



THE NATURE OF THE WORK OF THE ESTATE REGISTRAR AND HIS JURISDICTION

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Article history:	Abstract:
Received: June 8 th 2022 Accepted: July 10 th 2022 Published: August 17 th 2022	In this research, we explained the nature of the work of the estate Registrar and his Jurisdiction, as his work is considered a public employee in the State, and thus the State is responsible for him as one of its followers and as a result the State is held accountable for all that is issued by the estate Registrar within the framework of his functional work, in addition to his personal accountability, or as a free practitioner, through his registration of real estate transactions and transactions, and thus he is the only responsible for his work, there is no responsibility of the State for this, Or there may be a partnership between what is an employee of the state and that he practices a free profession, but under the control and guidance of the state, that is, it has the authority to direct and control him in his registration of real estate transactions, so that the state is responsible for what is issued from him within his work of employment, being that it has authority over him, also he is responsible to others for what comes from him, while the competence of his work is exercised during a certain time, place and authority must be adhered to. By it, and therefore any conduct outside the scope of his specified jurisdiction shall be considered an infringement by the estate Registrar of his competence, and therefore there is no effect and no existence of the actions he registers within his violation of his competence at that time.
Keywords: Estate Registrar, Employee, Self-Employment, Qualitative Jurisdiction, Spatial Jurisdiction, State Jurisdiction.	

INTRODUCTION

Real estate registration (1) represents the limit of the main and important means to achieve documentary security for all members of society, by providing the necessary protection for real estate properties owned by individuals, in addition to that it is considered one of the pillars in the formal contracts required by some laws, and that this process requires a person who must carry it out, and this person is known as the real estate registrar, who is defined as "a public official whose tasks are the drafting of contracts required by law or contractors request the addition of official status to them, Thus, he has the public authority, as he is obliged to confirm the date, reserve the documents and hand over executive and non-executive copies (2).

Since this profession may be practiced by the estate Registrar, as an employee in the public sector, or an employee in the private sector, or usually one government department within the state participates in performing all these functions, that is, in the sense that this department plays the basic and main role in the real

estate registration system and this is what some countries have taken, or this task may be part of the function of the judiciary and this is what is another aspect of the states, and also this task is carried out by a body within The Ministry of Labor and this is a new trend for some countries, and in a different direction some countries considered this profession a free profession subject to the control and supervision of the state, as the nature of the work of the estate registrar affects the extent to which the issue of the state is his work, whenever there is direct communication, supervision and guidance by the state practiced on the work of the real estate ate registrar, which in turn leads to the accountability of the state for what he issues, on the basis of the responsibility of the subordinate for the implementation of his subordinate, as in this case there is one of the subordinates of the subordinate The State, either the competence of the work of the estate Registrar shall be specified in a particular type and place, or may be granted the right to record and record all real estate dispositions and transactions without being bound by the binding spatial jurisdiction or the



qualitative or state jurisdiction, and thus any violation by him of this jurisdiction negates from the actions in which the status of official is located, in addition to the absence of impact completely, and therefore we will show this through this research by dividing it into two demands that the demand be The first is dedicated to indicating the nature of the work of the estate Registrar, while the second will indicate the competence of the work of the estate Registrar.

THE FIRST REQUIREMENT

The nature of the work of the estate Registrar:

Since each country has its own system of estate registration, which has been assigned to its own needs and has evolved throughout history, the nature of the work of the estate Registrar varies from country to country, and as a result affects the extent to which the state can be held accountable for his work or not. As a result of this difference, we show the position of some Western countries through the first section, while the second section is dedicated to the statement of the position of some Arab countries.

The first branch

Position of Western countries:

Western countries have not taken the same direction in determining the nature of the work of the estate Registrar, as the profession of real estate registration as well as notarization in France is considered a free profession, as he practices it through his self-employment, adding that according to French statutory law he is considered a public servant of the state, but he is responsible for estimating his fees, and is considered a representative of the public authority under the authorization issued by it (3), although the estate Registrar is not considered a public official but a person entrusted with a public service, Being paid not by the state but by the client, in the sense that he receives his fees from the public, although he participates in the facilitation of a public facility of the state, and this control by the state pushes him to take care and caution in his work (4), and this profession in France is subject to strict controls and conditions that must be met in the estate Registrar, as well as he is appointed by the Minister of Justice (5) and since this profession is free, he is free to choose the client as well as Also the client is also free to choose the real estate registrar who intends to register his real estate actions with him (6)

The title of an employee here is called a judgment, since in his work he is subject to the supervision of the State, that is, he performs a public function but exercises it through a free profession (7), and as a result this nature of his work enables the State to be held accountable for what is issued by the estate Registrar during the performance of his function on the

basis of the responsibility of the subordinate for the implementation of his subordinate as approved by the French Civil Law provided for in item 1242 of the amended French Civil Co Law de, which stipulates that "the person shall not be held responsible." Not only about the damage caused by his personal act, but also about the damage done by the people he asks for" (8)

Based on the above, we note that the French legislator considered the estate Registrar to be a refereed employee who works under the supervision of the State and is subject to conditions determined by the State, but he is the owner of a free profession, as he receives his work wages from the client and not from the State, and the State can be held accountable for what is issued by him during his work.

In Britain, although the old system in England did not have compulsory registration but was only required for the influence of the third parties, but the new law required the registration provision to have a motive for mandatory registration (such as the sale or transfer of ownership) (9) The estate Registration Department and its employees, including the estate Registrar, considered an independent administrative body (10), and the estate Registrar acts as a public servant who receives a salary from the state directly, provided that his work is under the supervision of a judge or lawyer from The administrative authority (11) is therefore a judicial function, i.e. in which the estate Registrar is an employee of the Ministry of Justice (12), and through the foregoing the State is responsible for him and for what is also issued from him, since English law has recognized the principle of responsibility of the subordinate for the operation of his subordinate, leaving the matter of determining the dependency and the possibility of the question of the state or not to the court.

The second branch

Position of Arab Laws:

There is a similarity between the position of the Arab laws on the nature of the work of the estate Registrar, as the Egyptian law considers the estate Registrar to be a public employee who receives his salary from the State at the end of each month like all employees in the State (13), and thus is subject to the provisions of the Law of Civil Servants in the State Number (47) of 1978, and also the new Civil Service Law Number(71) of 2016, and thus he is not free to choose his client and the client is free to choose the estate Registrar (14).) . This is confirmed by the text of item (46) of the Law on the Registry in Kind, which states: "Applications for registration shall be submitted to the Commission of the Registry in Kind, in whose jurisdiction the property is located in accordance with the procedures and conditions referred to in the Executive Regulations (15). Therefore, the estate



Registrar is an employee of the Ministry of Justice, appointed by a ministerial decision issued by the competent authority, and is subject to inspection and control by judicial bodies (16).

Therefore, the estate Registrar in Egypt is an employee under the supervision and supervision of the State, and receives a salary from the State, and the place is to hold the State accountable for what is issued by him during his employment work based on the text of item (174/1) of the Egyptian Civil Law. (17)

As for the Iraqi law, the estate Registrar is also considered a public servant in the State, subordinate to his work to the Directorate of Real Estate Registration (tapu) previously, which is one of the departments of the Ministry of Labor, and thus is subject to the provisions of the Law on the Discipline of State and Public Sector Employees Number 114 of 1991, and to the provisions of the Civil Service Law Number (24) of (1960), as it exercises its obligations guaranteed by the Real Estate Registration Law Number 43 of 1971 in force, under the supervision and guidance of the State, and is appointed by an administrative decision issued by the competent authority for defection (18) Thus, his work is considered within the framework of the job, and this position remains productive of its effects towards the estate Registrar (rights - obligations) of the public, so that he is not left free to leave the work or refrain from it because he exercises his functions within the public utilities, and that leaving the job violates the principle of the permanence of the regular and steady functioning of public utilities (19) until his relationship with the job ends in one of the legitimate ways (20), as well as that he is appointed by the competent authority, and this is confirmed by the Law of the State Shura Council in its discriminatory capacity in a provision that states: "The appointment of an employee must be in accordance with the procedures of appointment stipulated by law, and the appointment order shall be issued by a person who has the power to appoint" (21).

Based on the above, the estate Registrar in Iraq is one of the state employees of the Ministry of Justice, as he is appointed by the competent authorities, works under the control and supervision of states, and receives a salary from the state budget, thus holding the state accountable for what is issued from him based on the provisions of item (219/1) of the Iraqi Civil Law (22).

In summary, we can say that both English law, Egyptian law and Iraqi law have regulated the nature of the work of the real estate registrar as an employee subordinate to the state exercising his work and obligations under the supervision and guidance of the state, and abiding by all laws that regulate the public service as well as receiving a monthly salary by the state as a wage for his work in the real estate registration department, as well as not leaving him free to choose

the client, nor does it leave the client free to choose the real estate registrar, as well as he refrains from taking Any sums of money from the client and not subject to charges for the crime of bribery.

As for the French law, it is unique in its position on the nature of the work of the estate Registrar, and its position was completely contrary to what was stated in the previous laws, it regulated the nature of the work of the Registrar as a free profession practiced by him and receives a wage from the client and is free to choose his client as well as the client is free to choose the registrar, and is thus a work subject to the supervision and control of the State.

However, all the laws agreed on the possibility of holding the state accountable for the work of the estate Registrar.

In turn, we support what English law, Egyptian law and Iraqi law have turned towards, considering the nature of the work of the real estate registrar must relate to the state and its bodies, as it has an effective role in achieving stability in real estate transactions in addition to the main role in achieving documentary security for individuals, and with this great role it is inconceivable that this work will be a free profession without being subject to the direction and control of the state. The job certainly falls on the shoulders of the state part of the responsibility because it has the authority to supervise, direct and control his work, and thus we support what the previous laws have gone to.

SECOND REQUIREMENT

Competence of the work of the estate Registrar:

What is meant by jurisdiction is that the estate Registrar is qualitatively, spatially and stately competent when editing real estate transactions so that it is printed with an official character and proves its authenticity, so the Registrar's conduct must be issued while it is within his competence, and on the contrary it is an excess of his competence as his actions do not have any result or any effect, and he is the only responsible towards others for what is issued by him in violation of his powers granted, and therefore there is no responsibility of the State in it, and to indicate this competence we show who Except for the division of this requirement into three sections, the first section is dedicated to the statement of qualitative competence, the second is dedicated to the knowledge of spatial jurisdiction, and the third is to state jurisdiction.

The first branch

Qualitative Competence:

The contracts for the transfer of real property between individuals are written by the estate Registrar in order to acquire official status such as real estate sale, official mortgage and gift, if the Registrar writes a contract that does not fall within his qualitative competence, what is issued by him is not an official



bond, the estate Registrar cannot write an administrative contract, or write a contract for the sale of vehicles, as well as cannot write a certificate of possession, being not competent in it, and so on. Every public official or public official and any person entrusted with a service

General competence assigned to him by law (23)

Based on this, the specific competence of the work of the estate Registrar is to edit and add official status to real estate transactions and transactions.

The second branch

Spatial jurisdiction:

It means that the estate Registrar exercises his functions within a certain spatial jurisdiction, and may not depart from the scope of his spatial or regional competence specified by law, as he exercises the registration of real estate transactions and transactions of certain areas, but the French legislator did not specify to the estate Registrar a specific local or spatial jurisdiction, but extends to all places within the French State, i.e. gave him the power to receive various contracts regardless of the domicile or place of residence of the parties and whatever the location of the property, and then he can The writing of any deed and acquires official status while it is in any city within France, in contrast to what has been adopted by English law, Egyptian law and Iraqi law, as if certain areas are established to which the registrar is obliged to register their real estate transactions and transactions. Thus, any act by the estate Registrar outside the scope of the areas specified for him shall be null and void and invalid.

The third branch

State Jurisdiction

It means that the mandate of the estate Registrar shall be in existence at the time of the writing of real estate transactions and their registration in the estate Registry, if the estate Registrar has been removed from his position, suspended from his work, transferred to another place, or appointed by another person in his place, his mandate shall cease (24).

Therefore, all acts that have been recorded by the Registrar while outside the framework of his jurisdiction do not have official status, as all such acts are considered null and void, as a result of the breach of a condition of health, since the acts issued by the Registrar or any public official or person in charge of public service who are removed from their posts, transferred and suspended from work are not valid and do not acquire official status, if he is aware of them and is informed of the decision issued against him to dismiss, transfer or otherwise. As a result, the State is not responsible for the acts issued by it that exceed its state competence, but if the estate Registrar registers real estate transactions before being informed of the decision taken against him, this conduct acquires official

status provided that the relevant parties are bona fide (25).

We conclude from this that the estate Registrar must exercise his work within the competence assigned to him, qualitatively, spatially and preventively.

CONCLUSION:

The estate Registrar represents one of the persons of great importance as a result of his work of the registration of real estate transactions, as he is the person specified to add the official status of these acts, but the nature of his work varies from one country to another, and as a result the extent of the responsibility of the state for what he practices within the framework of real estate registration varies, the more interference the state in determining his work, the more he leads to the accountability of the state, and vice versa if the nature of his work was a free profession and not income The State in this activity shall be solely responsible for what is issued by it, and the estate Registrar shall be bound in his specific competence, whether the competence is qualitative, spatial or stately, and any infringement of this jurisdiction shall lead to the absence of the official and authoritative status of all that is issued by him within this excess, in addition to the lack of responsibility of the State for what is issued from him, and shall bear all responsibility.

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