

## Case Two

Occupation of any property requires having a legal document enabling the occupier to make use of the property. Such document may be in return for nothing as agreed with the landlord or in return of a given thing such as leasing agreement. It may also be an assignment along with the right to live in the property as in guarding contracts under which the landlord allows the guardian to occupy the property partially or wholly to guard it, provided that he should hand it upon request. As for occupation in other cases and without consent of the landlord, this is considered as assuming which is subject to punishment under the law. In this case, the landlord may go to investigation or civil courts as following:

- 1- Register a complaint against the assuming family in accordance with the provisions of Article 428 of Penal Code No. 111 of 1969 and Decision No. 36 of 1994 under which the penalty may reach imprisonment for a period not exceeding 10 years depending on investigation facts. The criminal court will be the competent court to look in the case as the concerned penalty exceeds imprisonment for 5 years. After conviction becomes final, the landlord will go to civil courts based upon the ruling issued to file a case called prevention of objection, demanding the court to force the assumer to hand to the landlord the property vacantly and incur all expenses. The landlord may also claim under another case double rental and value of damages incurred in the property in accordance with the provisions of Article 197 of Civil Code No. 40.
  
- 2- In case occupation of the assuming family resulted is loss of furniture, this is a two-fold issue: first: In case the family disposed of the furniture after committing assuming, breaking the locks, and seizing and selling the furniture, Articles 443, 444 of Penal Code No. 111 of 1969 will apply to the case, as the assumer here committed a number of crimes such as seizing the property, disposing of the furniture and articles after breaking the locks. Second, in case the loss of furniture resulted from ignorance, the landlord may include in his claim the value of lost furniture and damaged furniture, as such furniture was used without the consent of its owner.
  
- 3- The crime of verbal threatening is considered a misdemeanor. In this case, the landlord may go to the investigation court to register a compliant in accordance with the provisions of Article 432, while if the crime is threat to kill using weapons, the crime falls under Article 430 of Penal Code No. 111 of 1969, and is considered as a felony related to the criminal court. In case the threatening intends to scare using organized gangs under an individual or collective terrorist act, the assumer will be subject to the provision of Anti-terrorism Law No. 13 of 2005. Resorting to this law is determined by the facts, and it applies in case displacement resulted from sectarian motives with the intention to ignite sectarian tension, or if the displacement aimed to create organized gangs that depend on displacement in its crimes such as kidnapping and killing. In fact, in the case of some hot spot which is restricted to one category of Iraqi society after transferring the other categories according to an organized displacement, bringing the doers to justice is a duty and outcome of law application.

This is our viewpoint of case two

Judge Ala'a Jawad Hamid

### Case Three

Sale and leasing provisions are provided for in Civil Code No. 40 of 1951, and such provisions are of general nature. As for sale and leasing of property in case mentioned, it requires the following:

- 1- Sale of property will be carried out by the landlord holding the title or the person who has the right to sell or lease under an irrevocable general power of attorney. To be legal, the sale contract should be registered with Real Estate Registration Department in accordance with the provisions of Article 3/Paragraph 2 of Real Estate Registration Law No. 23 of 1971. In case the contract is not registered with Real Estate Registration Department, it will be null and void. Accordingly, nobody can sell a property he does not own unless he forges official documents, claiming that he is the landlord. In this case, he will be subjects to the penalties provided for in Article 289 of Penal Code No. 111 of 1969.

Selling property under sub-contract is null and void unless such contracts are registered with Real Estate Registration Department in the attendance of the seller and purchaser before the competent employee or whomever legally substitutes him at Real Estate Registration Department.

Ministry of Justice, which controls Real Estate Registration Department, issued a circular rejecting all power of attorney, even if it is irrevocable general power of attorney, fearing of forgery.

In case the purchaser of a property under a sub-contract has made improvements after receiving the property, he may file a case against the seller in accordance with the provisions of Decision of Revolutionary Command Council (disbanded) No. 1189 of 1977 before the court of first instance.

- 2- Leasing the property in the third case is subject to Property Leasing Law No. 87 of 1979 and its amendments, as Article 1/A reads: "The provisions of this Law shall be applied to the property leased by Iraqis for living purposes within the boarder of Baghdad Municipality and municipalities, except for newly built property."

Such provision has to do with the property, while in terms of the conditions of the landlord, he should be the landlord or has a share not less than 51 per cent of the total size of the property. Otherwise, such person should have the consent or authorized by a general or special power of attorney, allowing him to lease the property.

To ensure the right of occupation, the tenant should hold a leasing document, while the verbal contract is difficult to be proven.

According to the explanation above, it is difficult to understand how can a person other than the real landlord with no authorization sell or lease the house in question in case three. In all cases, the sale or leasing conducted by a person other than the real landlord with no authorization sell or lease the house is null and void, and the real landlord has no liability thereon. The person who has purchased or leased the house can refer to the fake seller or leasor he dealt with, claiming the amount paid in accordance with the articles on guarantee accrual provided for in Civil Code No. 40 of 1951.

Therefore, the sale contract or leasing agreement do not apply to the real landlord who has no liabilities.

- 3- Killing with no severe conditions related to the punishment provided for in Article 405 of Penal Code No. 111 of 1969, is considered as felony with life-time imprisonment. In case there are severe conditions, the legal description will change in accordance with the provisions of Article 406 of the same code, and the punishment will be execution. In case the killing is accompanied by threatening, violence, as well as the reasons provided for in Anti-terrorism Law No. 13 of 2005, Anti-terrorism Law will be applicable.

I think the law to be applicable to this case is Anti-terrorism Law No. 13 of 2005, as killing and property seizure was accompanied by threatening, violence, as well as under conditions and environment to which the said law applies.

Judge Ala'a Jawad Hamid

### **Case Eight**

#### **Family displaced under threat of violence sold its house for 10 per cent of its real value because it was in rush to leave the area of residence.**

As for this part of the case, the concerned family can prove the case of displacement under threat and violence by registering a complaint against the theaters in accordance with Anti-terrorism Law No. 13 of 2005, since violence in this case falls under forced displacement based upon sectarian or ethnic purposes as defined by the law. In terms of selling the property for 10 per cent of its real value, such sale should be registered with the competent department (i.e. Real Estate Registration Department). Prior to registration, the seller can give up the idea of selling, provided that he will pay the difference in accordance with the provisions of Decision of Revolutionary Command Council (disbanded) No. 1198 of 1977. However, if the purchaser controls acquisition of the property, he can oblige the original landlord to register his name based upon the case he files in accordance with the provisions of the decision above.

In case the seller files a case, claiming that he incurred significant detriment due to force majeure, such facts are subject to the evaluative authority of the competent court (i.e. court of first instance), and he can ask the competent court to bring the investigation sheet related to his displacement due to sectarian or ethnic violence.

As for the right of the purchaser to lease the sold property, in case he holds an official document authorizing him to lease or occupy the property, the contract is deemed true. However, if there is a sub-contract between the purchaser and the original landlord, such contract is deemed null and void unless it is registered with Real Estate Registration Department. This is because contracts are not enforceable unless they are registered with the competent department as provided for in Paragraph Second of Article 3 of Real Estate Registration Law No. 43 of 1971, where the Paragraph reads: “no dispose of any real estate is legal without registration with Real Estate Registration Department.”

In general, state involvement is required to safeguard the rights of Iraqi families such as title. Federal Budget Law of 2008 provided the executive branch the power to address such exceptional cases or refer to Ministry of Displacement and Migration to build residential compounds on plots (i.e. 20 dunnums) granted by the state to the Ministry in each province in accordance with the Letter of Secretariat-General of Council of Ministers addressed to Ministry of Displacement and Migration.

Judge Ala'a Jawad Hamid

### **Case Nine**

In fact, this issue involves two rather than one case: first, killing of the husband or father; second, disappearing of the husband or father. As for the other family that occupied the house, claiming that their original area of residence is not safe, this excuse does not justify assuming property of other people, and looking for their interest does not justify attacking the others, as Article 7 of Civil Code No. 40 of 1951 states that: "Any person who has misused his right, he shall be held liable." The two cases of the family will be dealt separately below as following:

#### **Case 1:**

To be able to take the legal proceedings, the family has to take the appropriate actions to transfer the property title to the inheritance by taking the following steps:

1. Go to the civil status court in the area of the deceased to issue limitation of succession in accordance with the provision of Article 305 of Law of Civil Procedures No. 83 of 1969.
2. To transfer property title, the inheritors will apply for registration of title upon the death of the landlord in the name of legitimate inheritors in accordance with the provision of Article 186 of Real Estate Registration Law No. 43 of 1971, where inheritance registration is based upon limitation of succession in accordance with the provision of Article 187 of the same law.
3. File prevention of objection case before a court of first instance in the area of the property to prevent any objection of the family occupying the property and ask it to evacuate the property. The family can also file another case, demanding the rental for the period of occupation, and file another case on damages incurred in case of damages to the property.
4. The family can file a criminal complaint in accordance with Decision of Revolutionary Command Council (disbanded) No. 36 of 1994: " 1- Every person who occupies, without advanced consent or contract, a house or apartment of another person shall be penalized by imprisonment for a period not less than 3 years and not exceeding 10 years incase of state property, 2- The perpetrator of the crime mentioned in Paragraph 1 of this Decision shall in addition to the punishment set pay double rental and double value of damages to the house or apartment."

#### **Case 2:**

Disappearance of the husband or father means that he went missing. In this case, he is neither dead nor alive. If the missing person has an agent to run his business, the agent can take step 3 and 4 in case 1 above. Otherwise, the family has to take the following steps:

1. Go to civil status court where the court will appoint a custodian to run his affairs in accordance with the provisions of Article 88 of Under Age Care Law No. 78 of 1980. The custodian can step 3 and 4 in case 1 above.
2. In case the situation continues, the court can declare the death of the missing person after 4 years of missing or 2 years in case he went missing under circumstances where there is a strong potential of being dead in accordance with the provisions of Article 93 of Under Age Care Law No. 78 of 1980. In this case, the family will take the steps mentioned in case 1, as the person is deemed dead.

Judge Ala'a Jawad Hamid