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PROVISIONS OF CONTRACTS FOR THE SALE OF REAL ESTATE IN EXCHANGE FOR MAINTENANCE IN JORDANIAN LAW

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ABSTRACT

This study analyzes contracts for the sale of real estate in exchange for maintenance under Jordanian law, classifying them as modern unnamed contracts that have emerged in response to evolving social and economic needs, particularly the protection and care of vulnerable persons. The analysis is conducted within the framework of the general provisions of the Jordanian Civil Code and the objectives of Islamic law (maqāṣid al-sharīʿa), highlighting the dual nature of the contract as both humanitarian, grounded in benevolence, and commutative, based on the exchange of consideration pursuant to the principle of freedom of contract. The study finds that the Jordanian legislator has not provided specific statutory regulation for this contract, leaving its legal characterization to judicial practice and legal doctrine, which have addressed it through the application of general rules on sale and contractual obligations, while accounting for the distinctive nature of maintenance as consideration. Jordanian courts have generally upheld the validity of such contracts when their essential elements are satisfied, recognizing maintenance as lawful consideration provided it is intended for continuous care rather than donation or circumvention. From an Islamic jurisprudential perspective, the contract is consistent with the objectives of Islamic law, insofar as it serves principles of benevolence, reciprocity, and social solidarity, and is free from uncertainty, ignorance, and harm. The study identifies key practical challenges relating to the scope and duration of the maintenance obligation and the valuation of non-material consideration in cases of breach or termination. It recommends the adoption of explicit legislative provisions within the Jordanian Civil Code to regulate this contract, clarify the parties' rights and obligations, strengthen protection for the weaker party, and require formal documentation and effective judicial oversight. The study concludes by emphasizing the need for legislative development informed by comparative experiences to ensure legal certainty while preserving the contract's humanitarian character.

KEYWORDS: Sale of Real Estate in Exchange for Maintenance, Jordanian Civil Code, Unnamed Contracts, Contractual Justice, Islamic Jurisprudence, Maqāṣid Al-Sharīʿa, Social Solidarity.

1. INTRODUCTION

Contracts for the sale of real estate in exchange for maintenance constitute a relatively recent legal phenomenon in Jordanian society, having developed in response to social and economic transformations and the resulting humanitarian need to provide care and support for vulnerable groups, particularly the elderly and those without family support. In practice, such contracts involve the transfer of ownership of residential or landed property in return for an undertaking by the transferee to provide the transferor with ongoing living, health, and personal care for life or for an agreed period. This contractual model reflects an expanded conception of commutative exchange, whereby consideration is no longer confined to monetary value but extends to benefits of a humanitarian and social character.

This practical development, however, has given rise to significant legal and jurisprudential questions concerning the legal nature and legitimacy of such contracts, the scope of the purchaser's maintenance obligation, and the legal consequences of non-performance. Further complexity arises in determining whether the contract should be characterized as a sale in its classical civil-law sense, a gift for consideration, a settlement, or a composite contract combining elements of several established contractual forms. These issues are compounded by the absence of an explicit statutory provision governing contracts for sale in exchange for maintenance in the Jordanian Civil Code, necessitating reliance on general principles of contract law, considerations of equity, and the objectives of Islamic law, which constitute a primary source of legislation in Jordan.

The significance of this study lies in its engagement with a contract that directly implicates fundamental social values of solidarity and mutual support, while simultaneously raising nuanced legal questions regarding its compatibility with the essential elements and conditions of sale under Jordanian civil law. Its practical relevance is underscored by the growing prevalence of such transactions and the disputes they generate before the courts, particularly with respect to alleged breaches of maintenance obligations or the determination of the parties' true intent at the time of contracting. This calls for a clearly defined legal framework capable of ensuring an equitable balance between the rights and interests of the parties.

Accordingly, this research undertakes a doctrinal and jurisprudential analysis of contracts for the sale of real estate in exchange for maintenance under Jordanian law, through an examination of the

relevant civil-law provisions and their applicability to this contractual form, as well as a comparative assessment of selected Arab legislations that have expressly regulated such contracts. It further explores judicial and scholarly approaches to interpreting this contract, with particular attention to its constituent elements—consent, subject matter, consideration, and the obligation of maintenance—and the legal effects of breach or termination.

Methodologically, the study combines analytical, comparative, and critical descriptive approaches in order to elucidate both the theoretical foundations and practical implications of this contract, while situating them within the normative framework of Islamic legal principles governing its permissibility and limits. Through this integrated approach, the study seeks to contribute to the development of Jordanian legal scholarship by proposing reforms aimed at refining the legislative regulation of contracts for the sale of real estate in exchange for maintenance, in a manner that promotes contractual justice and preserves the contract's essential humanitarian dimension.

2. THE CONCEPT OF THE CONTRACT FOR THE SALE OF REAL ESTATE IN EXCHANGE FOR MAINTENANCE

Contracts for the sale of real estate in exchange for maintenance have become increasingly prevalent in contemporary social practice, particularly in light of population ageing, growing social isolation, and the rising need for long-term care. Under this contractual arrangement, one party (the seller/beneficiary of maintenance) transfers ownership of real property to another party (the purchaser/maintainer) in return for the latter's undertaking to provide material, health-related, and living maintenance for the former throughout their lifetime or for an agreed period. Despite the expansion of this practice, the Jordanian legal system lacks a clear and specific statutory provision regulating such contracts, rendering the examination of their legal nature and the derivation of their governing rules from the general principles of civil law a matter of considerable scholarly and practical importance.

In practice, the contract is defined as an agreement involving the transfer of ownership of real estate from the seller to the purchaser in consideration of an obligation of maintenance, typically encompassing food, drink, housing, healthcare, and personal assistance. Within Jordanian applied jurisprudence, this contract is sometimes characterized as a sale subject to maintenance, and at other times analogized to a gift for consideration or a composite contract,

given that it entails distinct obligations – namely, the transfer of ownership on the one hand and the duty of care and maintenance on the other. Jordanian legal studies have addressed this concept and documented its practical and judicial challenges.

Within Jordanian contractual jurisprudence – particularly as informed by the Civil Code No. 43 of 1976 and its applied interpretations – the contract is understood as an agreement intended to produce specific legal effects, such as the transfer of ownership and the creation of obligations. Jordanian scholars generally define the sale of real estate in exchange for maintenance as a commutative contract in which a humanitarian benefit (maintenance) corresponds to the transfer of property ownership. Nevertheless, doctrinal disagreement persists regarding the formulation of a comprehensive definition for this type of contract. This divergence stems from a fundamental question: does the obligation of maintenance constitute a “price” in the traditional sense of consideration in a contract of sale, or is it merely an ancillary obligation or condition attached to another contract, such as a gift, or even an independent contractual arrangement? Contemporary Jordanian jurisprudence tends to hold that classification depends on the parties’ intent, the substance of the agreement, and its drafting, while recognizing that such classification has tangible implications for the application of both formal and substantive rules, including registration, taxation, and the protection of the weaker contracting party.

3. THE LEGAL STATUS OF THE REAL ESTATE MAINTENANCE SALE CONTRACT UNDER JORDANIAN LAW

The Jordanian Civil Code No. 43 of 1976 constitutes the primary legislative framework governing contractual relations in Jordan. Its general structure adopts a flexible approach that accommodates modern unnamed contracts through Article 87, which enshrines the principle of freedom of contract by providing that:

“Contracts are the law of the contracting parties and may not be revoked or amended except by mutual consent or for reasons prescribed by law.”

This provision, together with the general rules on contract formation (Articles 90–110), establishes the foundational principle that contracts are, as a rule, permissible unless they contravene public order or morals. Accordingly, the contract for the sale of real estate in exchange for maintenance may be classified as an unnamed contract deriving its legitimacy from this principle, notwithstanding the absence of an explicit statutory reference in the Civil Code.

This type of contract is closely connected to the contract of sale under Jordanian law. Article 513 of the Jordanian Civil Code defines sale as “the transfer of ownership of property or a proprietary right in consideration of compensation.” From this definition, it is evident that the essence of sale lies in the transfer of ownership in return for consideration. In contracts for the sale of real estate in exchange for maintenance, ownership is transferred from the beneficiary of maintenance to the maintainer, while the consideration consists of the purchaser’s obligation to provide maintenance and care. This raises a central question: can maintenance be regarded as consideration in the sense contemplated in a contract of sale?

Some Jordanian jurists argue that maintenance may constitute lawful consideration so long as it has a value that is financially assessable, even implicitly, given that humanitarian benefits—such as care, housing, and sustenance—possess both economic and moral value (Al-Riqad, 2021). On this basis, the contract may be treated as a genuine sale subject to the provisions governing sale in the Jordanian Civil Code, provided that the parties clearly express their intent to treat maintenance as consideration and that such consideration is defined or capable of determination. Conversely, where maintenance is vague or predominantly gratuitous in character, courts may be inclined to characterize the contract as a gift for consideration or as a mixed contract rather than a pure sale.

In this regard, the Jordanian Court of Cassation has held that “the determining factor in characterizing a contract is its true nature and substance, not its designation, and that consideration in a contract of sale must be defined or capable of determination at the time of contracting” (Court of Cassation, Civil Case No. 1526/2018, unpublished). This judgment underscores that the decisive criterion in legal characterization is the assessability of maintenance as consideration at the time of conclusion.

There is also a close relationship between contracts for the sale of real estate in exchange for maintenance and gifts for consideration. Article 557 of the Jordanian Civil Code provides that “a gift for a known consideration is permissible.” This indicates that a gift does not lose its character merely because it is accompanied by consideration, provided that such consideration is known and lawful. Accordingly, some Jordanian scholars view the contract for the sale of real estate in exchange for maintenance as closer to a gift for consideration than to a sale, on the ground that the seller’s primary

motivation is often humanitarian or social rather than purely economic (Al-Atoum, 2021). This perspective emphasizes that the relationship between the parties is founded on benefit and care rather than commercial exchange. Nevertheless, a key distinction remains: a contract of sale effects an immediate transfer of ownership, whereas a gift for consideration may remain contingent upon performance or formal attestation. Consequently, where ownership is transferred immediately in return for an undertaking of maintenance, the more accurate classification is that of a sale for non-monetary consideration.

Recent studies increasingly characterize contracts for the sale of real estate in exchange for maintenance as composite (commutative) contracts, combining features of several traditional contracts, notably sale, gift, and life annuity. This approach is grounded in the fact that the obligation of maintenance may extend for the lifetime of the beneficiary and involve the provision of periodic services, thus approximating the concept of a life annuity as regulated under Article (866) of the Jordanian Civil Code, which provides that "an annuity may be established for life for one or more persons, with or without consideration."

From this perspective, contracts for the sale of real estate in exchange for maintenance share with annuity contracts the element of temporal continuity and ongoing benefit, yet differ in that the consideration consists of the transfer of ownership of a specific immovable property rather than the payment of periodic sums. This distinctive feature places the contract within the category of composite contracts of a special nature, warranting independent legislative treatment to regulate its legal effects.

It should be noted that the Jordanian Civil Code does not contain a specific provision governing contracts for the sale of real estate in exchange for maintenance. However, Article (205) authorizes the conclusion of unnamed contracts by stipulating that "a contract not specifically regulated by law shall be governed by the general rules of contracts." Accordingly, the legal rules applicable to maintenance-based sale contracts are derived from the general principles of contract law (Articles 87–110), the rules governing sale (Articles 513–547), gifts for consideration (Articles 557–563), and annuities (Articles 866–869). Collectively, these provisions constitute the normative framework upon which Jordanian courts rely when adjudicating disputes arising from such contracts, including claims of breach or rescission.

Jordanian courts have indeed adopted this

approach in several cases involving analogous arrangements, such as "sale for life" or "sale conditional upon care," where they have invoked general principles of equity and contractual intent to resolve ambiguity regarding consideration and obligation (Court of Cassation, Civil Rights Case No. 4740/2019, Adaleh Database).

Significant legal consequences flow from classifying the contract within the framework of sale. Where a contract for the sale of real estate in exchange for maintenance is deemed a genuine sale, ownership transfers upon registration with the Department of Land and Survey pursuant to Article (16) of the Real Property Ownership Law of 2019; the contract is subject to taxes and fees applicable to sales rather than gifts; the provisions on latent defects and seller's obligations under Articles (531–539) of the Civil Code apply; and rescission or annulment may be sought in the event of the purchaser's failure to provide maintenance, in accordance with Article (246). Conversely, if the contract is characterized as a gift for consideration or a mixed contract, different legal outcomes may follow, including the donor's right to revoke the gift upon non-performance of the agreed consideration under Article (563).

Contemporary Jordanian legal scholarship increasingly treats contracts for the sale of real estate in exchange for maintenance as autonomous unnamed contracts rather than mere applications of sale or gift. Al-Atoum (2021) argues that the contract reflects a social and legal evolution requiring specific statutory regulation to protect the weaker party (the beneficiary of maintenance) and prevent abuse. Al-Riqad (2021), by contrast, emphasizes the necessity of recognizing the contract within the category of "sales for non-monetary consideration," conceptualizing maintenance as both a financial and moral obligation, thereby conferring full legal legitimacy upon the contract in light of principles of justice and social solidarity.

Accordingly, the contract occupies an intermediate position between sale, gift, and annuity, incorporating elements of all three and justifying its classification as a composite contract grounded in both commutation and care. This hybrid status generates legislative ambiguity that calls for statutory intervention to regulate its conditions and define the scope and duration of maintenance obligations. In the absence of such regulation, Jordanian courts continue to rely on general principles and analogical reasoning drawn from sale and gift, interpreting the contract in a manner that promotes justice and protects the weaker party in accordance with the objectives of Islamic law and the

principles of civil law (Al-Aqari, 2025; Abu Farwah, 2022; Al-Atoum, 2022; Al-Safarti, 2022; Al-Mashaqbah, 2024; Al-Fawa'irah, 2022).

4. THE STATUS OF THE REAL ESTATE SALE-FOR-MAINTENANCE CONTRACT IN JORDANIAN CIVIL LAW

Contracts for the sale of real estate in exchange for maintenance constitute a relatively modern contractual form arising from contemporary social and economic transformations. The absence of explicit regulation in the Jordanian Civil Code raises questions regarding their proper classification within the civil contractual system, namely whether they fall under sale (Articles 513–534), gift for consideration (Articles 555–558), or represent a composite contract incorporating multiple contractual elements.

Article (513) of the Jordanian Civil Code defines sale as “the transfer of ownership of property or a proprietary right in consideration of compensation,” identifying consent, subject matter, and consideration as its essential elements. In maintenance-based sale contracts, ownership is transferred in exchange for a non-monetary consideration consisting of living, health, and psychological care provided for the lifetime of the transferor. Jordanian jurisprudence has consistently held that consideration need not be monetary, but must possess an assessable value, rendering maintenance a lawful form of consideration and aligning the contract substantively with sale (Al-Sanhuri, 2020).

Conversely, some jurists regard the contract as closer to a gift for consideration due to its humanitarian character and its association with values of benevolence and care, as reflected in Articles (555) and (558) of the Civil Code. Nevertheless, maintenance obligations are typically reciprocal and legally binding, producing significant financial and legal effects, which distinguishes the contract from the predominantly gratuitous nature of gifts for consideration.

Modern Jordanian scholarship thus increasingly conceptualizes the contract as a composite contract, combining elements of sale (transfer of ownership for consideration), service or lease (continuous provision of benefit), and gift (humanitarian and social dimension). This view is supported by Article (87) of the Civil Code, which enshrines freedom of contract and permits the creation of unnamed contracts, and by Article (91), which prioritizes contractual intent over formal designation.

Al-Ajarmeh (2023) notes that the contract “combines the commutative objective of sale with the

humanitarian purpose of maintenance, thereby constituting a composite contract with a distinct identity that requires a flexible interpretive approach by the judiciary.” Jordanian Court of Cassation jurisprudence similarly affirms that courts must ascertain the parties’ true intent rather than adhere to contractual labels (Court of Cassation, Civil Rights Case No. 2463/2018).

In sum, Jordanian legislation has not excluded this contractual form from the legal system, but has left its regulation to judicial discretion guided by general contractual principles. The contract thus occupies an intermediate position between sale and gift for consideration, recognized by both jurisprudence and case law for its distinctive nature. Ultimately, the contract reflects a synthesis of financial exchange and humanitarian purpose, underscoring the need for explicit legislative regulation to ensure legal certainty, contractual balance, and effective protection of the weaker party.

5. DERIVING RULES FOR REAL ESTATE SALE-FOR-MAINTENANCE CONTRACTS FROM THE JORDANIAN CIVIL CODE

Contracts for the sale of real estate in exchange for maintenance constitute a modern contractual form for which the Jordanian Civil Code provides no specific regulation. This legislative silence places upon legal scholarship and the judiciary the task of identifying the appropriate legal foundations from which the governing rules of such contracts may be derived. It thus raises a fundamental question concerning the flexibility of the general principles of the Jordanian Civil Code and their capacity to accommodate unnamed and newly developed contracts responding to evolving social and economic realities.

The Jordanian Civil Code is among the most receptive Arab legislative frameworks to the principle of freedom of contract and the emergence of new contractual forms. Article (87) enshrines this principle by providing that: “A contract is the law of the contracting parties and may not be revoked or amended except by mutual consent or for reasons prescribed by law.” This provision constitutes the primary legal basis permitting parties to conclude contracts in accordance with their will, provided that such contracts do not contravene public order or public morals. It reflects a legislative policy of openness in the field of contracts, whereby the law does not confine contractual relations to the named contracts expressly regulated therein. This approach is reinforced by Article (91), which stipulates that “in contracts, consideration shall be given to intentions

and meanings, not to words and forms,” thereby granting courts interpretive flexibility to construe unnamed contracts in light of the parties’ true intent rather than their formal designation.

Accordingly, although contracts for the sale of real estate in exchange for maintenance are not expressly regulated, their rules may be inferred through the application of the general principles governing contracts under the Civil Code, particularly those relating to consent and defects thereof (Articles 93–104), subject matter and cause (Articles 105–107), and reciprocal obligations and contractual effects (Articles 199–204).

Substantively, such contracts are premised on the concept of transfer of ownership for consideration, which permits the analogical application of many rules governing sale. Article (513) of the Jordanian Civil Code defines sale as “the transfer of ownership of property or a proprietary right in consideration of compensation.” This definition does not require that consideration be monetary, but merely that it constitute a benefit capable of financial assessment. On this basis, the purchaser’s obligation to provide maintenance may be regarded as lawful consideration, whose value can be assessed in monetary terms in the event of dispute or breach. The provisions of Articles (518–521), relating to delivery and transfer of ownership in immovable property, may likewise be invoked to determine the moment at which ownership passes to the maintainer (purchaser), whether upon registration or upon fulfillment of a continuing maintenance obligation.

In this regard, Al-Tarawneh (2022) observes that “the expansion of the concept of consideration in contracts of sale has become a legislative necessity in order to accommodate emerging contractual forms, including sale in exchange for maintenance, which combines material and humanitarian consideration,” emphasizing that analogy to sale provides the clearest legal basis for ensuring stability of ownership and protecting both parties.

At the same time, certain aspects of contracts for the sale of real estate in exchange for maintenance may be interpreted by reference to the rules governing gifts for consideration, particularly with respect to the donor’s intent and non-monetary consideration. Article (555) of the Civil Code defines a gift as “the transfer of ownership of property without consideration during the lifetime [of the donor],” while Article (558) expressly permits gifts for consideration, provided that the consideration is known. Where an obligation of maintenance exists, the contract may therefore resemble a gift for consideration in nature, especially if the seller’s

primary intent is benevolence rather than profit. In such cases, courts may apply the rules governing gifts for consideration—such as revocation, acceptance, and the legal capacity of the donor and donee—so long as doing so does not conflict with the parties’ intent to establish a genuine commutative relationship.

The absence of specific legislative regulation places a substantial burden on the judiciary to derive applicable rules from general principles. The Jordanian Court of Cassation has repeatedly affirmed the judge’s authority to characterize contracts in accordance with the parties’ true intent, notably in Decision No. (2463/2018), which held that “the judge is not bound by the designation chosen by the contracting parties, but may characterize the contract according to its true nature and legal substance.”

On this basis, a Jordanian judge may classify a contract for the sale of real estate in exchange for maintenance as a sale where the consideration is defined and financially assessable, as a gift for consideration where the gratuitous element predominates, or as a composite contract where the objective combines transfer of ownership with humanitarian assistance. In this context, Al-Za’bi (2023) notes that “the application of the general principles of contract theory in the Jordanian Civil Code is sufficient to confer legal legitimacy upon such contracts, provided that the parties’ objectives and the social circumstances surrounding the contract are duly considered.”

Notwithstanding the capacity of general principles to accommodate this contractual form, the absence of explicit statutory provisions has resulted in variability in judicial reasoning and inconsistency in legal characterization from one case to another. Accordingly, several scholars, including Al-Kasasbeh (2024), have proposed the introduction of a dedicated chapter in the Jordanian Civil Code to regulate contracts for the sale of real estate in exchange for maintenance, following the example of certain Arab legislations, such as the Tunisian Civil Code, which recognizes contracts of sale in exchange for usufruct or care.

In conclusion, while the general principles of the Jordanian Civil Code—particularly freedom of contract, deference to true intent, and the plurality of sources of obligation—are, in principle, sufficient to derive the rules governing contracts for the sale of real estate in exchange for maintenance, the distinctive social and humanitarian nature of this contract justifies the adoption of specific legislative regulation. Such regulation would clarify the parties’ obligations, provide courts with explicit statutory

guidance, and ensure an appropriate balance between freedom of contract and the protection of vulnerable parties (Dabash, 2023; Lexis Middle East, 2023; Zawya, 2023).

6. OBLIGATIONS OF THE PARTIES IN CONTRACTS FOR THE SALE OF REAL ESTATE IN EXCHANGE FOR MAINTENANCE UNDER JORDANIAN CIVIL LAW

Contracts for the sale of real estate in exchange for maintenance represent a relatively new contractual form in Jordanian law. Although not specifically regulated by the Civil Code, their dual nature—combining the transfer of ownership with the humanitarian obligation of maintenance—has led scholars and courts to derive their rules from the general principles governing bilateral contracts. This contract entails an exchange of financial and material benefits on one hand, and human and moral benefits on the other: the seller (the maintained party) transfers ownership of the property to the purchaser (the maintainer), who, in turn, undertakes to provide the seller with living, medical, and social care for life. This arrangement reflects the principle of freedom of contract enshrined in Article (87) of the Jordanian Civil Code and demonstrates the flexibility of the law in accommodating contracts with social and humanitarian dimensions.

6.1. Obligations of the Seller (Maintained Party)

1. Transfer of Ownership in Accordance with Land Registration Requirements The seller's primary obligation is the transfer of property ownership, which must comply with the Civil Code, particularly Article (1148), which stipulates that: "Ownership of immovable property is not transferred except by registration in the Land Registry." Consequently, a mere agreement between the parties is insufficient; formal registration procedures in the Land Registry must be completed for the contract to be enforceable against third parties. Jordanian Court of Cassation precedent confirms this principle: Decision No. 1721/2019 held that "contracts relating to real estate produce legal effects only from the date of their registration in the official land registry."

To safeguard both parties' rights, the contract should stipulate that the seller must deliver the title deed after registration, ensuring that the property is free of encumbrances or liens, in accordance with Article (507).

2. Formal and Procedural Requirements for Contract Validity For validity, the contract must be in written form and formally notarized before

competent authorities, such as the Land Registry or a notary public, pursuant to the Real Estate Transactions Law No. (30) of 1953 and its amendments. The contract should include: a precise description of the property (area, location, boundaries), detailed specifications of the maintenance obligation (living, medical, and residential support), the duration of maintenance (typically for life), and signatures of both parties in the presence of at least two witnesses to ensure the integrity of consent.

Failure to comply with these formalities renders the contract relatively null, per Article (168), and it may also be unenforceable against third parties if not registered, although valid between the contracting parties.

3. Consequences of the Seller's Breach A breach by the seller in transferring ownership or delivering the property constitutes a fundamental breach, entitling the purchaser to seek specific performance under Article (364) of the Civil Code, or to rescind the contract and recover expenditures related to maintenance under Article (246). In cases of bad faith, such as the seller disposing of the property to a third party after the agreement, tort liability applies under Article (256), obliging the seller to fully compensate both financial and moral damages.

6.2. Obligations of the Purchaser (Maintainer)

1. Scope of Maintenance Obligation The purchaser assumes a comprehensive, ongoing obligation to maintain the seller throughout their lifetime, including living, medical, residential, psychological, and social care. Jordanian scholarship recognizes this as a continuous humanitarian obligation that transcends ordinary civil contractual obligations (Al-Majali, 2023).

2. Legal Basis under General Principles of Contract Enforcement The purchaser's maintenance obligation is grounded in the general rules on enforcing bilateral contracts, particularly Article (246) of the Civil Code: "In bilateral contracts, if one party fails to perform their obligation, the other party may, after notification, demand specific performance or rescission."

This establishes that the maintenance obligation is reciprocal, corresponding to the seller's duty to transfer ownership. Article (66) further requires contracting parties to perform obligations in good faith, implying that the purchaser must fulfill the maintenance commitment honestly and diligently. Being a continuing obligation, the contract may be rescinded upon fundamental breach, with restoration of the parties to their pre-contractual

positions.

3. Consequences of Breach and Evidentiary Considerations Breach of the maintenance obligation represents a significant practical challenge, potentially manifesting as neglect of healthcare or living standards, eviction, mistreatment, or cessation of basic support. In such cases, the seller may petition for contract rescission and restitution of property under general rescission rules (Article 246). Proof may include witness testimony, correspondence or recordings indicating neglect, and medical or social reports demonstrating harm.

The Jordanian Court of Cassation has confirmed this principle: Decision No. 1850/2021 rescinded a maintenance-based real estate contract due to the purchaser's failure to provide care, holding that "maintenance constitutes a fundamental obligation that is only fulfilled through continuous, actual support."

7. TERMINATION, NULLITY, AND CIVIL REMEDIES IN CONTRACTS FOR THE SALE OF REAL ESTATE IN EXCHANGE FOR MAINTENANCE

Contracts for the sale of real estate in exchange for maintenance raise distinctive legal issues due to their hybrid nature, combining proprietary transfer with a continuing personal obligation. As a result, the legal consequences of non-performance, invalidity, and civil liability require careful doctrinal treatment within the framework of the Jordanian Civil Code and general principles of civil law.

7.1. Grounds for Termination

Termination of a contract for the sale of real estate in exchange for maintenance may be justified where one of the parties commits a serious breach that undermines the contractual equilibrium or frustrates the purpose for which the contract was concluded. Most notably, termination may occur if the purchaser fails to perform the maintenance obligation in a material or permanent manner, particularly where such failure endangers the seller's livelihood, dignity, or basic needs. Given the personal and continuous nature of the maintenance obligation, even partial non-performance may, in certain circumstances, amount to a fundamental breach warranting termination.

Termination may also be grounded in the seller's unjustified refusal to transfer ownership of the property after completion of the required registration procedures, as such refusal constitutes a breach of the purchaser's proprietary expectations. Furthermore,

termination is permissible where fraud, deception, or material misrepresentation by either party is established at the time of contracting, especially where such conduct affects the seller's consent or the purchaser's willingness to assume the maintenance obligation.

The legal effect of termination is the restoration of the parties to their pre-contractual positions, insofar as possible. Ownership of the real estate reverts to the seller, and the purchaser is released from any future maintenance obligations. In addition, the court may award compensatory damages for losses sustained as a result of the breach, including financial losses and, where appropriate, non-material harm, in accordance with general principles of contractual liability.

7.2. Grounds for Nullity

Nullity arises where the contract lacks one or more essential elements required for its legal validity. In the context of sale-for-maintenance contracts, grounds for nullity include the absence or defect of consent, such as cases involving coercion, mistake, or exploitation of vulnerability; violation of public order or mandatory legal rules; failure to comply with compulsory registration requirements; or execution of the contract without the formal notarization prescribed by law for the transfer of real property.

Article (168) of the Jordanian Civil Code establishes that a null contract produces no legal effects from the outset. Consequently, neither party may rely on such a contract to assert rights or obligations, and each must restore what has been received under it.

This includes the return of property, benefits, or payments, thereby reinstating the legal and factual situation that existed prior to the purported agreement. The doctrine of nullity thus serves as a fundamental safeguard against abuses that may arise in contracts involving elderly or economically dependent sellers.

7.3. Civil Remedies

In addition to termination or nullity, civil remedies play a crucial role in ensuring protection for the weaker party, particularly where the purchaser breaches the maintenance obligation without lawful justification. In such cases, the purchaser may incur civil liability for the harm caused, including moral or non-material damage suffered by the seller. Article (363) of the Jordanian Civil Code affirms the general principle of tortious and contractual liability by providing that "anyone who causes harm to another

by their fault shall compensate the injured party.”

Given the humanitarian and social dimensions of maintenance obligations, courts may adopt a broad conception of compensable harm, encompassing psychological distress, loss of security, and deterioration in living conditions. Moreover, where ownership of the property has already been registered in the purchaser’s name, the court may order provisional measures – such as the attachment or sequestration of the property – pending final adjudication of the dispute. Such measures aim to preserve the seller’s rights and prevent irreparable harm, particularly in cases involving elderly or otherwise vulnerable individuals.

8. LEGAL AND JURISPRUDENTIAL ISSUES IN THE APPLICATION OF REAL ESTATE SALE-FOR-MAINTENANCE CONTRACTS UNDER JORDANIAN LA

The contract for the sale of real estate in exchange for maintenance is among the most significant modern civil contracts arising from social and economic developments in Jordan. The increasing need to secure care for the elderly or those without guardians motivates many individuals to transfer property ownership in exchange for lifelong maintenance. While the contract addresses a legitimate humanitarian need, it raises complex legal and jurisprudential questions regarding legitimacy, contractual nature, the extent of the maintenance obligation, and compliance with Islamic law and the general principles of Jordanian civil law.

The absence of specific statutory provisions has led to divergent scholarly and judicial opinions, with some classifying the contract as a non-cash sale, others as a mixed contract, or as an independent maintenance contract. The contract aligns with the principles of exchange and contractual justice, being essentially a reciprocal contract: the seller transfers property ownership, and the purchaser undertakes maintenance and care.

From an Islamic law perspective, the contract falls within the principles of lawful exchange (*mu’awadah*), which entails the transfer of property for property or for a benefit of recognized financial value. Under Hanafi jurisprudence, a sale is valid when the countervalue is known and determinable, even if non-monetary, provided it does not involve excessive uncertainty (*gharar*). Scholars permit the exchange of benefits, as noted by Ibn ‘Abidin: “Anything that can be leased may also serve as a lawful consideration in sale if its value is known.”

Thus, continuous maintenance constitutes a recognized benefit, with a value that can be

monetarily assessed, rendering it a lawful consideration for property transfer. The contract also aligns with higher objectives of Islamic law (*maqasid al-shariah*) in preserving life, property, and promoting human solidarity, as highlighted by Al-Shatibi, who identified the five essentials: religion, life, intellect, lineage, and property. From a contractual justice perspective, the contract achieves balance between the exchanged considerations if the maintenance is limited in duration or backed by realistic guarantees. Challenges arise when the seller is elderly, ill, or unable to appraise the value of the transferred property, potentially causing imbalance or exploitation.

Article (203) of the Jordanian Civil Code reinforces the principle of contractual justice: “If one party’s obligation is excessively burdensome, the court may adjust the obligation to restore balance between the parties.” Therefore, the contract’s legitimacy is conditional upon the absence of exploitation and proportionality between maintenance and property value.

9. KEY JURISPRUDENTIAL CHALLENGES FOR LIFELONG MAINTENANCE

The purchaser may be obliged to maintain the seller until death, without a set duration or defined financial cost. While based on customary and humanitarian understanding, this raises two main issues:

a. Uncertainty (*Gharar*) in Duration and Cost
Valid contracts under Islamic law and civil law require the subject of the obligation to be known and defined. Lifelong maintenance involves uncertainty since the duration of life is unknown and the costs cannot be predetermined.

Scholars such as Al-Zuhayli (2022) note that minor uncertainty justified by necessity and custom does not invalidate the contract. Since lifelong maintenance is customary and not speculative, the uncertainty is generally excused.

b. Scope of Maintenance and Effect of Death
If the seller dies, the maintenance obligation ends, while ownership remains with the purchaser. If the purchaser dies before the seller, the question arises whether the obligation passes to heirs. Under Islamic law, it may transfer if stipulated in the contract or executed on behalf of the family. Under Jordanian Civil Code Article (365), personal obligations terminate upon the obligor’s death unless they are financial or transferable. Hence, the contract should explicitly state whether the maintenance obligation is personal or hereditary to avoid post-mortem disputes.

10. JUDICIAL PRACTICE AND COMPARATIVE LAW

Although Jordanian law lacks explicit provisions on sale-for-maintenance contracts, courts have treated similar cases under non-cash sales or lifetime maintenance contracts. Notable cases include:

Court of Cassation Decision No. (1850/2021), which rescinded a sale-for-maintenance contract due to the purchaser's failure to care for an elderly seller, affirming that "maintenance constitutes a fundamental obligation that must be performed continuously, and breach entitles rescission and recovery of property."

Decision No. (1721/2019), confirming that a sale in which the consideration is a continuing benefit like maintenance is valid if the consideration is known and lawful, even if non-monetary.

Amman Court of Appeal Decision No. (2745/2020), ruling that "sale in exchange for maintenance constitutes a continuing reciprocal contract, obliging the purchaser to periodic performance, and breach results in rescission and restoration of the pre-contractual state."

Comparative legislation illustrates practical solutions

Tunisia: Article 573 bis recognizes "sale in exchange for maintenance," obliging the purchaser to support the seller for life, mandates formal notarization, nullifies contracts in cases of serious breach, and allows rescission if the purchaser fails in their obligation.

Algeria: The Civil Code addresses "sale for lifetime maintenance" (Articles 409–412), validating the contract if the consideration is determinable, acknowledging non-monetary consideration.

Egypt: No specific statutory provision exists, but legal scholars, including Al-Sanhuri (2021), consider it a valid contract under the principle of freedom of will, provided there is no exploitation or undue advantage.

The sale of real estate in exchange for maintenance, although not expressly legislated in Jordan, represents a modern civil contract with profound social and humanitarian dimensions. Its legitimacy is confirmed if conducted with fairness and without exploitation. Practical challenges remain in defining the scope of maintenance, effects of death, and remedies upon breach. Comparative experience, particularly the Tunisian model, underscores the need for Jordan to adopt explicit legal provisions, ensuring protection for the seller, reinforcing contractual justice inspired by Islamic law, and promoting legal certainty in socially oriented property transactions.

11. CONCLUSION

After examining both the theoretical and practical aspects of contracts for the sale of real estate in exchange for maintenance under Jordanian law, it is evident that this contract constitutes an unnamed or *sui generis* contract arising from evolving social and economic needs. It seeks to promote intergenerational solidarity and ensure humanitarian care for vulnerable individuals in exchange for the transfer of a specific property. The study highlights that the contract combines a humanitarian character, grounded in benevolence and social custom, with a legal, reciprocal nature governed by the principle of freedom of contract and the provisions of the Civil Code.

Although Jordanian legislation has not enacted a specific regulatory framework for this type of contract, courts and legal scholars have bridged the gap by applying general rules on sales and obligations, taking into account the unique nature of the consideration—namely, lifelong maintenance. The study identifies several practical and jurisprudential challenges, particularly the legality and scope of lifelong maintenance, defining the obligations of the purchaser (the maintainer), and assessing the moral value of the maintenance in case of breach or contract rescission.

Jordanian judicial practice generally validates the contract if its essential elements and conditions are satisfied, provided that the intention is lawful and the principle of contractual justice is respected, ensuring balance between obligations. From a jurisprudential perspective, the contract does not conflict with the objectives of Islamic law, as it is based on the principles of care and reciprocity, provided that excessive uncertainty, ambiguity, or unfairness are absent.

Accordingly, developing a legislative framework for sale-for-maintenance contracts is a pressing necessity to unify standards, precisely define rights and obligations, protect the weaker party, and balance the humanitarian and legal aspects of the agreement. Jordanian legislators are encouraged to enact clear provisions regulating this contract either within the Civil Code or the Property Law, drawing on comparative legislative experiences in the region.

12. KEY FINDINGS

- The sale-for-maintenance contract is formally reciprocal, but its essence carries a humanitarian and social character, extending beyond material benefit to promote solidarity and benevolence.
- It falls under unnamed contracts in the

Jordanian Civil Code, as there are no specific statutory provisions; application relies on general rules of sale and obligations.

- Jordanian courts have treated the contract flexibly, recognizing its validity when sale elements are met and considering maintenance as lawful consideration, provided the intention is care rather than disguised donation.
- Major legal challenges include defining the lifelong maintenance obligation, whether it entails result-oriented performance or due diligence, and evaluating the consideration in case of breach.
- Jurisprudentially, the contract is valid if it adheres to Islamic law standards of lawful consideration, avoiding excessive uncertainty (*gharar*), ambiguity, or harm, aligning with principles of social justice and care for the needy.
- There is a clear need for a specific legislative framework that delineates parties' obligations, execution and rescission mechanisms, and guarantees for the weaker party, ensuring balance between the humanitarian and legal dimensions of the contract.

13. RECOMMENDATIONS

13.1. Legislative Recommendations

- Enact specific provisions in the Jordanian Civil Code to regulate sale-for-maintenance contracts, defining their elements and legal effects.
- Require formal notarization and registration of the contract with competent authorities to ensure transparency and protect the weaker party.
- Provide legal guarantees allowing the seller (maintained party) to reclaim property or rescind the contract in the event of breach.
- Recognize maintenance as a continuous obligation throughout the seller's life, not subject to unilateral termination by the purchaser.
- Establish a fast-track rescission mechanism for breach of maintenance obligations, avoiding lengthy litigation.
- Regulate the fate of the maintenance obligation

upon the death of either party, specifying transfer to heirs or conversion into a financial guarantee.

- Draw on the Tunisian experience in codification while adapting to Jordanian social context.

13.2. Judicial Recommendations

- Jordanian courts should adopt the principle of protecting the weaker party in contracts with humanitarian and social dimensions.
- Establish clear criteria for breach of maintenance to unify judicial practice and ensure fairness.
- Require courts to consult social and medical experts to evaluate proper fulfillment of maintenance obligations.
- Strengthen judicial oversight to prevent manipulation or exploitation of elderly and vulnerable parties.

13.3. Jurisprudential and Academic Recommendations

- Broaden the concept of "consideration" in civil jurisprudence to include humanitarian benefits and maintenance, alongside monetary compensation.
- Encourage institutionalized jurisprudential efforts to root this contract within Islamic objectives and principles of social solidarity.
- Support comparative studies on maintenance contracts and incorporate them into law and Sharia curricula.
- Interpret contractual ambiguities in favor of the maintained party, based on principles of social justice and good faith.

13.4. Draft Legislative Proposal

"The sale of real estate in exchange for maintenance constitutes a contract whereby the purchaser undertakes to maintain the seller throughout their lifetime in return for property transfer. The contract shall be notarized, and may be rescinded judicially upon breach of the maintenance obligation. The obligation may transfer to heirs within the limits of the estate, ensuring social justice."

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