**A Paper with the Title:**

**Preferential Rights on Movables in Jordanian Civil Law**

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Abstract

The Jordanian legislator dealt with the general rules governing preferential rights, indicating the types of excellent rights, arranged according to their degrees. It divided preferential rights into "general," which refers to all the money of the debtor, and "specific" which refers to a particular amount from the debtor's money. It distinguished in particularly between the preferential right which applies to the movable, and the other which applies to real estate. It also distinguished between the rulings on competing preferential rights and set the limit for tracing in preferential rights for movables.

In this humble research, we are concerned about preferential rights on movables and the analysis of the problems that arise in each type and their treatment, always taking into account the position of the Jordanian legislator in articles 1436 - 1445 of the Jordanian Civil Code.

Initiatory words:

• Preferential right: A priority that the law determines for a particular right, taking into consideration its character, whereby a certain amount of money is allocated to meet a specific obligation, so that it remains dedicated to fulfilling an insured obligation.

• Movable: The Jordanian Civil Code does not define movable thing, but only defines property and considered that "everything else is a movable thing."

• Corporative right: is the direct appropriation by a person of a particular object whose appropriation is determined by law.

• Accessory corporative right: that right which is applied to something to ensure the fulfilment of an obligation. So, it is based on an original right, and does not exist without it.

**Introduction**

Preferential rights are a subsidiary corporative right which grant the creditor precedence to demand his or her right, in compliance with his or her character. It is determined by the text of the law, and indeed preferential right is established only in the text of the law.

The basis for preferential rights are considerations which have been newly legislated for in a report on preferential rights on certain debts. These considerations are sometimes based on equity, as with the seller's preference. Or, they may be based on tacit mortgage, as with preference on the debt of the lessor or the owner of a hotel, who have the privilege of the tenant's or guest's baggage in the rented property or the hotel.

Preference rights are divided into public preferences on all the debtor's funds, private preferences on a particular movable and private preferences on a given property or properties.

What concerns us in this research are private preferential rights on movable property, and an understanding of the problems that arise in each type, and their solutions, taking into account the position of the Jordanian legislator in articles (1436-1445), as follows:

* First: preference on the expenses of maintaining and restoring movables.
* Second: preference on agricultural expenses, and agricultural machinery expenses.
* Third: preferential rights on leases of real estate.
* Fourth: preference for the hotel proprietor.
* Fifth: preference for the movable seller.
* Sixth: shared preference on movables.

**First: preference on the expenses of maintaining, repairing and restoring movables.**

The Jordanian legislator addressed this privilege by stipulating in Article 1434 of the Jordanian Civil Code that "the funds spent on the preservation or repair of movable property shall be a preference and shall be paid after judicial expenses and the fees due to the government."

That is, the expenses of maintaining and repairing movables are those that are aimed at protecting the thing from complete or partial loss. Or, to make the thing fit for the intended purpose of its use, such as a car repairer, or watch rentals or renting a carpenter to fix furniture, and the costs of debt relief.[[1]](#footnote-1)

The basis of this preference is that, if it were not for the preservation and repair of the movable property, that movable property may have been destroyed, or at least its value would have been reduced. It is fair that the creditor takes priority before others in its collection from the price of the movable.[[2]](#footnote-2)

**What are the problems that arise?**

1. Does this preference guarantee the expenses of improvement and beneficial expenses, and how can the spender of this money collect it?
2. Since the creditor has the right to collect his secured debt as a priority from the price of the movable, what if the ownership of the movable is transferred to others?

This preference does not incorporate improvement charges or beneficial expenses[[3]](#footnote-3), such as painting the car or dyeing clothes or fabric. However, he or she may benefit from the right to imprisonment if the conditions were fulfilled as set out in Article 389 of the Jordanian Civil Code: "to whoever spends money on another's property, and has necessary or useful expenses in his or her hand, he or she should refrain from refunding until he or she collects what he is legally due.”

If the movable property is transferred to a bona fide holder, then he or she must hang on to proof of possession in dealing with the debtor to obtain the movable property, so the debtor is prevented from tracking his money.

However, if he or she was a mala tide holder in whatever way, and he or she knows about the existence of the maintenance expenses debt or is burdened with preferential rights, then the debtor should monitor the transfer. This abides by Article 1427 of the Jordanian law and the status of this preference comes after the preference for amounts owed to the Treasury and the preference of judicial expenses, Article 1434.

If the costs of maintenance and repair are multiplied and they are commensurate with each other, they are all of the same rank and are collected by their respective value, whatever their date of disbursement.

**Second: private preferential rights relating to agriculture,** and these fall under three types of rights.

1- Preferences of agriculture expenses.

2- The preference of the amounts due in return for agricultural machinery.

3- The preference of the rights of the lessor of agricultural land.

Article 1436 stipulates that the prices of seeds, manure and other kinds of fertilizers and pesticides, and the expenses of agriculture and harvest shall be a preference on the crop on whose production money has been spent and shall be paid for after the previous rights.

This text includes two types of preference rights.[[4]](#footnote-4)

 A – That aimed at the agricultural crop and includes the prices of seeds and fertilizer and the expenses of agriculture and harvesting, including the wages of those involved in the preparation of land for agriculture and the wages for services.

B. It shall focus on agricultural machinery and shall include the prices of these machines and the expenses of their repair and the cost of transporting them to the land.

The debtor has a preference on expenses for the maintenance of the movable, for the costs of maintaining the agricultural machinery. He or she has the priority on preference for the expenses of agricultural machinery, but does the preference include subsequent crops?

The preference is based on the crop that these expenses were spent on preparing or maintaining. The preference is not continued on subsequent crops. But if the expenditures result in a benefit to repeated crops for consecutive years, then preference falls on the crop of these years altogether, for example, sugar cane cultivation.

The Jordanian legislator has included a preference on agricultural costs for a number of private preferential rights applied on movables. This, even though the agricultural crop burdened with the preference is an immovable property, and that goes back to the fact that the crop is transferred by fate.[[5]](#footnote-5)

The rank of this preference: this preference comes in fifth place after the preference of judicial expenses, the preference of amounts owed to the Treasury, the preference of expenses for the maintenance of the movable and public preferences. If several farmers are competing for the agriculture expenses, their debts are equal and each one collects from the price of the crop.[[6]](#footnote-6)

B - the preference of amounts due in exchange for agricultural machinery. This preference includes all the money spent on the farm machine, including the price, the cost of transporting it to the land and the expenses of its repair and improvement.[[7]](#footnote-7) Those who repair agricultural machinery have two preferences: the preference of the amounts due in return for the agricultural machinery and the preference of the expenses for the maintenance of the movable property.

The seller of the agricultural machinery also has two preferences: the preference of the seller of the movable and the preference in exchange for the agricultural machinery. It is in the seller's interest to adhere to the preference in exchange for the agricultural machinery because it comes in fifth place, while the preference of the movable seller is ranked seventh.

The preference applies to the agricultural machines and not to the crop. The preference remains, even if the machine became a property by privatization.

**Third: Preferential rights arising from leases of real estate (buildings and agricultural lands)**

Article 1437 states: "For the rent of property and agricultural land for two years or for the duration of the lease, as I have said, and every other right of the lessor under the lease shall have a preference over what is present in the rented property and owned by the lessee in terms of rentable movable property or an agricultural crop."

The preference of these sums is applied upon the movables owned by the tenant or his wife, and present in the property, or the agricultural crop, but on the condition that they must be bookable and material possessions. Does this preference include movable property belonging to others? This preference applies to the movable property belonging to third parties if it is found in leased premises and the lessor is unaware of its revenues to others at the time it is placed in the rented property, on the basis that everything that exists in the property is included in the fare (Article 1438).

The preference is not limited to the movable property of the lessee and his or her spouse, but includes the movable property of the second lessee (the subtenant), if the lease prevents the first tenant from subletting. If the contract does not prevent him or her from subletting, the amounts due to the lessor shall not have a preference over what the lessee places in the leased premises.[[8]](#footnote-8)

The lessor shall have the right to trace the funds in the event of transfer from the leased premises without his knowledge. The rights of bona fide third parties shall be observed and the preference shall continue to be applied on the funds transferred, even if they harmed the rights of third parties for a period of three years from the day of transfer. If the funds are sold to a buyer of goodwill or at an auction, the lessor must return the price to the buyer.[[9]](#footnote-9)

The question that arises is a judgement on what happens if the movables are transferred from the rented property to another place or if they come into the possession of another person? It must be differentiated following the assumptions:

1. If the movables have been transferred to another place or person with the knowledge and consent of the lessor and without opposition thereto, he shall be deemed to have waived a right to the preference.[[10]](#footnote-10)

2. If the lessee acted freely with the movables in the premises that were rented to others, for instance selling them without transferring them from the rented premises, the preferential right is still applied. Even the lessor knew about it, he or she does not lose his right.[[11]](#footnote-11) That is because the survival of the movables reassures him or her of his or her ability to collect what is owed to him or her.

3. If movables are transferred or exported to another place or to another person without the knowledge and consent of the lessor, or in spite of his or her opposition.[[12]](#footnote-12)

This leads us to two possibilities:

**The first possibility** is that if the lessor does not enter into an entitlement reserve or leave it outside the legal period of 30 days from the date of transfer or remain silent for a period of more than three years, then these movables come out of the leased property to the buyer free of the preference that burdens them.[[13]](#footnote-13)

**The second possibility** is that the lessor has signed the entitlement bond and in this case he or she gains the right to trace these movables under the following conditions:[[14]](#footnote-14)

1- The tenant removed these movables without the knowledge and consent of the lessor.

2. The lessor has made an entitlement bond within 30 days from the date of transfer.

3. The wage remains insufficient to pay the lessor's right arising from the lease.

4- The lessor shall exercise the right to trace the movables within 3 years from the date of transfer.

5. The person who bought it should not have good faith, and if so the lessor has to pay the price.

**Fourth: Dues of the hotel owner in obligation to the guest.[[15]](#footnote-15)**

Article 1442 stipulates that the amounts due:

1. The owner of the hotel, who is in obligation to the guest for the cost of accommodation and for the expenses of his account, has a preference over the luggage brought by the guest in the hotel or its outbuildings.

The preference is on the luggage, even if it is not owned by the guest, if it is not proved that the owner of the hotel knew at the time of entry into it to the third party, provided that the baggage is not stolen or lost.

**Do the owners of furnished and unfurnished apartments and apartments benefit from the concession?** No, because these are covered by the preferential right due to the lessor as they do not provide hotel services, because their work is limited to short-term use.[[16]](#footnote-16)

The preference includes the fees for the guest's stay, fees for provisions and what he or she spent on his or her account, in terms of the cost of food, car-parking, and what the hotel offers to his or her spouse and children in terms of services. This includes the preference of compensation that the owner of the hotel is owed for the guest's entitlement to the contents of the hotel. The preference is limited to guaranteeing these amounts at the last time they were lodged, and for a period of two years. According to Article 452, the due date is the date of expiry of residence.[[17]](#footnote-17)

The rights of the owner of the hotel shall be on a par with the preferential rights of the lessor. In the case of the two cases coinciding, the priority goes to the older one.

What does "the older one" mean? It is the precedence of the placement of money transferred in the leased property or the hotel, if this material fact can be fixed by all means of proof.

**Does the loan taken by the guest from the owner of the hotel fall within the scope of the preference?** Jurisprudence considers that it comes within it if it is related to hotel services.[[18]](#footnote-18)

**The question that arises is: if the guest removes the luggage from the hotel without the owner's knowledge, such as if the guest sells it to someone of good will, does he have the right to recover it?** The jurisprudence said that the owner of the hotel should be deprived of his right to recover the movable property which leaves the hotel.[[19]](#footnote-19)

That is because the legislator did not grant the hotel owner the right that was granted to the lessor in the period of the entitlement bond (retroactive) within 30 days from the date of his or her learning of this taking out from his rented property. And no later than three years from the date of transfer of the material movable property to someone else.

However, if we return to Article 1190 of the Jordanian Civil Code, the movable owner may have the preferential right if he or she has lost it, stolen it, or is liable to recover it from the person who acquired it in good faith and within three years from the date of his or her loss, theft or coercion.

And because this holder of good faith may ask for an expedited payment, he is asked to recover it.[[20]](#footnote-20)

**Fifth: preference of the movable's seller:**

The movable's seller has a preference on the price and its accessories as expenses, and this concession remains valid for the duration of its retention period (Article 1444).

**The question that arises is what if the movable is incorporated in the real estate and has become real estate by nature, like building materials, does it continue to hold a preference or not?** For example, in turning wood into furniture or transferring the movable to a property by privatization, it does not lose its self-interest and it remains the preference of the movable seller to keep it despite the change that occurred to it.

The preference for the seller of the movable: the movable ranks after the preference of the lessor and the preference of the owner of the hotel. That is to say, it is in the seventh rank. That is, except when it takes precedence against them, if the lessor or the owner of the hotel knows the preference of the seller at the time of placing the sale in the leased property, Article 1444 Jordanian civil.

**Sixth: shared preference on movables.**

The Jordanian legislator organized this privilege in the text of the first paragraph of Article 1445 of the Jordanian Civil Code.

"For the partners in the movable, if they share a guaranteed preference, it is the right of each of them to claim from others because of the division, and to collect what has been decided for them from the settlement." The beneficiary of this preference is the shared partner who received less than his share, or the partner who claims the ownership of the third party and a claim is filed against him, and claims against his partners to secure what he lost.

This preference, just like the preference of the movable seller, is based on the fact that the shareholder has contributed to finding something in the joint interest with him. Therefore, preference should be ruled for him. That is, he has preference against other creditors when he returns his rights arising from the division and ensures that the partner who has not fully collected his share from the division receives it in full. But if he took less, then the partners will be entitled to a rate equal to the amount obtained in addition to the sum with the other partners in the joint money, to get the equivalent of his share.

If there is a residual interest in the property after a common share is due, the remainder shall be redistributed among the partners, unless the distribution was impossible to achieve. The remaining partners shall hold the share of the partner and he or she shall have a divided preference.

If the share of one of the partners came upon an amount of money as a result of the apportionment, then he has to return this obligation to the partners who have committed to pay the rate. The rights of such a partner have a preference that shall be based on the separated share that has occurred in the portion of each partner.

The divided preference is deemed to be the same as that of the movable seller. In the event of their coinciding, the priority is given to earlier one by date. If the division is obtained after the sale, the preference of the seller takes priority.[[21]](#footnote-21) And if the sale happened after the division, the divided preference takes priority.

**Conclusion**

In this humble research, we have shown the preferential rights stated for movable property, and the provisions of Jordanian civil law for each different type, and have explained the problems that may arise and how to deal with them. In this research we have reached several recommendations:

• Replacement of the term “buildings” with the term “real estate” mentioned in Article 1437. This is because the provisions relating to the preferential rights of the lessor of agricultural land are not different from the preferential rights arising from the leases of buildings.

• Taking the reverse order of the rights of the spenders on the expenses of the movable: repair, maintenance and restoration in succession, which is what other Arab legislators have done.

• The Jordanian legislator should add to the text of Article 1439 the phrase "of the time foreseen by the lessor", which was added by the Egyptian, Syrian and Iraqi legislator to determine the scope of the fee that the subtenant must not fulfill for the original tenant.

• Specifying the type of reservation that is required in the text of Article 1440 of Jordanian civil - is it a preservation or recovery?

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4. Dr. Said Abdel-Karim Mubarak - Summary of the Rulings of the Civil Code, Real Estate Rights, Hammad Center for Printing and Publishing, Irbid, 1st edition, 1995/1996 [↑](#footnote-ref-4)
5. Solomon Marks, believes that this preference does not apply to the crop except after its harvest, because before that it is located in the land and is counted as a property that only responds to property preferential rights. [↑](#footnote-ref-5)
6. Muhammad Labib Shanab, Lessons in Property and Personal Insurance, Dar Al-Nahda Al-Arabiya Publishers, p. 199, p. 231. [↑](#footnote-ref-6)
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10. Hamam Mohammed Mahmoud Zahran, p. 683, Mahmoud Jamal al-Din Zaki, p. 461 p 324. [↑](#footnote-ref-10)
11. Al-Sanhuri 10a, p. 707, p978 [↑](#footnote-ref-11)
12. Ali Hadi Al - Obeidi p442 [↑](#footnote-ref-12)
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15. Saieddin Mubarak, Summary of the provisions of the Civil Code, in-kind rights, p. 317. [↑](#footnote-ref-15)
16. Wahid al-Din, Auxiliary Property Rrights, p. 352. [↑](#footnote-ref-16)
17. Mahmoud Jamal Al-Din Zaki Personal and in-kind insurance p.459 [↑](#footnote-ref-17)
18. Hammam Mohammed Mahmoud Zahran, Personal and Property Insurance p. 213. [↑](#footnote-ref-18)
19. Dr. Abdul Moneim Al-Badrawi, Dr Shams al-Din al-Wakil, p. 694. [↑](#footnote-ref-19)
20. Bayan Yousuf Rajib, Preferential Rights, p. 298. [↑](#footnote-ref-20)
21. Saeed Mubarak, p317-318 [↑](#footnote-ref-21)