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THE RELATIONSHIP BETWEEN THE ASSIGNOR AND THE ASSIGNEE IN THE ASSIGNMENT OF RIGHTS: A COMPARATIVE ANALYTICAL STUDY IN UAE LEGISLATION

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ABSTRACT

The importance of this study arises from the need to clarify the effects of the assignment of rights on the transfer of rights between the original creditor and the new creditor, and to determine the nature of the relationship that emerges between them and the rights, obligations, and guarantees it entails. This plays a fundamental role in achieving stability in civil transactions. The study reveals that the UAE Federal Civil Transactions Law No. 5 of 1985 does not provide independent regulation for the assignment of rights, as its provisions in the assignment chapter apply to debt assignment, leading the judiciary to rely on interpretation to fill this legislative gap, especially given the lack of a dedicated chapter regulating the assignment of rights similar to debt assignment. This study aims to clarify the effects arising from the assignment of rights in the relationship between the assignor and assignee, explaining their legal positions and resulting rights and obligations, by drawing on other legislations that regulate the assignment of rights such as Egyptian and Kuwaiti legislation. The study concludes with the necessity of establishing an independent legislative chapter for the assignment of rights, containing clear and specific provisions regulating the transfer of rights, their guarantees, methods of proof, and conditions of enforceability against the debtor and third parties, in harmony with established jurisprudence and addressing practical problems identified by the study.

KEYWORDS: Assignment of Rights, Assignor, Assignee, Enforceability of Assignment, Appurtenances of the Right.

1. INTRODUCTION

The concept of transfer of obligations has evolved through stages of jurisprudential and legal development. Obligations are no longer viewed merely as personal bonds based solely on their parties, as was established in the traditional Western jurisprudential view. Instead, legal thought has shifted to consider the subject matter of the obligation and the required performance as the most important element in determining the value and effects of the obligation.

Due to this transformation, changing one party to the obligation no longer constitutes an obstacle to its continuation, as long as the subject matter of the obligation remains existing and executable. This has led to the emergence of legal systems that permit the transfer of rights or obligations and the continuation of the legal relationship with changing parties, thereby enhancing the role of this concept in modern civil and economic transactions. From here emerges the importance of this study's subject as it relates to individuals' lives and transactions, given the effects of legal acts they conclude that may extend between the parties to the relationship, and may also extend to other parties who develop legal positions affected by the transfer of rights or obligations.

In this context, the assignment of rights system emerges as one of the most important legal means that regulate the transfer of personal rights between individuals. It enables the assignor creditor to transfer his established right in his debtor's liability to another person, the assignee, providing flexibility in managing rights and contributing to facilitating civil and commercial transactions. Through this transfer, the relationship between the original assignor creditor and the new assignee creditor is determined; the former exercises the transfer of the right that belongs to him, while the latter succeeds him to replace him in the creditor's position with the authority to claim and collect.

The importance of studying the relationship between the assignor and assignee emerges considering the development witnessed in practical reality, as the assignment of rights has become an effective means for managing debts and organizing their transfer, whether in civil or commercial transactions. The spread of this means has contributed to enhancing transaction flexibility and restructuring obligations in a manner compatible with the needs of individuals and institutions, making understanding the nature of the relationship between the two parties a necessary step for comprehending the legal regulation of assignment and ensuring protection of both parties' legal

positions. Accordingly, this study is concerned with analyzing the elements of this relationship, clarifying the assignor's obligations and the assignee's rights, and determining the extent of transfer of guarantees and legal effects resulting from the assignment between them, considering that these aspects represent the foundation upon which the assignment of rights system is based and the entry point that reveals its reality and governs its regulation in practical application.

1.1. Research Problem

The study's problem lies in that the Federal Civil Transactions Law did not originally allocate provisions for the assignment of rights, nor did it regulate the effects resulting from the relationship between the assignor and assignee in the assignment of rights. Most of the assignment provisions contained therein are closer in application to debt assignment rather than right assignment, particularly those related to assignment effects.

Despite the same law containing some provisions that cannot be conceived as applicable except to the assignment of rights, the absence of explicit regulation of the provisions of this type of assignment and its effects on the relationship between its parties remains. This problem becomes clearer because the assignment of rights did not have independent regulation like debt assignment, which is partly due to the UAE legislator's influence by the Maliki school of jurisprudence.

This study will answer the following questions:

1. What is the nature of the relationship that arises between the assignor and assignee upon the conclusion of the assignment of rights?
2. What are the limits of the assignor's obligations toward the assignee upon the transfer of the right?
3. What are the procedures that make the assignment of rights enforceable against the debtor and third parties?
4. Does the assignor guarantee the debtor's solvency, or does this matter fall outside the scope of his obligations?

1.2. Study Importance

Theoretical Importance: The importance of this study lies in clarifying the effects of the assignment of rights on the transfer of the assigned right between the parties to the relationship (original creditor, new creditor) and defining its content clearly, given its impact on providing protection and guarantees for the parties to this relationship.

Practical Importance: The importance of this study lies in the role of assignment of rights in supporting economic and banking activities,

developing investment, providing protection for funds, and facilitating the collection of rights and debts in convenient and safe ways, thereby enhancing economic development and commercial exchange.

1.3. Study Objectives

1. Identifying the most prominent issues facing parties to the assignment of rights and clarifying their impact on transactions between assignment parties, with the proposal of legal provisions to address these issues, by benefiting from the experiences and legislation of countries that have addressed the assignment of rights in regulation and application.

2. Investigating legal provisions related to the study subject in federal laws, examining principles and judicial rulings issued by the state's courts, and benefiting from established practical and legislative applications in this regard.

2. RESEARCH METHODOLOGY

This study adopts a descriptive analytical approach aimed at clarifying the effects arising on parties to the assignment of rights (assignor and assignee) and explaining the reflection of this on relationships connected to this system. The comparative approach was also relied upon through studying some legislations that regulate the relationship between the assignor and assignee in assignment of rights, analyzing their texts and comparing them to highlight aspects of connection and difference, as well as relying on judicial rulings that addressed the assignment of rights, extracting the principles they established, and their connection to the study subject and conditions of assignment enforceability and resulting legal effects.

2.1. Study Plan

Chapter One: The Nature of Assignment of Rights

- First Requirement: Concept of Assignment of Rights

- Second Requirement: Enforceability of Assignment of Rights

Chapter Two: Assignor's Obligation to Transfer the Assigned Right

- First Requirement: Transfer of the Assigned Right, Its Appurtenances, Guarantees, and Defenses

- Second Requirement: Assignor's Guarantee of the Assigned Right

2.2. Chapter One: The Nature of Assignment of Rights

2.2.1. Preface and Division

Due to the impossibility of conceiving the continuation of an obligation with the change of one of its parties, where the two parties to the obligation are considered the two basic elements in the contract,

the idea emerged that the essential element of the obligation is no longer limited to its parties but has come to reside in its subject matter, or rather in the performance that the debtor must carry out for the creditor's benefit. This performance determines the economic value of the obligation, allowing the possibility of the obligation remaining standing even with the change of its parties or one of them.

In other words, it became possible for the obligation itself to transform into a right that transfers from one person to another. When the obligation transforms as a personal right, this transformation is termed 'assignment of rights.' We will discuss this idea more extensively through two requirements: the first requirement represents defining the assignment of rights system, and the second requirement represents the enforceability of assignment of rights against the debtor (the assignee).

2.2.2. First Requirement: Definition of Assignment of Rights

It is notable that the Federal Civil Transactions Law did not address the subject of assignment of rights independently and explicitly in the second chapter titled 'Assignment,' but rather addressed it without distinguishing between assignment of rights and assignment of debts, through Articles (1106-1132), considering that assignment is included within these contracts by analogy to guarantee. In contrast, the Egyptian legislator regulated the assignment of rights in the first chapter of the fourth section under the title 'Transfer of Obligation,' dedicating Articles (303-314) of the Civil Code to it (Egyptian Civil Code, 1948). Similarly, the Kuwaiti legislator adopted the same approach, regulating the assignment of rights in the first chapter of the fourth section through Articles (364-376) of the Civil Code (Kuwaiti Civil Code, 1980).

Considering the above, this requirement will be addressed through two branches: the first branch clarifies the concept of the assignment of rights system, and the second branch addresses the subject matter in the assignment of rights system.

2.2.3. First Branch: Concept of Assignment of Rights

Assignment of rights is an agreement or contract whose subject matter is the original creditor (the assignor) transferring his right to a new creditor (the assignee) against the debtor (the obligor) (Tanago, 2009, p. 334). It is a bilateral relationship based on the assignor and assignee, but it relates to the original creditor's right against the debtor, who is considered a party external to this relationship (Abu Amro, 2010, p. 181).

English jurisprudence defines assignment of rights

as a transaction between a person who owns contractual rights or benefits arising from the contract, called the assignor, creditor, or promisee, and another person called the assignee, who is in the position of a stranger to the contract concluded between the assignor creditor and the obligor debtor or the promisor. According to this, the assignor transfers his contractual rights to the assignee, who claims those rights by suing the debtor who is not a party to the transaction and whose consent is not required for its validity (Peel & Treitel, 2018, p. 714; Richards, 2020, p. 403).

The Egyptian legislator in Article (303) of the Egyptian Civil Code, as well as the Kuwaiti legislator in Article (364) of the Kuwaiti Civil Code, permitted the original creditor to transfer his right to a new creditor, unless prevented by a legal text, agreement, or the nature of the obligation.

While the UAE legislator's definition of assignment in Article (1106) of the Federal Civil Transactions Law came closer to debt assignment than to right assignment, and despite the absence of any text explicitly clarifying assignment of rights in the Federal Civil Transactions Law, UAE jurisprudence represented by the Federal Supreme Court defined assignment of rights as concluded by mere consent of the assignor and assignee, with no requirement for a special form unless provided by law or agreed upon by the contracting parties, or unless the nature of the obligation requires a specific form for the assignment (UAE Federal Supreme Court, 2001).

From the previous definitions, assignment of rights is characterized by a consensual nature, requiring agreement between the concerned parties to transfer the right. This confirms the necessity of having the element of consent between the parties in assignment of rights as a basic condition for contract validity, in addition to the availability of other elements: subject matter and cause (Al-Zuhairi, 2009, p. 120). Although assignment of rights has one form, its purposes and objectives may vary. The creditor may intend to sell his right to the assignee as the new creditor, or may intend to gift it, pledge it, or use it as payment for a debt owed to this new creditor. In this case, the assignment becomes payment in consideration, and consideration in all cases is given to the real intention of the two parties, namely the assignor and assignee.

2.2.4. Second Branch: Subject Matter in Assignment of Rights

The subject matter of assignment of rights is represented in the right existing in the obligor's liability for the assignor's benefit. This right transfers

from the assignor (original creditor) to the assignee (new creditor). Therefore, personal rights are permissible for assignment regardless of their subject matter (Talba, 2016, p. 8), whether money (which is common in practical life), fungible or specific things, or obligations to act or refrain from acting (Al-Amrousi, 2003, p. 540).

The subject matter of assignment can be an immediate right or one suspended on a condition or coupled with a term. Indeed, most assignments relate to deferred rights (UAE Federal Supreme Court, 1989). The assigned right may be established in a written document, official instrument, customary instrument, judicial judgment, or may not be written at all. Assignment of commercial papers, stocks, and bonds is also permissible, where assignment in these cases occurs either by transfer, endorsement, or delivery. Assignment of rights evidenced only by witness testimony or circumstantial evidence is also permissible (Shahata, 1954, p. 19).

Questions often arise regarding future or contingent rights and whether they can be the subject matter of assignment of rights. UAE jurisprudence has established the permissibility of assigning future or contingent rights, even if these rights have no current legal existence, if their future existence is probable. This is permissible even before any of their elements are realized, and even if the debtor disputes the right subject to assignment (Dubai Court of Cassation, 2022).

In our opinion, assignment of rights for future debts is a form of dealing in future things, which is permissible if uncertainty is eliminated. Uncertainty is eliminated when dealing with these debts is based on unit basis rather than in gross (Al-Sarhan et al., 2020, p. 160).

The principle is that personal rights, regardless of their subject matter, accept assignment as previously mentioned. However, there may be impediments that make rights non-assignable. The prohibition may stem from the nature of the right due to its close connection to the creditor's person, making the right's transfer difficult (Al-Arabi, 2022, p. 333). The prohibition may also be by legal text, such as the prohibition of assignment of rights to certain categories to protect public interest, like preventing judges and their assistants from purchasing assigned rights if the dispute falls within the jurisdiction of the court where they perform their duties.

Rights that do not accept assignment by legal text are joined by rights that cannot be seized by legal text. Explicit text has appeared in legislations that adopt assignment of rights, including Article (304) of the Egyptian Civil Code and corresponding Article

(365) of the Kuwaiti Civil Code stating: 'Assignment of rights is not permissible except to the extent that it is subject to seizure.' Since the right's assignability is not related to public order, contracting parties (creditor and debtor) may agree in the contract that the creditor may not assign the right in the debtor's liability to another creditor, or may agree in the contract that assignment of rights is not permissible except with the debtor's consent (Al-Adawi, 1996, p. 276).

2.2.5. Second Requirement: Enforceability of Assignment of Rights

For assignment of rights to be enforceable against the debtor (obligor) and third parties, specific procedures must be fulfilled to make it enforceable against both. Both Egyptian and Kuwaiti legislators clarified these procedures with explicit texts in their civil laws, providing that assignment of rights cannot be invoked against the debtor unless he accepts this assignment or is notified of it. Both legislators required that the debtor's acceptance be written with a fixed date for the assignment to be enforceable against third parties.

Although the UAE legislator did not provide independent texts for assignment of rights, there is explicit application of assignment of rights in Article (1130) Paragraph (2) of the Federal Civil Transactions Law, which states: 'The assignment is not enforceable against third parties except by its official notification to the obligor or his acceptance of it by a document with a fixed date.' Third parties in this context can only be conceived in assignment of rights (Al-Amrousi, 2003, p. 98).

This provision came as specialization from the legislator for the benefit of third parties, since assignment notification cannot be conceived at an entity other than the debtor, as he is addressed by the assignment and is the one the assignee demands the assigned right from. He is also most capable of informing third parties wishing to deal regarding this right about whether the original creditor had previously disposed of it or whether it was subject to seizure under his hand (Al-Sinhouri, 2009, p. 471).

This article's application is accurate only for assignment of rights. In detail, the necessary procedures for assignment enforceability will be addressed through two branches: First branch: notifying the debtor of the assignment; Second branch: debtor's acceptance of the assignment.

2.2.6. First Branch: Notifying the Debtor of the Assignment

If the debtor (obligor) refuses the assignment of rights, the only option remaining for the assignment contract parties is to notify him of it. Notification is a

legal act that can be issued by the assignor or the assignee. It has become customary for notification to be made by the assignee since he has the interest in making the assignment enforceable against the debtor (obligor) (Al-Namat, 2012, p. 47).

For assignment of rights to be enforceable against the debtor, notification must be by official paper from court officers according to procedures established in civil procedure law. The assignment of rights must be proven therein, along with its parties and statement of its conditions and basic data without need for the notification to include special text about the assignment (Marqos, 2019, p. 348).

What suffices instead of notification is the assignee filing a lawsuit against the obligor demanding payment of the assigned debt value; this lawsuit is considered notification of the assignment from the date it reaches the obligor and produces its effect against third parties from this date. Serving notice to the debtor by a court officer demanding payment of the assigned right in preparation for issuing a payment order also serves as notification when this notice includes statement of the assignment occurrence and its basic conditions. A precautionary seizure by the assignee on the obligor's property also suffices instead of notification (Dubai Court of Cassation, 2018).

Accordingly, assignment of rights becomes enforceable against the debtor and third parties from the notification date, and refusal is considered from the same date. Notification is achieved once it reaches the debtor's knowledge and is directed to the obligor or his legal representative such as guardian, curator, company manager, or any person authorized to fulfill the right on behalf of the debtor. In the case of future right assignment, notification is made to everyone who might potentially be a debtor of this right in the future, since the event has not yet been determined and there is no specific debtor who can be notified individually (Al-Arabi, 2022, p. 334).

2.2.7. Second Branch: Debtor's Acceptance of the Assignment

The debtor (obligor) is considered a third party in relation to the assignment of rights contract. He is not a party to the assignment, and the debtor's (obligor's) consent is not required for the assignment's conclusion as his intervention in this agreement is not necessary (Al-Namar, 2020, p. 215). However, the assignment is not enforceable against the debtor (obligor) except by his express or implied acceptance.

Since this acceptance is considered the means for assignment of rights enforceability against the debtor (obligor), the debtor's acceptance must indicate his approval of accepting the assignment (Dubai Court

of Cassation, 2016). No special form is required for acceptance; it may be established in an official or customary paper and may be oral in the presence of witnesses. Acceptance by the debtor can be proven according to general rules, although it is required for the assignment to be enforceable against third parties that the debtor's acceptance be in a document with a fixed date.

Acceptance may be implicit if the debtor pays part of the debt or its interest to the assignee after the assignment, provided that the acceptance is proven according to general rules (Al-Arabi, 2022, p. 335). The meaning of acceptance here is limited to the debtor's mere knowledge of the assignment and does not include acknowledgment of his obligation without condition or restriction.

The debtor's acceptance must be contemporaneous with the assignment's conclusion or after it, but the debtor's acceptance cannot precede the assignment's conclusion (Tanago, 2009, p. 339). It follows from the debtor's (obligor's) knowledge of the assignment resulting from his acceptance that he is obligated to fulfill the debt to the assignee instead of the assignor.

Assignment of rights is not enforceable against third parties unless the debtor is notified of the assignment or accepts it according to the details previously explained. Taking either of these two procedures suffices to make the assignment enforceable against third parties, but on condition that the debtor's notification or acceptance of the assignment be with a fixed date for the assignment to be enforceable against third parties.

2.3. Chapter Two: Assignor's Obligation to Transfer the Assigned Right to the Assignee

2.3.1. Preface and Division

This chapter addresses the legal effects arising between the assignor and assignee in assignment of rights after the assignment is issued correctly, acknowledged by the relationship parties, and becomes enforceable against the obligor (debtor) by his acceptance of the assignment or notification thereof. This chapter will be explained in two requirements: the first requirement is the transfer of the assigned right with its appurtenances, guarantees, and defenses; the second requirement is the guarantee of the assigned right that he transferred to the assignee.

2.3.2. First Requirement: Transfer of the Assigned Right, Its Appurtenances, Guarantees, and Defenses

The conclusion and enforceability of assignment of rights creates a set of legal obligations. It creates in the assignor's liability an obligation to transfer the assigned right to the assignee and secure means of its transfer to ensure the assignee's complete freedom to

dispose of it as the right's owner since the assignment's acknowledgment (Marqos, 2019, p. 351). These obligations will be listed in this requirement through two branches: First branch: transfer of the assigned right itself; Second branch: transfer of the assigned right's appurtenances and defenses that confirm it.

2.3.3. First Branch: Transfer of the Assigned Right Itself

Upon the conclusion of assignment of rights, the assigned right itself transfers in its entirety to the assignee, meaning it transfers at its full value even if the assignee pays a lesser amount for it, as is common in such transactions (Al-Sinhouri, 2009, p. 498). For example, if the right is personal, it is considered specific movable property, and therefore its ownership transfers from the assignor to the assignee without need for any procedure to implement this obligation.

Since the right transferred by assignment is the same assigned right, it transfers with its same characteristics that existed before the assignment, whether the assigned right was commercial or civil, suspended on a condition or added to a term, solidary or non-solidary, divisible or indivisible. It transfers to the assignee with these same characteristics (Al-Amrousi, 2003, p. 41).

Similarly, if the assigned right is established in an official document or enforceable judgment, it transfers with this characteristic to the assignee. If it is a right that produces interest, it transfers with its ability to produce interest, giving the assignee the right to execute with it and the right to demand the nominal value of this obligation from the obligor (Al-Sharqawi, 1995, p. 255).

The UAE legislator addressed the case of assigned right transfer in Article (1117) of the Federal Civil Transactions Law, which in its understanding applies to debt assignment rather than right assignment since the article's text pertains to debt transfer not right transfer. Meanwhile, the UAE legislator addressed the issue of delivering the assigned right's document in Article (1125) of the Federal Civil Transactions Law.

Article (1125) states: 'The assignor must deliver to the assignee the document of the assigned right and all necessary data or means to enable him to exercise his right.' It is noted from Article (1125) that although it came to regulate assignment provisions generally, it provided the phrase 'right document' in clear indication from the UAE legislator that the assignor has an obligation to transfer the right, not the debt, and enable the assignee to obtain his right in what was assigned to him. Therefore, this text's application

field is closer to assignment of rights rather than debt assignment.

The Egyptian legislator, despite regulating assignment of rights, did not provide explicit text regarding delivery of the assigned right's document, considering it an obligation necessitated by the nature of things. In contrast, the Kuwaiti legislator, who also adopted assignment of rights, explicitly provided for the assignor's obligation to deliver the assigned right's document to the assignee, and obligated the assignor to provide the assignee with all means that prove the right and enable him to use and claim it.

The assigned right transfers between contracting parties (assignor and assignee) from the time of agreement on assignment if the right exists and is determined (Abu Dhabi Court of Cassation, 2025). However, if the right is future and has not yet arisen in the assignor's liability, or was suspended on performing a specific act, it does not transfer to the assignee except from the time this right arises in the assignor's liability (Qasim, 1994, p. 228). In both cases, the assignor is obligated to deliver the right's document to the assignee. Regarding the debtor (obligor) or third parties, the assigned right does not transfer except from the time the assignment becomes enforceable against them (Al-Arabi, 2022, p. 338).

2.3.4. Second Branch: Transfer of the Assigned Right's Appurtenances and Lawsuits that Confirm It

As previously mentioned, the assigned right transfers with all its characteristics from the assignor to the assignee. Similarly, this right's appurtenances transfer to the assignee, including its guarantees, accrued interest and installments, and lawsuits that confirm the assigned right.

Article (307) of the Egyptian Civil Code and Article (368) of the Kuwaiti Civil Code explicitly provide for this. Both Egyptian and Kuwaiti legislators considered the assigned right's appurtenances and guarantees part of it, and therefore they transfer with it to the assignee by operation of law, unlike the UAE legislator who addressed provisions specific to assigned right guarantees in regulating the relationship between the assignee and obligor in the case of debtor's person change, according to Article (1119) of the Federal Civil Transactions Law, which is a clear application of debt assignment provisions rather than right assignment. However, UAE jurisprudence has established that the assigned right transfers with all its characteristics, appurtenances, guarantees, and defenses (UAE Federal Supreme Court, 2001).

The assigned right's appurtenances include its

guarantees, accrued interest and installments, and lawsuits confirming the assigned right, which will be addressed as follows:

First: Assigned Right Guarantees. These guarantees are considered appurtenances and attachments of the assigned right such as mortgage, privilege, and guarantee, and transfer to the assignee upon the assignment without need to mention this in the assignment contract. This is natural since these guarantees serve to confirm and strengthen the right, especially since the assignee relied on these guarantees when the right transferred to him, unless the assignor and assignee agree to exclude the transfer of these guarantees or some of them upon right assignment (Abu Al-Saud, 2006, p. 385).

If the assigned right is guaranteed by a personal guarantor, this guarantor remains obligated to guarantee for the assignee, exactly as he was obligated toward the assignor. His consent is not needed for the assignment to be enforceable against him, since the debtor's person (obligor) is what concerns him, and the latter has not changed; rather, it is the creditor who changed. However, notifying the guarantor of the assignment or obtaining his acceptance is necessary so he knows of the right's transfer and determines to whom he will fulfill the debt. If he was unaware of the assignment and fulfilled the debt on behalf of the debtor (obligor), the fulfillment would be correct and absolving of his liability (Al-Sinhoury, 2009, p. 498).

Second: Transfer of Accrued Interest and Installments. Interest and installments are considered attachments of the assigned right, and therefore transfer with it to the assignee whether they were due before the assignment or became due afterwards and were not paid. However, this ruling is not of public order and agreement between the assignor and assignee on non-transfer of these attachments is permissible (Karkin, 2016, p. 59). This is what the Egyptian legislator established in Article (307) of his Civil Code (Marqos, 2019, p. 352).

While the Kuwaiti legislator did not explicitly state that assignment of rights includes interest and installments, he provided generally that the assigned right transfers to the assignee with its characteristics, appurtenances, and guarantees. Perhaps the reason for this returns to expanding the assignment's scope to include everything that can be considered appurtenances of the assigned right, in addition to including current and future interest and installments as appurtenances of the right that transfer accordingly from the assignor to the assignee.

Third: Transfer of Lawsuits that Confirm and

Establish the Assigned Right. The principle is that the assigned right transfers to the assignee with its same components, characteristics, and all its appurtenances, attachments, securities, and guarantees that existed before transfer (Al-Arabi, 2022, p. 337). This assigned right may be accompanied by some lawsuits that confirm it and are considered its appurtenances, such as rescission lawsuit aimed at confirming and establishing the assigned right and representing a tool for its implementation or defense in its implementation (Abu Al-Saud, 2006, p. 385).

However, the assigned right may be accompanied by lawsuits that contradict and conflict with it (Al-Sinhouri, 2009, p. 498). Among these lawsuits is the nullity lawsuit, which is not considered an attachment of the assigned right because its purpose is destroying the right from its foundation and ending the contractual relationship, not confirming its continuation and protecting the assignee's rights. Therefore, it falls outside the scope of appurtenances that transfer with the assigned right (Al-Hija, 2008, p. 57).

2.3.5. Second Requirement: Assignor's Guarantee of the Assigned Right Transferred to the Assignee

According to general rules, the assignor is a guarantor for his personal acts, whether the assignment is with or without consideration. This finds application in Article (308) of the Egyptian Civil Code and Article (374) of the Kuwaiti Civil Code (Moussa, 2023, p. 290). Both legislations did not distinguish between assignment with or without consideration regarding the assignor's guarantee for his personal acts, as the assignor remains responsible for damage affecting the assignee, including actual loss and lost profit based on tort liability provisions.

Meanwhile, the UAE legislator did not regulate this case with any special texts since he did not provide independent regulation for assignment of rights as the Egyptian and Kuwaiti legislators did. However, UAE jurisprudence has held that the assignor guarantees the assigned right to the assignee and also guarantees his personal acts as long as these acts may lead to diminishing the assigned right or its attachments, such as mortgage or any other guarantee. In this case, the assignor is responsible whether the assignment is with or without consideration, and whether the guarantee is established by legal text or by agreement that increases or limits his responsibility.

If any interference with the right or its appurtenances results from the assignor's act, the assignor becomes a guarantor for his personal acts and his responsibility is based on wrongful act,

making him obligated to compensate the assignee even if the assignor stipulated non-guarantee (UAE Federal Supreme Court, 2001). The assignor guarantees to the assignee that he will not be exposed regarding what was transferred to him by right under the assignment of rights, regardless of whether the assignment is consideration or donation.

Accordingly, this requirement will be detailed in two branches: first branch covers legal guarantees, and second branch covers contractual guarantees that the assignor is obligated to provide to the assignee to guarantee the assigned right (Marqos, 2019, p. 354).

2.3.6. First Branch: Legal Guarantee

Whoever claims a right for himself and wishes to dispose of it to another, the principle requires that the disposer first guarantee the establishment of this right to him and his right to dispose of it, and second, refrain from any disposition that would prevent the assignee or transferee from benefiting from the right transferred to him by the assignor disposer. This guarantee differs in law's ruling depending on whether the assignment is with or without consideration.

First: Legal Guarantee for Assignment with Consideration. According to Article (308/1) of the Egyptian Civil Code and Article (371/1) of the Kuwaiti Civil Code, the assignor's obligation is limited to guaranteeing the assigned right at the time the assignment arises. The assignor guarantees to the assignee the existence of the right correctly and also guarantees its appurtenances of personal or real securities. The assignor also guarantees to the assignee against legal and material interference issued by him (Al-Fadl, 2017, p. 237).

Therefore, the assignor's responsibility in this guarantee is by operation of law without need for any special agreement establishing or confirming it. The assignor remains obligated to guarantee if it becomes apparent that the right subject to assignment does not exist at the time of its conclusion, when the source of that right was a void contract or voidable for the debtor's benefit in whose liability the right was established, and the latter actually voided it even if the voidance judgment was issued after the assignment's conclusion, since the voidance judgment has retroactive effect making the right considered as never having existed at the time of assignment issuance (Al-Arabi, 2022, p. 338; Al-Sharqawi, 1995, p. 258).

Second: Legal Guarantee for Assignment without Consideration. Article (308/2) of the Egyptian Civil Code and Article (371/2) of the Kuwaiti Civil Code refer to the case of assignment

without consideration and the extent of the assignor's obligation to guarantee the right and its existence. The principle is that the assignor is not obligated to provide guarantee to the assignee either by law or by agreement, as the rule provides for no guarantee on the donor whether the assignee cannot collect his right due to the obligor's insolvency or due to non-existence of the assigned right from the beginning (Al-Fadl, 2017, p. 237).

However, this rule cannot be adopted absolutely. Article (638) of the Federal Civil Transactions Law states: 'The donor does not guarantee the entitlement of the donated property in the donee's possession if the donation is without consideration, but he is responsible for any damage affecting the donee due to this entitlement if he deliberately concealed the cause of entitlement. If the donation is with consideration, he does not guarantee entitlement except to the extent of what the donee paid as consideration unless otherwise agreed.'

By analogy to assignment of rights where the assignor is the donor and the assignee is the donee, we find that if assignment of rights is without consideration, it is measured against donation without consideration, so the donor (assignor) does not guarantee entitlement to the donated item except if he deliberately concealed the cause of entitlement. In this case, he is obligated to guarantee it (Al-Arabi, 2022, p. 338). However, if the assignment is with consideration, it is measured against donation with consideration, and the donor's (assignor's) guarantee is established according to Article (1126) of the Federal Civil Transactions Law, which provides that the guarantee is limited to the time of assignment (donation) unless otherwise agreed, or to the extent of what the donor (assignor) paid as consideration to the donee (assignee) (Talba, 2016, p. 58).

2.3.7. *Second Branch: Contractual Guarantee*

The principle is that the assignor and assignee may agree to modify legal guarantee provisions. Contractual guarantee is another form of guarantee that falls on the assignor against the assignee, where this guarantee is subject to agreement, meaning the contractual relationship parties may agree to lighten the legal guaranteed provisions on the assignor or intensify them to guarantee the assignee, provided they do not exceed mandatory texts related to public order. This will be clarified as follows:

First: Agreement to Lighten Guarantee Provisions. Among permissible lightening aspects that may be agreed upon between assignor and assignee is exempting the assignor in assignment with consideration from guaranteeing the existence of the assigned right at the time of assignment

conclusion, or the assignor may stipulate to the assignee non-guarantee of the assigned right's appurtenances, such as when the right is guaranteed by mortgage or privilege then the invalidity or voidability of this mortgage or privilege becomes apparent and its owner voids it. The assignor would not be responsible for guaranteeing it when he explicitly stipulated non-guarantee (Al-Sinhouri, 2009, p. 508).

Since the right's appurtenances follow its original and transfer with it by operation of law, their exclusion can only be by special agreement concluded by the assignor with the assignee. Among lightening forms is also the parties' agreement to limit compensation that the assignee can seek from the assignor within the limits of what he paid as price only, without extending to interest or expenses incurred on the assigned right.

Agreement on lightening guaranteed conditions may extend to exempting the assignor from guaranteeing the existence of the assigned right at the time of assignment conclusion, which is exemption from contractual responsibility permitted by law when explicitly stated and not contrary to public order. This often occurs when the assignor is not confident that the right he assigns is his, so he stipulates non-guarantee. If the right is not his, he does not guarantee it, or the assignor was uncertain about the right's freedom from defects, so he stipulates non-guarantee to avoid responsibility for guaranteeing it (Al-Sharqawi, 1995, p. 358). However, such agreement or condition usually exposes the assignee to corresponding risks, which usually leads to the price he pays for the assignment to be much less than the assigned right's value. Non-guarantee conditions can be inferred from the disposition's circumstances themselves. If the assignor assigns a disputed right or one subject to a claim or litigation lawsuit, and the assignee knew this, the assignor would not be liable for guarantee unless there is explicit agreement contrary to this ruling.

Second: Agreement to Intensify Guarantee. This is often achieved when the assignee stipulates from the assignor a guarantee that is not limited only to the existence of the assigned right but extends to include the obligor's solvency and ability to pay. This type of guarantee is established only based on special and explicit agreement between the parties clearly revealing the assignor's will and approval to bear guarantee of the debtor's solvency.

If the assignor accepts this condition, he becomes obligated to guarantee the obligor's solvency at the time of assignment conclusion. If the obligor becomes

insolvent after assignment conclusion, the assignor is not a guarantor for the obligor's solvency unless there exists an agreement established otherwise.

Article (1126) of the Federal Civil Transactions Law finds application here, stating: 'If the assignor guarantees to the assignee the obligor's solvency, this guarantee extends only to his solvency at the time of assignment unless otherwise agreed.' This article contains clear application of assignment of rights despite the Federal Civil Transactions Law addressing the assignment system generally, and most of its texts regulate debt assignment in its absolute and restricted types. Unlike the Egyptian and Kuwaiti legislators, the text in this instance was explicit for application to assignment of rights rather than debt assignment. Article (309) of the Egyptian Civil Code and Article (372) of the Kuwaiti Civil Code indicated that the assignor is not a guarantor for the debtor's solvency except if agreement exists between the parties on that. Both legislators specified that what is included in solvency is the debtor and did not state the obligor as the UAE legislator did, all to remove any confusion and clearly indicate that what is meant is the obligor debtor in assignment of rights (Al-Sinhoury, 2009, p. 509). The assignor's guarantee of the obligor's solvency is considered a means of protecting the assignee, as it entitles him to recourse against the assignor if the obligor becomes insolvent without the assignee having a hand in this insolvency. However, if the obligor was solvent at the time of assignment acknowledgment, but the assignee was negligent by delaying his claim for the debt for a long period beyond reasonable limits leading to the obligor's insolvency, the assignor does not bear responsibility for this insolvency because its cause returns to the assignee's negligence in collecting his right, not to the assignor's act or negligence. Nevertheless, even with the guarantee condition being met and the obligor's insolvency established, the assignee cannot exercise his right to recourse against the assignor except after first establishing this insolvency by first seeking recourse against the debtor and exhausting all guarantees established for him against him in accordance with the 'debtor depletion' rule, since the assignor is not assigned the guarantor's capacity, although his responsibility approaches this in some aspects. Nevertheless, to protect the assignee's position, he may take precautionary or urgent measures before the assignor to ensure establishing the obligor's insolvency definitively (Shahata, 1954, p. 28).

3. CONCLUSION

At the conclusion of this research, the researcher reached several findings and recommendations,

which are outlined as follows:

3.1. Findings

- The Federal Civil Transactions Law provided a general framework for assignment provisions without explicitly addressing the effects arising in the relationship between the assignor and assignee, which are the most complex and important aspects in assignment of rights. In contrast, UAE jurisprudence, as presented by the study, has moved toward recognizing assignment of rights and acknowledging it as a valid contract when its elements are met and it does not conflict with public order rules. It has also clarified the effects resulting from the right's transfer in the assignor-assignee relationship. Perhaps this judicial direction was influenced by legislations that regulated assignment of rights and dedicated special texts distinguishing it from debt assignment according to the modern division of assignment.

- Although the UAE legislator did not dedicate special texts for assignment of rights, there is explicit application of it in Article (1130/2) of the Federal Civil Transactions Law, which stated: 'The assignment is not enforceable against third parties except by its official notification to the obligor or his acceptance of it by a document with a fixed date.' Third parties in this context can only be conceived in assignment of rights, so the legislator dedicated this ruling in this context to ensure assignment enforceability against both the debtor and third parties.

- The UAE legislator addressed the transfer of the assigned right in Article (1117) of the Federal Civil Transactions Law, but this text pertained to debt transfer rather than right transfer, making it related to debt assignment rather than right assignment. In contrast, Article (1125) addressed the issue of delivering the assigned right's document, and although it appeared in the context of regulating assignment provisions generally, including the phrase 'right document' clearly reveals the UAE legislator's intention to obligate the assignor to transfer the right and enable the assignee to exercise what was assigned to him. This makes this text's application scope closer to assignment of rights rather than debt assignment.

- The principle is the assignor's non-obligation to guarantee the obligor's solvency, as his guarantee is limited to the existence and correctness of the right without extending to the debtor's solvency and ability to pay, unless there exists an explicit agreement obligating the assignor to this guarantee. The UAE legislator established this principle in Article (1126) of the Federal Civil Transactions Law,

in clear indication that its ruling applies to assignment of rights rather than debt assignment.

3.2. Recommendations

- We propose establishing a special legislative chapter for assignment of rights, adding texts that regulate the effects arising in the relationship between assignor and assignee clearly, given their representation of the basis in practical problems shown by the study and the need to determine assignor obligations and assignee rights precisely to achieve legal stability. This chapter should include detailed legislative texts regulating assignment of rights generally, determining the scope of right transfer and its guarantees, methods of proof, and conditions of enforceability against the debtor and third parties, in harmony with established judicial

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practice and preventing interpretation variations.

- We also propose adding an explicit text obligating the assignor to transfer the assigned right to the assignee with the following wording: 'The assignor is obligated to deliver to the assignee the document of the assigned right and all necessary data or means to enable him to exercise his right, and the assigned right transfers with all its characteristics, guarantees, and appurtenances.' This should be added to the proposed texts in the first recommendation.

- We also propose adding a text to the proposed legislation in the first recommendation stating: 'If the assignor guarantees the debtor's solvency, this guarantee extends only to solvency at the time of assignment unless otherwise agreed.'

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