in some laws, including the Egyptian Civil Law, according to the text of Article (1/447), which stated: (that it is that which decreases the value of the sale, or decreases its benefit according to the purpose It is intended as indicated by the contract or appears from the nature of the thing or the purpose for which it was intended.
- The effect that results from the presence of an old and influential defect in the sale is that the contract is not binding on the buyer, and it is possible, through his unilateral disposal, to rescind the contract.
- The provisions of the hidden defect guarantee are not from the general system, so it is permissible to agree on what contradicts them.
- The Jordanian legislator did not mention the condition of antiquity in the sold item in guaranteeing the hidden defect but rather mentioned it in the option of defect in accordance with the text of Article (194) of the Jordanian Civil Code.

- The Jordanian legislator did not mention directing the buyer's notification to the seller, knowing that the defective one is defective within a certain period, like most other laws.

4. Recommendations

- I recommend that the Jordanian legislator stipulate the meaning of the effective defect, similar to some Arab and international legislations.
- Finding a legal text to clarify the concept of defect, as it is limited to the pest that decreases its value or benefits from it according to its nature.
- The Jordanian legislator should clarify when the defect affects the value of the contract.
- The Jordanian legislator sets a deadline for examining the sold item.
- Increasing the limitation period in the guarantee to become one year instead of six months so that it is a sufficient period to guarantee the rights of the buyer.

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