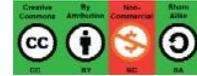




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# Analyzing the Implementation of Usufruct Rights and Obligations in the UAE Civil Transactions Law

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## Abstract

*Usufruct Right is considered to be an in-kind of the original rights that derives from the right of ownership. It is a right in kind for the usufructuary to use as an asset that belongs to others and to exploit it as long as it exists. The main purpose of this study was to first define the Usufruct Right and distinguish it from the other rights like the lease rights. This study adopted a descriptive analytical research approach and based all its arguments and conclusion after reviewing all legal texts related to the Usufruct Right, the UAE legislation, as well as other related relevant jurisprudential opinions. However, the focus of the study was the Usufruct Right as stated in the Federal Civil Transactions Law. Owing to the dearth of studies in this domain, a need was felt to examine the Federal Civil Transactions Law in terms of rights and obligations for the beneficiary of the Usufruct right. The study found that the UAE Law was not sufficient to determine the intrinsic characteristics of the Usufruct Right. Nor it recognized the temporary character of the Usufruct Right. The study also revealed that the Law was also not sure about features like bare ownership's rights and obligations, expiration of Usufruct rights. The study recommends that the UAE Law should reformulate the text of various articles of the Federal Civil Transactions Law*

Keywords: in-kind right, rent, Usufruct Right, user obligations.

## Introduction

Usufruct idiomatically means an “in-kind right that refers to the use and exploitation of something belonging to others, and which gives its owner direct powers over the thing to which the right is returned, enabling him to benefit from his right without the mediation of the owner of the thing. As an ownership right, the Usufruct Right is considered the most important of the rights subordinated to the right of ownership, but it does not give its owner the authority to dispose of the thing. The privilege of disposal remains with the owner, and thus the right of ownership is divided upon the emergence of the Usufruct Right into two parts: a part that belongs to the usufructuary and includes use and exploitation, and another part that remains

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for the owner of the usufruct is represented by the authority to dispose. This close resemblance generates a big discrepancy between the Usufruct Right and the right of the lessee (in property or real estate) even if there is a similarity between them in the use of the premises, and even in the exploitation of the property. This paper is mainly concerning this discrepancy.

Usufruct Right is an in-kind right that enables its owner (beneficiary) to use and exploit an asset that belongs to others, however, s/he is only bound by the right what the real owner is obliged to allow to the Usufruct beneficiary. Accordingly, the owner has to let the usufructuary benefit from his right without committing to him any positive obligation. On the contrary, when the Usufruct Right pertains to property or real estate, it differs from the lease rights. In real estate or property, the right of the lessee is always in consideration, while the right of the usufruct beneficiary may be without compensation. The payment of the rent is the subject of the tenant's obligation, and the contracting parties' must direct the tenant to pay the rent, instead of the usufruct that the lessor authorizes him, and if the lease contract does not agree on the rent, explicitly or implicitly, the contract is not based on a lease - due to the failure of a cornerstone Among its pillars - the contract here may be considered naked, whereby the lender is obligated to deliver something to the beneficiary without compensation for a certain period, or for a specific purpose. The lease contract rights also ensures that the landlord has a positive obligation to enable the tenant to benefit from the property, and accordingly the landlord is obligated to deliver the property to the tenant in good condition, and to carry out his duty to maintain it for the duration of the lease term provided that he returns it after use, without the lender obligating to pay in return for what he takes.

The current study fulfills a much felt need to study the provisions of the Usufruct Right of the UAE legislator, wherein Article (1333) of the Federal Civil Transactions Law defines it as an in-kind right for the beneficiary to use it as an asset belonging to others and to exploit it as long as it exists. The UAE law considers this right as of a great legal and economic value, and therefore it was necessary to discuss how the UAE law permits the acquisition of the Usufruct Right, what is the effect of the passage of time on it, and how to secure a balance between the rights and obligations of its parties. The current study highlights all these issues in accordance with what is stated in legal regulations, in order to understand all its aspects and determine points of confusion and defects that may permeate this right. The study also takes the opportunity to shed light on the reasons that led to making the Usufruct Right a reality, along with the solutions and suggestions. It is hope dthat this study would contribute to a better understanding of the legal regulations related to Usufruct Right.

### **Problem statement**

The problem of research arises in that Usufruct Right is often confused with the right of the tenant, especially if both of the two rights are related to a residential property. The jurisdiction of the courts of first instance. As for the jurisdiction to consider the rent lawsuit, it is within the jurisdiction of the rental dispute settlement committees, and the issue of the death of the beneficiary and does it affect Usufruct Right and its termination or not? Where we find that the UAE legislator did not provide for this part among the reasons for the termination of Usufruct Right.

## Research methodology

In this research, we adopted the descriptive analytical approach by reviewing all legal texts related to the Usufruct Right, in the UAE legislation, analyzing these texts and describing them accurately, in addition to analyzing the relevant jurisprudential opinions, and weighing them, with an explanation of the reasons and justifications that called for that, in addition to: Addressing practical issues related to the subject of the study that affect real-life events. The study first explained the definition of the Usufruct Right, its characteristics, the distinction between it and the lease right, and how to establish it.

## Literature Review

- *Usufruct Right: Concept, Definition and Characteristics*

Usufruct Right is one of the most important rights subordinated to the right of ownership, and it is the authority assigned to a person over something owned by others, which entitles him to use and exploit this thing while remaining the same thing to return it to its owner at the end of the Usufruct Right. Usufruct Right can be defined as “an in-kind right for the beneficiary to use and exploit something belonging to others for a specific period specified by law or agreement.” Linguistically and technically, Usufruct means “benefit” which further refers to the name of God (Al-Nafi’), or the one who communicates benefit to whomever he wants from his creation. However, opinions vary in defining the Usufruct Right in the manner in which the elements and characteristics of this right could be highlighted. Some have defined it as “in-kind right to benefit from something owned by others while keeping the same thing in order to return it to its owner.”

There are a few characteristics of Usufruct right that can be stated as follows, in the context of the UAE Law:

- In-kind right: The first paragraph of Article (109) of the UAE Civil Transactions Law defines the right in kind as “a direct authority over a specific thing that the law gives to a specific person.” by all in terms of its content and the exercise of its powers.
- Temporary Right: This feature, even if it is not mentioned in the text, but article 1344/1 referred to it, when it stipulated that “Usufruct Right: 1 expires at the lapse of fifty years unless the deed of its establishment stipulates another term.” And the nature of the right of ownership requires it. In the right of ownership, it is necessary for its elements to gather in it after the disappearance of the cause from which some of its elements were diminished, including the Usufruct Right.
- Things that are not consumable: because the beneficiary is obligated to return the thing after the end of his right, and accordingly, everything that is depreciable cannot in any way be subject to Usufruct Right; Because the beneficiary cannot benefit from it except by consuming it, which prevents it from being returned to its owner.
- It authorizes its owner the powers of use and exploitation without disposing of control: but it must be pointed out that the owner of the Usufruct Right has the authority to dispose of his right, so it is permissible to transfer the Usufruct Right belonging to him to a third party.

• *Difference between Usufruct Right and Lease Contract Right*

The Usufruct Right differs from the lease contract rights as applicable in property or real estate contexts. Under the UAE law, this difference is made clear in Article (742) of the Civil Transactions Law which states, “The lease is the ownership of the lessee, an intended benefit from the thing leased for a certain period in return for a known fee.” In fact, the right of the lessee is similar to the right of the usufructuary because each of them benefits from something that he does not own for a certain period, but the two rights differ in many respects, the most important of which are:

- The criterion for differentiating between the contract under which the Usufruct Right is established and the lease contract is in the extent of the right that each of them grants to the one who benefits from it. But if it appears that the contracting parties only intended for the tenant to benefit from the leased property, through the mediation of the owner, the contract is a lease. The joint intention of the contracting parties is invoked by interpreting the terms of the contract without deviating from their apparent meaning.
- Usufruct Right is transferred to the beneficiary’s heirs as a financial right, as the UAE legislator has recognized that inheritance is one of the reasons for earning a Usufruct Right, as Article (1334) of the UAE Civil Transactions Law stipulates that “Usufruct Right is earned by legal action, by preemption, by inheritance, or by the passage of time.” The right of the tenant does not end with the death of one of the contracting parties and can be inherited from him unless he considers the tenant’s personality in accordance with the provisions of Article (793) of the Federal Civil Transactions Law (1). The lease does not end with the death of one of the contracting parties. 2. However, the tenant’s heirs may request termination the contract if they prove that the burdens of the contract, due to the death of their legator, have become too heavy for their resources to bear or have exceeded the limits of their need.
- Usufruct Right of real estate does not arise between the two contracting parties, and for third parties, except by registration in the real estate registry, where Article (1277) of the Federal Civil Transactions Law states: Except by registration in accordance with the provisions of special laws,” while the right of the original tenant is that it is not necessary to declare it except as an exception, if it is mentioned on a real estate.
- The source of the right of the beneficiary is any of the reasons for earning in-kind rights except for inheritance. As for the right of the lessee, its source is always the contract.

The criterion here is that Usufruct Right Real Estate requires registration, as Article (6) of the Real Estate Ownership Law in the Emirate of Abu Dhabi states, “The ownership of real estate, nor the in-kind rights of subordination arising therefrom, or the rights subordinated to the right of ownership, whether it is between the contracting parties, or It was in the right of others except by registration, and the registration in the registry specified in Law No. (3) of 2005 referred to, is binding, definitive evidence of property ownership and in-kind rights of subordination or those subordinated to the right of ownership, long-term lease rights, as well as the local law in The Emirate of Sharjah regarding real estate registration stipulates in Article (5) that (it is obligatory to register all actions that would create an ownership

right or an in-kind right of real estate, or change it, or its demise, or from the final rulings proving anything of that - which leads to the non-transfer of ownership or any in A kind right is a real estate right, whether between the contracting parties or to others, except by registration, and this does not prevent these actions from arranging all personal obligations ((), but if the second party benefits from the real estate under a lease and a personal right, then the rights of this tenant, we find that they are registered and documented in the municipality department only and not It takes Documented in the Real Estate Registration Department.

- *Establishment of Usufruct Right*

It is necessary to find out what regulates the sources of Usufruct Right if the place to which it is referred is privately owned, and whether it is movable or real estate. As for the provisions related to Usufruct Right on state-owned lands, which are regulated by a special law, it is concluded that Usufruct Right is acquired for the same reasons as acquiring the right of ownership, except for those reasons that are inconsistent with the nature of usufruct. There are a few reasons, according to Article (1334) of the Civil Transactions Law in the United Arab Emirates, that contribute to the establishment of the Usufruct Right, namely: legal action, will or inheritance, preemption, and by the passage of time.

- *Legal Action through contract*

The legal act is the essence of the will that aims to produce a specific legal effect, whether it is by agreement of two or more wills (the contract) or by one will (the unilateral act). The legal act, then, may be a contract or it may be a will. The contract - whatever it is - leads to the acquisition of Usufruct Right initially or by transfer, that is, it may create a Usufruct Right directly or indirectly. By applying the general rules of the contract, the originator of the Usufruct Right must be the owner of the thing to which the usufruct is to be made, and qualified to dispose of it. Here, it is necessary to refer to the Emirati legislator in the Civil Transactions Law who was silent about establishing the usufruct for the benefit of the legal person. However, his silence does not preclude the application of the text to its release, that is, whether the beneficiary is a natural or legal person.

The legislator in the Emirate of Sharjah has corrected this shortcoming, as Article (1) of Executive Council Resolution No. (26) of 2014 regarding the use of real estate in the Emirate of Sharjah defines the beneficiary as “the natural or legal person who benefits from real estate by exploiting or using it, and disposing of the right of benefit, without Ownership of the property not exceeding the period of use. The contract leads to the transfer of Usufruct Right if the beneficiary sells his usufruct right to another person or gift it to him, for example, as the beneficiary can spend in the Usufruct Right, and the contract - whoever it is - may lead to the creation of a Usufruct Right indirectly, if the owner disposes of the ownership of the neck for the benefit of a person Another, and he retained the power of use and exploitation. Because although the purpose of the contract is to dispose of the ownership of the neck alone, the same disposal results in the emergence of a usufruct right for the old owner, who remains just a usufructuary after he was an owner. Perhaps this image is the most widespread in practice. Some believe that this image is mostly intended to circumvent

the provisions of inheritance and wills, and for this reason, Article (1261) of the Federal Civil Transactions Law in the United Arab Emirates has established a legal presumption that actions that take place in this way take the rule of a hidden will unless evidence is established. On the contrary. Accordingly, in the event that evidence is established to the contrary, the contract is the one that established the right of the neck by its separation from the full ownership, the usufruct emerged.

But if the evidence is not established in accordance with the above text, the disposal of a group is in the judgment of a will, and the disposer remains the owner of the property in full for the duration of his life, and the disposal may be reversed at any time; Because the will may be referred to, if he dies without retracting his will, the whole eye will go to the testator, and the provisions of the will apply. It is equal if the contract is with or without consideration, and it is also permissible for the Usufruct Right to be effective immediately. The beneficiary is entitled to the benefits of the thing from the date of the establishment of the Usufruct Right, and it can also be contingent on a condition, or added to a term. In this case, the benefit of the beneficiary does not begin until the condition is fulfilled, or the deadline has come.

- *Legal Action through will or inheritance*

A will that creates a Usufruct Right by bequeathing the owner to the benefit of the property he owns to a third party or by bequeathing him for the benefit of the property. There is nothing to prevent - in the light of the provisions of the Civil Transactions Law - from being a reason for the transfer of Usufruct Right from one person to another. This is because Usufruct Right does not lapse for the transfer of Usufruct Right from one person to another. This is due to the fact that Usufruct Right does not expire with the death of the usufructuary, and this entails the possibility of conceiving that the usufruct will bequeath his right of usufruct - after his death - to another person. The testator shall then pass the Usufruct Right after the death of the testator, provided that the testator has naturally passed away before the expiry of the term of Usufruct Right.

The Usufruct Right is earned by will in one of two ways: Either the owner of the property bequeaths Usufruct Right to a specific person, so the neck will remain for the heirs, and this corresponds to the Usufruct Right gain by means of the contract by way of creation. There is nothing to prevent - although this is not expressly stated - from the will of the Usufruct Right for one or more persons, whether it is at the same time, and a right of usufruct is established over the common, or it is successively, so that he benefits from the usufruct alone without the participation of others. So that if the Usufruct Right of one of them expires, a new usufruct arises that follows it and is derived directly from the will and not from the previous usufructuary. The property remains for the duration of the successive rights - to the heirs, even if the period of the last usufruct expires, the heirs gather in their hands all the powers of ownership.

- *Pre-emption:*

Article (1279) of the UAE Civil Transactions Law defines preemption as “the entitlement of a partner in a real estate with a common share to take the share of his

partner with which he was compensated by its price in financial netting and its value in non-financial netting, which indicates a customary application. Preemption is also not a right, because its proof does not include the person's powers over the thing. It is a means of gaining the right, nothing more. The wisdom behind the preemption decision is the desire to pay the expected harm to the intercessor in the event that his ownership contacts the sold property, and preemption also has economic benefits in the event that it leads to the summation of the dispersed right of ownership, such as the usufruct right, or the termination of the common in the case of selling the partner Common share common to a foreigner.

It is clear from the definition of pre-emption by the Emirati legislator that the scope of pre-emption is limited to netting, whether it is financial or non-financial, as long as pre-emption is limited to netting; Therefore, we must exclude other legal actions. It is noticeable that the legal texts regulating pre-emption in the Civil Transactions Law contain nothing to indicate that it is a means of gaining Usufruct Right as stipulated in the legislation. Rather, Article (1283) states that the intercession is the one who fully owns the share of one of the two partners.

The researcher believes that the UAE legislation was unsuccessful by not including the owner of the Usufruct Right among the owners of the right of pre-emption, since the purpose of the pre-emption report to the owner of the Usufruct Right is the same as the purpose of the report to the owner of the bare-ownership, in both cases it is a means of collecting the elements of ownership in one hand. However, pre-emption is a reason mentioned in Article 1334 of Civil Transactions among the reasons for earning the Usufruct Right, and the legislator in this text decided the right of pre-emption to both the bare-ownership and the usufruct, due to the wisdom that it sought to collect the scattered property by returning the usufruct to the bare-ownership.

It should be noted here that pre-emption is a reason for the transfer of Usufruct Right, not a reason for its initial establishment, if its role, such as selling, is limited to the transfer of Usufruct Right from one beneficiary to another. Article 1303 of the UAE Civil Transactions Law has clearly confirmed this meaning when pre-emption is generally considered a new purchase in which the right to be interceded is transferred to the intercessor. The intercessor acquires the right of intercession with the same characteristics that he had at the time of taking the intercession. As he replaces - then - in the joint the place of the partner against whom intercession is made, unless the preemption itself leads to the termination of the commonality, as one of the two partners interceded for the share of the other's partner and there were no other partners.

It should be noted here that pre-emption as one of the causes of Usufruct Right is not proven unless the transaction is indivisible in light of its intended purpose. The transaction is fragmented, and the entire right is not usufruct, because he does not have pre-emption in some of its parts.

- *Prescription (Passage of Time):*

From a practical point of view, jurisprudence confirms that acquiring usufruct through the passage of time is a rare occurrence, if it is not imagined that a person may allow money with the intent of acquiring a usufruct right only, while he can gain

ownership, and with that who can be a prescription reason to gain ownership and in-kind rights Others, including Usufruct Right, for example, a person arranging a usufruct right on a property that he does not own for the benefit of another person. The beneficiary earns Usufruct Right with a short Prescription if his possession of this right is accompanied by good faith and based on a valid reason, and in the UAE legislation a short Prescription leads to the protection of the property owner , if possession lasts for seven years and is accompanied by a sense of intent and based on a valid reason in accordance with the provisions of Article (1318) of the Federal Civil Transactions Law and most importantly that the property is unregistered, i.e. permissible and this is rare.

It is also possible to earn a Usufruct Right with a long Prescription that can be visualized in theory, such as possessing in bad faith a Usufruct Right with real estate or movables for a period of fifteen years, or receiving this right in bad faith from someone other than the owner, and it remains in possession of it for this period, as in the case of the usufruct's lease of his right and the initiative The lessee has to change his description of Usufruct Right from an accidental possession to a real possession that will continue for the duration of that term.

Based on the text of Article (1317) of the Civil Transactions Law, possession, whether it is received on a movable or real estate, provided that the place is not previously in the name of the non-holder if the possession of the possessor, with its material and moral components, continues for fifteen years, and without interruption, the possessor is not heard from the property's claim Or a claim for a right in rem from someone who does not have a legitimate excuse, such as Usufruct Right. The UAE legislator has established a legal presumption for the continuation of possession, as the second paragraph of Article (1320) of the Federal Civil Transactions Law stipulates that "the seizure of possession, if it was present, and was proven earlier, is considered a presumption of its existence between the two times, unless there is evidence to deny it." Accordingly, the possessor has nothing but to prove the time of the beginning of his possession, and that he is still in possession at the present time. If he is able to prove this, then it is legally assumed that his possession continued without interruption between these two times, and whoever claims the opposite must prove that.

## **Results and Discussion**

Article (1336) of the Federal Civil Transactions Law states, "The rights and obligations of the beneficiary shall take into account the deed that created the Usufruct Right, as well as the provisions prescribed in the following articles." Hence, the Usufruct Right has a set of effects represented in the rights enjoyed by the beneficiary and the bare-ownership and the resulting obligations owe them. The provisions relating to these antiquities are derived from two sources: the deed that created the Usufruct Right and the law.

This section first examines the rights and obligations of the usufruct beneficiary; followed by the bare-ownership; and finally the reasons that lead to the expiration of usufruct rights. Each of these sub-sections will comprise its detailed account as well as the analysis.

## **A. Rights and Obligations of the beneficiary**

The rights and obligations of the beneficiary should be discussed separately. The rights may be classified into three: one, the right of the beneficiary to use the thing; two, the right of the beneficiary to exploit the thing; and three, the right of the beneficiary to dispose of his right.

The first category of the right of the beneficiary to use the thing involves the use of authority to carry out material works and directly benefit from the usage of the thing and what its nature and purpose permits. Article (1338) of the Federal Civil Transactions Law stipulates that: 1- The beneficiary may dispose of the usufructuary in the usual manner if the usufruct deed is absolute from every entry. 2- If it is restricted by a record, the beneficiary may complete the disposition with the same or similar or less than that. The beneficiary has the right to use the thing exactly as its owner uses it, so he replaces the owner in using the thing, and here the control over the thing is transferred from its owner to the owner of the Usufruct Right, and just as he has the right to benefit from its use, he has the guarantee if this thing causes harm. Moreover, the beneficiary has the right to use the thing for what it was prepared for and for everything that can be used in it, provided that it is a lawful use and consistent with the nature of the thing. The thing has an unlawful use, is in violation of the conditional restriction, or is inconsistent with the nature of the thing and what it is usually prepared for. Here it must be pointed out that the authority of the beneficiary in the use of the thing differs from the authority of the owner, so if the owner has the right to use the thing in all the ways in which it is permissible for him to use it, whether this use is in agreement with the thing for which the thing was prepared or not, then the beneficiary must use the thing according to what was prepared for it, and it is not permissible for him to change the allocation of the thing. While the owner has the right to benefit from the thing even if this leads to the consumption of its substance.

The second category of the right of the beneficiary to exploit the thing refers to the Usufruct Right that authorizes the usufructuary to exploit a thing. The right of exploitation is what distinguishes the Usufruct Right from the right of use and the right of dwelling where it is not permissible for the usufructuary to exploit the thing, and the exploitation may be direct. It may be indirect by making others reap the fruits of the thing and pay it to the beneficiary in return for that. The beneficiary has the right to lease it to others, to reap its fruits in the form of rent. The beneficiary may rent the agricultural land as a farmer, and get a part of the crop. On the other hand, Article (1337) of the UAE Civil Transactions Law states that the fruits of the thing that are used are the right of the beneficiary for the period of his use. In this regard, the question arises about the ruling on the fruits that were present at the time of the start of the usufruct, or at the end, as the UAE legislator neglected to regulate these two cases and did not clarify whether they belong to the beneficiary or the owner of the bare-ownership, and then here it is necessary to refer to the general rules and it can be said that in these fruits three hypotheses are as follows:

- If the fruits started before the commencement of Usufruct Right and were reaped before the end of the Usufruct Right, then in this case the period during which the fruits grew until their completion is calculated, so the bare-ownership shall have what corresponds to the period preceding the beginning of the Usufruct Right, and

the right of the beneficiary shall be equal to the period following that. As for the price of seeds and agricultural costs, the beneficiary must contribute to them in proportion to the period of his use. We find that the UAE legislator did not regulate this hypothesis, and then the general rules are applied, and we recommend the introduction of a text in the nearest amendment regulating this issue.

- The fruits that appear and ripen during the period of use, are for the beneficiary alone without dispute. If the usufructuary cultivates the land and his right to usufruct ends, and the fruits are still in existence, in this case the land is left to the usufructuary or his heirs for a similar fee until he realizes the cultivation and reaps as stipulated in Article (1345) of the UAE Civil Transactions Law (if the specified period for usufruct has expired and the usufruct land is occupied By planting, the land is left to the beneficiary for a similar wage until he realizes the planting and reaps, unless the law stipulates otherwise.

The third category of the right of the beneficiary to dispose of his right entails that the usufructuary is considered a right holder, and he can dispose of the Usufruct Right only within the limits of his powers; therefore, he cannot give to the disposer more than he himself owns. It is not the material disposals of the beneficial thing that could lead to the thing's destruction, damage or change from one state to another, with the latter not owned by him to carry out material actions on it without the consent of its owner. The beneficiary is also restricted by what is contained in the usufruct deed, as Article (1338) of the Federal Civil Transactions Law states "1. The beneficiary has the right to dispose of the usufruct with the usual disposal if the usufruct deed is absolute from every record. To fulfill the disposition in its own right or like it or less." As is clear in the text, the beneficiary may dispose of the Usufruct Right, and in particular, assign it to others, or mortgage it or arrange an in-kind right original on it, taking into account the formality in this waiver to arrange its effect without being entitled to Disposing of the bare-ownership because it is not his property and it follows that if he sells the bare-ownership, it comes under the rule of selling the property of others.

On the other hand, the obligations of the beneficiary are under the UAE Law which imposes several obligations on the beneficiary, whether during the validity of the usufruct or upon its expiry. The basis of these obligations is his receipt of the thing to which his right is returned, and he must return it upon the expiration of this right. These obligations are also divided into four categories: (i) Obligation to use the thing for what it was intended for; (ii) Obligation to care for and maintain the thing; (iii) Obligation to notify the owner of every matter that requires his intervention; and (iv) Obligation of the beneficiary to return the thing in place of the Usufruct Right at the end of the right:

*i. The Obligation to use the thing for what it was intended for:*

The third paragraph of Article (1338) of the Federal Civil Transactions Law states, "The bare-ownership may object to any illegal use that does not conform to the nature of the thing used." It is clear from this text that the usufructuary is obligated to respect the allocation of the thing in what it was prepared for, and that his use of the thing subject of use is consistent with the intended benefit of it, which can be identified, through the nature of the thing or through the will of the bare-ownership. If there is no stipulation from the owner on a specific benefit, the thing shall be used according

to what was prepared for it. And since the beneficiary is obligated to use the thing in the condition in which he received it, he must respect the behaviors that the owner has done before the start of the use and make use of it in the way the owner used to use and exploit. He may inhabit it himself, or rent it for residence, even if the owner used to inhabit it himself, as long as that does not change what was prepared for him.

ii. *Obligation to care for and maintain the thing:*

Article (1340) of the Federal Civil Code states, "1. The beneficiary must take care of preserving the thing used, taking care of the usual person. 2. If the thing is damaged, or perishes without transgression or negligence on the part of the beneficiary, there is no guarantee on him." According to this text, the beneficiary must be committed, while using and exploiting the thing, to good management that preserves it. Thus, the Emirati legislator has set a material standard, which is that the beneficiary should do in order to preserve the thing what the usual man does. Preserving the thing that is benefited from is represented in carrying out the actions that are necessary to preserve the entity of the thing and to enable the owner to do what is necessary for this preservation, so that the thing is not lost to the owner, damaged or destroyed. The beneficiary shall not damage the thing, remove parts of it, or leave it without maintenance.

Accordingly, the usufructuary shall be responsible for the damage of the thing if his care for the thing usufruct is without the care that the usual man is obliged to do. But if it is proven that in preserving the thing he exerted the usual care of the man, then he shall be deemed to have fulfilled his obligation, and then he shall be denied responsibility for the damage. If the thing is damaged or destroyed without transgression or negligence on the part of the beneficiary, there is no warranty on it. The obligation of the beneficiary to maintain and maintain the thing is derived from his commitment to the expenses that require that, as Article (1339) of the Federal Civil Transactions Law states that "1. The beneficiary is obligated, during his benefit, to the usual expenses required by the preservation of the usufruct and maintenance work. Ordinary repairs and major repairs are on the owner, all of this unless there is an agreement to the contrary.

Through the text, the beneficiary is obligated to the expenses of maintaining the thing used in order to achieve the purpose he wanted to achieve and to preserve the thing used, but the text makes a difference between the usual and unusual expenses. Where the beneficiary is bound by the first, and the second is borne by the bare-ownership, unless there is an agreement to the contrary, and this distinction is due to the fact that the ordinary expenses are taken from the fruits and are therefore borne by the beneficiary, and then he must perform all the actions that would preserve the thing Among these expenses are what is spent in managing the thing because it is necessary for the beneficiary to obtain the benefit he intended, and among the usual expenses are taxes and fees imposed by law on the thing being used.

iii. *Obligation to notify the owner of every matter that requires his intervention*

Article (1342) of the Federal Civil Transactions Law states, "The beneficiary shall notify the owner.

- If a third party claims a right over the thing that benefits from it, then it is usurped by a usurper

- If the thing perishes, is damaged, or requires major repairs, it is the responsibility of the owner.
- If he needed to take action to pay off a danger it was hidden. If the beneficiary does not give notice, he shall be liable for the damage caused to the owner.

Accordingly, if a third party claims a right over the thing that is usufruct, the owner should know of the infringements that others have committed against the thing that is usufruct. As a result of the infringement, and if a foreigner is exposed to his claim to the thing, it is incumbent on the usufructuary to notify the bare-ownership of such interference, and in general the usufructuary must inform the owner of every material or legal interference that affects the usufructuary.

iv. *Obligation of the beneficiary to return the thing in place of the Usufruct Right at the end of the right*

Usufruct Right is a temporary right that ends with the expiry of its term, and the usufructuary is obligated to return the thing used at the end of the period. If the beneficiary refrains from responding, his hand over the thing is transferred from a trust hand to a guarantee hand, because in this case he becomes in the position of the usurper. The legislator has obligated the usufructuary upon the expiry of the usufruct, to return the objects for which the Usufruct Right has been decided to the owner, and in the event of his refusal to return them, the owner may demand that the return be returned through a recovery action or a personal action.

## **B. Rights and Obligations of the Bare-ownership**

Bare ownership is also examined at two levels: first: bare-ownership rights; second bare ownership obligations. There is a set of guaranteed rights unlike the obligations of bare-ownership. These rights are categorized as (i) right to dispose of bare-ownership; and (ii) right of the bare-ownership to obtain the products of the thing without the fruits.

The first right to dispose of bare-ownership means that the bare-ownership has the right to act as the owner of the bare-ownership, provided that such action is not prejudicial to the right of the beneficiary. The owner may sell bare-ownership, barter it, give it or bequeath it. The bare-ownership exercises the right to act as one of the owner's powers; where it authorizes him to transfer his right entirely to others by way of sale or gift, for example, or to assign an in-kind right to others as a pledge, and other acts provided that it does not exceed the limits established by law or agreement. The creditor, who is insured, may enforce against the property subject of the insurance, in the event of non-fulfillment of his right, and he shall recover his right from the price resulting from its sale. The bare-ownership may also arrange a right of rise on the property. But if the use of this right of easement conflicts with the right of the usufructuary, then the right of easement may not be used by the owner of the easement property until after the expiry of the Usufruct Right.

The second right of the bare-ownership to obtain the products of the thing e.g., the fruits. It is the right of the usufructuary to benefit what is produced by the usufruct and therefore the fruit belongs to the bare-ownership. Therefore, if a usufruct right is arranged on a real estate and the beneficiary finds a treasure in this real estate, it does not belong to him, unless the treasure is considered as one of the fruits of real estate.

But if the treasure is in the form of independent money, it belongs to the owner of the property. On the other hand, bare-ownership obligations are classified as (i) carrying out serious repairs (ii) not to perform acts that impair or diminish the right of the beneficiary; (iii) third parties' rights against the beneficiary and the owner of the bare-ownership.

The first category of obligations of carrying out serious repairs is among the obligations that must be carried out by the bare-ownership provided that they are not at the fault of the beneficiary. The second paragraph of Article (1339) of the Federal Civil Transactions Law states "As for the unusual expenses and repairs The grave that did not arise from the fault of the beneficiary, then it is on the owner, all this unless there is an agreement to the contrary. The owner of the bare-ownership shall carry out these repairs even if the beneficiary does not agree, and even if these reforms deprive the beneficiary of benefiting from the thing for the period necessary to carry out them, without asking the bare-ownership about compensating the beneficiary for this period, because the property is his property and he directly concerns him. To maintain its integrity, and this obligation is derived from his abstention from restricting the beneficiary to the actions that require the preservation of the thing.

The second category of obligations is not to perform acts that impair or diminish the right of the beneficiary. The bare-ownership is not entitled to perform acts that would impair or diminish the right of the beneficiary. Considering that the latter possesses a real right that requires not to be infringed upon, and to be respected by all. Accordingly, the owner of the bare-ownership may not, without the consent of the usufructuary, alter the thing that is usufructuary, such as constructing a new building in it, elevating the existing building, or demolishing part of it. But the rule that prohibits the owner of the bare-ownership from doing what leads to the disruption or limitation of the right of the usufructuary, an exception is given to him with regard to the actions that are required to maintain the integrity of the thing used.

The third category of obligations is Third Parties' Rights against the beneficiary and the owner of the bare-ownership. What is meant by the third party here is neither the bare-ownership nor the usufructuary, for these two are the parties to the Usufruct Right, and they are not considered third parties, rather it is every person arranged for him in this relationship in some way. In this situation, the beneficiary has the right to waive the right of his use to others, and this waiver may be a trade-off or a donation, as he can sell it, sue him, give it, or assign it to his creditor in return for repaying the debt. However, the beneficiary's right to waiver is restricted to not a few conditions in the contract that would not allow him to such waiver. If the beneficiary assigns the Usufruct Right to one of the above disposals, the third party assigned to him is considered to be the owner of the same Usufruct Right that was created for the usufructuary, but the latter remains obligated towards the bare-ownership with all the obligations arising from him, whether they belong to the owner or a third party, and they are not transferred to a liability assignee.

As the owner of the bare-ownership may not renounce the contract of the assignee as long as this contract is in accordance with the correct law and agreement, as long as the waiver of the beneficiary of the contract does not create any obligations owed by the bare-ownership and does not diminish the rights, it remains valid, and on the

other hand the usufruct's waiver of his usufruct must be time bound by the original Usufruct Right; where the period of usufruct of the assignee cannot, in any case, exceed the period specified for the beneficiary. The beneficiary may also mortgage a Usufruct Right as a formal mortgage if the Usufruct Right lies on real estate, and as a possessory mortgage if it falls on real estate or movables. It may also entail on the Usufruct Right the privilege of the seller of the real estate or the movable if the beneficiary has purchased Usufruct Right on either of them and has not paid its price. In the event that the usufruct assigns the Usufruct Right, the assignee has the same rights as the usufruct, where he shall have priority in repaying his debt from the Usufruct Right when other creditors compete with him for the beneficiary, while he exercises the advantage of tracking against the one to whom the Usufruct Right has transferred.

What is meant by exercising the right of tracking as one of the rights of the mortgagee creditor is to take legal measures to expropriate the Usufruct Right, sell it, and recover the debt from its price and here it is necessary to send a warning to the beneficiary. It must be noted here that the third party's right is related to the Usufruct Right only and does not extend to the bare-ownership where it is not permissible to seize it, as he is only entitled to the rights prescribed for the beneficiary only, and the mortgage is extinguished by the disappearance of its place in the event that the termination right expires before the execution of the mortgagee creditor on it. This applies in the case of a privileged right. But in the case of the bare-ownership's disposal of the mortgaged property, the right of the mortgagee creditor does not include this property, but remains limited to the Usufruct Right which he arranged with the debtor.

### **C. Expiration of Usufruct Right**

There are reasons specified by the law regarding the expiry of Usufruct Right. Article (1344) of the Federal Civil Transactions Law states that the Usufruct Right Expires as follows: (1) it ends with the lapse of fifty years, unless the deed of its establishment provides for another period; (2) By perishing the usufructuary; (3) By waiving off the usufructuary; (4) By terminating it by the court's judgment due to its misuse; (5) By the union of the two qualities of the owner and the usufructuary unless the owner has an interest in his survival, such as the bare-ownership being mortgaged. This reveals that the expiry of Usufruct Right has general and specific reasons, which are address below:

- *General reasons for the expiration of the Usufruct Right*

- i. First: the expiry of the usufruct at the end of its term*

The Usufruct Right is a temporary right in nature, so the usufruct expires at the end of the term specified for it, which means the term agreed upon in the deed created for usufruct. If there is no agreement on determining the period, then it ends with the lapse of fifty years. Legally, Usufruct Right is the right to usufruct in kind with something owned by others, provided that the same thing is preserved and returned to its owner at the end of the usufruct contract. It is noticeable that the UAE legislator did not restrict Usufruct Right to a specific period as a maximum, and therefore the

matter remains left to the will of the two parties in determining the period of usufruct in its establishment deed. It should be noted here that the UAE legislator did not include the death of the beneficiary in the enumeration of cases that lead to the expiry of the Usufruct Right, and the UAE legislator did well, as the introduction of this case raises doubt and instability because it is a term whose expiry date is unknown.

ii. *Second: Expiry of the benefit from the loss of the beneficial thing:*

The perishing of the usufruct means total devastation, as it leads to the absence of the usufruct, and is achieved when the thing subject to usufruct becomes completely unusable according to the purpose for which it was intended. But in the event that the destruction was partial, the usufruct does not expire, rather it continues on what is left of the usufruct, Article (1346) of the Federal Civil Transactions Law states: (1. If the Usufruct Right ends with the loss of the thing and the payment of compensation or insurance, the right of the beneficiary shall transfer to the consideration or the amount of insurance, If the destruction was not due to him, unless otherwise agreed upon. If the thing is completely destroyed, the Usufruct Right no longer exists because it is no longer in place. And if the Usufruct Right falls due to the perishing of the eye that is burdened with it, then this right does not transfer to the remains of the perished eye, such as the skins of animals that perished and the ruins of buildings that were demolished).

This means that the following conditions must be met in order for the Usufruct Right to expire by destroying the thing (i) The destruction of the thing must be complete, but if the destruction is partial, a distinction must be made between whether the remaining part is usable or not: if it is not usable by itself, and if it could be used in a way other than what it was, then the entire usability is forfeited. But if the remainder is valid for the same usufruct, then the usufruct remains based on it. (ii) That the thing usufruct perishes due to a force majeure: such as fire or foot, but if the destruction is due to the fault of the bare-ownership, or the fault of the usufructuary, then each of them is obligated to return the thing to its original origin, and the Usufruct Right returns. (iii) The usufruct shall not transfer to compensation for the loss: If Usufruct Right moves to compensation, the compensation shall replace the thing usufruct, and Usufruct Right remains in place, and Usufruct Right, when necessary, moves to the compensation paid for the insurance or for the acquisition.

iii. *Third: Expiry of the usufruct when the usufructuary relinquishes his right*

Usufruct Right is forfeited by the cessation of the right by the usufructuary, and this renunciation takes place at the will of the usufructuary alone, and it may take place by agreement with the owner of the bare-ownership, with or without consideration. However, the waiver here does not depend on the consent of the bare-ownership, but rather the will of the beneficiary is sufficient. Assignment by unilateral will is unconditional in a certain way, and requires the beneficiary to show his desire to relinquish the Usufruct Right, and it may be implicit, or it may be implicit silence, and the waiver of the Usufruct Right must not affect his obligations to the owner of the usufruct right and the rights of others. Finally, we point out that if the beneficiary relinquishes his right to others, then the third party dies, then the Usufruct Right devolves to his heirs.

- *Special Reasons for Expiration of Usufruct Right*

- i. First: The Expiration of Usufruct Right by the Union of Owner and Beneficiary Qualities*

By a union of parties, it means the union of the qualities of the creditor and the debtor, with respect to one debt in one person, which entails the impossibility of claiming the debt, since the person will not be able to claim himself; So the debt lapses to the extent that the two parties are united. Usufruct Right ends with the union of the parties, by merging the qualities of the bare-ownership and the usufructuary into one person, either by transferring the title of the money to the beneficiary as if the owner died and the beneficiary was his sole heir or vice versa, or the owner disposes of the bare-ownership by selling it to the beneficiary.

Through these examples, the phrase “union of the parties” appears inaccurate, as some jurisprudence sees that the expression of the union of the parties is the combination of the qualities of the usufructuary and the owner in one person. It should be noted here that the union of rights is achieved in the person of the usufructuary after ownership is transferred to him, and not in the person of the bare-ownership to whom the Usufruct Right does not transfer by transference, but rather returns to him inevitably after it was in the person of the usufructuary. The union of the property does not affect rights, if it is loaded with a mortgage, it remains in the interest of the creditor despite the union of the property.

And the union of liability is not a final cause for the expiration of the Usufruct Right, as if the cause that earned one of the parties’ ownerships, as a result of its nullity, cancellation or dissolution, ceases to exist retroactively, and the Usufruct Right returns again.

- ii. Second: Expiry of Usufruct Right for non-use*

In accordance with what is stipulated in Article (1348) of the UAE Civil Transactions Law, if the beneficiary leaves his right without using it for a period of fifteen years, then Usufruct Right is forfeited by the Prescription and prevents his case from being heard, as Usufruct Right is one of the temporary rights, and in-kind rights that are subject to prescription Dropping and preventing hearing the lawsuit, unlike the right of ownership, as it is a permanent right that is not waived by Prescription, even if it prevents hearing the lawsuit regarding it (he earns by Prescription).

This prescription is interrupted by the reuse of the thing by the owner of the right to use, even if there is an abuse of use, and this prescription is also stopped if there is an impediment with which it is impossible for the beneficiary to use the thing, as if he is a minor who has nothing to represent him legally. The expiry of the Usufruct Right results in specific effects, the most important of which is the obligation of the usufructuary to return the usufruct to its owner. Movable such as stores, stocks and bonds. If the thing is usufructuary, then the ownership is transferred to the usufructuary and the same or its value is returned to the owner.

## **Conclusion and Recommendations**

The study demonstrated Usufruct Right, defined its concept, and demonstrated its characteristics as a temporary in-kind right over something owned by others. The

study dealt with the distinction of Usufruct Right from lease right, then the study dealt with the provisions of establishing Usufruct Right, whether through legal disposal such as a contract and will or legal reasons such as preemption and the passage of time. The gain, as we explained in the study, the effects of it by explaining its effects on the right of the usufructuary, such as the right to use the usufruct, the right to exploit and manage it, and the right to dispose of it, in addition to clarifying the obligations of the beneficiary in exchange for the rights and obligations of the bare-ownership.

The study reached the following conclusions: First, in order to define the Usufruct Right, the Emirati legislator referred to its real nature and the powers granted to the right holder, but this was not found sufficient to define the intrinsic characteristics of Usufruct Right, as the legislator did not mention - in his definition - the temporary character of Usufruct Right. Second, the term disposition contained in Article (1338) of the Federal Civil Transactions Law refers to the material acts carried out by the beneficiary in order to use the thing. However, this term is not legally accurate because the disposition represents the third ownership authority that is maintained by the bare-ownership. Third, in matters of the obligations of the beneficiary and the bare-ownership, there is nothing to prevent them from being modified, tightened or mitigated. This is because these obligations are not from public order.

The study makes the following recommendations. The UAE legislator should reformulate the text of Article (1333) of the Federal Civil Transactions Law to read as follows: "The in-kind right is for the beneficiary to use and exploit something belonging to others for a specific period specified by law or agreement." It is also essential that the UAE legislator must reformulate the text of Article (1338) of the Civil Transactions Law with the following text: "The beneficiary may benefit from the usual use of the property if the usufruct deed is absolute from every entry." Finally, it is recommended that the UAE legislator should introduce a paragraph in the text of Article (1345) of the Civil Transactions Law whose content is "If there were fruits before the commencement of the Usufruct Right, the beneficiary shall be entitled to them in proportion to his benefit, provided that he contributes to the costs of seed, fertilizer and labor prior to his use."

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