



## PROVISIONS OF POSSESSION IN CIVIL LAW

**Assistant Lecturer: Mohammed Kadhim Neama**

**Islamic University of Lebanon**

[mohammedkazim326@yahoo.com](mailto:mohammedkazim326@yahoo.com)

Article history:		Abstract:
<b>Received:</b>	10 <sup>th</sup> March 2024	The Iraqi legislator dealt with possession, its transfer, and its protection, in recognition of the importance of the person's right to possession and the right of society, as he addressed them in the civil law and the civil facilities law, and at the same time emphasized the specificity of that protection and that the legal protection of real estate possession is the path through which guarantees of justice are achieved, and possession lawsuits are the legally prescribed means of protecting the possessor from any attack. Based on the above, the value of compensation must be taken into account in possession claims, in proportion to the current economic situation in Iraq.
<b>Accepted:</b>	7 <sup>th</sup> April 2024	
<b>Keywords:</b> Insurance mortgage. Accessory right . real estate		

### INTRODUCTION

Praise be to Allah the Lord of the worlds and may the blessings and peace of Allah be upon the most honored of messengers our master Muhammad and upon all his family and companion.

Allah created the human beings and imprinted in them the love of the land and the love of possessing and owning it, because it is the source of man's livelihood, including food, drink, housing, and other things. It is not strange that man seeks to own and seize the land, due to its stability and continuity throughout the life of this world. The legal systems that regulate ownership have developed historically, and possession has emerged. Although it is merely a realistic condition, it has an important role in the legal system and serious functions. It occupies a prominent place among the reasons for gaining ownership, because it is the tangible material manifestation that enables the exercise of the right to ownership because it is the apparent title of ownership, but in fact, it can be said that it has become in importance to a point where it surpasses the right of ownership, because it is an effective tool for exploiting and benefiting from things and rights. Therefore, the interest in organizing it and working to protect it was a manifestation of protecting stability and security in society, by determining the apparent realistic conditions, and because of the importance of the subject of possession and its transfer, especially the important effects resulting from its transfer, such as what Iraq witnessed of significant effects on the transfer of possession and disputes over it, especially in recent years, and the scarcity of academic studies on this subject, in addition to the development of the legal systems that historically regulate ownership, so possession appeared, and although it is only a realistic situation, However, it has an important role in the legal system due to the importance of the issue of possession and its transfer, especially the important effects that result from its transfer, such as what Iraq witnessed of the great effects on the transfer of possession and disputes over it, especially in recent years.

#### The importance of the research

The research is of great importance in explaining possession in Iraqi civil law in terms of explaining the nature of possession, its elements, possession claims, and its effects.

#### Research problem

The problem of research arises through the serious functions of possession, as it occupies a prominent place among the reasons for gaining ownership, because it is the tangible material manifestation that enables the right of ownership to be exercised in an actual manner. It is the apparent title of ownership because it is an effective tool for exploiting and benefiting from things and rights. Therefore, the interest was in organizing it and working on Protecting it is an aspect of protecting stability and security in society, by determining the apparent realistic conditions.

#### Research Methodology

The researcher used the descriptive analytical method by analyzing legal texts and extrapolating the opinions of jurists who addressed the subject of the study.

#### Search Plan

**The first topic: The nature of possession in Iraqi civil law.**

**The second section: Possession claims and their defects**

## **The First Section** **The nature of possession**

Possession is considered one of the important topics within the scope of civil law, as the commentators have endeavored to explain the definition of possession, especially in the language and terminology of legal jurisprudence, as well as the elements of possession. All of this is what we will discuss in this study, the definition of possession linguistically, terminologically, and legally, the elements of possession through the following:

### **The first requirement**

#### **Definition of possession linguistically, terminologically and legally**

##### **Section One: Definition of possession in language:**

Possession is a language taken from possession and possessory with one meaning and possession in the Arabic language has several meanings, including:

- 1 .Combining and joining: anyone who joins something for himself, whether money or anything else, has taken possession of it, and held it in his possession.
2. Entitlement: It also comes in the sense of entitlement. If a person acquires land between its borders, he is entitled to it and no one else <sup>(1)</sup>.

### **Second Section**

#### **Definition of possession terminologically**

Jurists differed in defining possession according to their view of possession. Some of them see it as a material condition, and some of them believe that it is the apparent aspect of exercising the right , While others see it as a physical situation with the intention of ownership or possession , so it is a real authority exercised by the possessor of something such that it is consistent in its external appearance and in the intention of the possessor with the exercise of the right of ownership or any other real right, even if this authority is not based on a right recognized by law<sup>(2)</sup>.

It is understood from the above that the existence of a right is not necessary for the existence of possession. The thief, the usurper, or whoever believes, contrary to reality, that he is the owner of the right, is considered a possessor as long as he has actual authority over the thing, appearing over him as the owner or the owner of another real right.

### **Section Three**

#### **Legal definition of possession**

Article (1154) of the Iraqi Civil Law No. (4) of 1951 defines that possession is (a material situation in which a person by himself or through an intermediary, has effective control over something in which it is permissible to deal with it or actually use it as a right). According to this definition, possession in its legal sense is considered merely a realistic situation that involves the possessor exercising actual authority over the thing, whether this authority is based on a right or not based on any right.

Some jurists believe that the definition of possession stated in the Iraqi Civil Law is incomplete and deficient in the ownership element, and they considered that it dealt with material possession without possession with the intention of ownership<sup>(3)</sup>.

There is a jurisprudential disagreement regarding the legal nature of possession, as some jurists believe that possession is a right, while others believe that it is a material fact upon which the law has some effects.

Some jurists believe that possession is a right because it represents the characteristics of the right to it, so there is the right of possession just as there is the right of easement and the right of usufruct. The right of possession basically includes the right to seize something as long as it is not proven that it is owned by someone else, and this right is invoked before everyone and has all the characteristics of an absolute right.

It is worth noting that the supporters of this opinion were unable to root this right and attribute it to the types of real or formal rights. Therefore, they concluded that possession is of a special nature related to the protection that was legislated to protect the possessor against possible attacks on possession. It is in the public interest to enable possessors of their possession to ensure the stability of apparent transactions, until their hands are removed by legitimate means. This right exists in itself, and is neither a real right nor a personal right, until their hands are raised by legitimate means. This right exists in itself, and is neither a real right nor a personal right <sup>(4)</sup>.

---

<sup>(1)</sup> Abu Al-Fadl Jamal Al-Din Muhammad Ibn Makram Ibn Manzur Al-Ifriqi Al-Misri, Lisan Al-Arab, Volumes 3-4, Volume Four, Beirut Press, 3<sup>rd</sup> Edition, New Revised Edition 2005.p.4545.

<sup>(2)</sup>Hamid Mustafa, Iraqi Civil Law, Part 1, Ownership and its Causes, Articles (61-1048 , 119872), Trade and Printing Company Limited, Baghdad 1953 AD p.123

<sup>(3)</sup> Dr. Ramadan Abu Al-Saud, Wajiz fi al-huquq al-'ayniyah al'asliya , their Provisions and Sources, New University House, 2007.p.213.

<sup>(4)</sup> Muhammad Kamel Pasha, Explanation of the New Civil Law, Original Real Rights, Part 4 Reasons for Gaining Ownership, Possession and Prescription, 2<sup>nd</sup> edition, 1371 AH. 1952 AD p776.

This view is criticized by the fact that possession cannot be considered one of the rights that can be used as a subject of transaction. Whereas the rights are in accordance with the text of Article (66) of the Iraqi Civil Code, which stipulates that (financial rights are either real or personal.)

Possession is neither a real nor a personal right, according to the provisions of Articles (68-69) of the Iraqi Civil Code.

Most jurists consider possession to be a material fact and not a right, and this is what the Iraqi legislator took from his definition of possession in the text of Article (1145), the first paragraph, that it is (a material situation in which a person by himself or through an intermediary, has actual control over something in which it is permissible to deal with it or actually uses it as a right).

Since possession is a financial condition, it is not a real right, nor is it a personal right, and it is not a right at all, but rather a reason for gaining the right. Possession is a simple incident that creates legal implications.

The law protects possession and has its effects, whether it is based on a right of the possessor or whether it is based on a right. The aim of this protection is to take into account important considerations that are sufficient to justify them.

On the one hand, it is related to the security of society and the stability of the system in it with observation that this legal protection is temporary, as anyone who claims other than the apparent status of possession can resort to legal methods to prove his right<sup>(5)</sup>. On the other hand, possession is usually based on a right, where the possessor is himself the owner of the thing or the holder of a real right over it. If this is not the case, then the person who disputes it must resort to the judiciary to prove his right of thing to the possessor's possession<sup>(6)</sup>.

### **The second requirement Possession elements**

Possession has two elements: material and moral. The material element means the group of material actions undertaken by the possessor in which he appears as the holder of the real right. These actions must be consistent with possession in its external appearance, such as possession by the owner. The moral element means the intention to use the thing that the possessor possesses and uses it as the owner or as the holder of another real right. Accordingly, that is, the intention to appear as having a right in real over the thing, we will discuss them through the following two sections:

#### **First section Material Element**

We mentioned that what is meant by the material element is the set of material actions undertaken by the possessor, in which he appears as the holder of the real right, and these actions must be consistent with the possession in its external appearance, such as the owner's possession.

The material works through which the material element is achieved in using, exploiting or changing the thing, depending on the nature of the thing. Possession of agricultural land is through cultivation and possession of a house is through inhabitation.

As for legal acts, such as selling and renting, they alone are not sufficient to achieve the material element of possession because they can be issued by someone other than the possessor and because they relate to the real right such as ownership and not to the material thing itself.

Likewise, possession can be by intermediary, such as in the name of the possessor and for his account, i.e. indirect possession such as possession by the tenant for the account of the lessor, and this type of possession has the material element but not the moral one<sup>(7)</sup>.

#### **Second section The moral element**

What is meant is the intention to use the thing that the possessor possesses and use it as an owner or as the holder of another real right over it, that is, the intention to appear as the owner of a real right over the thing that he possesses for himself and for his own account, and the moral element is what determines whether possession is legal or accidental. As is known, the possessor must have the legal element (capacity), and if he is not qualified, the guardian or custodian, guardian as well as the legal person, must have the capacity. Other than that, it is not valid for the moral element to be available to someone other than the possessor.<sup>(8)</sup>

In summary, for possession to be legal, it must have both a material element and a moral element, such as the possession of the lessor and the lender...etc.

---

<sup>(5)</sup> Dr. Ramadan Gamal Kamel, Legal Protection of Possession, National Center for Legal Publications, 2nd edition, 2004-2005.p.210.

<sup>(6)</sup> Dr. Abdel-Razaq Al-Sanhouri, Al-Muwasiit fi Explanation of the New Civil Law, part. 2, Al-Halabi Legal Publications, Beirut - Lebanon, New 3rd Edition, 2000. P.286.

<sup>(7)</sup> Dr. Ali Hassan Al-Dhanoun, Explanation of the Iraqi Civil Law, Original Real Rights, Al-Rabitah Printing and Publishing Company Limited, Baghdad, 1954 p. 657.

<sup>(8)</sup> Dr. Ali Muhammad Al-Amin, The statute of limitations for ownership in Lebanese law, a comparative study, Al-Halabi Legal Publications, Beirut, 1993, p. 543.

As for accidental possession, it has only the material element without the intention of possession, that is, without the moral element, such as possession by a tenant.

**The second section  
Legal protections for possession**

It has become clear to us that the law protects possession for its own sake and has its effects, regardless of whether it is based or not on a right recognized by the law. The Iraqi Civil Code has established three lawsuits for possession: the lawsuit to recover possession, the lawsuit to prevent exposure, and the lawsuit to stop new work. This lawsuit protects (possession of real estate) only. As for movables, they are protected by the rule (possession of a movable property is a title deed), and because movables are less important than real estate, modern laws limit this claim to protecting real estate and not movable property.

**The First Requirement  
Possession Claims**

Possession lawsuits are three lawsuits: the lawsuit to recover possession, the lawsuit to prevent exposure, and the lawsuit to stop new business. These lawsuits are of great importance in the field of preserving the right of the possessor to exercise his right to possession. We will address possession lawsuits through the following branches:

**First Section  
Possession Recovery Claim**

The Code of Civil Procedure and the Iraqi Civil Code deal with the subject of claims for recovery of possession, but I will deal with the Iraqi Civil Code because it is the focus of my research. It dealt with Article (1150 paragraph 1) of the Iraqi Civil Code<sup>(9)</sup>, which is in the process of recovering possession, and it defined what is meant by it, after specifying the plaintiff therein and the other conditions, as the article stipulates that (the possessor of the property, if possession is taken from him, must ask the court of first instance return it to him within one year from the date of dispossession). The goal of this lawsuit is not to protect the possession itself, as mentioned above, but rather its goal is to remove the effect of the forbidden act that violates peace and public security committed by the person who robbed someone else of possession. The lawsuit to recover possession aims to restore the possession of the possessor to the property from which possession was stolen, to request, within one year, from date of dispossession of ownership and its return to him<sup>(10)</sup>.

If the seizure of possession was hidden, the period begins to run from the time this is revealed. If the possessor wants to recover the property, and both the person recovering and the one disputing possession have not had a full year of possession, a ruling shall be given to whose possession was better, i.e. the possession that is based on a legal bond. If neither of the possessors has a bond or their bonds are equal, the possession is the right by preference and the earlier possession in date. One of them claims to have been legatee of a property, and the other claims to have inherited it, then the possession of the legatee is preferable because it is earlier in the date of the legal bonds on which the claimant for recovery relies.

A recovery lawsuit may be filed by someone acting on behalf of someone else in possession. This lawsuit has nothing to do with ownership, so the accidental possessor is not deprived of it<sup>(11)</sup>.

As for proving this claim, the law makes it easy to prove it, as it is done by proving possession, which is a material fact proven by all means of proof, including the testimony of witnesses and evidence<sup>(12)</sup>. This is because the Iraqi legislator defined possession in Article (1145) of the Iraqi Civil Code as a material fact.

**Second Section  
Exposure Prevention Claim**

The lawsuit to prevent exposure is considered one of the most important possession lawsuits, as it is the main possession lawsuit, or the optimal possession lawsuit, because it aims to protect the possession itself. It is also filed in all forms of exposure, unlike other possession lawsuits whose filing is limited to a specific form of exposure.<sup>(13)</sup> The Iraqi legislator took up this lawsuit, as Article (1154) of the Iraqi Civil Code stipulates that: (Whoever possesses a

---

<sup>(9)</sup> look : Text of Article 1150 of the Iraqi Civil Code

<sup>(10)</sup> Judge Sadiq Haider, Vice President of the Court of Cassation, Explanation of Civil Procedures, a comparative study, Al-Sanhouri Library, Baghdad, 2011. P.120.

<sup>(11)</sup> Dr. Muhammad Monji, Possession, Distribution of the Knowledge Establishment, Jalal Hajji and Partners, ed., 2005 p.104..

<sup>(12)</sup> Dr. Muhammad Taha Al-Bashir and Dr. Ghani Hassoun Taha, Original Real Rights, Accessory Real Rights, Part 1, Higher Education Press, 1982 AD.p.251.

<sup>(13)</sup> Dr. Hamam Muhammad Mahmoud Zahran, civil real rights, property rights, provisions on property rights, New University House, Cairo, 2010 p.321

<sup>(13)</sup> Counselor Ezz al-Din al-Danasouri and Professor Hamid Okaz, Commentary on the Code of Procedure, Part 1, 2004 edition.p.312.

property and continues to possess it for a full year, and then suffers an exposure in his possession, may within one year of the occurrence of the exposure file a lawsuit to prevent this infringement before the Court of First Instance ).

Article (11), paragraph (2) of the Civil Procedure Code defines it by saying (it requires that the possessor be subjected to an attack that does not amount to the disposition).

Accordingly, it can be defined as (that lawsuit filed by the possessor of the property against others requesting that it be prevented from harming him during his possession).

The lawsuit to prevent exposure is brought by the possessor against the person who denies his right to this material dispute or against the person who commits an act involving the dispute in it<sup>(14)</sup>

This exposure may be material or legal: material exposure is like placing electricity wires on the roof of a building, cutting down trees, building on someone else's land, digging a hole in the land, harvesting crops, and so on.

The exposure may be legal and means any legal action that conflicts with the rights of the possessor and would make possession a subject of dispute or litigation before the courts. Such as a warning given to the possessor requesting the removal of agriculture, uprooting existing structures on the land, or executing a judgment on a property in the possession of a person who was not a party to the case in which the judgment was issued.

These acts of exposure, whether material or legal, if they are consecutive, interconnected, and committed by one person, create one continuous case of exposure. However, if they are numerous, distant, independent of each other, or committed by different people, then each of these acts is considered a stand-alone case of exposure, and there are multiple claims to prevent exposure. By the multiplicity of these actions or persons issued by them <sup>(15)</sup>.

Despite this, the principle is that a lawsuit to prevent infringement is filed against the objector who attacks the plaintiff in his possession, but it is permissible to file it against a third party, even if he has good faith.

The lawsuit is also filed against the general successor (the heirs), and the specific successor (the buyer and others) of the party who is at exposure , even if this successor is in good faith, because this lawsuit is in real and follows the property in whatever hands it may be. The plaintiff may include the lessor or the principal in the lawsuit as a guarantor. However, if what is required in the lawsuit to prevent the exposure is to leave the property or restore the situation to what it was before the exposure , then this lawsuit can be filed against the third party to whom the property was transferred, even if he was in good faith and did not even know about this exposure, and the plaintiff directs this request to him, the same applies to the objector himself, but he cannot ask this third party to compensate for the exposure he suffered, unless he proves that he has bad faith and knows that the harm occurred.

The possessor resorts to the judiciary to stop the attack and protect his possession from exposure , provided that his possession of the property continued for at least a year before the exposure occurred, and that a lawsuit to prevent the exposure is filed within one year from the date of the exposure , and this is what Article (1154) of the Iraqi Civil Code has stated, because if it continues If the usurper quietly took possession of the property for a period of one year, the possessor's hand was removed and the usurper became a possessor protected by the law.

### **Third Section Claim for Stopping New Business**

The legislator went to great lengths to protect the possession. He was not satisfied with protecting it from plunder and was not satisfied with protecting it from exposure. Rather, he organized, in addition to that, the protection of it from exposure before it occurs. The Iraqi legislator approved this claim in the text of Article (1155) Paragraph (1) of the Iraqi Civil Code by saying (Whoever possesses a property and continues to possess it for a full year and fears, for reasonable reasons, that he will be subjected to new actions that threaten his possession, has the right to file a claim before the Court of First Instance requesting that these actions be stopped, provided that they have not been completed, and that a year has passed since they were started. )

This claim exists in the law to confront cases of threat of possession, and its subject is not an exposure that has been completed, but rather works that had been completed would have resulted in an exposure of possession, such as if a person started building a wall that had been completed to block the light on a neighbor's view, then the neighbor files a lawsuit to stop the new works, on the condition that there is no a year has passed since the work was started, provided that it has not been completed. If the work is completed, the claim that is filed will be a claim to prevent exposure.

In brief is that it is required in a lawsuit to stop new works - as it is required in the two previous lawsuits: - that the plaintiff has been in possession of the property for a period of not less than one year and that the possession has met its conditions. It is also required that it be filed before the completion of the new works, and in any case before one

---

<sup>(15)</sup>Judge Lafta Hamel Al-Ajili, rulings on claims for protection of possession (a study in light of the provisions of the law, the opinions of jurists, and judicial applications), Al-Kitab Press - Baghdad - Al-Mutanabbi Street - 1<sup>st</sup> edition, 2012.p.192.

year has passed since its commencement <sup>(16)</sup>. It is worth noting that the ruling that can be issued in this case is to stop the new works without violation, as stated in Article (1155) of the Iraqi Civil Code. (The court issues a temporary ruling to stop the new works or to continue them...) When the dispute is brought before the possession judge, he will issue a ruling that does not contain one of two things:

1. Either the judge sees that the plaintiff is right in his claim and assesses that there are reasonable reasons to fear that there will be an actual exposure to the plaintiff's possession if the works required to be stopped are completed. Thus, the possession judge rules to stop the new works and not to continue them until the claim of right or ownership is filed and the case is completed.

Or the possession judge finds that the plaintiff is not right in his claim, and he has the right to reject his claim because the conditions for the claim to stop the new works are not met, so he rules to reject the claim, and then the defendant continues with the new works that he started until the right claim or the ownership claim is filed.

### **The Second Requirement Disadvantages of Possession and its Effects**

In this requirement, we will address the disadvantages of possession and its effects through the following two requirements:

#### **First Section Disadvantages of Possession**

One of the disadvantages of possession is that it is permissible for the successor to prove that he was in good faith when the possession was transferred to him from his predecessor, and he has the right to cling to that against others even if his predecessor was in bad faith. This is what is stipulated in Article (1449), the first paragraph of the Iraqi Civil Code (possession is transferred to the general successor in its capacity, However, if the successor proves that he was in good faith, he may cling to that even if his predecessor was in bad faith.)

It is worth noting that if the heir is a usurper of a property owned by someone else and his heir succeeds him in possession of this usurped property, the heir cannot, if he is completely ignorant of the usurpation incident, invoke good faith, but the heir can, after learning of the usurpation incident, go to whomever he believes is the owner of the property and buy it from him. Thus, he obtains a valid reason. If the real owner of the property appears, he can claim his new possession as evidence.

#### **Second Section Effects of possession**

##### **First: The transfer of possession by force of law from the previous holder to the general successor**

Possession is transferred through succession. The predecessor's possession is transferred to the general successor in its characteristics, and this transfer of possession is by force of law, such as the transfer of possession to the heirs. In this case, possession is transferred in the same capacity as that of the predecessor. The successor's possession is a continuation of the predecessor's possession, and the successor's possession is not considered a new possession. If the predecessor's possession was defective due to one of the defects, it is transferred to the general successor in its capacity until the defect that marred it is removed. If the predecessor's possession was incidental, then the general successor's possession will be incidental as well.

If the predecessor was in possession in good faith, then possession is transferred to the general successor according to the aforementioned description. This is also the case if the predecessor in possession was in bad faith.

##### **Second: Transfer of possession to a private successor**

A private successor is someone who receives from another person the ownership of a specific thing in person or a right in real over that thing.

The tenant who purchases the thing subject to possession and retains it as he has become its owner in these two cases does not receive a material delivery, but rather a legal delivery, and this is stipulated in Article (953) of the Egyptian Civil Code, that possession may be transferred without material delivery if he continues with his hand on his account whoever succeeds him in possession, or the successor continues to hold the same account.

The delivery may be symbolic, which is carried out by handing over bills of lading for goods or house keys, for example.

The successor's particular possession is a new possession from the possession of his predecessor, and his special characteristics are established, which may be similar to the characteristics of the predecessor's possession or may differ from them<sup>(17)</sup>.

The possession of the predecessor may be original, but the possession of the successor is incidental, such as the mortgagee's possession of a mortgage and the tenant, so the owner's possession is original, while the lessee's possession is incidental possession. The predecessor's possession may be incidental and the successor's possession is original. The lessee would sell the property under his possession to another possessor who was good or bad faith. If the possession of the particular successor is independent of the possession of the predecessor, this does not prevent the successor's possession from being added to the possession of the predecessor in whatever effect is deemed to be his legal gain, and this is what is stipulated in Article (1149) of the Iraqi Civil Code (the successor, whether general or

<sup>(16)</sup> Dr. Salah al-Din al-Nahi, *Al-Wajij fi Civil and Commercial Pleadings*, Part 1, National Publishing and Publishing Company, Baghdad 1992.p.561

<sup>(17)</sup> Judge Lafta Hamel Al-Ajili ,*ibid* p. 198.

specific, may He adds to his possession the possession of his predecessor in all the effects of the law). However, this annexation has conditions including:

- 1 .The predecessor's possession must be valid in order to produce legal effects for gaining ownership by prescription. If the person from whom possession is received is an accidental possessor such as a tenant, then the possession of the lessee that he wants to include in his possession does not produce any effect because it is not valid for gaining ownership by prescription.
2. The possession of the predecessor, whom the successor wants to include in his possession by the five-year statute of limitations for ownership, must be his possession of it in good faith and a valid reason. If that possession is not based on good faith and a valid reason, then the general successor cannot adhere to that. If the predecessor was in bad faith, then the alternative is to count a new period for acquiring ownership within the five-year statute of limitations, provided that there is the correct reason and good faith.

Based on the above, possession is transferred to a successor, either by inheritance or through a legal relationship between the two parties, such as sale or lease. However, if the current possessor does not have any legal relationship with the predecessor, such as if the possessor obtained possession by usurpation, then the period of the predecessor is not included in the successor, because the current possessor is He then gained possession initially, not by transfer. From a previous possessor, even if the act (usurpation) that caused the possession to pass to a successor may have led to the cancellation of the previous possession. <sup>(18)</sup>

It is worth noting that possession is lost if it is usurped from the possessor unless he regains it within a year. In the event of recovery, he is not considered to have lost possession. However, if he does not regain it within this period, he is considered to have lost it from the day he usurped it. This is consistent with the Egyptian Civil Law, where Article (957/2) stipulates that possession expires if the trust continues for a year arising from a new possession that occurred against the will of the possessor or without his knowledge.

### CONCLUSION

Through what was previously detailed, we can arrive at the end of this research to a set of conclusions and suggestions, including:

#### Conclusions:

- 1 .The Iraqi legislator dealt with possession, its transfer, and its protection, in recognition of the importance of the person's right to possession and the right of society, as it is dealt in the Civil Law and the Civil Accompaniments Law, and at the same time emphasized the specificity of that protection.
- 2 .Legal protection of real estate possession is the way through which guarantees of justice are achieved, and possession lawsuits are the legally prescribed means of protecting the possessor from any attack.
3. The purpose of the possession claim is to fully protect the possession itself, independent of protecting the property or the origin of the right.

#### Suggestions:

Based on the above results, it was suggested that the compensation value should be taken into account in possession claims in proportion to the current economic situation in Iraq.

### SOURCES AND REFERENCES

#### First: Language books:

Abu Al-Fadl Jamal Al-Din Muhammad Ibn Makram Ibn Manzur Al-Ifriqi Al-Misri, Lisan Al-Arab, Volumes 3-4, Volume Four, Beirut Press, 3<sup>rd</sup> Edition, New Revised Edition 2005

#### Second: Legal books:

- 1 .Hamid Mustafa, Iraqi Civil Law, Part 1, Ownership and its Causes, Articles (61-1048 , 119872), Trade and Printing Company Limited, Baghdad 1953 AD.
- 2 .Dr. Ramadan Abu Al-Saud, Wajiz fi al-ḥuquq al-'ayniyah al'asliah , their Provisions and Sources, New University House, 2007.
3. Dr. Ramadan Gamal Kamel, Legal Protection of Possession, National Center for Legal Publications, 2nd edition, 2004-2005.
- 4 .Dr. Salah al-Din al-Nahi, Al-Wajij fi Civil and Commercial Pleadings, Part 1, National Publishing and Publishing Company, Baghdad 1992.
- 5 .Dr. Abdel-Razaq Al-Sanhouri, Al-Muwassit fi Explanation of the New Civil Law, part. 2, Al-Halabi Legal Publications, Beirut - Lebanon, New 3rd Edition, 2000.
6. Dr. Ali Hassan Al-Dhanoun, Explanation of the Iraqi Civil Law, Original Real Rights, Al-Rabitah Printing and Publishing Company Limited, Baghdad, 1954.
- 7 .Dr. Ali Muhammad Al-Amin, The statute of limitations for ownership in Lebanese law, a comparative study, Al-Halabi Legal Publications, Beirut, 1993.
- 8 .Dr. Muhammad Monji, Possession, Distribution of the Knowledge Establishment, Jalal Hajji and Partners, ed., 2005.
- 9 .Dr. Muhammad Taha Al-Bashir and Dr. Ghani Hassoun Taha, Original Real Rights, Accessory Real Rights, Part 1, Higher Education Press, 1982 AD.

---

(18) Judge Lafta Hamel Al-Ajili, op. cit., p. 199

10 .Dr. Hammam Muhammad Mahmoud Zahran, civil real rights, property rights, provisions on property rights, New University House, Cairo, 2010.

11 .Counselor Ezz al-Din al-Danasouri and Professor Hamid Okaz, Commentary on the Code of Procedure, Part 1, 2004 edition.

12. Judge Sadiq Haider, Vice President of the Court of Cassation, Explanation of Civil Procedures, a comparative study, Al-Sanhouri Library, Baghdad, 2011. Dr

13 .Judge Lafta Hamel Al-Ajili, rulings on claims for protection of possession (a study in light of the provisions of the law, the opinions of jurists, and judicial applications), Al-Kitab Press - Baghdad - Al-Mutanabbi Street - 1st edition, 2012.

14. Muhammad Kamel Pasha, Explanation of the New Civil Law, Original Real Rights, Part 4 Reasons for Gaining Ownership, Possession and Prescription, International Press, 2nd edition, 1371 AH. 1952 AD.

**Third: Laws**

1 .Iraqi Civil Law No. 40 of 1951.

2 .Iraqi Civil Procedures Law No. 83 of 1969.

3. Egyptian Civil Law No. 131 of 1948.