



ENSURING EXPOSURE AND ENTITLEMENT IN THE CONTRACT FOR THE SALE OF INFORMATICS SOFTWARE IN BAHRAINI LAW

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Abstract

The present study raises a major question represented in the adequacy of the provisions of warranting exposure and maturity in the Bahraini law in addressing cases of exposure and maturity to which buyers of electronic software are exposed. Our concern is justifiable because this law was issued before the great change and revolution that took place in the world of communications and technology, which produced the Internet that accommodated the vast world, in a way that made the world look like a small room and not even a small village, so it canceled the distances and changed the method of communication between people.

Accordingly, this study deals with the general rules contained in the civil law that regulated the seller's obligation to warranty exposure and maturity, as well as indicating the adequacy of the provisions contained in the copyright protection law to preserve the right of contracting parties to purchase electronic software. It also tackles what this exposure may lead to the possibility of maturity to third parties when the seller is unable to take an action against disturbance of possession. The importance of this issue is important in many ways, most notably the attempt to regulate this warranty, as this issue was not regulated accurately in the copyright protection law, although this law considered electronic software as works covered by the protection stipulated in it. So, I began my study by defining electronic software and their types, and then I tackled the definition of contracts for the sale of electronic software, their elements and their characteristics. Moreover, the legal basis for the seller's obligation to warranty of exposure and maturity, and then I detailed in two chapters with the meaning and provisions of each of the warranty of exposure and maturity. The conclusion included the most important findings and recommendations.

Keywords: *exposure and maturity warranty, electronic software sales contract, compensation, copyright in electronic software*

INTRODUCTION

The principle of freedom of contracting gave the will great authority to conclude whatever contracts it wanted within the scope of what is imposed by public order and morals. This led to the innovation and then the spread of contracts that until now there is no integrated law that regulates and governs their disputes. Perhaps the most prominent of these contracts is electronic sales that appeared through modern means of communication, including the Internet, and swept most aspects of daily



life in society for the ease and speed of conducting them as a result of reducing the distances and times required for contracting. Therefore, the process of buying and selling takes place with complete ease and without the presence or bearing any risks or exerting any effort from different places in the world through the use of the computer, whose operation depends on the availability of special information programs (applications) that differ according to the operations to be conducted through it. These programs have become a necessity that imposes itself through the prominent role it plays in facilitating electronic commerce. This is accompanied by the production of advanced application programs that preparing them need strenuous efforts that require huge funds that may reach millions of dollars to accommodate the successive progress in various fields of life, especially in the economic field. This information and electronic applications have become the subject of several contracts in order to obtain them, perhaps the most important of which is the contract for the sale of electronic software, which is distinguished from other sales by its unique characteristics, given that they are literary works that are not predominantly commercial in nature and are not used in the scope of industrial operation. This may requires the development of a legal environment that protects electronic software buyers and guarantee their rights from any exposure or maturity they may face after their implementation of their obligations to pay the value of the software programs to their creator or seller who owned them, and owned the right to invest. The importance of the research is evident as a relatively recent subject on the legal level due to the lack of studies that dealt with the contract for the sale of electronic software, not to mention the obligations of the seller of those software programs, especially with regard to warranting exposure and maturity, as they are among the most common problems facing the buyers of these software programs.

I will follow the inductive approach, where I will shed light on how to give legal protection to the buyer of electronic software by warranting his right to it through the seller paying and warranting any exposure or maturity that the buyer of those software programs may face. This will be based on the provisions of the general rules of the contract theory in the Bahraini civil law as well as the provisions of Bahraini Copyright Law No. (23) of 2006. The Bahraini Copyright Law considered computer software programs among the works covered by copyright protection based on the text of Article 2/b, which states that “literary, artistic and scientific works shall enjoy the protection stipulated under the provisions of this law once created. This is done without the need for any formal procedure, whatever the value, type, purpose, method or form of expression of these works. Protection includes in particular the following works: B- Computer software, whether in the source language or in the language of the machine.

I will devote my study to explaining the legal regulation of the commitment of the electronic software seller to warranty exposure and maturity in three chapters as follows:

Chapter one: Concept of the electronic software sales contract

Chapter two: The commitment of the seller of electronic software to guarantee exposure

Chapter three: The commitment of the seller of electronic software to warranty of maturity.

Chapter one: Concept of the electronic software sales contract



Before stating the commitment of the seller of electronic software to warranty exposure and maturity, we must clarify what is meant by the electronic software sales contract and determine its nature and the obligations incurred by its parties, as well as explaining its characteristics. Finally the legal basis for the seller's obligation to warranty of exposure and maturity will be stated. This is what I will address in the following three topics:

First topic: Definition and characteristics of electronic software sales contracts:

In this topic, I will discuss what is meant by electronic software, and then define the sales contract contained in the first section. I will devote the second section to explaining the general and specific characteristics of this contract.

First section: Definition of electronic software sales contract:

Electronic software, as the intangible element in the information system, represents mental work that has a financial value. In fact, it is "a set of instructions that translates an algorithm into a smart phrase that the machine (or the compiled software) understands and recognizes."⁽¹⁾ It was also said that it is "a set of instructions written in a specific language addressed to a computer in order to reach certain results."⁽²⁾

The Bahraini legislator did not define these software programs, but merely referred to them as being among the works protected by the Copyright and Related Rights Protection Law, based on Article 2/b thereof, which stipulated that by saying: "computer software programs, whether in the source language or in the language of the machine." Looking at the terms of the text can show that it means a set of commands or instructions that are expressed in any language, symbol or form and included in the computer to be used directly or indirectly in order to perform a specific function or to reach a desired result.

Software programs are divided based on the nature of the function they perform into two parts. The first is system software programs that control and operate the computer's internal functions as well as regulating the succession and sequence of operations in it. The second is the application software programs that are installed on physical supports that are inserted into the computer when needed, and its function is to enable the computer user to carry out his work (such as drawing programs and games).

In terms of the ability to trade, electronic software are divided into special software programs that are prepared according to specific requests from a specific user, and model software programs that are general and represent a complete set intended to be supplied to all who wish to obtain them for the purpose of completing a specific application.

These software programs are subject to many contracts depending on the type of software program. They may be subject to a work contract, especially if their creator works under the supervision and direction of the client. If he works independently, then the contract is a contracting contract. Model

⁽¹⁾ Tony Michel, *Specifics of Contracting in Informatics*, Human Rights Publications, 1996, p. 21

⁽²⁾ Dr. Shehata Gharib, *The Moral Right to the Author of Software Programs*, Arab League House, Cairo, 2008, p.8.



software programs may be subject to a lease contract or a licensing contract to be exploited by a person or a group of people, in addition to the possibility of a sales contract. The electronic software sales contract has been defined as: exchanging an electronic software program prepared in advance for cash, in which the author of the software program or whoever successor waives this right completely and finally to the buyer the rights of financial use scheduled on the software program, in return for a cash price⁽³⁾.

It appears to us from the above definition that the sales contract of these software programs deals only with the rights to use them, because the electronic software are considered among the works protected by the copyright law, as we explained above. Therefore, it is not allowed to transfer the moral rights of the work to others on the grounds that it is one of the inherent personal rights of the author. Accordingly, the sales contract refers to the financial rights of the software program without the moral rights⁽⁴⁾.

Based on the above, the creator (author) of the electronic software program does not transfer ownership of the software program to the purchaser, or more precisely, does not transfer all the financial rights to the purchaser, but rather transfers to him the right to personal use of the software program without the right to dispose or exploit it⁽⁵⁾. As a result, the purchaser of electronic software may not sell, lends or leases the software program to others except in one case, which is represented in obtaining prior permission from the seller (the creator of the software)⁽⁶⁾, unlike the buyer in sales contracts in general, who, as a result of the contract, owns the right of ownership with all its advantages of disposal, use and exploitation.

In order for the electronic software sales contract to take place, all its elements represented by mutual consent must be available through the presence of two wills that consent and tend to create a legal effect. However, the practical reality indicates that the electronic software sales contract is often concluded through contracts prepared in advance by the creator or producer of the software attached to a copy of the software subject to the contract installed on a floppy disc (CD) or memory chip (RAM), or contracting might be through social networks (the Internet) or through an exchange of offer and acceptance via e-mail⁽⁷⁾. These methods of expressing offer and acceptance may raise some legal problems related to the contractual balance, given that the author of the software is the one who drafts sales contract and announces it to others according to non-negotiable terms, in addition to the fact that the drafting of the contract clauses may be tainted by some complexity or

⁽³⁾ Dr. Jalil Al-Saadi, Contract for the Sale of Model Software for Information: A Study in Iraqi and French Laws, research published in the Journal of the College of Law, Al-Mustansiriya University, Issue 21/22, Sixth Year, Volume Four, 2013, p.1.

⁽⁴⁾ Dr. Nawaf Kanaan, Copyright, Contemporary Models of Copyright and Means of its Protection, Dar Al Thaqafa for Publishing, Amman, 2004, p. 85.

⁽⁵⁾ Dr. Reda Metwally and Hadan, Protection of the Financial Right of the Author, House of Thought and Law, Al-Mansour, 2011, p. 23.

⁽⁶⁾ Intellectual Property Rights in Software, Copyrights, Patents, Ownership, www.softwarecontracts.net.

⁽⁷⁾ Heba Thamer Mahmoud Abdullah, Electronic Commerce Contracts : A Comparative Study, Master Thesis, Faculty of Law, Al-Nahrain University, 2006, p. 142.



ambiguity for the non-specialized buyer, and this may make The contract for the sale of electronic software is a kind of contract of adhesion. In order to face this unbalanced situation, the Bahraini Civil Code has satisfied itself with the text of Article 58, which allows the judge to intervene to amend the arbitrary condition or to exempt the weak party in accordance with what is required by the rules of justice, but he remedied the matter in the text Article 6 of the Consumer Protection Law, and obligated the supplier of goods and services to provide the consumer, in the approved official language, with all the necessary information about the specifications of the goods and the proper methods of using them. Moreover, the legislator also gave the consumer and every interested person the right, based on the text of Article 8, to return the goods in whole or in part to claim compensation in the event that he did not obtain the required information, which leads to damage to him or his money⁽⁸⁾.

As for the second element in the contract for the sale of electronic software, it is represented by the object. Since it is a binding contract for both sides, it creates obligations for the seller (creator or author of the software), which main object is the electronic software, which is distinguished by special nature, as it must be possessed and monopolized. This matter is imagined after the author of the program recording his ideas and writes them in one of the programming languages and save them on a material support. In return, the object of the buyer's obligation is the price that he undertakes to pay to the creator of the software program. It is recognized that software programs play a big role in the economic field, and that the production costs of some of them may reach large sums that exceed millions of dollars.

Regarding the cause as a third element, the provisions of the general theory of the cause apply to it, as it is the motive for contracting, and it must be present and legitimate.

Second section: Characteristics of the Software Sales Contract:

The software sales contract is characterized by a set of characteristics, some of which are general in common with all sales contracts, and some of which are specific due to the special nature of these software programs.

In general, this contract is characterized as one of the commutative contracts, as we explained above, both parties to the contract are obligated to give consideration for what he took. Thus, it is considered one of the actions that revolve between benefit and harm, and it is also one of the consensual contracts that take place once the offer is combined with acceptance. However, the practical reality explained that the common method of obtaining software programs is through obtaining packages containing the software with the physical medium loaded on it as well as the usage manual and description of the software program within a transparent bag coated with a sticker that includes an explanation that opening the cover means acceptance of the terms of the contract and thus the conclusion of the sale. Furthermore, the conclusion may be made from over the internet⁽⁹⁾.

⁽⁸⁾ Dr. Abdul Hai Hijazi, Introduction to the Study of Law, Part Two, Kuwait, 1970, p. 109.

⁽⁹⁾ How companies buy software, solutions and services. <http://www.softwarecontracts.net>.



The software sales contract is also distinguished as a binding contract for both sides, as it arranges mutual obligations on both parties, so both are considered a creditor and a debtor. It is also one of the contracts that transfer ownership, except that the ownership of the software is not completely transferred, but the right to use is transferred, and in special cases the exploitation right may be transferred if agreed with the author on that. This is considered one of the unique characteristics of this contract as a result of the non-material nature of the object to which the contract is concluded. Thus, the provisions to which it is subject differ from the provisions that regulate sales received on physical things, which requires verification of the suitability of selling and buying electronic software by making sure that these software programs represent something in the eyes of the law and that they are the object of financial rights⁽¹⁰⁾. This contract is also distinguished, due to the nature of the sold object, as an inalienable moral right, by being subject to the copyright and patent protection law. Finally, the electronic software sales contract may be one of the contracts that are characterized by the lack of technical equivalence between the parties. It is natural for the author of the software program to be a person with scientific experience and precise specialization in the field of programming, unlike the buyer, who is often an ordinary person with no experience in these matters. This may sometimes require the intervention of the judiciary to mitigate some arbitrary conditions, if any.

Second topic: Nature of the electronic software sales contract:

As a result of the inability of the purchaser of electronic software to dispose of the program, jurisprudence was divided into two tendencies to determine the nature of the contract for the electronic software sales contract, as follows:

First tendency:

The first tendency sees that it is not possible to attribute the status of a sales contract to contracts contained in electronic software as a result of the lack of rights transferred according to it due to the creativity of the software program's creator. The author of the software retains all the financial rights approved by the writer protection law. As a result, he does not transfer to others anything but a mere one single right that is represented by the personal use of the software program. Hence, the latter is not entitled - as we stated previously - to sell the program to others, nor is it permissible to copy it⁽¹¹⁾, which contradicts the idea of transferring ownership of the thing sold, which represents the essence of the sales contract in general.

⁽¹⁰⁾ Dr. Fayez Abdullah Al-Kandari, *The Limits of Civil Protection for Software Programs: A research published in the Journal of Law issued by the Academic Publishing Council at Kuwait University, first issue, year 28, March 2004, p. 14.*

⁽¹¹⁾ Even if the copying was for the purpose of personal use, but to a computer other than that computer mentioned in the contract concluded between the two parties, and for details, see: Dr. Nouri Hamad Khater, *Informatics Contracts*, House of Culture, Amman, 2001, p. 132.



Some jurists followed this tendency, and they assert that electronic software are characterized by certain characteristics that make them distinct from other funds (movable or real estate and even other mental ones). It follows from that that the sales contract contained in these software programs is of a special nature as well, which in turn affects warranties needed to regulate the relationships arising from it. These warranties differ in their content and function when applied from those in ordinary sales contracts⁽¹²⁾.

Second tendency:

The supporters of the second tendency see the possibility of applying the provisions of the sales contract to contracts contained on electronic software, as this contract leads to the transfer of ownership, with some restrictions or exceptions. That is, the sales contract of electronic software transfers the ownership of the software program, but in part⁽¹³⁾.

Those who adopted this approach relied on the provisions of the text of Article (4-131) of the French Intellectual Property Protection Act, which confirmed that the existence of some exceptions or restrictions does not prevent the conclusion of a contract for the sale of electronic software due to its special nature⁽¹⁴⁾. Thus, it allowed the author to waive some of his rights and then the possibility the occurrence of a sales contract that is replaced by electronic software. They based their opinion on the case of merging the software programs - as it represents the intangible element in the information system - with the computer - which represents the physical element in the same system - such as a floppy disk or a memory chip. This merger between the two elements of the information system leads to the merger of the physical medium of the software, especially with regard to software programs that are an essential part of the computer and therefore included in the sales contract⁽¹⁵⁾. Based on the second approach, there is nothing to prevent making electronic software the subject of a sales contract as long as the law has equated between tangible and intangible things in terms of the possibility of them being the subject of a sales contract, in addition to the fact that the restrictions or exceptions contained in the transfer of ownership of electronic software do not represent an obstacle to concluding the sales contract. Therefore, the opinion that we prefer is the second opinion, because electronic software are in fact of a commercial and industrial nature, and

(12) Dr.. Sabri Hamad Khater, Contractual Warranties for the Transfer of Information, Journal of Law, Al-Nahrain University, No. 3, 1999, p. 119

(13) Dr.. Jalil Al-Saadi, Op. Cit, p. 16

(14) Where it came in the text of the articles of the French law what it means: "The program seller's retention of ownership is very important, so that he can sell more copies to other users, which made the issue of sale and delivery here different from other sales such as selling physical things." Dr.. Nuri Hamad Khater, Op. cit, p. 134.

(15) We must not confuse the contract for the sale of the software with the contract for the sale of the computer that contains it. It may be said that the latter represents a tangible thing that can be owned by a sales contract and then disposed of, but this matter is not considered acceptable because what counts is the moral element, i.e. the software carried by the support, not the support. Therefore, it is necessary to separate the software as a moral right that may have a great financial value, and the support or the computer, which has a very low financial value compared to the value of the software. For more see: Dr. Nabila Ismail Raslan, Insurance in the Field of Informatics and Networks, New University House, Alexandria, 2007, p. 47



this is what distinguishes them from other intellectual works of a literary nature (such as a story and a painting). If the buyer of the story or the painting can, by law, make a copy of it for his personal use, this is not possible within the scope of electronic software because its application in this case may lose its author or creator the ability to market his software commercially, which leads to harm him/her.

Thus, the legislator has done well when he forbids the making of copies of electronic software by any person, even if he is the buyer, unless he has contracted for that with the author. Therefore, his right is limited to one copy for personal use, but the legislator did not neglect the buyer's right despite its restriction, so he took his/her interest into account when the seller (the creator of the software) is denied the right to withdraw the software from circulation, because this will inevitably harm the buyer. In the event that the seller violates this obligation, he must compensate the buyer for any damage incurred as a result of this withdrawal⁽¹⁶⁾.

From the foregoing, it becomes clear to us that the electronic software sales contract is a contract according to which the seller (creator or author of the software) transfers one or some of his rights to the buyer and retains the rest as an intellectual work subject to the provisions of Article (38) of the Iraqi Copyright Protection Law, which stipulates that: "The author may transfer to others the usufruct rights stipulated in this law, except that the transfer of one of these rights does not entail giving the right to exercise another right. It is required for the validity of the disposal to be in writing and to specify explicitly and in detail each right that is subject to disposal with an indication of its extent, purpose and duration of exploitation and its place. The author must refrain from any action that would disrupt the use of the disposed right." Thus, the buyer can use the software only without being able to sell it, rent it, or lend it to others, unless otherwise agreed with the seller.

Third topic: Legal basis for the electronic software seller's obligation to warranty of exposure and maturity:

Some jurists consider that the process of creating or authoring electronic software is in fact an invention attributed to its owner. As a result, what is true for the invention is also true for it regarding the purchaser's warranty of exposure and maturity.

The contract for the sale of electronic software puts an obligation on the seller represented in enabling the buyer to possess the software without nuisances. That is it is not permissible for the seller to interfere with the buyer's benefit from anything, whether it is an act emanating from the seller or a legal action emanating from a third party. The principle is that the basis for this obligation is established by law, except that the provisions of this warranty are not from public order, and therefore it is permissible to agree on what contradicts it. However, it must be noted that the scope

⁽¹⁶⁾ We must not confuse the contract for the sale of the software with the contract for the sale of the computer that contains it. It may be said that the latter represents a tangible thing that can be owned by a sales contract and then disposed of, but this matter is not considered acceptable because what counts is the moral element, i.e. the software carried by the support, not the support. Therefore, it is necessary to separate the software as a moral right that may have a great financial value, and the support or the computer, which has a very low financial value compared to the value of the software. For more see: Dr. Nabila Ismail Raslan, Insurance in the Field of Informatics and Networks, New University House, Alexandria, 2007, p. 47



of exposure and maturity in the scope of electronic sales is very limited because any material exposure to which the assignee is exposed to can resort to the counterfeit lawsuit that prevents any infringement of the invention from any whosoever. It guarantees the owner of the invention the protection of his financial rights. As a result, the purchaser of these software programs deserves compensation for any damage incurred, with the confiscation of all counterfeit materials.

The counterfeiting lawsuit may be considered more important if the source of the material exposure is the inventor of the electronic software (the assigner). This case can be imagined if he provides a third party with technical knowledge and enables him to physically challenge the rights of the assignee. Moreover, the legal exposure may appear in the lack of originality of the invention or the inability to operate the industrial application accompanying it. The French jurisprudence differed about the nature of the lack of originality in the invention or the absence of its industrial application. On the one hand, an opinion considers these matters as a latent defect to which the provisions of latent defects apply. On the other hand, the second opinion saw these matters are in fact legal exposure, and then it is referred to the provisions of warranty of exposure and maturity⁽¹⁷⁾.

From the aforementioned, it is clear to us that the creator of the software must refrain from any exposure to the buyer after his assignment of the financial right to others, i.e. the use and exploitation of the work, whether it is physical or legal. The material exposure is represented in his refusal to provide a copy of the software program to the assignee. If the author of the software abuses his moral right and refuses to hand over the work to the buyer or colludes with another buyer according to better and more profitable terms, this case represents exposure. Hence, the buyer has the right to in rim execution⁽¹⁸⁾. This abuse or exposure can be imagined in the case of electronic software sale contracts that are requested in particular (special software programs).

In addition, any encroachment on the work by photographing it, imitating it, putting a name other than the author on it, or any other type of illegal exploitation of the work gives the buyer the right to make reservations and sign a seizure on the work, its copies or images. This also includes the seizure of the materials that are used for republishing or extracting copies of it. He also has the right to seize things or equipment that were used in carrying out illegal acts as well as to demand stopping the publication of the work, its manufacture, or preventing its circulation that means preventing the sale of the work, offering it for sale, or distributing it⁽¹⁹⁾.

Furthermore, the author has the right to pay the exposure by claiming in rim execution by destroying copies of the infringed work⁽²⁰⁾. One of the most important types of infringing works is counterfeiting, piracy, distortion of the work or imitation of the work -all constitute an infringement on the author's

(17) Dr.. Nuri Hamad Khater, Op. cit, pp. 117 and 118. The opinion of the two jurists, chaanne et urst, supports that it is a legal exposure because the issue here does not pertain to the invention itself in order to be considered a defect, but rather pertains to a legal issue, which is the existence of another invention prior to the new invention, but if the exposure is due to the absence of an industrial application, then this is related to the imitation of the invention, then this is a latent defect.

(18) Dr. Esmat Abdul Majeed Bakr, and Dr. Sabri Hamad Khater, Legal Protection of Intellectual Property, House of Wisdom, Baghdad, 2001, p. 124.

(19) Article 46 of the Iraqi Copyright Protection Law No. 3 of 1971, and see Dr. Esmat Abdul Majeed Bakr Dr. Sabri Hamad Khater, Ibid, p. 158.

(20) Article 47 of the Iraqi Copyright Protection Law No. 3 of 1971.



right. The purchaser has the right to publish the work or to financially benefit from it if the agreement has been made on the right of the buyer to exploit the work in addition to personal use⁽²¹⁾.

Chapter two: Warranty of exposure:

The seller's obligation in selling electronic software is not limited to transferring its ownership to the buyer or handing it over, but rather warrant his personal exposure as well as legal exposure issued by third parties.

According to the sales contract, the seller shall warrant the buyer the use, exploitation, and disposition of the thing sold without nuisances that might lead to exposure. Warranty of exposure is part and parcel of nature of the contract. Hence, there is no need to be provided in the contract, as the seller is obligated to warranty exposure based on the provisions of the law that came as an interpretation of the will of the contracting parties even if this warranty was not stipulated in the contract. However, this warranty is not part of the public system, so it is permissible for the contracting parties to agree to amend its provisions by tightening, mitigating or exempting⁽²²⁾.

All of this is based on the text of Article 408 of the Bahraini Civil Code, which states:

"The seller warrant exposure to the purchaser in all or part of the sold item from any person who claims a right over the thing sold at the time of the sale invoking it against the purchaser. He is also bound by the warranty, even if the objector claims a right that arose after the sale, if this right was transferred to him from the seller or was a result of his action⁽²³⁾.

Based on the foregoing, the author of the electronic software warrant two types of exposure, which we will discuss in the following two topics:

First topic: Warranty of personal exposure:

The seller warrants the personal exposure emanating from him, whether it is material or legal exposure. On the one hand, The material exposure means every physical act issued by the seller and affects the rights and powers granted to the buyer of the software and that would disturb the buyer's possession of the thing sold. The seller does not base this nuisance on a legal right that justifies his behavior. Examples of the material exposure include the seller of the electronic software program refrains from presenting the code to open the software program when it is closed, or he places a virus inside the software program and refrains from providing anything that invalidates the work of this virus. On the one hand, the legal exposure, it is represented by the seller taking legal actions

⁽²¹⁾ Dr. Esmat Abdul Majeed Bakr and Dr. Sabri Hamad Khater, Op. cit, p. 170.

⁽²²⁾ Dr. Nouri Hamad Khater, Informatics Contracts, Al al-Bayt University, 2001, p. 186.

⁽²³⁾ An example of this provision is what came in Article 439 of the Egyptian Civil Code, which emphasized that the seller guarantees that the buyer will not be subjected to interference in the use of the whole or part of the sale, whether the exposure is from his own doing or from a foreign act. And if the foreigner had established his right after the sale, if this right had devolved to him from the seller himself, as in the French civil law, the seller guarantees his personal exposure to the buyer, whether material or legal, stipulated in 1626 French civil (despite when a sale was issued in which any text mentioned in the warranty. The seller is obligated to guarantee the buyer the right of exposure he suffers in all or part of the sale or the allegation alleged about it, not announced the sale)

C.Fr.Art. 1626 Quoique lors de la vente il n'ait été fait aucune stipulation sur la garantie, le vendeur est obligé de droit à garantir l'acquéreur de l'éviction qu'il souffre dans la totalité ou partie de l'objet vendu, ou des charges prétendues sur cet objet, et non déclarées lors de la vente.



without right or by filing a lawsuit against the buyer that annoys him during his possession of the thing sold⁽²⁴⁾. Not to legally rebutted, this exposure should meet the following conditions:

1. **The occurrence of the exposure actually**, mere possibility of its occurrence in the future is not sufficient because the fear of its occurrence does not justify the claim of the warranty. If the seller threatens the buyer with exposure to him, this threat is not sufficient to establish the warranty of exposure as long as the seller does not carry out his threat and is actually exposed. Consequently, the statute of limitation for the exposure warranty lawsuit does not apply except from the time the exposure actually occurred, and its period is fifteen years from the time the exposure occurred⁽²⁵⁾.

2. **That the exposure would totally or partially prevent the purchaser from benefiting from the thing sold**, whether the exposure is based on a material reason or legal reason. Material exposure is of two types, one based on purely material actions, and one based on legal actions, whether before or after the sale, that would prevent the buyer from benefiting from the thing sold. One of the forms of legal exposure is that the author sells the private electronic software to the buyer at his request with specific specifications, except that the seller hands it over to a second buyer. Thus, the ownership of the software program (saved on a material support) is transferred to the second buyer according to the possession rule stating possession is equivalent to title. Thus, the seller's exposure is based on a material reason. The seller's exposure based on a legal reason is represented in the seller's claim that he has a right over the electronic software against the buyer, whether the claimed right is prior to the sale or subsequent to it, such as selling a work that he does not own and then becomes the owner through inheritance or bequeath, so the purchaser is invoked by this ownership that occurred after the sale⁽²⁶⁾. Here, we apply the rule of the one who shall warrant shall refrain from exposure⁽²⁷⁾.

The seller is committed to warrant material exposure, even if the act that constitutes this act is not in itself a mistake and is not considered an illegal act. Rather, it is considered one of the acts. If it was issued by someone other than the seller, the warranty would not have been imposed on the perpetrator. The position of the seller here differs from that of a third party, since the seller has committed himself/herself according to the sales contract, the ownership of the thing sold and the uninterrupted usufruct of it are transferred to the purchaser so that the purchaser does not miss out the use of it⁽²⁸⁾.

⁽²⁴⁾ Compare that with Dr. Saeed Mubarak and Dr. Taha Mulla Howish and Dr. Sahib Obaid Al-Fatlawi, *Op. cit*, p. 117.

⁽²⁵⁾ Dr. Al-Sanhouri, *The Mediator in Explanation of Civil Law, Part 4, Sale*, 1st Edition, Al-Halabi Law Publications, Beirut, Lebanon, 2000, p. 626. Counselor Anwar Tolba, *The Mediator in Civil Law, Part 4, Sale, Barter, Gift, Company*, Modern University Office, 2001, p. 194.

⁽²⁶⁾ Dr. Al-Sanhouri, *Op.cit*, pg. 627 and et seq., Dr. Fayez Ahmed Abdel Rahman, *Op. cit*, p. 202.

⁽²⁷⁾ The French Court of Cassation ruled that if the author waives his right to publish his work to the publisher, and he does not have the right to publish it himself or through another publisher a new edition of the same work, and the court decided to guarantee the partial entitlement to the author, and to ensure that electronic software, whether on tapes or via the Internet, are considered works and rights of the author. Thus, the fact that the author of the electronic software entrusted it to a publisher to publish it in another place is considered exposure that requires warranty exposure, quoting Dr. Muhammad Kamel Morsi, *Op.cit*, 273.

⁽²⁸⁾ We must distinguish between the legal exposure issued by the seller and the right that the seller performs based on the contract or the law. The seller's request that is sold by word of mouth is not considered exposure to the buyer, as well as the seller's request to cancel the sale due to defects of will such as coercion, error,



The seller's obligation to warranty exposure for his personal actions is a permanent commitment. As a result, the seller cannot claim the drop of the warranty after the lapse of fifteen years. Moreover, the warranty of personal exposure is not only binding on the seller, but also includes his general posterity in the French law. The heirs are obligated to warranty exposure, as well as the seller's sponsor⁽²⁹⁾. In Bahraini law, if the electronic software seller dies, the warranty of personal exposure of the buyer is related to the inheritance, and as a result, the heirs do not have the right to breach it as a debt. The rule is that (there is no inheritance except after paying off the debt), and then the heirs are bound by this warranty.

However, if the heir sells a work owned by his legato to his son, for example, or his wife, the buyer may not invoke the warranty against the heir, and the seller may recover the sold item from the buyer⁽³⁰⁾. However, the warranty of exposure does not transfer to the private posterity or to the seller's creditors if they take the procedure that makes their right enforceable against third parties. Likewise, this obligation is indivisible in the case of multiple sellers, even if the thing sold accepts division⁽³¹⁾. Thus, the seller's warranty of personal exposure is a commitment to abstain from an action that is embodied in not interfering with the buyer in the ownership and benefit of the thing sold. Hence, it is then an indivisible obligation, so if this obligation is related to a liability of more than one person, the obligation is not divided among the multiple debtors so that each of them is concerned with a part of it, but each of them is a debtor of the obligation to warranty the entire exposure⁽³²⁾.

The right to claim the warranty for exposure is transferred to the general posterity of the purchaser and his special posterity, whether the sale was made by public, compulsory, judicial, administrative, or voluntary auction, or the sale was ordinary⁽³³⁾.

From the aforementioned, it becomes clear to us that in the sale of electronic software sales contract, the exposure that necessitates the warranty includes prejudice to all the rights and powers granted to the buyer over the software program (which in fact falls under the form of financial benefit legally established for the author of the software itself). Thus, if the author of the electronic software disposes of part or all of his rights to third parties, he undertakes not to do any act that may disturb the buyer during his possession of the software or hinder this use or benefit.

If the exposure is material, the buyer may demand that it be stopped and that all its effects be removed. The court may, in order to stop the exposure, impose threatening fines on the seller. Moreover, the buyer may claim compensation for the damage he has suffered. However, if the exposure is legal, then the buyer may demand that some legal actions against him or claiming the

and exploitation. This is not considered exposure because here he/she uses his right that is derived from the sales contract itself. Saeed Mubarak and Dr. Taha Mulla Howish and Dr. Sahib Obaid Al-Fatlawi, *Op.cit.*, pp. 119-130.

⁽²⁹⁾ Dr. Muhammad Kamel Morsi, *Op.cit.*, vol. 6 / p. 272 et seq.

⁽³⁰⁾ Al-Sanhouri, *Op. cit*, pg. 663.

⁽³¹⁾ Anwar Tolba, *Op. cit*, p. 196.

⁽³²⁾ Dr. Al-Sanhouri, *Ibid*, pg. 663.

⁽³³⁾ This is unlike what is done in the case of warranting latent defects, as there is no warranty for defects in judicial sales or in administrative sales if they are made by way of public auction in accordance with Article 424 of the Bahraini Civil Code, Dr. Al-Sanhouri, *Ibid*, p. 637, Counselor Anwar Tolba, *Ibid*, p. 196.



dismissal of the lawsuit. Furthermore, the buyer has the right to demand the rescission of the sale due to the seller's breach of his contractual obligation not to object. He also has the right to claim compensation in accordance with the general rules of contractual liability⁽³⁴⁾. As a result, the seller is obligated not to claim ownership of the rights after their assignment. What facilitates the issue of proving ownership is what the Bahraini legislator stipulated for the validity of the author's actions in (Article 8) from the Copyright Protection Law. It is necessary for the agreement to be in writing and to mention in it explicitly and in detail the right subject of the contract, its purpose, and the period and place of exploitation.

However, it must be noted that there is an exception to this obligation imposed on the seller not to personally interfere with the rights of the buyer, as the law allows the seller to be financially exposed to the buyer of electronic software, provided that he compensates the latter. This allows the author of the software program to withdraw his work from circulation or to make substantial modifications to it, even though he has sold his financial usufruct rights to another person. Based on the foregoing, and the fact that the electronic software are among the works protected by the copyright law, the creator of the software may withdraw it from the hands of the buyer and make substantial modifications. Although these actions are considered as personal exposure, the legislator has allowed and authorized it based on the text of Article (5/e) of the Copyright Protection Law, provided that serious reasons arise that justify the ban or withdrawal. In this case the author must obtain from the competent court a judgment preventing his work from being circulated or withdrawing it. The court shall rule in the event that the court responds to his request to oblige him to pay in advance a fair compensation to the one to whom the financial rights have devolved within a period specified by the court, otherwise the judgment shall be deemed null and void.

Second topic: Warranting legal exposure issued by third parties:

The seller's warranty is not limited to his commitment not to personal exposure, rather the warranty extends to legal exposure issued by third parties to the buyer, and the following conditions are required for this warranty to be established:

First: That the exposure actually takes place from a third party, who is every foreigner who is not a party to the sales contract, and claims a right against the thing sold and brings a lawsuit against the buyer with this right. This lawsuit differs according to the right claimed by the third party against the thing sold. It may be a total entitlement claim whereby a third party claims ownership of the entire sale, or a mortgage claim claiming a secured debt, or claiming that the sold item is rented to him/her. Moreover, the thing sold may be in the hands of a third party, so he/she clings to its right on the thing sold, and he pays the recovery claim that the buyer files against him, noting that it is not required to be a legal exposure issued by a third party to the buyer to file a lawsuit before the court. The exposure may occur without filing a lawsuit if the buyer believes that a third party has a right to what he claims, so he handed over the thing sold to him or reached a reconciliation, or the buyer paid the debt secured by a mortgage on the thing sold. However, the buyer took a risk here,

⁽³⁴⁾ Dr. Saeed Mubarak and Dr. Taha Mulla Howish and Dr. Sahib Obaid Al-Fatlawi, Op.cit, p. 120.



as the seller may prove that the third party is not right in what he claims, and thus the buyer loses his right by referring to the seller under warranty⁽³⁵⁾.

It is also required that the exposure issued by third parties be immediate and not contingent. The buyer does not have to claim warranty if the third party did not now, but rather expected that he would be exposed to a claim by third parties in the future. For example, the buyer cannot claim to the seller what he paid to a third party in terms of a debt secured by the sale without informing the seller. The seller may have paid that secured debt if, for example, a third party has a mortgage right on the thing sold, or if the debt has expired for any of the reasons for termination⁽³⁶⁾.

Second: The exposure should be legal, with a third party claiming a right approved by the law on the sold item, such as a third party claiming a right on the sold item invoked against the buyer before the court. The right of others may be a real or personal right. An example of a personal right is the tenant's right to claim that others have a fixed-date rent prior to the sale⁽³⁷⁾. That dispute might relate to identifying the person who is the author of the software, as if the sale was made over software that undertakes updating and developing old software program that belongs to someone other than the creator of the updating software. After the contract is concluded on the second software, the owner of the first software disputes the validity of the proof of the right of the one who updated his old software, such as claiming that the development process used software that imitated his software or was copied from the information contained in the original software or modified in an illegal way. Consequently, we are facing a legal exposure issued by third parties in relation to the contract related to the updating software.

However, if the third party's exposure to the buyer is material, the seller does not warrant him. In this case the buyer must defend himself against the material exposure issued by third parties by legal means to protect his right, when the thing sold was usurped, stolen, or damaged by someone⁽³⁸⁾.

Third: That a third party's right to the thing sold be established before the sale, whether it was caused by the seller's action or for a foreign reason such as inheritance. It follows from that that the buyer has the right to claim the warranty if the right claimed by the third party on the thing sold is a mortgage right that the seller had arranged on the thing sold before selling it. However, the seller is not liable to the legal exposure issued by a third party if the third party based his exposure on a right subsequent to the sales contract, except if the seller was the one who caused the third party's right to be based on the thing sold. In this case, he warrants the legal exposure issued by the third party even if the third party based his exposure on a legal reason subsequent to the sale, as if he sold private electronic software to a buyer who requested it with special specifications and was designed at his request according to the sales contract agreed upon between them. However, the author handed it over to a second buyer who is bona fide and the latter adhered to the possession of the

⁽³⁵⁾ Dr.. Al-Sanhouri, Op. cit, pg. 641. Dr.. Fayez Ahmed Abdel-Rahman, Op. cit, p. 202. Dr. Muhammad Kamel Morsi, Op. cit, Part 6, pg. 278. Counselor Anwar Tolba, Op. cit, Part 3, pg. 198.

⁽³⁶⁾ Dr. Muhammad Kamel Morsi, Ibid, Part 4, pg. 279.

⁽³⁷⁾ Dr. Al-Sanhouri, Ibid, pg. 648.

⁽³⁸⁾ Dr. Muhammad Kamel Morsi, Ibid, Part 4, pg. 279.



transferred object as the title of property, in this case the first buyer claims warranty of exposure to the seller because he is the cause of this exposure and maturity.

The seller's obligation to warranty of exposure issued by third parties is a commitment to a result and not to exert care. Accordingly, the seller is considered in breach of its obligation as soon as the third party wins his case, even if the seller has made every effort to prevent or defend the exposure, such as appointing a lawyer in the case⁽³⁹⁾ and spent expenses on it.

If the seller fails to implement his obligation to warranty exposure issued by third parties, then the buyer has the right to claim compensation. In the case of claiming real implementation, the obligation is indivisible. However, in the event that the buyer claims compensation, then the obligation is divisible because its object is an amount of money. Therefore, the buyer claims to the seller if the sold item is due with a warranty of maturity⁽⁴⁰⁾.

Finally, we must clarify that if the exposure does not affect the legally established rights of the author, then the buyer is the one who is obligated to defend. But if the material exposure constitutes an infringement of moral rights, then the defense is limited to the author or his representative. That is if the author does not explicitly authorize the buyer to defend such exposure and abuse, the seller alone is responsible for defending it.

Chapter three: Warranty of maturity:

If a third party litigated the buyer and raises a claim of maturity and the seller fails to defend this exposure and dismisses the claim of maturity, and as a result a court ruling is issued for this third party proving his right to the electronic software, then the warranty of maturity is achieved, as if the buyer was actually deprived of one of the rights he had on the software, or if it is proven that the thing sold is owned by a person other than the seller in whole or in part, or if it is proven that there are some rights over the thing sold, such as the rights that accrue from electronic software before the sale, as in the case of the seller providing the buyer with software programs loaded in the memory of the computer sold and the seller had assigned them to others under a former contract. There is no need to stipulate this warranty in the contract because it is established by law, except that in order for the buyer to have a counterclaim against the seller with a warranty of maturity, the conditions for this warranty must be met. Moreover, this warranty differs in total maturity and partial maturity, so we divide this chapter into two topics. The first will deal with the conditions of the maturity warranty whereas the second is devoted to explaining the provisions of the warranty of maturity⁽⁴¹⁾.

First topic: Conditions the buyer's claim on the seller for warranty of maturity:

⁽³⁹⁾ Dr. Al-Sanhouri, Op. cit, pg. 649. Dr. Saeed Mubarak and Taha Mulla Howish Dr. Sahib Obaid Al-Fatlawi, Op. cit, p. 121. Counselor Anwar Tolba, Op. cit, Part 3. p. 198.

⁽⁴⁰⁾ Dr. Al-Sanhouri, Ibid, pg. 654.

⁽⁴¹⁾ And the Egyptian Court of Cassation ruled that "it is sufficient to return to the warranty of maturity if the buyer is actually deprived of the thing sold for any reason prior to the sale in which he had no hand in it or was unable to stop it." Dr. Muhammad Ali Othmani, Warranty of Maturity in the Sales Contract: A Comparative Study between Islamic Jurisprudence and Civil Law, 1st edition, Dar Al-Nahda Al-Arabiya, Cairo 1999, p. 84.

3 Cassation 11/18/1982 Appeal 554 Question 46 s quoting Counselor Anwar Tolba, Op. cit, p. 210.



In order for the purchaser of electronic software to claim on the seller for warranty of maturity, the following two conditions must be met:

First: The cause of maturity pre-existing the sales contract or post-existing it, but was transferred to a third party from the seller:

Article 408 of the Bahraini Civil Code stipulates that “the seller warranty of exposure to the purchaser in all or part of the sold item from any person who claims a right over the thing sold at the time of the sale invoking it against the buyer. Moreover, he is also bound by the warranty even if the objector claims a right that arose after the sale, if this right has been transferred to him from the seller or as a result of his action.

According to this provision, the exposure issued by third parties, which is warranted by the seller, either arose before the conclusion of the sales contract, such as the seller having concluded a license contract for the electronic software before the conclusion of the contract for the sale of it, and the license period extends beyond the conclusion of the sales contract, or it is a reason of the exposure issued by third parties arose after the conclusion of the sales contract because of the seller, such as the seller of the electronic software had sold it to another buyer after the conclusion of the first sales contract, so the second buyer would be exposed to the first buyer and dispute the ownership of it.

Second: The seller’s non-interference in the case after being notified by the buyer in a timely manner:

According to Article 409 of the Bahraini Civil Code, if a claim is brought against the buyer for the maturity of the thing sold in whole or in part, he must initiate the inclusion of the seller in it. If he did not include it and a final judgment was issued in favor of others, the warranty is forfeited from the seller if it was proven that his inclusion in the entitlement lawsuit would have led to its rejection. The seller may not intervene in the maturity lawsuit despite being notified and invited to intervene by the buyer at the appropriate time. In this case, the buyer can claim on the seller for the warranty of maturity⁽⁴²⁾, and the buyer can also claim on the seller for the warranty even if no final judgment is issued regarding the entitlement, except that he had agreed with the entitled person to leave the thing sold in return for compensation, because this is considered a purchase of the thing sold from the entitlement⁽⁴³⁾.

It is assumed here that the buyer avoided the judgment of maturity by concluding an agreement between him and the objector to that for a price or something else. The seller can avoid the harmful consequences of the warranty of full and partial maturity by returning to the buyer what he paid with the legal interests and expenses. If the buyer recovers from the seller what he paid, then he has kept the sold item and recovered its loss. This type of recovery is rare⁽⁴⁴⁾. It must be emphasized finally

⁽⁴²⁾ Dr. Al-Sanhouri, Op. cit, pg. 668 et seq. Dr.. Fayez Aham Abdel-Rahman, Op. cit, pg. 208 et seq. Dr. Muhammad Kamel Morsi, Op. cit, p. 291.

⁽⁴³⁾ Article 442 of the Egyptian Civil Code stipulates: “If the purchaser anticipates that all or part of the sold property will be due by paying an amount of money or by paying something else, the seller may get rid of the results of the warranty by returning to the buyer the amount he paid or the value of what he paid with the legal interests and all expenses.”

⁽⁴⁴⁾ Dr. Al-Sanhouri, Op. cit, pg. 691.



that the warranty of maturity accepts division, so it is permissible to warrant partial maturity, and this is what we will explain in the second topic.

Second topic: Provisions of the warranty:

The principle is that the seller is responsible for warranting the maturity of the thing sold, but the legislator distinguishes between total and partial maturity of the thing sold in his commitment to the warranty.

First section: Total Maturity Warranty:

Article 410 of the Bahraini Civil Code stipulates that: “A- If buyer is entitled to the entire thing sold, he has the right to recover the price from the seller and claim back on him for all the loss and missed gain. B- Nevertheless, the buyer’s right is limited to recovering the price and all expenses If the seller proves that he was not aware of the reason for the maturity”⁽⁴⁵⁾. From the text of the article, it becomes clear to us that with regard to the total maturity, the extent of the seller’s warranty varies according to whether he was bona fide or mala fide:

First: Bona fide seller:

The seller is considered bona fide if he does not know that the electronic software is due at the time of sale. In accordance with the provisions of the Bahraini Civil Law, the bona fide seller is obligated to return to the buyer the price and all expenses, whether the value of the electronic software increases or decreases in the period between the conclusion of the sales contract and the maturity of the thing sold. That is, there is no effect of fluctuations of the named prices are based on the paid by the buyer. Moreover, there is no consideration for the increase, whether it was done by the buyer or by someone else.

Jurisprudence criticizes the position of the Bahraini legislator for the buyer to return to the seller for the price and not for the value of the sold item at the time of maturity, as it would have been better for the Bahraini legislator to decide to compensate the buyer with the value of the thing sold at the

⁽⁴⁵⁾ Article 443 of the Egyptian Civil Code states: “If the buyer is entitled to the entire thing sold, he has the right to demand from the seller 1- The value of the thing sold at the time of maturity, along with the legal interests from the same time. 2- The value of the benefits that the purchaser was obliged to return to those who were entitled to the thing sold. 3- Beneficial expenses that the buyer cannot oblige the beneficiary with, as well as luxury expenses if the seller is mala fide. 4- All expenses of the warranty and claim of maturity, except for what the buyer could have protected him from had he notified the seller of the lawsuit in accordance with Article 440. 5- In general, compensation to the purchaser for the loss he suffered or forfeited in terms of gain due to the entitlement of the thing sold. On the other hand, the Egyptian law buyer claims on the seller for the value of the sold item at the time of maturity, not the price named in the contract. This made the Egyptian law the compensation due in the claim of warranty of maturity differs from the compensation in the claim of annulment and rescission. There is a clear technical difference, as Dr. Al-Sanhouri says, between the claim of warranty of maturity on the one hand, and the claim of rescission and the claim of annulment on the other hand. Both the rescission lawsuit and the annulment lawsuit suppose that the contract has ceased, either by invalidation or annulment, and that the compensation that the seller gives to the buyer is based on the contract after it ceased to exist, so it is represented by restoring the situation to what it was before the contract by refunding the price named in the contract, while the warranty of maturity lawsuit assumes that the sale contract remains unchanged, since the compensation in it is caused by the sales contract itself, and the compensation is not in the warranty of maturity except in the implementation of a consideration after it was not possible to implement the contract in kind due to the impossibility of the seller’s implementation of his obligation in kind, so the warranty is the value of the sold item at the time of maturity and not the price named in the contract. Dr.. Al-Sanhouri, Op.cit, pg. 67.



time of maturity⁽⁴⁶⁾. It would have been more appropriate for the Bahraini legislator to decide to compensate the buyer with the value of the thing sold at the time of maturity, not with the value named in the contract, because the nullity and rescission of the contract differs from the case when the thing sold is due. In the first case it is not the compensation that the seller is obligated to pay on the basis of the sales contract, because the invalidity or rescission of the sale presupposes the cessation of the sale. In the second case, the sale remains valid. Therefore, the compensation that the buyer is entitled to is considered execution for consideration after it became impossible for the seller to implement his obligation in kind⁽⁴⁷⁾.

In addition to the maturity warranty claim, the buyer has the right to file a claim for rescission of the contract, because the sale issued by the seller to him was tantamount to selling the property of a third party or an intrusive act, or because the seller did not fulfill his obligation to deliver the thing sold and transfer its ownership⁽⁴⁸⁾. Nevertheless, the seller can, in Bahraini law, deduce from the price the amount equivalent to the interest that accrued to the buyer as a result of his benefiting from the thing sold according to the rules of earning without reason⁽⁴⁹⁾. The buyer also has the right to claim back the beneficial expenses that he spent. Also, if the assignee of the rights to exploit the software had contracted with a programming expert to fix the software's defects or increase its effectiveness and efficiency. This also includes all the expenses of the warranty lawsuit and the maturity lawsuit, except for what the buyer could have avoided if he had notified the seller.

Second: Mala fide seller:

According to Article 410 of the Bahraini Civil Code, the seller is considered in mala fide if he knows the reason for the maturity of the electronic software. In this case the buyer has the right to recover the price from the seller and return to him all the loss he suffered and the lost profits due to the maturity of the thing sold.

Based on that, the seller is obligated, in addition to the aforementioned elements of compensation, to pay to the buyer the increase in the value of the thing sold in the period between the conclusion of the sale and the maturity of the thing sold, whether the increase occurred due to the buyer's action or abatement event such as an increase in prices. Moreover, the seller is also obligated to return the luxury expenses that the buyer spent on the thing sold. Likewise, the buyer has the right to claim on from the seller for all the losses he suffered and the profits he missed, in addition to the expenses that were lost on him, the expenses of drafting the contract, registration fees, and brokerage. He also has the right to demand from the seller all the profits he missed, such as the price is deposited in a bank and the buyer receives interest on it⁽⁵⁰⁾.

We hoped that the Bahraini legislator would take into account what the Iraqi civil law had taken with regard to sequential sales. It stipulated in Article 552 that "if the thing sold is due in the hands of

⁽⁴⁶⁾ Dr Saeed Mubarak and Taha Mulla Howish Dr. Sahib Obaid Al-Fatlawi, Op. cit, pp. 123-124.

⁽⁴⁷⁾ Compare that with Dr. Saeed Mubarak and Taha Mulla Howish Dr. Sahib Obaid Al-Fatlawi, Ibid, p. 124.

⁽⁴⁸⁾ Compare with Dr. Fayez Ahmed Abdel-Rahman, Op. cit, pp. 213-214.

⁽⁴⁹⁾ Dr. Saeed Mubarak and Taha Mulla Howish Dr. Sahib Obaid Al-Fatlawi, Ibid, p. 124.

⁽⁵⁰⁾ Compensating the buyer for the loss he suffered and the profit he missed is an affirmation of what the general rules require in compensation with contractual liability, Dr. Al-Sanhouri, Op cit, pg. 683.



the last purchaser and a judgment is passed on to the beneficiary, then this is a judgment for all sellers, and each one has the right to claim on the seller for the warranty, but not before that the seller claims."

This article establishes the warranty in sequential sales. For example, if (A) sells an electronic software to (B), then (B) sells this software to (C), and (C) sells the same software to (D) and it becomes due under the hands of the buyer (D), each buyer has a claim that is made against a seller with a warranty of maturity if the purchaser claims from him, and (d) ⁽⁵¹⁾ has no right to claim against seller (a) except with an indirect claim as the debtor of the debtor. In this case he is exposed to competition with the creditors of his debtor because the interest that is obtained as a result of this claim enters the debtor's money as the warranty common to all creditors⁽⁵²⁾.

Second section: Warranty of partial maturity:

Article 411 of the Bahraini Civil Code stipulates that "A- If entitled to some of the sold item is entitled, or if it is found burdened with an assignment or the right of a third party, and the buyer's loss from that amounted to an amount that, if he knew it, he would not have completed the contract, then he has the right to return the thing sold and what he benefited from it, provided that he shall be compensated within the limits required by the previous article. 2- If the purchaser chooses to keep the thing sold, or if the loss incurred by him did not reach the amount indicated in the first paragraph, he has no choice but to claim compensation for the damage he suffered due to the maturity in accordance with what is required by the previous article⁽⁵³⁾.

From the text of the article, it becomes clear to us that the maturity in this article is not complete, but rather partial. Partial maturity is achieved in different ways, as part of the sold item may become due. It may become clear that the sold item is mortgaged or encumbered with a privilege or easement right. In all of this, it is considered an entitlement to some of the sold item, i.e. a partial entitlement⁽⁵⁴⁾.

Based on this text, if some of the sold item is due, or if the item is encumbered with a mortgage obligation, the purchaser has the choice between rescinding the sale, returning the sold item, and claim the price with other expenses, or keeping the sold item with a claim for compensation for the damage he suffered due to the maturity⁽⁵⁵⁾.

Furthermore, Article 413 of the Bahraini Civil Code also stipulates that "A- the contracting parties may agree to increase, decrease or waive the maturity warranty. B- However, every condition for diminishing or forfeiting the guarantee shall be null and void, if the seller has deliberately concealed the cause of warranty, or if the warranty arose from his act".

The provisions relating to the warranty of maturity are not from the public system, but rather they are rules that interpret the will of the contracting parties and are not an order. Therefore, it is

⁽⁵¹⁾ Dr. Saeed Mubarak and Dr. Taha Mulla Howish and Dr. Sahib Obaid Al-Fatlawi, Op. cit, p. 127.

⁽⁵²⁾ See Articles (230, 231) of the Bahraini Civil Code.

⁽⁵³⁾ Close to that is the text of Article 444 of the Egyptian Civil Code.

⁽⁵⁴⁾ Dr. Al-Sanhouri, Op. cit, pg. 687.

⁽⁵⁵⁾ Dr.. Saeed Mubarak and Dr. Taha Mulla Howish and Dr. Sahib Obaid Al-Fatlawi, Ibid, p. 125.



permissible to agree to amend them by amending the warranty by increasing, decreasing or dropping the warranty.

The agreement must be clear by stating that the will of the contracting parties has gone out to amend the provisions of the warranty, so it is not mislead by ambiguous terms. All the expressions are included in the contract and confirm the warranty of the seller are to strengthen the warranty, such as it was stated in the contract that the seller of the software warrants all the disputes and impediments to benefits that occur to the buyer.

In the agreement not to warranty or reduce it, it is taken into account not to expand its interpretation, because the buyer waives his right, and the abdication of the right is interpreted in a narrow way according to general rules⁽⁵⁶⁾. Regarding dropping the warranty, the seller may stipulate that the buyer shall not be responsible for the warranty at all and in all cases. Here such condition is considered and produces its effect in forfeiting the warranty, except in the case if the seller has intentionally concealed the cause of the maturity, or caused by his action in the maturity⁽⁵⁷⁾.

CONCLUSION:

The conclusion presents the main findings and recommendations.

First: Results:

- 1- Among the most important post-industrial and technological developments are software programs, those programs that were the subject of the most important contract, which is the sale contract, as software programs are no longer just a mental product, but rather money that begets money in addition to the moral character that characterizes these software programs.
- 2- The software sale contract is defined as (the exchange of a software for information prepared in advance for cash, in which the author of the software or whoever devolves waive this right completely and finally to the purchaser the financial exploitation rights decided on the software program in exchange for a cash price).
- 3- The electronic software sales contract differs from other ordinary sales contracts in that the seller (the author or innovator of the software) does not transfer the ownership of the software to the buyer, meaning that he does not transfer to him the financial rights, but only the right to use, and the matter may extend to the right to exploit without a right of disposal.
- 4- The seller is bound by a contract for the sale of electronic software with several obligations, including his obligation to ensure that the purchaser has the warranty of exposure to the software in quiet possession in order to achieve its purpose. This is to prevent the buyer from being stripped of what he owns according to the sales contract in exchange for an amount - which is often exorbitant - if the thing sold is entitled to third parties. The author may sell software and then hand it over to another person with a second sales contract. Here, the buyer may claim for the warranty of exposure from the seller.

⁽⁵⁶⁾ Dr. Al-Sanhouri, Op. cit, pg. 697.

⁽⁵⁷⁾ Dr. Ghani Hassoun Taha, Op. cit, p. 303.



5- The author is obligated to refrain from any exposure to the buyer in his possession of the electronic software, in addition to defending any exposure issued by third parties, and to compensate the buyer for the damages incurred as a result of this exposure.

6- If the electronic software is due as a result of the seller's inability to defend the exposure, then the seller is obligated to compensate the buyer along with paying what he received from the buyer. The matter varies with the extent of bona fide or not, as well as the type of warranty, whether in whole or in part.

7- The seller's obligation to warranty of exposure and maturity towards the buyer of electronic software is a legal obligation imposed by law, but it is not from public order and therefore it is permissible to agree to tighten or mitigate them.

Second: Recommendations:

1. That the Bahraini legislator single out a special law for informatics software programs that includes a regulation of the contracts that come with these software programs, and shows in the contract the obligations that fall on the parties to the contract, and takes into account the special nature of these contracts.

2. Professionalism is an attribute that characterizes the seller, the author of the software. However, we find this characteristic absent on the part of the buyer, as he is not competent. Thus, it is necessary for the Bahraini legislator to set a legal regulation for dealing with this type of software in a manner that provides legal protection to the buyer as a consumer.

3. We suggest that faculties of law and legal authorities hold seminars and conferences and direct postgraduate students to write about intellectual property issues, especially after the scientific and technical development in the fields of life, which contributed to the increase in individuals' aspiration to obtain electronic software programs.

4. Providing a provision to warranty of exposure and maturity in the sequential sales.

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