



## THE COMPELLING NECESSITY OF HOUSING AS A MEANS OF TERMINATING THE LEASE

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### Abstract

This study deals with the compelling necessity of housing as a means of terminating the lease, which is a permit or a means granted by the legislator or the judiciary to the owner to repossess their property as a result of the realization of an emergency circumstance. To meet the aim of the current study, a comparative analytical approach is taken into account. Given the results, the right of the owner to repossess the property by compelling necessity is restricted by not to abuse the right in order to preserve the rights of the tenant for the purposes of housing. In fact, these restrictions, which violation constitute an abuse, are represented in the absence of the intent of abuse, that the desired benefit of the act is illegitimate and that the benefit from the same is not commensurate with the harm that afflicts others in addition to not going beyond the status established by the customs and traditions.

**Keywords:** Housing, Legislator, Judiciary, Property.

### Resumo

O presente estudo trata da imperiosa necessidade da moradia como meio de rescisão do contrato de locação, que é uma licença ou meio concedido pelo legislador ou pelo judiciário ao proprietário para reintegrar seu imóvel em decorrência da realização de uma circunstância emergencial. Para atender ao objetivo do presente estudo, uma abordagem analítica comparativa é levada em consideração. Diante dos resultados, o direito do proprietário de reaver o imóvel por necessidade imperiosa é restringido por não abusar do direito a fim de preservar os direitos do inquilino para fins de moradia. De fato, essas restrições, cuja violação constitui um abuso, são representadas na ausência da intenção de abuso, que o benefício desejado do ato é ilegítimo e que o benefício do mesmo não é compatível com o dano que aflige outros além a não ultrapassar o estatuto estabelecido pelos costumes e tradições.

**Palavras-chave:** habitação, legislador, judiciário, propriedade.



## 1. INTRODUCTION

The lease is considered a temporary contract that expires at the end of the term specified in the contract unless one of the reasons set for the termination of the contract is realized, e.g. nullity, termination or abandonment (Green et al., 2016; Livson et al., 2021). Yet, the provision of this rule is not applicable to the leases that are subject to the rule of legal extension under the Landlords and Tenants Law , i.e. the contracts concluded before August 31, 2000, considering that the contracts concluded after this date are governed by the rule "pacta sunt servanda" (Desmond & Bell, 2015; Lowry, 2019; Teixeira & Rodrigues, 2021).

In fact, and despite the legislator's establishment of the rule of legal extension of the lease, yet this does not mean that the landlord cannot vacate the tenant from the property as the legislator, and in the Landlords & Tenants Law, listed several cases where if any satisfied, then the landlord may vacate the leased property and repossess the same from the tenant (Franzese et al., 2016; Silva et al., 2021; Monteschio & Teixeira, 2021). However, these cases mentioned by the legislator did not fulfill the need for what was produced by the practical reality, so some legislations resorted to enacting other reasons that allow the landlord to repossess the leased property including the existence of a compelling necessity of housing for which I chose to research this last part according to the Jordanian and Iraqi legislations (Aljbory & Alshafaiy, 2016; Garnov et al., 2022; Merritt & Farnworth, 2021).

In fact, examining this case raises many questions that constitute the issue of the study, including, but without limitation, what is meant by the compelling necessity of housing? Who is the owner of the right to repossess for necessity? What are the restrictions on the right to repossess property due to the compelling necessity and what are its conditions? What is the legal nature of the right of repossession? Does the right of repossession transmit from its original owner to someone else through inheritance? What is the position of the Iraqi legislator regarding the previously raised questions? Is the Jordanian legislator's position approached it or does it have a different position? These and other questions that may be raised in this research will be the focus of our study in the future hoping that we will find satisfactory answers to them that will benefit those interested in this aspect (Wilkie et al., 2017; Garboden & Rosen, 2019).

Yet, we will focus our study on the compelling necessity of housing as a means of terminating the lease without addressing other leased property repossession cases except to the extent necessary and incidental as required by this study.

## 2. METHODS

In our study, we will follow the comparative analytical approach as we will deal with the relevant provisions set in the Jordanian and Iraqi Laws with analysis and branching to determine their contents and goals as well as with regard to judicial rulings to derive solutions from them and project the same to the legal reality. Further, we will also analyze and criticize the content of the commentators' opinions.

Accordingly, and based on the foregoing, we will divide this study into two topics, dealing in the first with: the definition of compelling necessity and its legal nature while in the second, we will approach the controls and conditions of compelling necessity of housing.

## 3. RESULTS AND DISCUSSION

### 3.1. Definition of Compelling Necessity and its Legal Nature

We will clarify the definition of compelling necessity and its legal nature by dividing this topic into two sections in the first of which we will approach the definition of the compelling necessity while the second will be dedicated for stating at the legal nature for the compelling necessity of housing (Green et al., 2016).

### 3.2. Definition of Compelling Necessity of Housing

The compelling necessity is a compound term consisting of two words (necessity) (and compelling), and to know the meaning of this term, it is necessary to know its components, i.e. necessity and compelling (Greif, 2018). Hence, **necessity by language** is a need while the necessary matter is every matter needed and can't be abandoned. So, the necessity means the need which is an abstract need such as the need of housing while **compelling in language** means: the verb compel by compelling meaning the matter is compelled for him, i.e. he is forced (Garboden & Rosen, 2019).

### 3.3. Definition of compelling necessity idiomatically

The Jordanian and Iraqi legislators have not defined the compelling necessity as one of the reasons for vacation which is due to leaving the matter of setting definitions for jurisprudence (McKee et al., 2020). Hence, and in view of that, there were many definitions for the compelling necessity for which some commentators defined the compelling necessity

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as being: an extreme necessity and an urgent need for the landlord to occupy his/her home. It was also defined as: the severe need to occupy the leased house (Lowry, 2019).

In fact, and though the compelling necessity is a relative issue that varies with the change of circumstances and conditions surrounding it, yet it has general controls as stipulated in sub-paragraph (5) of paragraph (C) of article (9) of the Jordanian Landlords and Tenants Law as well as paragraph (12) of article (17) of the Iraqi Lease Law (Desmond & Bell, 2015; Aljbory & Alshafaiy, 2016).

Accordingly, it becomes clear to us that the compelling necessity of housing is: “an enablement or a legislative permit created by the legislator or the judiciary in some countries given to the landlord because of a special legal position in that he can create a legal effect of his/her own free will as a result of the realization of an unexpected emergency circumstance or a severe need of the landlord after the expiry of the legal term of the contract making the lease stressful for him/her, whether this circumstance is related to him/her or to one of his/her children, ascendants or spouse which matter shall result in the termination of the tenancy relationship between him/her and the tenant (Greif, 2018).

Noting that the Iraqi Law adopts the compelling necessity of housing as a reason to vacate the leased property even if it occurred during the original term of the lease without taking into account the consensual agreement concluded between the landlord and the tenant and its mandatory power as a binding contract for its two parties, where the beginning of paragraph (12) of article (17) of the Iraqi Lease Law provides that: “If it happens after the contract...”, although the compelling and justified necessity to repossess the housing was approved in civil legislation to terminate the legal extension of the lease but not the original lease, the implicit renewal nor an explicit renewal of it (Aljbory & Alshafaiy, 2016; Hatch, 2017).

### 3.4. The compelling necessity is not created by the landlord

The mere need of the landlord for the leased property is not sufficient to terminate the lease and for the landlord to repossess the leased property. Rather, the compelling necessity must have been imposed on the landlord by compulsion and not by choice in addition to being beyond the will of the party seeking the vacation and not just a desire that the landlord seeks to achieve (Hatch, 2017). Yet, the urgent need that the will of party seeking the vacation interfered with does not justify the vacation. For example, a person allows his/her brother and his/her family members to live with him/her in the house, so that it becomes crowded with its residents. In fact, this case does not fit to be a lawsuit to vacate his/her leased house to others for the compelling necessity because it was of his/her creation (Greif, 2018). In fact, an example of a compelling necessity that is beyond the will of

the landlord and not of his/her creation is the case of the wife divorced by her husband, where she is compelled to leave her husband's house and is in a compelling necessity allowing her to seek to vacate her house leased to others since the considerations forced her to ask for the divorce are more dangerous than those compelling seeking to vacate the house (Franzese et al., 2016).

### 3.5. The Legal Nature of the Compelling Necessity of Housing

All the sources of the right, despite their multiplicity, and whether being a personal right or a right in kind, can be grouped under two general sources, i.e. the legal (material) fact, which is: "Every material event or act on which the law has a specific effect, whether this effect is the creation, modification or demise of a right" and the legal act that means: "the tendency of the will to produce a specific legal effect, whether this effect is the creation, modification, transfer, or termination of a right" (Garboden & Rosen, 2019).

In fact, we have previously defined repossession as: "the possibility of the landlord repossessing his/her residence if circumstances arise according to conditions specified by law." Actually, the request for repossession, if the conditions are met, depends on the will of the landlord (Wilson, 2020). In fact, and based on the definition, we find that the repossession may be a material fact since the repossession is a material act and could be a legal act because it depends on the will of the landlord if the conditions of compelling necessity of housing are met (Lowry, 2019). That is, the reasons for the compelling necessity of housing are a fact that establishes repossession, but the right is not complete without the landlord's declaration of his/her will to repossess the housing. Yet, there are those who consider the repossession as a mere compound event as the repossession stands to be a way to repossess the usufruct of the right of ownership, and thus it is neither a right in kind nor a personal right, as there is no idea of obligation between two persons (Green et al., 2016).

In fact, a question arises here about the repossession and the legal positions of the right. Is repossession considered a right or just a permit because both of them share in that they are vested with a certain permit, but they differ in its extent for which the right grants its owner the advantage of monopolizing the powers while the permit is a temporary stage that gives a certain person the advantage of choosing between accepting a position or rejecting it before it becomes a right, which means that repossession is not a right but a legislative permit that turns into a right when the landlord decides to accept the position and establish it by declaring his/her will to do so. In fact, the legal position of the repossession is a middle stage between the permit and the right called as the permitting right or the creating right, i.e.

an enabling vested upon a person because of a special legal position to have a legal effect of his/her own free will (Merritt & Farnworth, 2021).

Accordingly, the right of repossession can be considered a legal act issued by the will of the landlord alone aimed at creating a legal effect of repossessing his/her property and ending the state of legal extension in addition to being a legislative permit for the laws approving the same but is not an exception (Franzese et al., 2016).

### **3.6. The right of repossession and the theory of the emergency circumstances**

The origin of the civil rules is that the contract is the law of the contracting parties "pacta sunt servanda", that is, the inability of any of its parties to withdraw from the implementation of the contract, to revoke or modify it except with the agreement of the two parties, but it is one of the most important cases in which the law allows one of the contracting parties to modify the effects of the contract despite the will of the other party by judiciary is the state of emergency circumstances. In fact, the Islamic Jurisprudence has adopted the theory of emergency circumstances since ancient times preceding the positive law in addressing this theory for which it has applied its provisions in practice in many issues, but under different names such as "emergency provisions, excuses or pandemics" (Garboden & Rosen, 2019). In fact, the content of the emergency circumstances theory is summarized as a general exceptional circumstance that makes the implementation of the obligation, even if not impossible, as being stressful for the debtor and allows the court, upon the request of the debtor, to modify the contractual obligation to a reasonable extent. In fact, the theory of emergency circumstances has conditions that must be met in order for its ruling to be applied: 1- That a general exceptional event occurs after the conclusion of the contract and during its implementation 2- That the incident is not expected to occur at the time of the conclusion of the contract 3- That the incident could not be avoided 4- That this circumstance entails burdening the debtor even if the implementation has not become impossible 5- That the contract lax in implementation and not being an immediate contract that arranges its effects just by concluding it (Hatch, 2017; Wilson, 2020).

In fact, article (205) of the Jordanian Civil Law, and paragraph (2) of article (146) of the Iraqi Civil Law provided for the theory of emergency circumstances (Aljborgy & Alshafaiy, 2016).

Yet, and since lease contracts are continuous contracts, then the scope is wide for them to the variant circumstances, and by applying the theory of emergency circumstances to lease contracts, we find that the state of necessity that allows the landlord to repossess his/her property is mostly his/her own and expected cases, for example, the cracking of walls, his/her illness, the marriage or divorce of himself or one of his/her origins or

descendants, and therefore it cannot be considered as an application of the theory of emergency circumstances because the first condition contained in this article that an exceptional general accident occurs has not been fulfilled (Greif, 2018).

However, the Iraqi Law was affected by the principle of annulment for excuse, which agrees with the theory of emergency circumstances in that each of them is a requirement for the principle of justice, which aims to remove harm or at least mitigate it, but annulment for excuse is not considered as an application of the theory of emergency circumstances and the reason for this is the difference of the two systems in basic and effect, so, and for the implementation of the theory of emergency circumstances, the emergency incident must be general, that is, it includes the debtor and other all people such as war (Greif, 2018). As for the annulment for excuse, then it is sufficient to enforce it that the landlord or the tenant sustains a special excuse even if not shared by rest of the people, such as quarantine. Further, they also differ in the impact of each of them. Actually, the theory of emergency circumstances only results in establishing the right of the weary debtor to seek the amendment of his/her obligation and return it to a reasonable extent while the annulment for excuse entails the landlord or the tenant to get rid of all of his/her obligations and the termination of the contract in addition to the fact that emergency circumstances are unforeseen and cannot be avoided while the emergency excuse can be avoided (Merritt & Farnworth, 2021).

### 3.7. Controls and Conditions for the Compelling Necessity of Housing

We will deal with the controls and conditions of compelling necessity of housing by dividing this topic into three sections, in the first of which we will address: the owner of the right to repossess, in the second: the conditions of compelling necessity of housing while in the third: the restrictions on the right of repossession (Lowry, 2019).

### 3.8. The Owner of the Right to Repossess the Leased property

The commentators differed in determining the capacity of the owner of the right to use the compelling necessity of housing to repossess the leased property and terminate the lease relationship into two trends (O'Sullivan, 2016). The first believes that the said right is established for the landlord being the only aspect remaining of the right of the landlord as a usufruct of his/her property as he/she wishes, the right hindered by the legal extension that deprives the owner of the freedom to use his/her property and lease it to whomever he/she wants for the rent that he/she sees suitable, and therefore it is fair that when the interests of the landlord and the tenant are in conflict with their equal need for the leased property, then

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the first should be preferred because he is the first to benefit from his/her property over the stranger (Hatch, 2017). In fact, this trend has been adopted by the Jordanian legislator as it provided in sub-paragraph (9) of paragraph (C) of article five of the Jordanian Landlords and Tenants Law that: "If the landlord is not living at the area where his/her leased property is situated and has been of no other property, then he shall have the right to vacate it and to live therein upon his/her return to that area, if this is stipulated in the contract and in accordance with its provisions," while those of the second trend believed in linking the right to repossess the leased property due to the compelling necessity of housing with the lease contract (the right of usufruct) and not the right of ownership, which means giving the right to exercise it to the landlord whether being the owner or not (Garboden & Rosen, 2019). In fact, the negatives of this trend is that it leads to depriving the owner of his/her right to repossess in favor of the original tenant if there is a sub-lease in addition to depriving the non-leasing owner as the partner in the common property of the use of this right for which the holders of this trend justified their position by saying that providing for this right of the landlord was not intended to deprive the owner of it, but rather intended to add the non-owner, such as the partner who rents out all the common property while saying otherwise leads to the confiscation of this right from the owner." In fact,, the Iraqi legislator has adopted this trend where it states at the beginning of article (17) of the Iraqi Lease Law that "the landlord may not seek the vacating of the property subject to the provisions of the law except for one of the following reasons" (Aljbory & Alshafaiy, 2016; Wilson, 2020).

In fact, we support what the proponents of the first trend held in limiting the right of repossession to the owner to the exclusion of anyone else because the justification that the owners of the second trend went to is not sufficient as each partner in the property can repossess the leased property with the consent of the rest of the partners based on the percentage required by law in accordance with the general rules. In addition, the right of repossession was found for an unexpected emergency circumstance or a severe need that compels the owner to repossess his/her property being the owner of the first right to it and to preserve the rights so that no person other than the owner would take this permit as a pretext to repossess the property (Greif, 2018).

Hence, and based on the jurisprudential trends that we outlined above, it is necessary to clarify what is meant by the owner in Jordanian law, to form a basis that the Jordanian legislator can rely on when amending the provisions of the rules for the legal extension of the lease contract (McKee et al., 2020).

By referring to the Jordanian Landlords and Tenants Law, we find that it defines the owner in article two of it as: "He who has the right to dispose of what he rents or the partner who owns more than half of the property or otherwise the person authorized by law to



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manage the property and any person to whom the ownership is transmitted from the original owner" (Lowry, 2019).

Accordingly, and through the provision, it becomes clear to us that ownership may be detached ownership or common ownership and detached ownership is that which one thing is owned by one person, that is, the case in which the owner gathers the three powers of use, exploitation and disposition individually which is officially proven in the ownership contract registered with the competent departments, and therefore whoever proves ownership of the leased property can repossess the leased property (O'Sullivan, 2016).

Yet, the ownership may not be detached, but it is common, and it is agreed that the common partner is considered the owner of his/her share as full ownership but his/her right is restricted to the rights of his/her other partners and therefore, the right to repossess the leased property by the owner is established in common, but it is stipulated that in order to accept the repossession claim that he/she be the owner of more than one half of the property or the consent of the rest of the partners to repossess (Merritt & Farnworth, 2021).

As for the right of the partners to be common in managing the common property a usual management, this requires taking the decision by the one who owns the majority of the shares of the partners in accordance with the provision of article (1034) of the Jordanian Civil Law and that the usual management is the one that does not aim to bring about a fundamental change or an amendment in the purpose for which the common property was prepared, and thus, establishes the right to repossess the leased property due to the compelling necessity of housing for the joint partner if he obtains the consent of his/her partners who own the majority necessary to manage the common property (McKee et al., 2020).

Also, the right of repossession is established for every person to whom property is transmitted due to a legitimate reason for acquiring property, and since inheritance is considered one of the reasons for acquiring property in accordance with article (1086) of the Jordanian Civil Law, it is established for the heirs as being general successors in the right to repossess the leased property for the compelling necessity of housing. Yet, and as for the Iraqi legislator, it stipulated the right of the heirs to repossess the leased property due to the compelling necessity of housing, by issuing a special resolution by the Revolutionary Command Council No. (99) dated 19/1/1984 if they meet the required general conditions, the most important of which is the lack of the availability of private housing for them and the death of their bequeather while he owns a house rented to others. Actually, Baghdad Appeal Court ruled by its judgment No. (82) dated 14/2/1989 that: "... it became clear that the landlord is the bequeather of the plaintiff and he only owns the rented house in addition to having established that all his/her heirs do not own a house except the rented house which

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passed to them as a legacy, so the claim is covered by the provisions of the Revolutionary Command Council Resolution No. (99) of 1984 (O'Sullivan, 2016).

The question arises here about the death of the owner after filing a lawsuit to repossess the property due to the compelling necessity of housing and before the issuance of the ruling. Would the heirs in this case substitute the bequeather? By referring to article (3) of the Jordanian Civil Procedures Law, which states that: "1- No request or defense in which the holder does not have an existing interest recognized by law shall be accepted. 2- The potential interest is sufficient if the purpose of the request is to provide for avoiding an imminent harm or to ascertain a right for which there is fear of losing its evidence when disputed". In fact, we find that the case of repossessing the leased property due to the compelling necessity of housing requires a necessity on the part of the owner, and the reasons for it must be examined while this is not transferred to the heirs unless the case of necessity is proven (Merritt & Farnworth, 2021).

### 3.9. Conditions of the Compelling Necessity of Housing

The conditions of compelling necessity stipulated by the laws in question and on which the evacuation request is based are interconnected with each other, and therefore it is not correct to take some of them without others until the compelling necessity is ruled for (Silva, 2015).

### 3.10. Expiration of the original lease term

In accordance with the provisions of the General Rules, the landlord is not entitled to request the vacation of the leased property during the term of the original lease for his/her personal need unless otherwise agreed as this is the original principle (Greif, 2018). In fact, and in exceptional laws, the landlord may not enjoy broader rights than he or she is entitled to under general rules and as long as he or she has been bound by the lease contract with the tenant for a certain period of time, then he/she has to fulfill his/her consent and wait until the end of the contract and then ask for vacation of the leased property.

The need of the landlord for the leased property to live during the validity of the original lease term is not an emergency excuse that permits the termination of the lease and the vacation of the property, but this is not part of the public order, so it is permissible to agree on contrary of it, i.e. the landlord agrees with the tenant to terminate the lease if a personal need arises for him/her.

The original term of the lease in the extraordinary laws means the fixed term of the contract below the de jure term of the lease. In fact, no vacation may be made for the



compelling necessity during the validity term of the said lease without agreement. The same provision applies if the lease contract is renewed implicitly after the expiration of its term. No vacation may also take place during the period of implied renewal. If the contractors do not determine a period of time, the period shall be the period of payment of the rent provided that the notice is given on legal dates. Based on the foregoing, if the term of the original lease contract expires, the place may be vacated due to the necessity of the landlord compelling him/her to occupy it him/herself or by one of his/her children during the legal extension period, given that the landlord is the owner of the property and is more likely to be taken care of over the tenant in the event that their interests conflict.

### **3.11. There is a necessity compelling the landlord to repossess the leased the property**

Necessity is of great importance as it is the essence of this rule. Hence, if a necessity arises with the landlord that calls for the repossession of the leased property, it requires reviewing the duties and rights of the landlord and the tenant with the aim of balancing their interests. Therefore, there must be an urgent and compelling need to occupy the leased property by the landlord. Yet, and if the compelling necessity is not available, so it shall not be ruled to be vacated and it is necessary for the compelling necessity to continue until a court order is issued. Yet, if the necessity removed before filing the lawsuit or during entertaining it when the tenant proves the same, resulting in no need for the leased property, then the case should be dismissed and no ruling for the repossession shall be issued. However, if the judgment was issued to vacate the property due to compelling necessity, and the judgment acquired a final degree, then the necessity ceased after that, then this shall not be considered a reason to suspend the execution of the judgment (Garboden & Rosen, 2019).

Yet, if the court issued a decision dismissing the case and not ruling to repossess the property due to the lack of a state of compelling necessity, this does not prevent the landlord from filing the case again if he/she has another reason for necessity while the tenant may not defend on the basis of the previous ruling in the subject matter of the case as long as the case may be renewed at any time even if the lawsuit was filed shortly after the ruling on the first lawsuit.

### **3.12. If the necessity arises after concluding the lease contract**

The time of the occurrence of necessity is of great importance in the request for vacating, as it is required for a ruling to repossess the leased property that the compelling

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necessity is fulfilled after the date of concluding the lease contract and continues until the ruling is issued while if the necessity was available at the date of filing the case but ceased before the ruling was issued, then the court dismisses the case .

In fact, it is not a condition that the compelling necessity arises with the landlord only, but it is possible that it be with his/her wife or one of his/her children living with him/her. For example, if the landlord lives with his wife at the third floor in a building that has no lift where his wife sustained a heart diseases endangering her life to use the stairs, then her husband has the right to seek to vacate his/her rented house in order to live with his/her sick wife.

### **3.13. The place is rented for housing**

It is required that the rented house be a dwelling house, i.e. the place that has prepared as a residence and is prepared for that by its nature at the time of construction, even if it was used for a purpose other than housing like a lawyer's office.

In fact, the right of repossession is limited to the places prepared for housing, and accordingly, it is not permissible to request the vacation of a lawyer's office, a physician's clinic or a commercial store even if the request is to vacate them in order to include them in the house originally occupied by the landlord. Further, it is also a condition that the leased property is situated within the boundaries of the city in which the landlord lives and dwells.

### **3.14. The landlord does not own another house in which he/she can reside within the city boundaries in which he resides**

This condition is consistent with the wisdom of the rule of compelling necessity of housing and so, the court, and before issuing a vacation ruling, must make sure that the landlord, his/her spouse, or one of his/her minor children does not own another house within the city boundaries in which he usually resides, but if the landlord owns several houses, then the tenant, against whom the landlord has filed a claim to repossess the leased property, has the right to object to the choice of the landlord and to submit data proving that the rest of the houses owned by the landlord, his/her spouse or his/her minor children meet his/her needs and are commensurate with the number of his/her family members as well as with his/her social status more than the house requested to be vacated.



### 3.15. That the place is not rented to a public legal person or with the intention of using it as a school, hospital, shelter or charitable entity

As we mentioned previously, it is required that the place be rented for housing, so it is not permissible to request vacation if the place is rented to state entities, governmental departments, institutions, schools, hospitals or charitable entities for which these places have been excluded from that due to the harm resulting from evacuating them in the public interest for which it is not permissible to prioritize the needs of the landlord even if it is fulfilled by a compelling necessity over the public interest (Nasarre-Aznar & Molina-Roig, 2017).

### 3.16. Restrictions on the Right of Repossession

The right to resort to the judiciary is a permit granted to citizens while its use does not entail compensating the opponent for the damage incurred in the event of losing the case unless this permit is used in bad faith. In fact, article (101) of the Jordanian Constitution provided that: "The courts are open to all," while the third paragraph of article (19) of the Iraqi constitution stated that: "Litigation is a safeguarded right guaranteed to all."

It is also one of the established legal rules that legal permissibility is incompatible with the indemnity, so whoever uses his/her right in a lawful or permissible use does not indemnify the damage resulting from that which is according to the provisions of article (61) of the Jordanian Civil Law, and article (6) of the Iraqi Civil Law. Yet, and if the plaintiff uses his/her right in an unlawful or impermissible manner in which his/her intent was to abuse, then he/she is obligated to indemnify the damage he/she caused in accordance with the provisions of article (66) of the Jordanian Civil Law and article (7) of the Iraqi Civil Law.

In fact, the repossession of housing for compelling necessity is a permit or an enabling granted by the legislator or the judiciary to the owner to repossess his/her property to which the owner has the right to resort to it if its conditions are fulfilled within the framework of the laws approving the same.

Actually, the principle established in the general rules is that the permissibility in the use of the right is not absolute, but is restricted by several restrictions aimed at not damaging others (Green et al., 2016). Hence, and if the holder of the right abuses the same leading to exceeding the limits of the permit vested by the law to practice his/her right, he stands to have abused his/her limits and hence, shall be accountable for the damage he/she causes to others. Actually, the Jordanian legislator has created four criteria to consider the right's holder abusive in his/her use and is responsible if he/she causes damages to others, which are: A- If the intention to abuse is met. B- If the benefit sought out of the act is illegal.

C- If the benefit from it is not commensurate with the damage sustained by others. D- If it goes beyond what is established by customs and traditions (Nasarre-Aznar & Molina-Roig, 2017).

### **3.17. Availability of intent to abuse with intent to harm the tenant**

The landlord is considered abusive in the use of his/her right if he/she is in bad faith, i.e. intends to use his/her right to repossess the property for the compelling necessity of housing to abuse and harm the tenant. As for searching in his/her intention, the secrets of his/her conscience, the secrets of his/her chest and his/her intent to remove the tenant from the rented property, all appears that this criterion is not easy to investigate but it is possible to infer the intention of the landlord through his/her normal external behavior, so the judge can, through the presumptions, elicit the availability of intent to damage he has (Montezuma & McGarrigle, 2019). Yet, the most important of these clues is the lack of interest or the achievement of little benefit, and by examining his/her claim to repossess the property, it would be shown if the same was the result of previous disputes between him/her and the tenant or through his/her malicious behavior against the tenant, for example, the owner's claim to repossess the property after the tenant refused his/her request to increase the rent or having not declared the owner's ownership of another residence. In fact, and since the intent to abuse is a subjective criterion that is not easy to investigate, the subject judge must refer to each case separately through the facts of the case and the surrounding circumstances in order to derive it (Hatch, 2017).

### **3.18. Absence of legitimate interest**

It is not sufficient for the interest to be of benefit to the landlord, rather it must be legitimate, and the interest is illegitimate if its realization contravenes a provision of the law or its realization conflicts with public order and morals (Montezuma & McGarrigle, 2019). The real reason is behind the same character of legality, and in determining the legitimacy of the interest is due to the objective criterion, which is the standard of the usual person, and based on the foregoing, the landlord has the right to request the repossession of the property due to the compelling necessity of housing if the request for repossession is based on a real and urgent need of the owner, i.e. that there is a necessity, and that the owner's intention behind his/her exercise of the right to repossess the leased property is based on a legitimate reason, so the owner may not abuse his/her right by relying on an illegal or unreal reason, for example, using a false medical report on his/her health condition (Green et al., 2016).

### 3.19. The benefit is not commensurate with the damage caused to others

The existence of a legitimate interest of the landlord is not sufficient to exempt him/her from the indemnification if his/her use of his/her right to repossess the property causes damage to the tenant. Rather, this interest must be of a degree of importance that exceeds the damage caused to the tenant in order to be a justification for the use of the right and this criterion does not count the psychological motive to repossess the property, but rather requires balancing the interests of the two parties, the landlord and the tenant meaning that the benefit that accrues to the landlord as a result of repossessing the leased property is of little importance so that it is not commensurate with the damage that may be caused to the tenant as a result of repossessing the leased property. It is uncommon for the ordinary man to use his/her right in a way that causes severe damage to others, and in that he has only a minor interest that is not at all commensurate with the damage that befalls others (Garboden & Rosen, 2019).

### 3.20. Going beyond customs and traditions

This criterion is applied to unfamiliar neighborhood damages. This presumption can be visualized through physical actions that the landlord may perform with the intention of repossessing the property, such as creating a building that blocks the windows of the property, which leads to blocking the light from it, or placing building materials or dirt next to a property of the tenant, disconnecting the electricity current or water with the intention of evacuating him/her from the property, which are generally unfamiliar damages of the neighborhood (Montezuma & McGarrigle, 2019).

## 4. CONCLUSION

After we reached the end of this research, in which we dealt with the compelling necessity of housing as a means of terminating the lease contract, we concluded a set of findings and recommendations as follows:

1 - The compelling necessity of housing is a legal enabling created by legislators in different countries, including the Jordanian legislator while its scope is sometimes determined by law and sometimes through judicial applications.

2- The leased property is repossessed for the purpose of housing when the compelling necessity is fulfilled by the owner who has the right to use this solution.

3- The right of the owner to repossess the property is restricted by compelling necessity not to abuse the right in order to preserve the rights of the tenant for the purposes

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of housing and that the benefit from it is not commensurate with the damage that afflicts others and not to exceed what is custom and traditional.

4- Legislation that decided the legal extension of the lease contract is exceptional legislation because it deviated from the general rules in the lease contract related to freedom of contract.

5- The compelling necessity of housing was established in civil legislation to end the legal extension of the lease contract but not the original lease contract nor the implicit renewal.

6- In the Jordanian Landlords and Tenants Law, it is not permissible to vacate due to the compelling necessity of housing during the original term of the contract, but rather it has been approved to end the legal extension of the original lease contract.

7- The compelling necessity is considered in Jordanian legislation as a permit to the owner if h/she wants to use or leave it within the specified controls and conditions, while in other legislations it is considered an application of the theory of emergency circumstances.

## 5. RECOMMENDATIONS

1 - We hope the Jordanian legislator will expand the cases in which the landlord may repossess the leased property due to the compelling necessity of housing as is the case with the Iraqi legislator.

2- We hope the Jordanian legislator will add a paragraph to article (9) of the Jordanian Landlords and Tenants Law that protects the tenant's right when the landlord abuses the use of compelling necessity of housing by dismissing the vacancy lawsuit.

3- Amending the provision of paragraph (12) of article (17) of the Iraqi Tenancy Law of 2000, so that it becomes clear that the compelling necessity of housing ends the legal extension of the lease contract and not its original term.

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