
**The Owner's Rights and Obligations with regard to
the Individually Owned Unit and the Common Areas
in the UAE Federal Legislations with Particular
Emphasis on the Emirate of Dubai Law No. 17 of
2007 Concerning Ownership of Jointly Owned
Properties**

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Introduction

The bulk of this chapter is devoted to discuss the owner's rights and obligations with regard to the individually owned unit and the common areas in the UAE Federal legislations with particular emphasis on Dubai Law No. 17 of 2007 Concerning Ownership of Jointly Owned Properties, and the legal transactions that can be made over the individually owned unit. It is divided into five sections: section one throws light on the concept of ownership. Section two discusses the rights and obligations of the co-owner with regard to the individually owned unit. Section three discusses the rights and obligations of the co-owner with regard to the commonly-owned parts. Section four discusses the legal transactions that can be made over the individually owned unit. Section five evaluates the provisions of the laws relating to the subjects discussed and presents the main conclusions and recommendations.

1. The concept of ownership

Four points need to be illustrated here as follows: ownership and possession, joint ownership, the dogmatic contents of the ownership of the individually owned unit, and the legal nature of the ownership of common areas.

1.1 Ownership and possession

At the beginning, it is appropriate to indicate that the UAE Civil Transactions Act No.5 of 1985¹ is the main legislation in the area of private law in general and the law of contracts and obligations in particular². It is the general law in the UAE that governs matters relating to real property rights, personal rights, sources of obligations, effect of obligations, etc³.

This Act was enacted on 15 December 1985 as a Federal Act to be applied all over the State. It was published in the Official Gazette No.158 on page 11 and it came into force on 29 March 1986. Unlike some Arab civil codes, which have adopted the Egyptian Civil Code⁴ as a model, the UAE

¹ This Act will be referred to in the text as CTA 1985.

² Al-Attar M, 1997, Sources of Obligations in the UAE Civil Transactions Act, UAE University Press, p.15.

³ Ballantyne W.M, 1985-86, 'The New Civil Code of the United Arab Emirates', Arab Law Review, November, Vol.1, p.247; Al-Jammal M, 1995, Explanation of the United Arab Emirates Civil Transactions Act: A Comparative Study with Islamic and Western Jurisprudence, UAE Press, p.21.

⁴ In drafting and forming this code, a great deal of emphasis was placed on the enrichment of this code from European laws as well as from

Civil Transactions Act incorporates many shari'a principles, particularly in the field of property, contracts, and obligations¹.

According to section 2 of the Act, when a judge is presented with a case, he has to decide it according to the provisions of the Act. Absent any relevant provision in the Act, a judge has to decide in accordance with the rules of Islamic jurisprudence, particularly those found in the Imam Malik and Imam Ahmed Ibn Hanbal Doctrines, and, if there is none, from the rules found in the Imam Shafe'i and Imam Abu Hanifah Doctrines. In the absence of such principles, a judge has to apply custom on the condition that such custom does not contravene the rules of public order and decency and, if the custom is related to a certain Emirate, it is applied to this Emirate.

Shari'a (for details, see Al-Sanhuri A, 1952, Al-Waseet in the Expanation of the Civil Law: Sources of Obligation, Vol.1, Cairo: Dar Al Nahdhah A-Arabeyeh, p.2&p.49; Anderson J.N, 1971, 'Modern Trends in Islam: Legal Reform and Modernization in the Middle East', International and Comparative Law Quarterly, January, Vol.20, pp.1-21; Ballantyne, Op.Cit, p.247; Edge I, 1985-86, 'Comparative Commercial Law of Egypt and the Arabian Gulf', Cleveland State Law Review, 34(1), pp.129-44; Siwar M, 1993, Property Rights in Jordanian Civil Law, Amman: Dar Al-Thaqafah for Publishing and Distribution, p.13).

¹ Al-Attar M, 1997, Op. Cit, p.18; Anwer Sultan, 2002, Sources of Obligations in Jordanian Law: A Comparative Study with the Rules of Islamic Doctrine, Amman: Dar Al-Thaqafah for Publishing and Distribution, p.45.

UAE Civil Transactions Act distinguishes between ownership and possession. Ownership is an exclusive right to own a thing and to enjoy all privileges of ownership to the exclusion of everyone, whilst possession is only a right to possess or to hold a thing without the right to enjoy all privileges of ownership¹. In addition, ownership is a lasting right, whilst possession is tentative².

Possession is either original or derivative. Original possession occurs through occupancy of things that have no owner, e.g. through adverse possession or prescription, whilst derivative possession occurs through the transactions where possession is taken but ownership is not transferred, e.g. bailment³. Possession of land ordinarily involves two elements. First, the physical relation to the land that gives control over the land possessed. Secondly, the intent to exclude other persons in general from the physical occupation of the land⁴.

Ownership is governed by three main principles. First, the exercise of ownership rights may be subject to restrictions

¹ Zu'bi M, 1992, 'Acquisition of Property by the Passage of Time', University of Jordan Studies Journal, Vol.20, Appendix No.1, pp.465.

² Qusous W, 1993, Administration and Division of Common Property, Amman: University of Jordan, p.24.

³ Siwar M, Op. Cit, p.40.

⁴ Thompson M, 1995, Land Law, First Edition, London: Sweet & Maxwell, p.216; Al-Mursi M.Z, 1999, Real Property Rights in the UAE Civil Transactions Act, Second Book, UAEU Press, p.427; Zu'bi, Op. Cit, p.465.

concerning the public interest in that ownership is not absolute but subject to certain rules that aim to benefit society at large¹. Secondly, a person may be the owner of land although he is not the full owner or his rights of ownership are, for the moment, incomplete, such as in the case where the person has a right of an easement , or a right of drinking, i.e. taking water through another person's land².

Thirdly, ownership is not just about rights, or benefits, but also about burdens such as the case where the owner is required to comply with restrictions imposed by the law, or regulations laid down by the Council regarding planning, or where the owner is under a duty not to commit trespass, or any harm like nuisance, which, if it occurs, will affect the rights of others³. In other words, the owner is free to use and dispose of his property as he pleases except in so far as he does not infringe his duties to respect the rights of other owners⁴.

The popular means of the acquisition of ownership of property is contract, and that ownership can be set up against third parties if certain conditions are fulfilled, enabling those third parties to know of the transfer⁵. As such, proprietary rights in immovables cannot be acquired or created, unless registered in the land register (s. 1277 CTA 1985).

¹ Obaidi A, 2000, Real Property Rights, Amman: Dar Al-Thaqafah for Publishing and Distribution, p.12; Siwar M, Op. Cit, p.29.

² Qusous W, Op.Cit, p.19.

³ Al-Mursi M.Z, 1999, Real Property Rights in the UAE Civil Transactions Act, First Book, UAEU Press, pp.87-88.

⁴ Siwar M, Op. Cit, p.79; Qusous W, Op.Cit, p.41.

⁵ Ball M, 2002, Contract Law, First Edition, Leicester: Torsh Ltd, p.8; Al-Attar M, Op. Cit, pp,20-21.

The registration system in UAE is based on the estate itself. Accordingly, any legal transactions concerning this estate must be registered in its register and not in any other register so as to bind the parties to the transaction and any third parties. Thus, for movables, a special significance is attached to the overt possession of the thing, whilst for immovables; it is attached to the act of public registration (s.1277 CTA 1985)¹.

1.2 Joint ownership (co-ownership)

One of the predominant features of the ownership system in UAE is the joint ownership, which means the ownership of the same property at the same time by a number of persons². Joint owners are owners of a separate share of the property. Each joint owner holds his share under a separate title and the share may be separately alienated and inherited (see sections 1152-1153 CTA 1985).

Any joint owner is entitled to demand the division of the property, which is held in joint ownership, unless it is indivisible, such as the common parts of a building, which are owned by all co-owners and the nature of which makes them so, or if the ownership deeds prescribe them as common parts. The other joint owners are precluded from refusing to abide by such a request, unless a previous agreement is concluded otherwise³.

¹ Section 3 of the Law No.27 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai states “lands owned by developers and used as jointly owned properties and the units sold by said developers shall be registered in the land department”.

² Obaidi A, Op.Cit, p,47.

³ Adul-Khaleq H, 1990, Al-Wajeez in the Explanation of the United Arab

Under section 1166 CTA 1985, if the property is of such a nature that it could not be divided, or if the benefit derived from the property would be destroyed by division, then, such property will be sold by public auction, and the proceeds will be divided among the joint owners, with the co-owners having a priority right to buy the shares of the others according to the doctrine of first refusal¹.

UAE law only recognizes one form of co-ownership, that is the tenancy in common. Thus, when a co-owner dies, his share passes under a will or inheritance and does not transfer to the other co-owner who is still alive. In addition, the shares of the parties can be of whatever size they wish them to be².

1.3 The dogmatic contents of the ownership

As for the dogmatic contents of the ownership or the scope of ownership, it is important to say that the UAE law

Emirates Civil Transactions Act: Real Property Rights, First Edition, Dubai: Police College, p.138; Qusous W, Op.Cit, p.107.

¹ See sections 12-14 of the Law No.27 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai.

² Under English law, co-ownership has the form of joint tenancy. The essence of this form is the existence of the principle of survivorship, which means that when one joint tenant dies, any interest he enjoys over the land, under the joint tenancy, automatically passes to the remaining joint tenant (Gray K, 2001, Elements of Land Law, Third Edition, London: Butterworths, p.832).

regards property as an individual asset¹. This means that the owner is entitled to use his land as he chooses or indeed to fail to use it, no matter how little benefit this may bring to others or how much more effectively the property could be used. The owner is entitled to assert his rights in relation to his property and to restrain others from disturbing his enjoyment. In addition, he can transfer it to whoever he wishes, and on death, he can leave it to whoever he wants subject to the limits of law².

The owner of property or land owns what is over and beneath it to the extent that it is advantageous to him (s.1134 CTA 1985). He cannot, however, claim that he has the right to protect the space over his property to an unlimited attitude, or the unlimited depth beneath his land, if this causes hardship to the public, such as in the cases where telephone wires, or electricity cables pass over his land, or where water, or sewerage pipes pass beneath his land³.

At the same time as emphasizing individual ownership as a cardinal principle, UAE law aims to facilitate the use of property or land by enabling the owner to create subsidiary interests, which will benefit him and others. If he does not wish to inhibit the property himself, he may wish to grant a

¹ Qusous W, Op.Cit, p.87.

² Zu'bi M, 1994, 'Rights of Property and Rights of Disposal', Yarmouk University Social Sciences and Law Journal, 10(2), p.103.

³ Al-Mursi M.Z, First Book, Op.Cit, p.105; Zu'bi M, 1994, Op.Cit, p.103.

lease to someone else, entitling another to the benefit of occupation and himself to the benefit of the rent. Similarly, if a neighbouring landowner needs access or passage through his lands, he will be able to grant such access (i.e. easement) in return for compensation¹.

As any other owner, the owner of the individual unit enjoys all elements of ownership over his residential unit, which is defined by section 2 of the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai² as “any flat, floor, a part of land or house (villa) connected or not connected with another house being part of a jointly owned property”. These elements are also available with some restrictions over the common areas, which are defined by section 2 of the Law No.7 of 2007 as “those common parts of property designated for common use by unit owners and occupiers and shown in the site plan”. (See below).

1.4 The legal nature of the ownership of common areas

Section 1182 of the UAE Civil Transactions Act No.5 of 1985 and its amendments has explicitly stated “...co-owners of common property shall not be entitled to apply for its division if its discovered from the object to which that property was allotted that it should remain common”. This

¹ Obaidi A, Op.Cit, p.306.

² This Law was published in the Official Gazette No. 326, Year 41, on 31 December 2007 and became effective after three months as of the date of its publication (s.33 of the Law).

indicates that ownership of common areas is a compulsory ownership in the sense that all owners are required not to apply for division of it as it is dedicated to the benefit of all co-owners and not for the sole benefit of any individual owner exclusively¹. This type of co-ownership includes family ownership, ownership of properties that cannot be divided due to its nature, such as cemeteries, but most notably, it includes the ownership of the jointly owned property.

Some law jurists, argue that the ownership of the jointly owned property is a system that is similar to or a kind or a form of servitudes, which means that each owner has the right to use and get benefit of all common parts without the exclusion of others, and they see that compulsory co-ownership can be considered as a mutual servitude to the benefit of other owners. In other words, it is an easement in an immovable property for the benefit of another immovable property owned by another². However, we believe that this is unacceptable argument, this is because servitudes represent the normal situation of ownership and they are decided to the benefit of the neighbouring properties within certain conditions and certain circumstances, whereas the jointly owned property is a property that is owned by more than one owner and each owner has rights and bears obligations in the aim of achieving the benefit of both of them.

¹ Siwar M, Op.Cit, p.54; Obaidi A, Op.Cit, p.92.

² Mansour M.M, 1965, Property Right, First Edition, Cairo, p.129; Shahatah Sh, 1988, Real Property Rights, Cairo: Dar Al-Fajr, p.325; Obaidi A, Op.Cit, p.92, see Adul-Khaleq H, Op.Cit, pp.93-94.

Other law jurists¹ argue that the rules applied on the ordinary neighbourly damage or, in other words, contiguity rights, are applied on the ownership of the jointly owned property, and they rely, in this concern, on section 144 CTA 1985 which states “the owner shall not exaggerate in the exercise of his right to the extents of causing damage to the neighbour’s property, and the neighbour may not have recourse against his neighbour for the ordinary neighbourly damage which is unavoidable, but he may request the abatement of the damage if it exceeds custom limit...”. However, we believe that it is difficult to base ownership of the jointly owned property on the ordinary neighbourly damage system, simply because this system applied both on the individually owned units and on the commonly owned units, and it is regarded as a restriction on the owners rights and this restriction comes to the benefit of the public or, the whole society.

Other law jurists argue that the ownership of the jointly owned property confers on the co-owners merely a personal right in the sense that it entitles them to get use and benefit of these parts without and real rights as these parts are owned by all co-owners². In deed, it is difficult to imagine how a jointly owned property confers on the co-owners only a personal right (see below).

¹ See Lafi M, 2004, Property Rights in Land in the Arab World, Beirut: Al-Muntada, pp.25-27.

² See Abdul Muhesan T, 1998, Real Property Rights, Cairo: Iman Printing, p.14.

The majority of the law jurists¹, however, see that the co-owner's right in the ownership of the jointly owned properties is a genuine property right the matter which means that each co-owner has all the rights of the owner over his property and enjoys all privileges of the ownership but, in the meantime, he is subjected to all obligations as specified by law.

From our side, we believe that this is the true argument and add that this right is a property right that confers on the owner all legal rights, which are the right of use, the right of exploitation and the right of disposal. This is envisaged from section 1152 of the Civil Transaction Act No.5 of 1985 which states "subject to the provisions relating to the shares of every heir in the estate, if two or more persons own a thing ...". In clear words, the word "own" which is used by the UAE legislator indicates that the co-owner's right in the ownership of the jointly owned properties is a genuine property right and nothing else.

So, a question rises: is the ownership of the jointly owned property a genuine ownership?

The answer is: yes, and the owner enjoys all rights over his property and, in the meantime, he is subject to all obligations and restrictions as will be seen below.

¹ Al-Saddah F, 1982, Original Property Rights: A Comparative Study of Lebanese and Egyptian Law, Beirut: Dar Al-Nahdah. Pp.161-162; Abu Allail I, 1995, Real property Rights in the Kuwaiti Law, University of Kuwait Press, p.157; Adul-Khaleq H, Op.Cit, p.94.

2. Rights and obligations of the co-owner with regard to the individually owned unit

It is necessary, here, to indicate that the owner of the individual unit enjoys the full rights conferred on the owner of any other property. Under this heading, we will discuss property and property rights, characters of the property right, restrictions imposed on the property right, and the rights and obligations of the co-owner with regard to his exclusively owned unit.

2.1 Property and property rights in the UAE law

Property has been given different definitions by law jurists. According to one jurist, property is “the capacity of the owner to dispose of what he owns or a relationship between a person and a thing whether a tangible or an intangible”¹. According to another jurist, it is “a right by nature of which a thing belongs to the owner in such a way that he can use it and dispose of it to the exclusion of all others”². Furthermore, some law jurists define it as being “a relationship which one has with a thing or a word used to describe particular concentrations of power over things and resources”³. However, one can lay down a strict definition of property by saying that property is “the power of use, enjoyment and disposition of owned things”.

¹ Siwar M, Op.Cit, p.26.

² Zu’bi M, 1994, Op.Cit, p.87.

³ Obaidi A, Op.Cit, p.15; Qusous W, Op.Cit, p.18.

Section 1133 CTA 1985 defines property as “the power of the owner to use, exploit and dispose of what he owns (his property) in an absolute manner and to take benefit from its products and to carry out all transactions legally permissible”. This means that property rights in the UAE law consist of three elements; namely: the right of use (isti’mal), the right of exploitation (istighlal) and the right of disposal (tassarruf) whether for value or gratuitously.

Property is either real (aqar) or chattel (manqool) (s.101 CTA 1985). Aqar includes land, houses, buildings, etc, and includes less powerful collections of incidents that do not rise to the level of ownership, e.g. easements and mortgages. A manqool is divided into two categories; namely: (i) tangibles, which can be physically possessed, e.g. books, and (ii) intangibles, which cannot be physically possessed and which depend for their existence on enforcement by the courts, e.g. debts, trademarks, patents, business names and the rights to literary and artistic property (copyrights).

For the purpose of ascertaining the competent court, all actions concerning aqar or manqool are estimated in accordance with the monetary value of the aqar or manqool in question at the time of bringing the action before the court. However, a special court in Dubai is established in June 2008 in order to try cases or disputes relating to immovable properties. This court is called “the Real Estates Court”¹.

¹ This Court was established by the Decree No.57/2008 on 1/6/2008 (for details, see Dubai Courts, 2008, Annual Report, Government of Dubai

There are many subject-matters, which are not recognized by UAE law as individual property:

(a)- Things the sale of which is null, e.g. animals not ritually slaughtered, narcotics¹.

(b)- Things in which there is, in fact, no ownership, that is to say (i) things which are public property, such as air, water and streets; (ii) waqf properties; and (iii) things that are 'not known', such as birds in the air, to which are assimilated things which are not in actual possession².

(c)- Things which are not in actual possession and the recovery of which cannot be expected, such as things that have been lost, usurped, or confiscated³.

2.2 Characters of the property right

A property right has three distinguishing characters:

(a)- A comprehensive right:

The property owner has all the powers, which entitle him to use, exploit and take benefits of what he owns without interference from anybody, unless this interference is

Publications, p.15).

¹ Al-Attar M, Op.Cit, p.167; Fadel M & Fatalawi S, 1996, Explanation of the Named Contracts in Jordanian Civil Law, Revised Edition, Amman: Dar Al-Thaqafah for Publishing and Distribution, p.73.

² Obaidi A, Op.Cit, p.18.

³ Zu'bi M, 2004, Explanation of the Contract of Sale in the Jordanian Civil Law, First Edition, Amman: Dar Al-Thaqafah for Publishing and Distribution, p.150.

permitted in law or by agreement¹. This means; namely: (i) the property owner is the owner of all powers and there are no fetters or limitations on his ownership and (ii) all rights derived from the property right are tentative in nature and they will be returned to the property owner after the expiry of their period, e.g. beneficial rights.

Liability for damage, however, shall be due from the person who exercises his right unlawfully. Under section 106(2) CTA 1985, the exercise of the right is considered as unlawful in these cases: (i)- if there is an intent to aggress; (ii)- if the interest to be achieved from the act is unlawful; (iii)- if the benefit therefrom is disproportionate with the damage inflicted on others; and (iv)- if it exceeds custom and usage.

(b)- An exclusive right:

The property owner has the right to exclude anyone from sharing his power even though this sharing does not cause any harm to the property with exception to the cases stated by the law or decided by an agreement². Section 1133(2) CTA 1985 states that “the property owner only himself has the right to enjoy his property in accordance with provisions of the law”.

(c)- A lasting right:

A property right continues as long as the property exists³. It does not come to an end or cease, unless by destruction of the property, e.g. by an earthquake, while on death it passes

¹ Siwar M, Op.Cit, p.36; Al-Mursi M.Z, First Book, Op.Cit, p.61.

² Zu'bi M, 1994, Op.Cit, p.96.

³ Mansour M.M, Op.Cit, pp.11-12; Obaidi A, Op.Cit, p.17.

to the heirs. A property right cannot be terminated by failing to use it on the part of the landowner¹. It does not come to an end, unless it is acquired by another person according to the law, e.g. adverse possession or prescription.

2.3 Restrictions on the property right

Under sections 130 & 528 CTA 1985, all transactions creating interests in an immovable property must be made by deed and according to the provisions of the law. Such transactions must be registered in the land registry concerned otherwise they are void². UAE Constitution of 1972, as amended in 1996, guarantees the protection of property and property rights and states that “no property of any person may be expropriated except for purposes of public utility and in consideration of just compensation, as may be prescribed by the provisions of the law”³. This means that the Constitution of 1972 imposes some fetters on property rights. These fetters are:

(a)- Legal fetters:

Section 1136 CTA 1985 provides that “the property owner has the right to use it in whatever way he likes, unless this use causes harm to others, or is against the provisions of the law”. Examples of legal fetters are the division of city areas

¹ Adul-Khaleq H, Op.Cit, p.18; Qusous W, Op.Cit, p.28.

² Section 3 of the Law No.27 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai states “the land department shall prepare and remain special registers for the jointly owned properties and their owners and shall issue appropriate title deeds and regulate the sale, mortgage (or any other disposal) of said jointly owned properties ...”.

³ See also section 1135 CTA 1985, which provides the same.

into industrial, residential and commercial, the stipulation as to the size and character of any buildings to be erected, and the distance between neighbouring buildings, airports, bus stations and railways.

(b)- Fetters to achieve public interests:

An example of these fetters is the compulsory possession, i.e. the case where the state or any of its governmental bodies requires the immovable property or the land to establish schools, universities, hospitals, etc, or the case where the state requires it to carry out excavation for ruins, oil or other minerals¹. In this case, the state is required to reimburse the property owner. Section 1135 CTA 1985 provides that “no property can be expropriated without a legal reason and no property can be expropriated, unless for public benefit and in return for just compensation”.

2.4 Rights and obligations of the co-owner with regard to the unit

At the outset, it is important to mention that ownership of floors and flats embodies two kinds of ownership; namely: separate or individual ownership of the unit itself, and joint or common ownership of the common parts of the whole building². These two kinds of ownership are governed by two systems: the first is the floors and flats system whose

¹ Al-Sanhuri A, 1967, Al-Wasseet in the Explanation of the New Civil Law: Property Right, Vol.8, Cairo: Dar Al Nahdhah Al Arabeyyeh, p.575; Adul-Khaleq H, Op.Cit, pp.32-33;

² Obaidi A, Op.Cit, p.93. Siwar M, Op.Cit, p.182.

rules are embodied in the Civil Transactions Act No.5 of 1985 and the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai, and the second system is the upper part and lower part system whose rules are embodied in the Civil Transactions Act No.5 of 1985¹, which has borrowed these rules from the Jordanian Civil Code No.43 of 1976² which is, in turn, has borrowed the majority of its rules and principles, including these rules, from the Ottoman Journal of Equity (Majallah)³, which is derived from the rules of Islamic jurisprudence⁴.

2.4.1 The upper part and the lower part system

In this system, the UAE legislator deals with only with the obligations of both the owner of the lower part and the owner of the upper part. It does not deal with the rights of the owners of these parts. This is may be because these rights are same as the rights of the owner of the individual

¹ This is similar to the position in the Jordanian law (See Obaidi A, Op.Cit, p.93).

² Ballantyne W.M, Op.Cit, p.247-248.

³ Al-Far A, 1996, Sources of Obligations in the Jordanian Civil Law, Amman: Dar Al-Thaqafah for Publishing and Distribution, p.9.

⁴ Khater N & Sirhan A, 2005, Sources of Personal Rights (Obligations), Amman: Dar Al-Thaqafah for Publishing and Distribution, p.7. It should be noted that in Jordanian law, the Majallah has been repealed and its rules become only applicable in matters where there is no contradiction with the provisions of the Civil Code No.43 of 1976. In this concern, section 1448(1) of this Code provides "the provisions of the Majallah shall to the extent they are repugnant to the provisions of this code be hereby repealed". This means that section 1448 has expressly abolished only those provisions of the Majallah which are in conflict with the provisions of the civil code (see Khater N & Sirhan A, Op.Cit, p.11).

unit and they embody the same elements and factors of ownership as stated above, the matter which means that the UAE legislator tries to avoid redundancy.

Thus, the owner of the upper part and the owner of the lower part each is the owner of his storey or strata as an individual and a separate ownership, and this includes its floor, roof, walls, windows, doors, etc¹. The owner of the lower part, however, owns the land over which the building is established along with the roof (ceiling), whilst the owner of the upper part owns the right to be continuously and perpetually over the lower part (the settlement right)².

As such, each of the upper part and lower part owner owns its storey fully and independently, and he enjoys all rights of the owner, i.e. the right of disposal, the right of use, and the right of exploitation. In addition, he is subject to the same obligations and restrictions, as stated above. However, due to the exceptional nature of this kind of ownership, the law imposes some restrictions or obligations as follows:

(A)- Obligations of the owner of the lower part

The owner of the lower part is in under an obligation to:

a) Carry out the works and repairs required to preclude the

¹ Obaidi A, Op.Cit, p.94.

² Zuhaili W, 1987, Named Contracts in the Civil Law of Jordan and the United Arab Emirates: A Comparative Study, Damascus: Dar Al-Fikr, p.608; Al-Shalabi M, 1983, Introduction to the Islamic Doctrine, Beirut: Dar Al Nahdhah, p.364.

falling down of the upper part (s.1194(1) CTA 1985). Examples are to maintain the ceiling and to strengthen the lower part piers. If he refuses to carry out the said works or repairs, however, the court may upon the application of the person suffering the damage order the execution of the required repairs and the said person may have recourse against the owner of the lower part for his share of the costs (see s.1194 (2) CTA 1985).

b) Rebuild the lower part as it was before if the building has fallen down, and if he refrains therefrom and the owner of the upper part builds it with his permission or that of the court he shall be entitled to recourse for the latter's share in the costs he incurred. But, if the lower part owner refrains therefrom and the upper part owner builds it without permission of the court or that of the lower part owner he may have recourse against the owner of the lower part for his share of the value of reconstruction at the time of building. However, the upper part owner may stop the lower part owner from disposition and use until he pays him his dues and he may also lease¹ it with permission of the court and deduct his dues from the rent (see s.1195 CTA 1985).

(B) Obligations of the owner of the upper part

Section 1196 CTA 1985 provides that “the owner of the upper part shall not be entitled to increase the height of the building and thereby cause damage to the lower part

¹ For more information about lease see (4.3).

owner”. This also includes an obligation not to put or store heavy things over the floor of his part, which at the same time, forms the ceiling of the lower part, to the extent that it might harm the building or endanger the piers of the whole building, and consequently may cause its collapse¹.

Besides, one can say that the rights of contiguity can apply therein in away that no owner is entitled to cause harm to the other owner as a neighbour².

2.4.2 Floors and flats system

According to section 1188 CTA 1985, if the owners of the various floors and flats of a building are several they shall be considered as co-owners of the land and the parts of the building allotted for their common use or any other part registered under such description or the nature of which prescribes its being common and these shall specifically include the following, unless there is a contrary provision in the ownership deed or special law:

- 1- Foundations and main walls;
- 2- Common partition walls and walls allotted for chimneys and ceiling support;
- 3- Ventilation ducts for bathrooms and kitchens;
- 4- Supports for ceilings, arches, entrances, ducts,

¹ Adul-Khaleq H, Op.Cit, p.244; Mansour M.M, Op.Cit, p.269; Al-Saddah F, Op.Cit, p.283.

² See Ali Haider, 1979, Explanation of the Majallah, Beirut: Dar Al-Nahdah, p.92.

roofs, stairs and staircases, passages and foundations for floorings, lifts and porter's room;

5- Heating and cooling equipment and all types of pipes, gargoyles, sewage and common networks and installation like lighting and water equipment and their accessories and all that may be annexed to the building except for what exists thereof inside the floor or flat.

This is unless there are provisions stated otherwise, whether these provisions are stated in ownership deeds, or in any private law.

It is envisaged from this that the common parts in the ownership of floors and flats include the land on which the building is erected, and every part the nature of which prescribes its being common and any other part registered under such description.

However, we can conclude from this the followings:

a)- Some common parts may be common between some owners and not necessarily between the all owners of the building, such as the party walls that separate two neighbouring flats or units¹. These walls are considered common between these two flats only and not between all flats, unless there are registered so².

¹ Section 8(4) of the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai states "dividing walls between adjoining units shall be shared by both owners if they are part of the common areas".

² Section 1190 CTA 1985 states "common walls between two flats shall

- b)- Specification or definition of common parts is not a matter that is related to the public order in the sense that no one can contract against or agreed to the contrary. Thus, it is valid to agree or contract outside of in the ownership deeds.
- c)- The parts which are separately and individually owned by the unit owner only include those parts which are existed inside his flat or unit and cannot extend to include parts outside that, as these parts are commonly owned.

Section 7(1) of the Law No.27 of 2007 in the Emirate of Dubai provides that unless otherwise indicated on the site plan, the common areas of jointly owned property include, without limitation:

- (a)- Structural elements of jointly owned property including the main supports, foundations, columns, beams, structural walls, steps, ceilings, ceiling joists, hallways, staircases, stairwell, emergency exists, entrances, windows located on exterior walls, facades and roofs.
- (b)- Parking areas, watchman rooms, recreational facilities and equipment, swimming pools, gardens, storage facilities, places designated for use by the owners association or whomever it assigns or contracts to manage the jointly owned property.
- (c)- Main utility equipment and systems including electricity generators, lighting systems, gas systems

be commonly owned by the owners of these two flats if they are not included in the common parts”.

and equipment, water systems, heating and cooling systems, air conditioning systems and waste storage and treatment facilities.

(d)- Lifts, tanks, pipes, generators, suction fan, air compressor, units, mechanical ventilation systems.

(e)- Water mains, sewer pipes, ventilation shafts, gas pipes and flues and electrical wiring and conduits serving more than one unit.

(f)- All fittings, connections, equipment and facilities used by more than one unit owner.

(g)- and devise for measuring the reticulation of supply utilities.

(h)- All other parts, which are not located within the boundaries of a unit, that are necessary and required for the existence, maintenance or safety of the property.

Section 7(2) of the same Law provides that unless otherwise indicated in the site plan, the common area of jointly owned property comprising land, other than a building and part of a building, include, without limitation:

(a)- Roads, roundabouts, intersections, pathways, pavement sides, drainage ways curbs, gutters, median strips, bridges, viaducts.

(b)- Lakes, ponds, canals, promenades, fountains, water features and other waterways, including all equipment associated with them.

(c)- Landscaping, open space areas, and playgrounds.

(d)- Wires, cables, pipes, sewers, drains, ducts,

devices and equipment by which units or common areas are supplied with utility services.

(e)- Measuring or utility service supply devices designated for common use by the owners and occupiers of the units.

In addition, section 8 of the same Law explicitly states: (1)- Unless otherwise indicated on the site plan, each unit situated in a building shall include, without limitation, the following:

(a)- Floors, floor materials and components down to the base of the joists and other structures supporting the floor of the unit.

(b)- Plaster ceilings and all other type of ceilings, additions that form part of the internal area of the unit and spaces between the ceilings, ceilings above the support walls and structures inside the unit and walls separating the unit from the rest of the jointly owned property and any adjacent units or common areas.

(c)- All non-load bearing walls and non-support walls inside the unit.

(d)- Windows, glass and fixtures that form part of the interior windows, lighting systems for the unit, doors, door frames and all equipment and fixtures serving the unit.

(e)- All internal connections serving the unit.

(f)- All fixtures and fittings installed by the unit owner or occupier.

(g)- All additions, modifications and improvements made to the unit from time to time.

(2)- Unless otherwise indicated on the site plan, each unit associated with jointly owned property comprising of land, other than a building or part of a building, shall include, without limitation, everything situated within the boundaries of the unit, other than the utility service that serves the common area or another unit.

(3)- Each unit is entitled to appropriate support and shelter from the other units and the common areas.

(4)- Dividing walls between adjoining units shall be shared by both owners if they are part of the common areas.

From all of that mentioned above one can see that the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai was more clear in defining the thing which are commonly owned and the things which are individually owned than the Civil Transactions Act of 1985 which was brief in defining these things. Despite that, however, there are many things, which can be commonly owned, and these thing may be specified in the site plan or in the ownership deeds. This is clearly envisaged from the concept of “without limitation” which the law has used and repeated many times, and we believe that the legislator of Dubai was prudent by mentioning this.

Under section 10 of the Law No.7 of 2007, the unit owner has the right to sell or dispose of his individually owned unit by any kind of dispositions. Also, he is entitled to

mortgage his unit in favour of a bank, or any other financial institution, providing that disposition conveys the whole of his interest in the unit and common parts. This is important, because, as said before, the owner cannot sell his share in the common parts in isolation of his own unit, and vice versa, he cannot sell in unit in isolation of the commonly owned parts in the building as a whole¹.

The Law No.7 of 2007 provides a mechanism by which the co-owner(s) has/have the right to buy the share of the other co-owner once he intends to sell it to another party who is not one of the co-owners. This mechanism is “right of the first refusal” which is regulated by section 12 & 13 of the Law. In this concern, section 12 of the Law No.7 of 2007 provides that each co-owner of a unit has the right of first refusal to purchase another co-owner’s share in a unit offered to sale to a non partner, and if more than one co-owner’s possesses this right, then they shall be entitled to purchase proportionally to their existing interests. However, the right of first refusal does not apply to any sale between spouses, lineal ascendants, lineal descendants, brothers and sisters, or their descendents².

This means that the right of shufa’a (preemption) which is introduced by the provisions of the UAE Civil Transactions Act No.5 of 1985³ and which applies to lands in general does not apply to floors and flats⁴.

¹ This is similar to the position in the Jordanian law (See Obaidi A, Op.Cit, p.9).

² See Al-Mursi M.Z, Second Book, Op.Cit, pp.301-304.

³ See sections 1279-1306 CTA 1985.

⁴ See section 10 of the Law No.7 of 2007 Concerning Ownership of

For this right to be used by the co-owner, however, certain conditions and requirements must be fulfilled: (i)- the co-owner's share must be a joint share in a flat or floor; (ii)- the buyer must be a third party (any one who is not a co-owner) that has a share in the flat or floor; (iii)- the sale must not be compulsory, such as the case in which there is an execution order from the court in order to sell the co-owner's movables and immovables and to pay his debts; (iv)- the sale must not be for the whole flat or floor, but only for a share of it; (v)- the right of first refusal must be practiced over the whole share and not over a part of it (it cannot be divided).

Section 13 of the Law No.7 of 2007 states "1- the right of first refusal cannot be divided, so it cannot be used or abandoned unless in whole, and in case of multiple owners of this right each shall use his right according to his share, and if one or some of them abandoned his right then this right shall be transferred proportionally to their existing interests; 2- the right of first refusal shall lapse should the selling co-owner notify the other co-owners, through a

Jointly Owned Properties in the Emirate of Dubai. It should be indicated, here, that the right of pre-emption arises when the landowner sells the whole or part of his land to a person other than the purchaser (s.1279 CTA 1985). As a result of arising by operation of law, the right of pre-emption does not need to be registered in order to bind third parties (Jundi M, 1985, The Right of Pre-emption in the Civil Law of Jordan and the United Arab Emirates: A Comparative Study, The Law Journal, March, Vol.1, p.174). In addition, it is never lost if the pre-emptor dies before he has succeeded in obtaining a judicial decree (Al-Saddah F, Op.Cit, p.475).

notary public, of the name and address of the third party purchaser and the conditions of sale, and the co-owners fail to agree to the said conditions within a period of one month after receiving the said notice; 3- in the event of a co-owner agrees to buy he must notify the selling co-owner through the notary public of his intention with fifteen days of receiving notice of the sale and complete the sale procedures at the land department within ten working days from finishing this period; 4- if it is approved that the sale was done with better terms to the benefit of the purchaser from the mentioned terms in the notification sent to the owners of the right of the first refusal; they have the right to claim for compensation for the damage suffered to them before the competent court”.

In fact, one can say that this section comes to the benefit of both parties; the selling co-owner and the buying co-owner. In setting a limited period of time, the legislator seeks to discover the seriousness of both parties to accomplish this legal transactions, and to save the time of both parties, and consequently to cut off any possible litigation.

3. Rights and obligations of the co-owners with regard to the common parts

There are two subject matters for the rights and obligations here: rights and obligations over the individually owned unit, and rights and obligations over the commonly owned

parts¹. Rights and obligations over the individually owned unit are same rights and obligations of the ownership in general and these rights include the right of disposal, the right of use and the right of exploitation. Besides, they are subject to the same obligations and restrictions as stated above.

Accordingly, this part of study will focus on the rights and obligations of the co-owners over the commonly owned parts:

(A) The right to use the commonly owned parts

Section 1191 CTA 1985 states that “every owner shall be entitled to use (benefit from) the common parts for the purpose for which they are allotted provided that the exercise by the remaining partners of their rights is not thereby precluded”.

In specific terms, this means that the co-owner’s right to use the common parts is subjected to two restrictions: (i)- his use must confine to the purpose for which the common part is allocated; (ii)- other co-owners must not be harmed or precluded from using these common parts. Thus, for example, no co-owner has the right to park his car in the garden, which is allocated to the benefit of the whole co-owners. Similarly, no one is allowed to store his spare parts in the lift, which is allocated for the use of all co-owners.

¹ See Obaidi A, Op.Cit, p.97; Siwar M, Op. Cit, pp.186-187; Adul-Khaleq H, Op.Cit, p.239.

Section 24 of the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai provides that subject to the association constitution, unit owners and occupiers and their guests must use the common areas as designated for, and in a way that does not compromise the rights of others to use those areas or disturb others or put their safety or the safety of the jointly owned property at risk.

(B) The right to make alternations in the common parts

Under section 1193 CTA 1985, no owner is entitled to effect any alterations in the common parts even at the time of reconstruction without the consent of the all co-owners, unless the alteration affected by him will benefit those parts without any change in allotment or damage to the other owners.

This means that each owner has the right to carry out alterations in the common parts without the consent of other owners if the following requirements are satisfied: (i)- the alteration will be of benefit for those common parts; (ii)- the alteration should not result in making changes to the allotment of these common parts; and (iii)- the alteration should not harm or cause damage to the other owners¹.

Under section 23(1) of the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of

¹ See Siwar M, Op.Cit, p.192. This is similar to section 857(2) of the Egyptian Civil Code No.131 of 1948, which adds another requirement, i.e. the costs of such alteration should be borne by the co-owner who has carried out these alterations.

Dubai, the unit owner is not allowed to make any alterations or modifications to the structure or external appearances of his unit or any part of the jointly owned property that would materially affect the unit or jointly owned property or its external appearance. This is save for what is authorized or permitted by the owners' association.

If the unit owner makes such alterations or modifications without being authorized or permitted by the owners' association, however, he becomes liable to repair the resulting damage at his own expenses and in the manner requested by the owners' association. But, if the unit owner fails to do so, the owners' association can repair the damage and recover the repair costs from the owner (s.23(2) of the Law No.7 of 2007).

(C)- The right to dispose of the common parts

Each owner has a share in the common parts according to the percentage he owns in the building, but he is not allowed to dispose of his share in isolation of his separately and individually owned unit. This is simply because his share in these parts is regarded as an appurtenant to the unit (see s. 1192 CTA 1985).

(D) Division of common parts

The nature of these parts and the purpose for which they are allocated make them indivisible. Therefore, section 1189 CTA 1985 clearly states "the common part of the building shall not be divisible and the share of every owner therein shall be proportionate to his share in the building and no owner shall be entitled to dispose of his share independently of the part he owns".

The principle of the indivisibility of the common parts is adopted again by section 16 of the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai, which provides that “under no circumstances can common areas be divided or disposed of, in whole or in part, separately from the units to which they appertain”.

(E) Payment of the common parts maintenance costs

Section 1192 CTA 1985 provides that “every owner shall share in the costs of the preservation, maintenance and management of the common parts and his share in the costs shall be to the value of his ownership in the building as shown in the management regulation of the building and every owner who causes an increase of the costs of the building shall be liable therefore. And no owner shall be entitled to disown his share in the common parts in order to get ride of the participation in the costs”.

In the same context, section 22(1) of the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai provides that each unit owner shall pay the owners’ association his share of the annual service fee to cover the cost of management, operation, maintenance and repair of the common areas. Such fee must be calculated in correspondence with the space of unit of the total space of the jointly owned property. In addition, section 22(2) of the Law provides that the unit owner is not allowed to relinquish his share in the common areas in order to avoid paying his share of the annual service fee.

If the unit owner refuses or fails to pay his share of the annual service then the owners' association shall have a lien on every unit for unpaired service fee and any other obligations levied against the unit owner in accordance with the provisions of this law or the association constitution. This right shall exist even when ownership of the unit has conveyed to a new owner¹.

Section 25(2) of the Law No.7 of 2007 has laid down a strict process by which the unit owner can be forced by law to pay his share of the annual service fee. It provides that if the unit owner does not pay his share of service fees, or defaults on any of his obligations, the decision of the manager of the association taken against the unit owner shall be, after three months of being notified to him through the notary public, enforceable by the execution judge at any competent court, and in all cases the suffered person may object on this decision within that period at the competent court, and the execution must be held till taking a decision in the subject of the objection.

(F) Payment of the insurance premiums

This obligation is not explicitly stated in the law; it is impliedly embodied in its provisions. This is inferred from the wording of section 30 of the of the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai, which states “the insurance premiums

¹ Section 25(1) of the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai.

payable by each unit owner shall be covered by the annual fees paid to the owners' association according to the provisions of this law”.

In addition, section 28 of the Law states “the owners' association must maintain comprehensive insurance in an amount equal to the repair or replacement value of the joined owned property in case of its destruction for any reason and the association shall be the beneficiary of the said insurance”.

(G) Management of common parts

Section 1197 CTA 1985 provides “1- wherever there is common ownership of a building divided into floors or flats the owners may form a union to administer it and secure its better use; 2- the object of the union may be the reconstruction or purchase of buildings for the distribution of their parts among its members; 3- the union shall in respect of its formation, regulation, administration, powers and what relates to it, shall be subject to the provisions of legislations relating thereto”¹.

It is clear from this section that formation of a union is not compulsory, i.e. it is optional. However, if such a union is

¹ Section 6 of the Law No.27 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai states “each unit owner has an obligation in favour of other unit owners, occupiers and Owners' Association to comply with the master community declaration and the association constitution”.

formed, it shall be subject to the provisions of the legislations relating thereto. But, if such a union is not formed, then the management of the common parts will continue to be governed by the general rules relating to the management of the common property. These general rules are as follows:

Basically, the management of the common property is a matter that is primarily related to the consensus of all owners. Thus, section 1155 CTA 1985 provides that the management of the common property shall be the joint right of the co-owners, unless otherwise agreed, but if one of the co-owners undertakes the management without objection from the others he shall be considered as their agent.

The UAE Federal Legislator, however, distinguishes between normal and abnormal management. The first kind of management does not seek to make a radical change in the purpose for which the common part is allocated, whilst the second kind of management seeks to make such a change, such as changing the purpose of the building from residential to commercial¹. Besides, in the normal management regard is given to the opinion or the decision of the majority of the co-owners, whereas in the abnormal management regard is given to the opinion or the decision of the co-owners who owns at least three quarters of the common property.

¹ See Al-Mursi M.Z, First Book, Op.Cit, p.377 & p.380.

However, the law stipulates that the decision of the majority should be communicated to the other co-owners by notarial notice, and dissident co-owners shall have the right to refer to the court within two months of the date of notification. The court may on reference decide on the measures it deems proper if it agrees to the decision of the said majority, and it may particularly decide to grant the dissident co-owner a guarantee to secure the payment of the compensation that may become due (ss.1156-1157 CTA 1985).

As for the co-owner's right to preserve and keep up the co-owned property, section 1158 CTA 1985 provides that "any co-owner shall be entitled to take measures for the preservation of common property even if that be without the consent of the remaining co-owners".

Accordingly, the legislator gives the co-owner a right to take all necessary precautions and actions in order to keep and preserve the common property without need of the consent of other co-owners, as these precautions and actions aim to achieve the benefit of all co-owners¹. Given that, the co-owner can bring an action in order to cutoff prescription period from running against all owners or to bring an action of recovery on intruders, etc.

¹ See Obaidi A, op.Cit, p.57.

As regards the co-owner's obligation to pay the cost of the management and protection of the co-owned property, section 1159 CTA 1985 provides "the management costs of the common property and its preservation, the taxes due thereon and all other costs resulting from the common nature of the property or prescribed thereon shall be borne by all the co-owners each according to his share". This section refers to two kinds of costs; namely: (i)- the management costs which must be borne by all co-owners according to their shares; and (ii)- the preservation costs, which is spent for the purpose of keeping the co-owned property in good condition and protecting it from intrusion. This again must be borne by each owner according to his share¹.

However, one question arises here and needs to be answered: what is the legal foundation based on which the co-owner who carried out preservation can claim the costs from other owners each according to his share?

In fact, some law jurists argue that the co-owner who spends money and incurs expenses can go back on the other co-owners and recover the cost according to each share on the basis of officiousness, which is regarded as one of the forms of unjust enrichment. They argue that the co-owner is regarded as a volunteer². However, the majority of law

¹ Al-Saddah F, Op.Cit, p.149; Obaidi A, op.Cit, p.58.

² See Nabeel I, 1995, Theory of Obligations, Vol.1, Cairo: Dar Al-Nahdah Al-Arabeyyeh, p.49; The Explanatory Memorandum of Jordanian Civil Code, 1992, Part II, Amman: Al-Tawfeeg Press, p.456.

jurists base this upon the legal agency in the sense that the co-owner who spends money and incurs expenses is regarded as a legal agent for all other co-owners¹.

As regards the co-owners right to dispose of his share, section 1153 CTA 1985 has provided that every co-owner may dispose of his share without permission of other co-owners provided that he shall not inflict damage on the rights of those co-owners.

Section 16 of the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai, however, provides that “under no circumstances can common areas be divided or disposed of, in whole or in part, separately from the units to which they appertain”.

It should be added that upon the registration of the first sale of a unit in a jointly owned property in the land registration department, an owners’ association will be legal formed automatically (by force of law)². In this concern, it should be kept in mind that the owners’ association is a non-profit institution or establishment and it has its own legal entity that is separated from its members. In addition, it has the right to sue in this capacity and to own movable assets³.

¹ Mubarak S, 1996, Summary of the Civil Law Rules: Real Property Rights, First Edition, Cairo: Dar Al-Nahdha, p.31; Siwar M, Op.Cit, p.125; Maxoni A, 2007, Real Property Rights, Beirut: Al-Jeel Press, p.73.

² Section 17(1) of the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai.

³ Section 18(1) of the Law No.7 of 2007 Concerning Ownership of Jointly

4. The legal transactions that can be made over the individually owned unit and the common areas

As said above, the co-owner has the right to dispose of his share along with his individually owned unit, i.e. he is not allowed to dispose of his share in isolation of his individually owned unit, and providing this does not harm or cause damage to the other owners.

Thus, the owner can dispose of his own unit as he wishes providing he observes the statutory provisions in this concern. He can enter into any agreement and conclude any contract that is recognized by law; most notably he can sell his own unit, or lease it, or mortgage it, or make it subject to a servitude or an easement (e.g. right of way), etc. The most important legal transactions, however, are sale and lease of the owned unit.

It is proposed, here, to discuss how a contract is concluded and then to shed light on the sale contract and the lease contract as models of the legal transactions that can be made over the unit.

4.1 Concluding a contract in the UAE Law

4.1.1 General

A contract may be defined as a legally enforceable agreement giving rise to rights and obligations for and on

Owned Properties in the Emirate of Dubai.

the parties involved. It is concluded by offer and acceptance; one party makes the offer and the other accepts it¹.

Section 125 of the UAE Civil Transactions Act No.5 of 1985 defines a contract as "the coincidence and meeting of the offer issued from one of the contracting parties with the acceptance issued from the other in such a manner that gives the effect thereof on the object of the contract and on the obligation of each party towards the other".

By virtue of section 130 of the UAE Civil Transactions Act No.5 of 1985, a contract is made as soon as an offer coincides with an acceptance, subject to any additional conditions, which the law may prescribe. Section 131 of the Act indicates that offer and acceptance are expressions used by custom to make the contract. The prior expression is the offer and the second is the acceptance².

¹ Treitel G.H, 1999, The Law of Contract, Tenth Edition, London: Sweet & Maxwell, p.8; Koffman L & Macdonald E, 1998, The Law of Contract, Third Edition, Surrey: Tolley Publishing Company, p.1. Also, see Al-Shamisi J, 1998, Sale Contract in the UAE Civil Transactions Act: A Comparative Study with Islamic Fiqh, UAEU Press, pp.3-5.

² Unlike the UAE Civil Transactions Act of, English law neither puts a general theory of contract nor provides detailed rules and principles for contracts. Thus, the matter is left to the case law as well as to the principles of equity. In other words, the bulk of the English contract law is judge-made. This law is basically concerned with whether or not an agreement has been reached, and how it can be enforced, and what remedies are available to the injured party when a contract is broken (see Beale HG; Bishop WD and Furmston MP, 1995, Contract: Cases and

4.1.2 Expressing and communicating the will in contracting under the UAE Civil Transactions Act

As said above, contract is an agreement that arises from offer and acceptance. One person makes the offer and another person accepts it¹. In other words, it is the establishment of a legal tie between concurring offer and acceptance that is aimed at bringing about a legal action or transaction².

As a general rule, offer and acceptance must be made by legally competent persons having full capacity; i.e., persons who have reached the age of majority, which is twenty one lunar years (s.85(2) CTA 1985) and have a certain level of mental ability (see ss.86-88 CTA 1985)³.

Materials, London: Butterworths, p.3; Lewis J.R & Holland J.A, 1988, Landlord and Tenant Law, Fourth Edition, Durham: Casdec Ltd, pp.31-32).

¹ Abu Zahrah M, 1980, Property and the Theory of Contract, Damascus: Dar Al-Fikr, p.173; Cunningham A; Stoebeck B & Whitman A, 1984, The Law of Property, Minnesota: West Publishing Co, p.265; Al Far, Op.Cit, p.31.

² Abu Zahrah M, Op.Cit, p.265. It is to be mentioned, here, that Islamic jurists define a contract as "a legally sound combination between offer and acceptance in such a manner that its effect leaves its mark on its subject matter" (Al-Zarqa M, 1959, Introduction to Fiqh, Sixth Edition, Vol.1, p.274; Mahmasani S, 1955, 'Transactions in the Shari'a' in Khaddouri M & Liebesny H (eds), Law of the Middle East, Vol.1, Virginia: William Byrd Press, p.179; Abu Zahrah M, Op.Cit, p.171).

³ For details see Anwer Sultan, Op.Cit, pp.53-58

Besides offer and acceptance, three necessary requirements must be available in order for a contract to be legally binding. These requirements are the subject-matter, the cause and the formality if the subject matter is immovable (real property) or a movable thing which has special records, e.g., cars, buses, motorcycles¹.

Under the UAE Civil Transactions Act, the rule is that parties enjoy the right to conclude any contract they wish, provided this contract is not contrary to the rules of shari'a or law². Similarly, section 206 CTA 1985 provides that a contract may be made subject to a condition, unless the condition is prohibited by the legislator, or it is contrary to the public order or morals; otherwise the condition shall be null and the contract shall be valid, unless the condition is the motive behind the contract in which case the contract shall also be void.

Section 280 CTA 1985 validates a promise to conclude a contract. It provides that a legal promise exists when a person binds himself with a future obligation towards another but not by way of a financial obligation, and it may relate to a contract or work³. It also provides that the promise shall bind its maker (the promisor), unless he dies or becomes bankrupt.

¹ See Obaidi A, Op.Cit, p.165.

² Ibn Taymeyah, 1383 H, Fatawa Ibn Taymeyah, Riyadh: Dar Al Fikr, pp.326-343; Al-Far A, Op.Cit, p.89; Khater N & Sirhan A, Op.Cit, p.33.

³ Section 280 CTA 1985 specifically deals with a unilateral act, which is by section 277 CTA 1985 subject to the same rules governing contracts, with an exception of the existence of two identical wills.

It is to be said that there are two theories that explain the expression of the will in contracting. The first is called the subjective theory and the second is called the objective theory¹. Each of these two theories explains concluding of a contract in a different way. According to the first theory, a contract is concluded by matching of the hidden, or the latent, will of the parties, i.e., it ascribes creating of a contract to the psychical will of the parties. According to the second theory, a contract is concluded by matching of the apparent, or the patent, will of the parties, i.e., it ascribes creating of a contract to the physical will of the parties².

Influencing by the Islamic legal jurisprudence, the UAE Civil Transactions Act No.5 of 1985 has adopted the second theory (the objective theory)³. It can be argued, here, that by adopting the objective theory the legislator has protected the bona fide party who has relied on the offer forwarded to him by the other party and accepted it with the intention to create an enforceable agreement.

4.1.3 The importance of offer and acceptance in forming a contract

At the outset, it must be mentioned that the classical jurists

¹ Adams J & Brownsword R, 2000, Understanding Contract Law, Third Edition, London: Sweet & Maxwell, p.35; Ball M, Op.Cit, p.65; Al-Attar A, Op.Cit, p.9.

² Abdul-Baqi A, 1984, The Theory of Contract and Unilateral Act, Cairo: Dar Al-Fikr Al-Arabi, p.21&p.94.

³ See Munzer F, 2007, Sources of Obligations, Amman: Dar Al-Thaqafah for Publishing and Distribution, p.112.

of Islamic law did not attempt to develop a general theory of contract¹. The word *aqd* has been used by the Islamic jurists to describe unlimited transactions². Moreover, the same word is continued to be in use in the laws of Arab countries³. The lack of a general theory of a contract in Islamic law, however, led the early jurists of Islam to treat the contract of sale as a prototype to which other contracts should conform⁴.

The efforts of Islamic law jurists were concentrated on the detailed and individual treatment of each contract⁵. But, the UAE Civil Transactions Act of 1985 has put a very comprehensive theory of contract and laid down detailed rules and principles concerning all types of contracts that the legal culture of society knows and recognizes.

¹ Fadli J, 1997, *Al-Wajeez in the Civil Contracts: Sale, Lease and An Independent Work*, Amman: Dar Al-Thaqafah for Publishing and Distribution, p.11; Zahraa M, 1993, 'Negotiating Contracts in Islamic and Middle Eastern Laws', *Arab Law Quarterly*, January-December, Vol.13, p.265.

² Abu Zahrah M, *Op.Cit*, p.175; Anwer Sultan, *Op.Cit*, p.11.

³ McKendrick E, 2000, *Contract Law*, Fourth Edition, London: Macmillan, p.8; Khater N & Sirhan A, *Op.Cit*, p.29. See, for example, section 87 of the Jordanian Civil Code No.43 of 1976, section 73 of the Iraqi Civil Code No.40 of 1950, section 31 of the Kuwait Civil Code of 1980, section 140 of the Yemeni Civil Code of 1992, and section 125 of the UAE Civil Transactions Act No.5 of 1985).

⁴ See Al-Shalabi M, *Op.Cit*, p.419. This approach has been adopted by the UAE Civil Transactions Act (see for example s.366 & s.611 CTA 1985).

⁵ Al-Kasani, *Badae' Al-Sanae'*, Vol.5, Cairo, p.259; Al-Shalabi M, *Op.Cit*, p.414; Saleh N, 1998, 'Origins of the Sanctity of Contracts in Islamic Law', *Arab Law Quarterly*, January-December, Vol.13, p.263.

The contract of sale forms the core of the UAE law of contract and it is considered as a model for all bilateral contracts¹. It is essential for the validity of this contract that: (1)- the subject matter (mahal) should be: (i)- a lawful property of value (mal mutaqawwim) (s.95 & s.200 CTA 1985); (ii)- in existence at the time of sale (s.201 CTA 1985); (iii)- a specific thing, which is ascertained or capable of ascertainment (s.203 CTA 1985); and (iv)- capable of delivery (s.199 CTA 1985); (2)- the price must be ascertained at the time of contracting (s.556 CTA 1985); and (3)- the contract of sale, as any other legal transaction, has to be registered in the land records at the land registration department if its subject matter is land or any other movables of which the transfer of title depends upon registration (s.1277 CTA 1985).

UAE Civil Transactions Act No.5 of 1985 recognizes the freedom of contract and provides an applicable measure of freedom within certain fixed rules². Freedom of contract has to be compatible with ethical rules of legal transactions, and custom plays an important role in this regard³. In addition,

¹ Naddawi A, 1999, Explanation of Jordanian Civil Law, Amman: Dar Al-Thaqafah for Publishing and Distribution, p.18; Zu'bi M, 2004, Op.Cit, p.16.

² Al-Attar A, Op.Cit, p.22; Khater N & Sirhan A, Op.Cit, p.33; Munzer F, Op.Cit, p.44.

³ Mansour A, 2001, The General Theory of Obligations, First Edition, Amman: Dar Al-Thaqafah for Publishing and Distribution, pp.32-33; Thannoun H & Raho M, 2002, Sources of Obligations: A Comparative

contracts are governed by the rule that a person is permitted to make all the transactions he desires, unless these transactions are forbidden by the law or are contrary to the rules of public order or morality, i.e., the principle of freedom to contract (s.126(d) CTA 1985)¹.

It should be noted that in Islamic law², which has major influence on the UAE law, the general rule is that all contracts are pacts which must be observed since Allah is a witness to any contract entered into by individuals or by collectivities, and any valid contract is obligatory in accordance with shari'a rules (be faithful to your pledge to Allah when you enter into a pact)³ & (Ye who believe fulfill all contract)⁴. In addition, it is reported that the Prophet (PBUH) has said "Muslims are committed to the terms of their agreements, unless a term that legalizes something forbidden or prohibits something allowed"⁵.

Study of Islamic and Comparative Law, First Edition, Amman: Dar Wael, p.42.

¹ See Abdul-Baqi A, Op.Cit, pp.47-49; Abu Zahrah M, Op.Cit, pp.223-227.

² In Islamic law, the sole source of law is the Quran, which is the word of Allah that was transmitted to the Prophet Muhammad (PBUH) through the Angle Gubrai'l; and Sunna is the supplement of the Quran. The latter is the record of the collected traditions of the Prophet (PBUH). It embraces the Prophet's statement, orders, acts of worship, and approvals (Al-Shalabi M, Op.Cit, p.98; Abu Zahrah M, Op.Cit, p.7&p.13).

³ The Holy Quran, Surat Al-Nahil, verse 91.

⁴ The Holy Quran, Surat Al-Māedah, verse 1.

⁵ Abdul-Baqi A, op.Cit, p.84. See The Explanatory Memorandum of Jordanian Civil Code, 1992, Part I, p.93.

The subject-matter of a contract may be: (i)- property, movable or immovable, material or immaterial; (ii)- benefits of property; (iii)- certain work or service; (iv)- any other thing not prohibited by a legal provision or not contrary to the rules of public order or morals (s.126 CTA 1985).

Under the UAE Civil Transactions Act, contract is of three main types; namely: valid, void and fasid¹. A valid contract is that one whose conditions and their respective qualifications are lawful by being made by capable persons, relating to an object that can be subject to its provisions, having an existing, valid and lawful purpose, the legal qualifications of each condition are met, and not subject to a vitiating defect (s.209 CTA 1985). A void contract is that one whose conditions and qualifications are unlawful in respect of its base, subject-matter, purpose or the form prescribed by the law; it has no effect and cannot be rectified (s.210 CTA 1985). A fasid contract is that which is lawful essentially but not in the qualifications of its conditions. But, if the reason for its invalidity is rectified it becomes valid (s.212 CTA 1985).

As said before, the two main components of a contract are offer and acceptance. Each of these components can be in the past tense, in the present or in the mandatory tense if the immediate effect is intended (s.132 CTA 1985). Below, is a discussion of offer and acceptance.

¹ See Al-Attar M, 1997, Op. Cit, p.187; Al-Far A, Op.Cit, pp.98-124.

4.1.3.1 Offer

An offer is a proposition put by one person (offeror) to another person (offeree) coupled with an indication that the proposer is willing to be held to that proposition¹. The expression of the will must be by word, in writing, the customary sign even from a person who is not dumb, the actual exchange denoting consent, or by any other conduct which in the normal circumstances leaves no doubt about its indication of consent (s.132 CTA 1985).

In other words, an offer may be made in writing, speech or by conduct². It may be made through an electronic message, i.e., an e-mail via internet, mobile, etc. To this effect, section 11 of the Federal Law No.1 of 2006 Concerning Electronic Transactions and Commerce in the United Arab Emirates³ states that "for the purpose of entering into a contractual relationship, the offer and the acceptance may be expressed, wholly or partially, by the electronic means and the contract shall not lose its validity or the possibility of its execution due to the fact it is made by one or more electronic means".

¹ Al-Ahawani H, 1992, Sources of Obligation, Cairo: Dar Al-Nahdhah, p.50.

² Al-Sharqawi J, 1991, The General Theory of Obligations, Cairo: Dar Al Nahdhah, p.89; Abu Zahrah M, Op.Cit, p.206; Thannoun & Raho, Op.Cit, pp 45-48; Khater N & Sirhan A, Op.Cit, p.57.

³ This Act was published in the Official Gazette No.442, on 30 January 2006.

This indicates that the message of information is regarded as a means of expression of a will, and for the purpose of creating a binding contractual obligation, this message is legally accepted as a valid offer or as a valid acceptance.

A mere statement of a person's intention, or a declaration of his willingness to enter into negotiations is not an offer and cannot be accepted so as to form a valid contract¹. The offeror may make the offer to a particular person, or to a group of persons, or to the world².

An offer is different from an invitation to treat or to negotiate in that an offer is a statement by one party of his willingness to enter into a contract on stated terms, provided that these terms are, in turn, accepted by the party or the parties to whom the offer is addressed, whilst an invitation to negotiate is simply an expression of willingness to enter into negotiations, which may finally lead to the conclusion of a contract at a later date³.

The process leading to an agreement may be long. It may consist of mutual requests of information and a series of negotiations. When negotiations have reached the point

¹ Thannoun & Raho, Op.Cit, p.64; Khater N & Sirhan A, Op.Cit, p.62.

² See Ramadan A, 1990, Sources of Obligations in the Lebanese and Egyptian Law, Beirut: Al-Dar Al-Jameéyyeh, p.16; Al-Dasouqi I, 1995, The Theory of Obligation, Kuwait: Kuwait University Press, p.48.

³ Al-Far A, Op.Cit, pp.42-43; Mansour A, Op.Cit, p.69; Thannoun & Raho, Op.Cit, p.64; Anwer Sultan, Op.Cit, p.54.

where one of the parties makes it clear that he is willing to contract on specific terms and all that it is required is acceptance by the other party, then it can be said that an offer has been made¹. Indeed, there are many cases where offer is distinguished from an invitation to treat or to negotiate. Below, are some examples of these cases:

(a)- Display of goods for sale in stores

In this simple everyday practice, the rules of offer and acceptance simply do not demand that a particular conclusion be reached. Nor can the intention of the parties provide a useful guideline. Section 134(1) CTA 1985, however, distinguishes between two cases; namely: the display of goods with their prices, and the display of goods without showing their prices. The first is considered as an offer, but the second is an invitation to negotiate. This applies to the display of goods by advertising in catalogues².

(b)- Advertisement

The general rule is that (in case of ambiguity) a newspaper advertisement is not an offer but an invitation to negotiate³. Section 134(2) CTA 1985 states that "publication, advertisement, statement of market prices and any other

¹ Anwer Sultan, Op.Cit, p.53; Khater N & Sirhan A, Op.Cit, pp.64 & p.92.

² Zraiheed A, 2001, 'Towards a General Theory in Framing Contracts', University of Kuwait Journal of Law, Issue No.3, p.201; Al-Attar A, Op.Cit, p.53; Munzer F, Op.Cit, p.114.

³ Mansour A, Op.Cit, p.69; Khater N & Sirhan A, Op.Cit, p.58.

statement relating to an offer or orders directed to the public or to individuals shall not in the case of ambiguity be considered as offers, but as an invitation to negotiate".

It should be noted, however, that there are many situations where an advertisement can be held to be an offer, not a mere invitation to negotiate. An example is where an advertisement offers a reward for the return of a lost property¹. If the finder returns the property, knowing of the reward offer, he is entitled to the reward. It is not open to the owner to say that he was not making an offer, but an invitation to negotiate².

(c)- Auction sales

The general rule is that an auctioneer, by inviting bids to be made, makes an invitation to negotiate³. The offer is made by the bidder which, in turn, is accepted when the auctioneer strikes the table with his hammer. The problem of identifying the highest bid remains outstanding because, until the hammer is brought down, there is always the possibility of a last minute bid being made⁴. Section 144 CTA 1985 states that "subject to the provisions of other laws, the contract in auctions shall not be completed except by the falling down of the hammer, and an offer shall be superseded by a bigger offer even if the latter was void, or by closing down of the auction without any acceptance"⁵.

¹ This is one of the applications of the unilateral act. It can be applied to a bilateral contract, however, if there is a previous dealing between the parties.

² Al-Attar A, Op.Cit, p.64.

³ Munzer F, Op.Cit, p.115.

⁴ Al-Far A, Op.Cit, p.49.

⁵ Section 279 of the UAE Civil Procedures Act No.11 of 1992 provides

(d)- Tenders

Where a person (corporate or incorporate) calls for tenders for a particular project, the general rule is that the invitation to tender is an invitation to negotiate. The offer is made by the person who submits the tender and the acceptance is made when the person calling for tenders accepts one of them¹.

(e)- Bus timetables

Concerning transport, one could say that a bus timetable and the running of the bus are an offer by the bus company, which is accepted by boarding the bus by a passenger. Alternatively, it could be said that the bus timetable is an invitation to negotiate; the offer is made by a passenger when boarding the bus and the acceptance takes place when a bus conductor, or driver, accepts the money and issues a ticket.

Under the UAE Civil Transactions Act, however, there are the so called contracts of compulsion or adhesion, which are: (i) related to necessary commodities, e.g., electricity, water, transport; (ii) monopolized by the providing companies; and (iii) directed to the public on identical

that an advertisement of the auction sale must be made in any daily newspaper. The advertisement must define the time of sale, the place where the goods are existed, and the place where the auction sale will take place.

¹ Al-Far A, Op.Cit, p.49.

terms¹. In these contracts, acceptance is confined to a mere acceptance of the already stated terms. This is envisaged in section 145 CTA 1985, which states that "acceptance in contracts of adhesion shall be limited to mere acceptance of predetermined conditions made by the offeror who does not agree to negotiate them"².

Accordingly, it can be argued that since the contract of transport by a bus is a contract of adhesion, an offer is a contract of adhesion made by the bus company by making the bus available for the public and an acceptance is made by the passenger by boarding a bus and reserving a seat.

4.1.3.2 Acceptance:

An acceptance is an unqualified expression of assent to the terms proposed by the offeror³. There is no rule that acceptance must be made in writing⁴. Thus, it can be made orally or by conduct. It can be made by an electronic message as well, i.e., a message via the internet, mobile,

¹ Mansour A, Op.Cit, p.47; Al-Far A, Op.Cit, p.50.

² It should be indicated, here, that section 284 CTA 1985 provides "if the contract is entered into by adhesion and includes oppressive terms, the court may amend those terms or exempt the adhering party from them in accordance with the prescriptions of equity, and every agreement to a contrary effect shall be void". This means that the court can intervene and amend the terms of an offer as well an acceptance. The purpose of this intervention is to do justice to both parties of the contract.

³ Thannoun & Raho, Op.Cit, p.67; Munzer F, Op.Cit, p.127.

⁴ Anwer Sultan, Op.Cit, p.56.

etc¹. In this concern, section 11 of the Federal Law No.1 of 2006 in respect of Electronic Transactions and Commerce in the United Arab Emirates states that "for the purpose of entering into a contractual relationship, the offer and the acceptance may be expressed, wholly or partially, by the electronic means and the contract shall not lose its validity or the possibility of its execution due to the fact it is made by one or more electronic means".

Accordingly, the message of information is regarded as a means of expression of the will, and for the purpose of creating a binding contractual obligation, this message is legally accepted as an offer or as an acceptance.

A response of the offeree which does not accept all the terms and conditions proposed by the offeror but which, in fact, introduces new terms is not an acceptance; it is a counter-offer, which is then treated as a new offer capable of acceptance or rejection². The effect of a counter-offer is to terminate the original offer so that it cannot subsequently be accepted by the offeree³.

¹ Mansour A, Op.Cit, p.82.

² For details, see Winfield P.H, 1939, 'Some Aspects of Offer and Acceptance, Law Quarterly Review, Vol.55, pp.499-520.

³ Morqos S, 1987, Al-Wafi in the Explanation of the Civil Law, Part I, Cairo, p.617; Khater N & Sirhan A, Op.Cit, p.71; Al-Attar A, Op.Cit, pp.66-67.

This means that a reply to an offer is only effective as an acceptance if it accepts all the terms of the offer without any qualification or addition. In other words, acceptance shall be identical with the offer (s.140(1) CTA 1985). In short, if the offeree puts forward an addition, restriction or amendment of the offer, this shall be considered as rejecting the offer while making a new one.

An acceptance must be clear, unequivocal, unconditional, and made by the person to whom the offer is intended¹. It must be communicated to the offeror, i.e., it must be brought to his attention. The general rule that acceptance, to be effective, must be communicated, stems from the basic principle that contract is based on agreement. If acceptance is not communicated the agreement is not concluded². However, the offeror who wishes to state that he will be bound only if the offer is accepted in a particular way must use clear words to achieve this purpose³.

To sum up, it can be said that the validity of an acceptance is governed by four principal rules; namely: (i)- it must take place while the offer is still in force, i.e., before it has lapsed or been revoked; (ii)- it must be on the same terms of the offer, i.e., it must match all offer terms; (iii)- it must be unconditional; and (iv)- it must be communicated to the offeror.

¹ Munzer F, Op.Cit, p.127.

² Mansour A, Op.Cit, pp.72-73.

³ Anwer Sultan, Op.Cit, p.57.

Acceptance of an offer will not be implied from mere silence on the part of the offeree, and the offeror cannot impose a contractual obligation upon the offeree by stating that, unless the latter expressly rejects the offer, he will be held to have accepted it¹. It should be added, here, that if the time for acceptance is fixed the offeror shall remain obliged by his offer until that time expires (s.139 (1) CTA 1985).

It is a maxim in the UAE law that no words shall be attributed to a silent person, but silence, where necessity requires, amounts to an expression and can be considered as acceptance (s.135 (1) CTA 1985). However, silence shall be especially considered as acceptance if there was a previous dealing between the two contracting parties and the offer had connection with that dealing, or if the offer was merely to the benefit of the offeree (s.135 (2) CTA 1985)².

This means that the offeree's silence does not amount to an acceptance and cannot have the effect of forcing a person to a contract without the requisite of positive acceptance, delivered to the offeror, either by words or conduct³. If a judge were called upon to assess whether an offeree's conduct amounts to acceptance, the judge would not apply a

¹ See Khater N & Sirhan A, Op.Cit, pp.69-71; Thannoun & Raho, Op.Cit, p.69.

² See The Explanatory Memorandum of Jordanian Civil Code, 1992, Part I, p.103; Al-Far A, Op.Cit, pp.43-44; Mansour A, Op.Cit, pp.53-54; Thannoun & Raho, Op.Cit, p.70.

³ NupLegal, Offer and Proposal Forms, <http://www.nuplegal.com/ofandac.html>, Sunday, 12 April 2009.

subjective test. Rather, a judge would apply an objective test to decide if a reasonable person would have inferred acceptance from the conduct in question¹.

If at the time of contracting the two contracting parties are not dealing face to face (not in the same meeting place (majlis al-aqd))², the contract shall be deemed to have been made in the place and at the time of acceptance, unless there is an agreement, or a legal provision, to a different effect (s.136 CTA 1985). This simply means that, unless stated or agreed otherwise, the general rule which UAE law adopts is that acceptance takes place when the offeree declares that he has accepted the terms of the offer without any variation, and that this declaration comes to the knowledge of the offeror³.

¹ Khater N & Sirhan A, Op.Cit, p.70. Under the Islamic law of contract, the rule is that the deeds of the parties are judged subjectively. This rule stems the Prophet's Tradition, which says "all deeds shall be judged according to intentions".

² Majlis al-aqd (meeting place) is the place where the parties to the contract meet, discuss the terms and conditions of the contract, and finally agree.

³ In determining the time and place of concluding a contract between two parties, who are not present, resort may be made to one of the following theories: the declaration of the acceptance theory, the post of the acceptance theory, the reception of the acceptance theory, and the knowledge of the acceptance theory. The UAE legislator has adopted the last theory (see Munzer F, Op.Cit, p.138; Anwer Sultan, Op.Cit, p.70; The Explanatory Memorandum of Jordanian Civil Code, 1992, Part I, 110; Al-Far A, Op.Cit, p.47).

An interesting matter that has surfaced in contract law is the use of modern technology in the communication of acceptance which leads to an exception to the general rule that acceptance must be personally delivered to the offeree and directed to his attention in the same meeting place. Unless agreed otherwise, a person may mail an acceptance to the offeror and the contract is said to be perfected when the offeror receives the acceptance and declares that he accepts it¹.

4.1.4 Termination of offer

As said before, offer is an indication of willingness to do or refrain from doing something that is capable of being converted by acceptance into a legally binding contract. An offer must be a clear, unequivocal and direct approach to another party to contract with². Once made, an offer cannot be revoked before the offeree makes his decision, unless it is under seal.

However, an offer may be terminated by the will of the offeror, or because of a reason beyond the offeror's control³. There are five principal methods by which an offer may be terminated:

¹ Anwer Sultan, Op.Cit, p.57 & p.70; Khater N & Sirhan A, Op.Cit, p.78.

² See Duhaime's Law Centre, Offer and Acceptance, www.duhaime.org/contract/ca-con4.aspx, Sunday, 12 April 2009.

³ Yazeed A.N, 2003, 'Offer and Acceptance in Jordanian and Comparative Law', University of Jordan Dirasat Journal, Vol.30, p.232.

(i)- The first is that the offer can be revoked by the offeror at any time before it has been accepted by the offeree¹. To be effective, revocation of the offer requires that a notice of revocation to be actually brought to the attention of the offeree. Revocation, however, needs not to be communicated by the party himself. It is sufficient if the offeree learns from a third party that the offer has been revoked².

Declaration of revocation is necessary so as to protect the bona fide offeree who has relied on the offer and who is looking forward to entering into an agreement with the offeror³. The general rule is that an offeror cannot withdraw his offer once it has been accepted and that withdrawal of an offer is not effective until communicated to the offeree⁴.

It should be noted that the two contracting parties continue to have the choice of withdrawing until the end of their meeting (majlis al-aqd). So, if the offeror withdraws after the offer has been made but before acceptance, or if there shall be a word or a deed from either party denoting rejection, the offer shall become void and acceptance thereafter shall have no effect (s.137 CTA 1985). In addition, the repetition of the offer in the meeting place but before acceptance is made renders the first offer void and effect shall be given to the second offer (s.138 CTA 1985).

¹ Mansour A, Op.Cit, p.71.

² See the French Court of Cassation Decision on Cass, civ, 13/1/1984, Bull. civ 1, n 193, p.164.

³ Khater N & Sirhan A, Op.Cit, p.61.

⁴ Mansour A, Op.Cit, p.71; Thannoun & Raho, Op.Cit, p.65.

However, the UAE Civil Transactions Act of 1985 prohibits revocation of the offer by the offeror if it is limited to a specific period of time. Section 139(1) of this Act explicitly provides that "if the term for acceptance is fixed the offeror shall remain obliged by his offer until that term expires"¹.

(ii)- Secondly, an offer can be terminated by the rejection thereof by the offeree. No agreement will arise if the offeree rejects the offeror's terms, or purports to accept them subject to conditions².

(iii)- Thirdly, an offer may be terminated for lapse of time. An offer which is expressly stated to last only for a specific period of time cannot be accepted after that time has passed³. An offer which specifies no time limit is deemed to last for a reasonable period of time. A reasonable time is a question of fact. It depends on the means by which the offer has been made, its subject-matter, etc. For example, an offer to sell something that fluctuates rapidly in market value, e.g., a bloc of shares, would come to an end in a short time. For perishable goods, e.g., food, a reasonable time would likely be a matter of hours or days. The reasonable time would be longer where the subject matter of the contract is a

¹ See the French case: Cass.civ 1, 2 Juillet 1979, D, Inf. Rap, p.225, obs. Audit.

² The Explanatory Memorandum of Jordanian Civil Code, 1992, Part I, 107; Khater N & Sirhan A, Op.Cit, p.64.

³ The Explanatory Memorandum of Jordanian Civil Code, 1992, Part I, 105; Khater N & Sirhan A, Op.Cit, p.62.

building for instance¹. Therefore, the whole circumstances of the offer must be looked at.

(iv)- Fourthly, an offer which is stated to come to an end if a certain event occurs cannot be accepted after that event has actually taken place. An offer is also terminated in the case of non-occurrence of a required condition. Thus, an offer which is expressly made subject to a certain condition cannot be accepted if that condition fails².

(v)- Finally, an offer may be terminated by the death of the offeror, or if the offeror loses his legal capacity³. This is because the legal personality of the offeror comes to an end upon death or deteriorates for lack of capacity⁴.

There is no rule governing the case where it is the offeree who dies, but the generally accepted view is that on the offeree's death the offer comes to an end by operation of the law⁵.

¹ See Duhaime's Law Centre, Offer and Acceptance, <http://www.duhaime.org/contract/ca-con4.aspx>, Sunday, 12 April 2009.

² Gilmore A, 1974, *The Death of Contract*, Columbus, p.56.

³ A person may lose his legal capacity in many cases; he may become mad, idiot, etc. Section 86(1) CTA 1985 states "whoever lacks discernment for minority, idiocy or lunacy shall lack capacity to exercise his civil rights".

⁴ Mansour A, *Op.Cit*, p.74; Anwer Sultan, *Op.Cit*, p.59; Khater N & Sirhan A, *Op.Cit*, p.107. It is to be added that the rule that the offer is terminated by the death of the offeror finds its roots in the Islamic jurisprudence, which is considered as an original source of the UAE Civil Transactions Act No.5 of 1985 (see Al-Attar A, *Op.Cit*, pp.86-87).

⁵ Abdul-Baqi A, *Op.Cit*, p.138; Mansour A, *Op.Cit*, p.74.

4.2 Sale contract

Sale contract is a contract whereby the seller transfers the property of a thing, be it movable or immovable, to the buyer for a price. It is concluded by offer and acceptance.

Sale contract forms the core of the UAE law of contracts and it is considered as a model for all bilateral contracts¹. It is essential for the validity of this contract that:

(1)- The subject matter should be:

(i)- A legally property of value (mal mutaqawwem) (s.95-96 CTA 1985). Thus, pigs and wine cannot be the subject matter for a sale contract between Muslims, but it is a valid subject matter between non-Muslims as far as their religions permit the dealing with them².

(ii)- In existence at the time of the sale (s.490 CTA 1985). However, an agreement for the sale of future thing is valid in the absence of deceit (s.569 CTA 1985).

(iii)- A specific thing, which is ascertained or capable of ascertainment (s.490 CTA 1985). Thus, a sale of unspecified thing from a specified mass is invalid, i.e. a sheep from a specified herd.

¹ Naddawi A, Op.Cit, p.18; Zu'bi M, Op.Cit, p.15.

² See Zuhaili W, Op.Cit, p.24.

(iv)- Capable of delivery (s.514 CTA 1985). Thus, a sale of a bird in sky, or a fish in water, is void. The delivery of the bought property does not necessarily have to be physical. Hence, delivery can be affected by the removal of all restrictions between the sold goods and the purchaser, so that the latter can obtain delivery with no impediment¹.

(2)- The price must be ascertained at the time of contracting (s.503 CTA 1985). The price may be paid by installments and its payment may be deferred (s.508 CTA 1985). If the payment of the price is deferred, it must be for a fixed time. If no time for payment is fixed, the contract is invalid.

(3)- The contract of sale must be registered in the land records at the land registration department if its subject matter is an immovable property, e.g. building, flat, land, or any movables of which the transfer of property is dependent upon registration (s.528 CTA 1985).

Once the contract of sale is validly created, the property in the subject matter passes by virtue of the contract to the buyer and the property in price passes to the seller, unless the law or the agreement says otherwise (s.528, s.511 & s.514 CTA 1985).

This means that as soon as the sale is concluded, the ownership of the sold property is transferred to the

¹ See Adnan S, 2005, Explanation of Named Contracts in the United Arab Emirates Civil Transactions Act, Amman: Dar Wael, p.105.

purchaser who becomes indebted for the price and under an obligation to pay it, unless it is agreed to delay payment or to pay by installments. If the purchaser fails to pay the price when it is due, he is considered to have failed to perform his obligation.

Concerning the contract of sale, there are some relevant statutory rights. These rights are the right of rescission (khayar al-shart), the right of observation (khayar al-ru'yah), the right of specification (khayar al-ta'yeen) and the right to annul for defect (khayar al-ayb)¹.

Other forms of the contract of sale

Under the UAE Civil Transactions Act of 1985, there are many forms of sale under different names and sometimes subject to different conditions and limitations, examples are:

(i)- Al-tawliyah:

This is a resale at the price at which the seller bought the goods (the original price) (s.506 CTA 1985).

(ii)- Al-murabahah:

Which is a resale at the original price plus an additional sum as a profit (s.506 CTA 1985).

¹ For details, see Al-Shamisi J, Op.Cit, p.306 onwards; Anwer Sultan, Op.Cit, pp.212-226.

(iii)- Al-wadheea'h:

This is a resale for less than the original price (s.506 CTA 1985).

(iv)- Bay' al-wafa':

This is a contract in which the seller accepts anything offered by the buyer instead or in return for the price that the latter has contracted to pay.

(v)- Assalam:

This is a sale in which the price is to be paid immediately and the subject matter to be delivered at a fixed future date, i.e. it is a sale with advance payment for future delivery (s.568 CTA 1985). All conditions essential for the validity of the contract of sale are also essential for the validity of this contract with the exception that the subject matter should be in existence at the time of the contract (s.569(1) CTA 1985).

This sale has been treated by Islamic jurists as a valid contract, because it is necessary for the life of people who have no money at the moment to offer in return for what they intend to buy, and because it was customary used since past time ago¹.

In addition to the satisfaction of the conditions essential for a valid sale, the following conditions are essential for the

¹ See Al-Shamisi J, Op.Cit, pp.146-147; Zu'bi M, Op.Cit, p.488.

validity of the contract of salam: (i)- the price should be paid in the meeting place (majlis al-aqd), i.e. the place where the parties meet and agree, and (ii)- the subject matter should be delivered at a fixed future date. If it has not been delivered, the injured party has the right to choose between waiting its existence or rescission¹.

(vi)- Al-muqayadhah (barter):

The contract of muqayadhah is a contract of the exchange of commodities, i.e. lentils for lentils, corn for corn or either for another². The rules governing this contract are the same as those governing sale, as long as they do not contradict its nature (s.611 CTA 1985)³.

(vii)- Assarf (Exchange):

This is a contract of the exchange of money and all precious metals⁴. The essential terms required for the validity of this contract are designed to ensure that no transaction will become usurious. Thus, it is essential for the validity of this contract that the things exchanged should be equal in weight if they are of the same kind, i.e. gold for gold or silver for silver. If one precious metal is exchanged for one of a different kind, i.e. gold for silver, the equality in weight is not necessary, but it is essential that delivery should be made in the meeting place.

¹ See Zuhaili W, Op.Cit, pp.23-26.

² Al-Sanhuri A, 1952, Al-Waseet in the Expanation of the Civil Law: Sources of Obligation, Vol.4, Cairo: Dar Al Nahdhah A-Arabeyyeh, p.856.

³ See Zu'bi M, Op.Cit, pp.541-547

⁴ Zu'bi M, Op.Cit, p.18.

4.3 Lease contract

A lease contract is similar to a sale contract in that it is a sale of the benefit in return for money or money worth¹. It is the benefit not the property that constitutes the subject matter of a lease contract, which is concluded by offer and acceptance².

A lease contract passes the property in the benefit to the lessee and the property in the rent to the lessor³. According to section 750 CTA 1985, the rent dues when the benefit is enjoyed. However, the parties may agree that it should be paid in advance, or in arrears⁴. It is essential for the validity of this contract that both the rent and the term for which the thing is leased should be capable of fulfillment⁵. Thus a runaway animal, for example, cannot be the subject matter of a lease contract.

A lease (a tenancy) is mentioned in the Quran. In a narration about one of Prophet Jacob's daughters, Allah, the Almighty, said "one of them said: Oh my (dear) father! Engage him on wages: truly the best of men for thee to

¹ Naddawi A, Op.Cit, p.162.

² Pawlowski M & Brown J, 1995, A Casebook on Landlord and Tenant Law, London: Sweet & Maxwell, p.3; Brown J, 1995, Law Q&A: Landlord and Tenant, London: Blackstone Press Ltd, p.5.

³ Zuhdi Y, 1975, Lease Contract, Sidon: The Modern Press, p.6.

⁴ Brown J, Op.Cit, pp.20-21.

⁵ Pawlowski & Brown, Op.Cit, p.6.

employ is the (man) who is strong and trusty"¹. In addition, a rent as the consideration for the possession of the benefit of the leased property is mentioned in the Sunnah. The Prophet Muhammad (PBUH) is reported to have said "give the worker his rent before his sweat dries"².

It should be noted, here, that in its first era, the human society did not know the lease contract. This is because it contained only two classes of people; the first class was consisted of landlords, who owned their own properties and used to live on their production, and the second class was consisted of servants, or slaves, who lived with their masters³.

As a result of the development, which had taken place in the human society, new circumstances arose and encouraged the existence of a new class; that is the middle class. The members of this class consisted of small farmers, and slaves who became free. Those people were in need to find places to live⁴. Therefore, negotiations were carried out between those people and the property owners. Eventually, these negotiations resulted in the creation of what became known as tenancy agreements or lease contracts⁵.

¹ The Holy Quran, Surat Al-Qassass, verse 26.

² Abu Abdullah Muhammad, Sunan Ibn Majeh: Ahkam Al-Ojaraa, Beirut, Tradition No.2434.

³ Fadel & Fatalawi, Op.Cit, p.161.

⁴ Naddawi A, Op.Cit, p.125.

⁵ Fadel & Fatalawi, Op.Cit, p.161.

The first class (landlords) started to build houses on their own lands for the purpose of renting and the third class (farmers and workers) started to obtain the benefit of the houses in return for agreed sum of money (thereafter called a rent)¹. This allowed the landlords to exploit their properties through tenancy agreements and allowed the farmers to get residence and to take the benefit of the estates, which they did not own².

A lease contract came into existence after the advent of the sale contract. This is because the existence of such leases was an outcome of the pressing need of residence to the people of the middle class, which arose in a subsequent period to the existence of the sale and exchange contracts³.

The subject matter of the lease contract is not required to be a residential or a commercial property; it may be an agricultural land. The lease contract whose subject matter is agricultural land has three forms:

¹ Fadli J, Op.Cit, p.192.

² Fadel & Fatalawi, Op.Cit, pp.161-162.

³ Roman law knew the lease contract as one of the formal contracts, which could not be executed, unless it had been made according to some ritual ceremonies. This contract was restricted only to slaves and animals throughout the primitive era of Rome. However, lease contracts, which their subject-matter were land or houses began to be granted at the beginning of the second century BC (see Fadli J, Op.Cit, p.192; Zuhaili W, 1987, Op.Cit, pp.14-15).

(i)- Al-muzara'ah:

This is an investment contract between a landowner and a cultivator. The landowner hires his land to the cultivator who has to invest and exploit it with a view to sharing its product in the ratio, which they agree in the lease contract (s.809 CTA 1985). It is essential for the validity of this contract that the land must be suitable for cultivation and must be handed over to the cultivator at the time of the contract or at any agreed time (s.810(1) CTA 1985). It is, also, essential that the cultivator's share in the product should be known at the time of the conclusion of the contract (s.810(2) CTA 1985).

(ii)- Al-musaqah:

This is similar to the contract of muzara'ah, but the only difference is that instead of land to be cultivated, it is here trees and plantations to be served for a share in their fruits and products (s.822 CTA 1985). It is essential for the validity of this contract that the trees to be served should be ascertained, and the contract must be for a definite term¹.

(iii)- A-mugaraseh:

This contract is a partnership between a landowner and another person who contracts to plant the hired land for a definite term. The products will be shared according to their agreement (s.835 CTA 1985).

¹ See Zuhaili W, Op.Cit, p.248.

As regards the co-owner's right to lease his unit, section 15 of the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai has stated that "a unit owner may lease his unit on condition the unit owner and the tenant remain obliged to comply with the association institution and the master community declaration towards the other unit owners, occupiers and the other owners association".

4.3.1 The essential requirements of the lease

In order to create a valid lease contract, certain requirements must be fulfilled besides offer and acceptance. These requirements include a deed, two different parties, rent, definite term, subject matter and exclusive possession.

(a)- A deed

A lease must be made by a deed. The deed must set out the terms, which include the parties, the property, the length of the lease, the rent, and other covenants, particularly concerning repairs and insurance. Certain covenants are implied in all leases (though the deed may vary or exclude them). In the case of the landlord, the usual implied covenants are (i) to enable the tenant to enjoy the property peacefully (i.e. quiet enjoyment); and (ii) not to derogate from his grant. In the case of the tenant, the usual implied covenants are (i) to pay the rent (including service charges); and (ii) to use the property for the purpose it is let for.

(b)-Two parties

The general rule is that a person cannot grant a lease for himself or play the role of a landlord and a tenant at the same time (s.743 & s.761 CTA 1985). Thus, there should be a landlord and a tenant.

(c)- Rent

Rent is the stead which has been agreed upon between landlord and tenant and stated in the lease. It does not need to be a sum of money; it may be fungible things like goods or non-fungible things like the performance of manual services (s.749 CTA 1985). If there is no rent mentioned or agreed upon in the contract, the lease is rescindable (s.748(2) CTA 1985). Rent may include service charges, but does not include tax, which is attached to the personality of the landlord¹. It may be paid in advance or in installments (s.751 CTA 1985). It is envisaged from section 742 CTA 1985 that the Civil Transactions Act considers rent to be the price of the benefit of the leased premises and it does not impose any obligation on the landlord to provide the tenant with a rent book.

(d)- Definite term

The term for which the lease is to run must be clearly laid down (s.751 CTA 1985)². A lease cannot run indefinitely or

¹ Mustafa M.H, 1996, The Practical Problems in the Rescission of the Lease Contract: Non-Payment of Rent, Cairo: the Law Library, p.76.

² See Naddawi A, Op.Cit, p.140.

be forever since a lease for perpetuity contradicts the essential nature of a tenancy¹.

(e)- Subject matter

Section 745 CTA 1985 provides that the subject matter of a tenancy is the benefit of the leased premises. Such benefit must be certain, i.e. the manner in which it is going to be obtained must be defined (s.746 CTA 1985). It must be legal, i.e. the leased premises must not be used in a manner which contradicts the rules of law, public order or morals, e.g. as a brothel, a place for gambling or storing narcotics².

(f)- Exclusive possession

This is the right to control the property or land and to exclude all other persons, such as strangers or trespassers, from it. Where a person is granted the right to use the property without the right of exclusive possession, the grant is not a lease but a licence.

4.3.2 The characteristics of the lease:

For a lease, there are eight distinguishing characteristics:

(a)- It is a named contract:

A lease is a contract named in law. The rules that it is governed by are stated in different laws, such as the Civil Transactions Act of 1985 and other laws.

¹ Fadel & Fatalawi, Op.Cit, p.216.

² See Zuhaili W, Op.Cit, p.233.

(b)- It is a consensual contract:

In theory, only offer and acceptance are required for the conclusion of the lease¹. This means that the lease contract is in principle not formal and it can be concluded orally, in writing, or by indication². This rule, however, is a complementary rule so that the parties to the contract may agree otherwise.

(c)- It is a binding contract:

A lease generates rights and obligations on both of its parties. Each of the parties enjoys rights and is subject to obligations³.

(d)- It is a reciprocal contract:

Each of the parties is entitled to receive a benefit in return for what he forwards. The tenant is liable to pay the agreed rent in return for his use and enjoyment of the leased premises and the landlord is liable to enable the tenant to enjoy peacefully and quietly the leased premises in return for rent.

(e)- It is a time contract:

A lease is a contract for a definite term and cannot be concluded forever. If it is concluded forever, or for an indefinite period, it is void, even though it may be considered as a sale contract if it satisfies the conditions required for a valid sale⁴.

¹ Fadel & Fatalawi, Op.Cit, p.165.

² Zuhdi Y, Op.Cit, p.6.

³ Lutfi M.H, 1990, Rules of Sale and Lease Contracts, Cairo: University of Cairo Press, p.135.

⁴ Lutfi M.H, Op.Cit, p.136.

(f)- It is a managerial contract:

A lease is not a contract of disposal like a sale contract, but it is a contract of management by which a landlord can exploit his property by letting¹. Therefore, the parties to the lease are not required to be of full legal capacity of disposal. It is sufficient if they enjoy managerial capacity.

(g)- It is of a variable nature:

The nature of the lease varies according to the nature of the use of the leased premises. It is residential if the property is leased for residential purposes and commercial if it is leased for commercial purposes².

5. Evaluation

From the above discussion, we have seen that the Civil Transactions Act No.5 of 1985 is the main legislation that governs matters relating to real property rights in the UAE.

UAE Civil Transactions Act distinguishes between ownership and possession in that ownership is an exclusive right to own a thing and to enjoy all privileges of ownership to the exclusion of everyone, whilst possession is only a right to possess or to hold a thing without the right to enjoy all privileges of ownership.

¹ Zuhdi Y, Op.Cit, p.6.

² Muhammad H.M, 1990, Principles of the Sale and Lease Contract, Cairo: University of Cairo Press, p.136.

One of the forms of ownership in the UAE law is the joint ownership, which means that each co-owner has his own share of the property, and this share may be separately alienated and inherited. Any joint owner is entitled to demand the division of the property, which is held in joint ownership, unless it is indivisible, such as the commonly owned parts in a building.

According to the majority of the law jurists, the co-owner's right in the ownership of the commonly owned properties is a genuine property right, which means that each co-owner has all the rights of the owner over his property (i.e. the right of use, the right of exploitation, and the right of disposal) and he enjoys all privileges of the ownership but, in the meantime, he is subject to all obligations as specified by law.

It is found that the concept of property in UAE law is so ample in that one cannot find a specific definition for it. It is, also, found that section 1133 CTA 1985 defines property in a way that is not in harmony with the Islamic jurisprudence as well as with the modern trend that recognizes the social function of property rights. Accordingly, section 1133 should be amended to the effect that it should state "property is a direct power that entitles the owner, within the limits of the law, to use, exploit and dispose of what he owns".

A property right has three distinguishing characters: it is a comprehensive right, an exclusive right, and a lasting right. It is subject to many legal restriction and other restrictions that aim to achieve the public benefit of the whole society.

It is seen that the rights and obligations of the co-owner with regard to the unit are governed by two systems; namely: the upper part and the lower part system, and the floors and flats system.

It is seen that each co-owner in the joint ownership of commonly owned parts enjoys many rights over these parts. These rights include the right to use the commonly owned parts, the right to make alternations to the common parts with some limitations, and the right to dispose of the common parts along with the individually owned unit. On the other side, it is seen that each co-owner is subject to many restrictions and obligations that include payment of the common parts maintenance costs, payment of the insurance premiums, not to relinquish his share in the commonly owned parts.

It is found that there are many legal transactions that can be made over the individually owned unit and the commonly owned parts; most notably sale and lease contracts. Each of these contracts is a bilateral transaction that essentially requires an offer and an acceptance of that offer. Offer is an indication of willingness to enter into a legally binding agreement and acceptance is an agreement to the terms of the offer. However, for an offer to be converted into a legally binding agreement or contract it must coincide with an acceptance that mirrors the whole terms of that offer. In specific words, the acceptance of the offer must be made in response to that offer and must correspond to its terms.

UAE Civil Transaction Act recognizes the freedom of the parties to conclude their agreements on their own terms and accept that their agreement should be enforceable by the courts, unless they come against the rules of law.

In the UAE Civil Transaction Act, the general rule is that the test for the existence of an agreement is an objective one. In other words, UAE Civil Transaction Act is often concerned with the objective appearance, rather than with the actual intention of the parties. It has tried to find a reliable objective criterion for determining the existence of mutual assent. such a criterion is represented in the developing of the concept of majlis al-aqd and in adopting the objective theory.

However, section 125 CTA 1985, which defines contract, needs a technical amendment. It should state "contract is the joining and consistence of the acceptance made by the offeree with the offer made by the offeror in a manner which proves the effect thereof on the object of the contract". This is because offer is the first expression that is launched by the offeror and acceptance is the following expression that is given by the acceptor in response to the first expression.

As for the Law No.7 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai, it is revealed that there are many point of strength and many

points of weakness in this Law. These are illustrated below:

(i)- The Law has clearly defined the parts that come under the common areas. It provides examples of these parts in sections 7 & 8 of the Law. However, it has stated that these parts are just examples the matter which means that there may be other parts not stated by these sections and this is a matter that is left to be decided by the co-owners themselves or that can be stated by the site plan itself. This envisaged from the concept of “without limitation” which is used by the Law in sections 7 & 8. (See ss.7-8 of the Law).

(ii)- The Law gives the co-owner a right to sell or dispose of his own unit as he pleases. The word “dispose” includes all kinds of depositions, whether these dispositions are unilateral dispositions, e.g. grant, waqf endowment, or bilateral dispositions, e.g. sale, lease, mortgage, etc. This means that the legislator does not deny the co-owner’s right of ownership or confine the co-owner to limited disposition or dispositions. (See for example s.10 & s.15 of the Law).

For the benefit of the whole co-owners, however, the Law prevents the co-owner from disposing of the commonly owned parts, whether in whole or in part, separately from the unit, which he individually owns. (See s.16 of the Law).

(iii)- The law has introduced a legal mechanism by virtue of which each co-owner is given the right to purchase another co-owner’s share in a unit offered for sale, providing certain

procedures are to be followed and certain requirements are to be met. In fact, this helps avoid ambiguity, reduces litigation, and saves the time of courts. In addition, by introducing this mechanism, the legislator has excluded buildings and flats from the sphere of the application of preemption, which is a legal mechanism that is introduced by the Civil Transaction Act in order to furnish the owner of a share in land to purchase the other partner's share in the land which is offered for sale, and which is governed by long procedures. (See ss.12-14 of the Law).

(iv)- The Law provides for the establishment of the owners' association once the first sale of any unit is made. In fact, this achieves the benefit of all co-owners who can find a certain body that can represent them and litigate on their behalf. However, the Law does not provide for the establishment of such association before sale. This means that before sale the building owner can litigate under his own name. (See ss.17-18 of the Law).

This is different from what the position is under some Arab laws, such as the Jordanian Ownership of Floors and Flats Law No.25 of 1968 and its Amendments, which provides that such association is established by force of law when the number of floors and flats in the building reaches four or more. From our part, we may argue that in this issue the Jordanian legislator was more specific than the legislator of Dubai even though the Jordanian legislator does not require any sale as a pre-condition for the establishment of the association. (See s.3 & s.12 of the Jordanian Law).

(v)- The Law has stipulated that the owners' association is a non-profit establishment. It, also, provides that it has a separate legal entity from its members. As we believe, this will help achieve the purpose behind its establishment and will be beneficial for the whole co-owners (See s.18 of the Law).

(vi)- The Law imposes many obligations on the co-owners. These obligations include the obligation to pay the service fees. In case of default to pay such fees by any co-owner, the Law provides a mechanism and strict procedures that aim to force the co-owners to pay his share in the service fees. This comes to the benefit of the whole co-owners as well as to the benefit of the building and helps keep it in a good condition. (See s.25 of the Law).

(vii)- The Law imposes an obligation on each co-owner to pay his share in the service fees, which includes the premium insurance fee. In fact, this is very important especially in the case of the demolition of the building as a result of storm or fire or any other cause, so the owners' association can demand the insurance company to pay the insurance sum and this may help reestablish the building. The stand of the legislator of Dubai, in this concern, is better than the stand of the Jordanian legislator, for example, which does not provide for a similar provision or even does not imposes any obligation on the co-owners to pay such a premium.

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