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**2007**

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## اللهم إله إلاء

إِلَّا أَرْوَاحُ النَّبِيِّينَ الَّذِينَ هُمْ أَنْجَى مِنَ الْأَرْضِ مَنْ يَجْعَلُ

إِلَّا رُوحُ وَالدُّرْيِيِّ رَحْمَةُ اللَّهِ رَحْمَةٌ وَلَا سُعَةٌ

إِلَّا وَالدُّرْنِيِّ الْفَاضِلَةُ أَطْهَلَ اللَّهُ فِي عُمْرِهِ

إِلَّا الَّتِي حَسَنَتِي عَلَى مُوَاصِلَةِ هَذَا الدُّرْسَ وَتَحْمِلَتْ مَعِيَ الْكُدُورَ وَالْعَنَاءَ

شَرِيكَةَ دُرْبِيِّ زَوْجِيِّ الْغَالِبَةِ

إِلَّا أَبْنَائِي الْأَعْزَارِ الَّذِينَ أَشْغَلْتَنِي الدُّرْلَاسَةَ عَنْهُمْ

عُمْرُ وَعَزْلَرِيِّ

إِلَّا إِخْوَانِي وَلَا إِخْوَانِيِّ الَّذِينَ أَحْبَبْوَا إِلَيَّ الْمُخْبِرَ



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b	الملخص باللغة الإنجليزية





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“Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition there of, to any person receiving the same in good faith and without notice of the previous sale has the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same”<sup>(2)</sup>.

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(2) Rose, F. D: **statutes on contract tort and restitution.** Sixth edition. British Black stone press limited. 1995. page 116

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“A breach of contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract, performs defectively or incapacitates himself from performing. Repudiation before performance has become due gives rise”<sup>(1)</sup>.

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(1) Treitel. G. H: **the law of contract**. ninth edition. British: sweet and maxwell for spreading. 1995. Page 746 .

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“A breach of contract may entitle the injured party to claim damages, the agreed sum, specific performance.

Breach may also give the injured party the right to “rescind” the contract in circumstances” <sup>(1)</sup>.

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(1) . Treitel, G. H: **the law of contract**. Former reference. page 75

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“Where a contract term or notice purports to exclude or restrict liability for negligence a person’s agreement to or awareness of it is not of itself to be taken as indicating his voluntary acceptance of any risk”<sup>(2)</sup>.

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.355 . 2006 .

(2) Rose, F. D: **statutes on contract tort and restitution**. Former reference. Page 96.

.277- 276 . 2003 .

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**An-Najah National University**  
**Faculty of Graduate studies**

**Warranty of Exposure and Maturity  
In the Sale Contract  
"Comparative Study"**

**Prepared by  
Ribhi Muhammad Ahmed Hazim**

**Supervisor  
Dr. Hussein Mashaqi**

**Submitted in partial Fulfillment of the requirements for the Degree of  
Master of Arts in special law, Faculty of Graduate studies, at Al-Najah  
National University, Nablus, Palestine.**

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## **ABSTRACT**

This study has tackled, in research & analysis, one of the commitments laid on the shoulders of sellers; that is the warranty of exposure and maturity in the contract of selling, a comparative study.

And I've dealt with this topic of research in four chapters as follows:

A preliminary chapter, entitled the essence of the selling contract and the compliance with the warranty; where I've taken in it the essence of the sale contract; its nature and identification; as well as its distinction from the contract of barter simply because the barter contract is the basis of establishing the sale contract. This chapter come in three topics; such as,

First, I've talked about the essence of selling contract in various legislations; as well as the development of the sale contract in the Roman, French, Egyptian and Jordanian laws.

Second, is where the study has tackled the selling contract simply because it is characterized by several characteristics; such as, it is a consensual contract, an opposition contract, obligatory to both sides and transferring for property.

Third, is where I've discussed the essence of commitment by warranty besides stating its causes & kinds.

The first chapter is entitled the warranty of exposure. I've talked in it about the opposition; and I've discussed in it as well the opposition in general throughout four topics: First, is where I've illustrated the concept of the seller's commitment after his personal opposition; and the interactions of opposition issued from it; and the merits of the seller's compliance by the warranty of that opposition. And I've mentioned the provisions of the seller's commitment by the warranty of his personal opposition. Second, I've stated in this topic the creditor and debited by the warranty of opposition which is already issued by the seller. It is where the purchaser is a creditor in it by the warranty; and the seller might be indebted towards the purchaser. Then, I've discussed the proprietorship of selling by prescription as a few legislations have authorized the proprietorship of the seller from the sale in prescription.

In the third topic, I've manifested the concept of the seller's commitment by the warranty of opposition issued by the 3<sup>rd</sup>. party; and I've talked about the merits of that commitment and its provisions. And I've tackled as well the sale establishing warranty; then, the sale registered & not registered; and later on, the sale establishing commitment in the liability of the seller by the warranty of opposition and maturity towards the purchaser.

In the fourth topic, I've researched the creditor and debtor by the warranty of opposition issued by the 3<sup>rd</sup>. party where the purchaser will be a creditor in it and the seller becomes a debtor by the warranty of opposition issued by the 3<sup>rd</sup>. party; and I've demonstrated in it who is the compliant by the warranty in case of consecutive sales.

The second chapter is entitled the commitment with the warranty of maturity. I've showed in it the concept of maturity where there are two

topics: First, I've talked about the merits of commitment with the maturity and the prosecution of demanding; and I've shown as well the impact of the seller's intervention in the prosecution of maturity and not. Second, I've talked about the effects of maturity; such as, its effect between the seller and creditors, the purchaser and creditors; and the effect of the whole maturity between the seller and purchaser as well as manifesting the value of compensation demanded and its amount.

The title of the third chapter was the amendment of the warranty rules; their alleviation, strictness and indemnity. The chapter was divided into two topics: I've shown in the first one the alleviation and severity of warranty rules where the seller is to commit to more or less than what is set in the general statutes of the warranty rules; as well as showing the attitude of the comparative law concerning alleviating and strictness of the warranty rules.

In the second topic, I've talked about the consent to indemnify from warranty, the cases of its falling; and I've demonstrated the concept of indemnity from the warranty and its provisions; and I've stated the attitudes of comparative law concerning indemnity from the warranty; and I've talked as well about the attitude of the comparative law in the cases of warranty falling where there are cases that the right of the purchaser falls in them wholly or partially.

The recommendations of the study are the following:

First, the amendment of article (551) in the Jordanian civil law because it considers the suspended contract a true one after its authorization; and I, personally, look upon it in such a way even before it is being authorized; and the test of it is to be as follows:

1. In case the proprietor has acknowledged the sale, the contract would be valid, executive and compliant in the right of the purchaser.
2. And it would be valid, executive and compliant in the right of the purchaser as well in case the proprietorship of the sale was transferred to the seller after the issuance of the contract.

Second, the amendment of the third paragraph of article (505) in the destiny of complementary improvements performed by the purchaser on the sale as it did not distinguish whether the seller was of good-willing or not. The text of it is to be as follows:

3- And the seller guarantees to the purchaser what he has innovated in the sale where the former guarantees the to latter the value of those innovations if the seller was of bad-willing.

Third: The Jordanian legislator should frankly state whether it was possible to amend the rules of warranty in the sale because such texts were ignored in the Jordanian civil law.

Fourth, the amendment of first paragraph in the text of article (467) from the Palestinian civil law project because this article did not state the effect of the purchaser's knowledge concerning the maturity of the sale to the 3<sup>rd</sup>. party on the selling, or the effect perpetrated on that. I suggest that the text of the fifth paragraph is to become as follows:

5- In case the maturity of selling on the action of 3<sup>rd</sup>. party arises, the seller will be responsible for the returning of the whole amount of the sale on maturity unless it was confirmed that the purchaser aware in time of selling of the cause of maturity; or that he has purchased a falling option.

Fifth, we wish the Palestinian legislator might change article (455) of the Egyptian civil law by article (455) of the Egyptian civil law when comparing it with article (467) in the Palestinian civil law project because article (445) in the Egyptian civil law talks about the warranty of hidden defects in the sale whereas the comparison occurs on the amendment of warranty rules in the Palestinian civil law project compared with the Egyptian civil law.

Sixth, we wish Egyptian legislator on classifying the selling of the 3<sup>rd</sup>. party's proprietorship to consider the contact a suspended one instead of making it a revocable contract because the revocable contract has valid impacts on its parties. And the revocable contract as it was quoted in the Egyptian civil law has been based on two rules: the contract might be revoked by the purchaser; and the impacts of the contract are not valid on the right of the real proprietor of the sale. The purchaser is not entitled to revoke the contract simply because the revocation of it by the purchaser or authorizing it is authorizing it is issued by a personal who does not own the sale.