



## **THE ACCESSION OF THE RIGHT HOLDER IN THE APPARENT SITUATION INTO THE CONTRACTUAL RELATION**

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<p><b>Received:</b> November 1<sup>st</sup> 2021 <b>Accepted:</b> December 1<sup>st</sup> 2021 <b>Published:</b> January 5<sup>th</sup> 2021</p>	<p>Assuming an individual demonstrates with another person's property and without his consent, then, at that point, that act is thought of as ineffectual against its proprietor and happens forthcoming his authorization, and this is what was specified in the main passage of Article (135) of the Iraqi Civil Code, yet assuming this current individual's conduct concurred with specific conditions, which are within the sight of a deception with respect to the individual discarding it, while exploring the truth of this conduct, that the individual discarding it (the proprietor of the obvious circumstance) is the proprietor of the right (not the contracting party), and the last option played a part in taking shape this conviction, so would we say we are confronting the very outcomes that might result from Is this conduct, assuming that it is without those conditions that encompassed it?, and does this conduct, which depends on an evident circumstance, go to the right holder (the non-worker for hire) who is the proprietor of the genuine circumstance, and consequently - as per this discernment - a job for the non-contracting party in impeding the execution An agreement that he isn't a party to? Considering this, the job of the official arises in the degree of dependence on the obvious circumstance, and afterwards the chance of the proprietor of the clear circumstance going into this authoritative relationship, and that the present circumstance might be situated in its examination and afterwards dependence on conditions and defences that legitimize and quality, and the impacts of the present circumstance arise showing the arrangements of lawful relations that emerge Among the people of the evident circumstance. To know this, we should initially characterize the idea of the evident circumstance, and this is the thing that we will show in the main point, and afterwards show the degree of dependence on the obvious circumstance in the subsequent subject.</p>

**Keywords:** Accession, apparent, right holder and contractual.

### **THE FIRST TOPIC APPEARANCE CONCEPT**

An individual might contract with someone else who accepts that he is the proprietor of the right, however, the last option isn't considered accordingly. Rather, he is someone else who is portrayed as the proprietor of the evident circumstance, as the last option might be accepted to be the proprietor of the right and this conviction depends on outside material proof, and the accessibility of The great confidence of other people who managed the proprietor of the obvious circumstance, and this is adequate for the rise of a genuine situation for the proprietor of the clear circumstance, and this is because of the hypothesis of the obvious circumstance, which traces back to its beginnings in old laws that gave this hypothesis incredible significance, and it showed up and created

later that in the laws of different nations, and as per all That is, we will manage to decide the idea of the clear circumstance in the primary necessity, and establishing the hypothesis of the evident circumstance in the subsequent prerequisite.

#### **The first requirement**

#### **What is the appearance of the situation?**

The hypothesis of the evident circumstance is critical, as the obvious is something contrary to reality. The observers and statute have given it incredible consideration, in deciding the importance of the clear circumstance, when it might influence the interests and focuses of specific individuals, and the present circumstance doesn't occur and doesn't exist besides with the accessibility of specific conditions or components, in particular, the component material and



moral. Considering this, we will examine the meaning of the clear circumstance in the primary area and the components of the obvious circumstance in the subsequent segment.

### **First branch**

#### **Define the apparent mode**

The apparent language is the thing that returned from the, for example, it arose later disguise, and showed up and showed up on the mystery, and with the thing uncovered, so the clear is a conflict with the psyche, and as per the grammarians it is the thing and it's anything but a pronoun and it is said to show up, and the presence of the country that is outside it, and the thing showed up, for example, showed up in appearance. It is evident, assuming it is uncovered and arisen, and this is a matter that is clear from you that is a shame to you, then, at that point, it is transient, so the obvious is something contrary to the inward, it seems to show up, so it is obvious and noticeable, and the evidence is one of the names of God Almighty, and in the Qur'an, it is the first and the last and the clear and the covered up, and in His expression, the Highest and they leave the clear Sin and its inside, its visible presentation is in favour of doubt, and its inside is infidelity.<sup>1</sup>

The evident importance of the fundamentalists (it is the thing that is known by a similar tuning in without thought, and it is the one that goes before the minds and deceptions because of its appearance in what is planned), as in the Almighty's idiom: usury, yet this isn't the expected significance, yet it came to react to the Jews who said that selling resembles usury, it came to nullify the closeness among deal and usury, not to explain the decision of every one of them, and the obvious importance should be followed up on unhesitatingly, except if there is proof to pass judgment on Other than that, that is, to leave it, and there is a translation<sup>2</sup>.

Concerning actually, the clear is the thing that shows a hypothetical sign, that is, all things considered, the significance is probable, for example, the lion is logical in the savage creature, is reasonable in the courageous man, he is the person who demonstrates the implying that was set for him, a hypothetical sign, with the chance of others. What is evident in the law is characterized as (the reasonable individual who goes against reality, and misleads others that his position is secured by the law)<sup>3</sup>, so the clear as per this is something particular that isn't reality, which makes there a deception that this conduct is the right conduct, later certain conditions have been met that should be met to accomplish

Apparent circumstance, which is ensured by law. It is additionally a misleading circumstance and an infringement of legitimate conditions that emerge from an individual's activities, in opposition to what is demonstrated by the common guidelines, or disregarding the guidelines that should be kept, so the lawfully evident circumstance, "is an imaginary lawful position, which later turns out to be certain that it isn't, as I might suspect, Or it is the tricky appearance that abuses the right lawful conditions, which are created by the activity of the powers or honours of a place that has no lawful ability to possess it.

The evident circumstance in the Pleadings Law is "the genuine position involved by the rival and encompassed by outer appearances, which lead to a typical conviction or deception that it is a lawful undertaking, which gives a deception to the true blue outsider, that the occupant of this position is the genuine proprietor, which makes the adversary certain and consoling with Whoever manages him in such manner, and taking prosecution and authorization methodology against him, as the appearance wherein he showed up, albeit truly in opposition to that, as far as the presence of one more circumstance which is the right lawful circumstance as though there was someone else who is the proprietor of this legitimate position<sup>4</sup>. In this way, the evident circumstance can be characterized as a particular circumstance, which makes the outsider discarded in deception or conviction that he is in a right legitimate situation, through a mix-up concerning the right holder, yet it turns out to be clear in any case.

### **Second branch**

#### **Visible mode items**

The evident circumstance has two components, the first is the material component, and the second is the ethical component, which is needed to accomplish the clear circumstance and afterwards takes it from the accessibility of the two components, as they are the mainstays of the obvious circumstance. The material component here is addressed by the presence of outer proof, which shows up as an appearance of a lawful focus, which produces a deception or a typical faith in the lawfulness of the genuine focus, for example by accepting that the proprietor of the clear circumstance is the proprietor of the genuine lawful position, and a typical conviction among others brings about the legitimacy and authenticity of the place of the proprietor of the evident position. The Lebanese Court of Cassation governed in a choice given by it that expressed: "The evident organization accepts that the outsider who managed the clear specialist has



committed an authentic error, accepting that this individual holds an office."<sup>5</sup>

Also, the Egyptian Court of Cassation governed in a choice given by it that expressed: "The activities gave by the proprietor of the clear position in opposition to reality to outsiders in sincerely will bring about the outcomes of the activities gave by the proprietor of the genuine position when those proof encompassing the evident position would produce overall confidence in congruity This is the focal point of reality. It turns over here that the material component connected with the clear circumstance will prompt the security of the genuine place of the proprietor of the obvious circumstance, which swindles others, that it is a right and legitimate focus that is inseparable from reality, with the presence of material variables and appearances that deceive it, which drove those conditions to be a justification for the age of this conviction. What's more, to ensure others here, who is accepted to be in a right legitimate circumstance, the official made the evident circumstance.

Also, the presence of the ethical component of the evident circumstance, which is addressed here by the great confidence of others, is required. It is important to know the expectation of the guide and confirm that he planned or didn't mean to veer off from law and order and the upsides of society, and in this way, it isn't adequate just from the presence of outside proof that produces a typical conviction or deception in the legitimacy of a practical focus, but instead from the accessibility of one more fundamental component in the clear circumstance. , which is the ethical component in the great confidence of others and managing the proprietor of the clear circumstance<sup>6</sup>. The standard of sincere trust might have a mental part addressed in the assurance not to submit to the furthest reaches of the law, which shows up in the endeavour to manage the proprietor of the clear circumstance. Likewise, the agreement should be executed by what the two gatherings have settled upon and in a way predictable with what is needed by the rule of sincere trust in the execution of agreements, and this rule set up by Article 1104 of the new French Civil Code, which specifies that "contracts should be arranged, closed and carried out in with the best of intentions," and Article 1103 demonstrated that "contracts lawfully finished up replace the law for their gatherings." Here, great confidence is required, and when he neglects to do as such, we are not before a clear circumstance, and this was affirmed by the French Court of Cassation in a choice given by it, which expressed (that the adversary's misstep keeps

him from being insincerely, and doesn't permit him to stick to the obvious circumstance)<sup>7</sup>. What's more, relating to it is the primary section 150 of the Iraqi Civil Code, which expresses that "the agreement should be executed as per what it contains and in a way reliable with what is needed by great confidence." Amending it exclusively by the righteousness of an arrangement in the law or by shared assent." And Article 148, the principal passage of the Egyptian Civil Code, expresses that "the agreement should be executed as per what it contains and in a way predictable with what is needed by great confidence. Custom and equity as indicated by the idea of the commitment." Since the official has perceived that the will includes power inside the restrictions of public request and ethics, the agreements that the two gatherings finish up by their will are considered for them as a law that should be regarded. The Egyptian Court of Cassation characterized great confidence as great confidence ... It is the full conviction of the individual to whom he is arranged, when acting, that the disposer claims what he is following upon, and assuming this conviction is polluted by the smallest uncertainty, great confidence abstains. contracting parties, and will be perceived, deciphered and executed as per great confidence, reasonableness and custom."<sup>8</sup>

### **The second requirement**

#### **The rooting of the apparent situation theory**

The theory of the apparent situation appeared in the legislation of ancient countries such as the Roman law, and then emerged and developed in the legislation of contemporary countries such as French law and Egyptian law, as well as we find its presence in Iraqi law, and this theory also has a basis in Islamic jurisprudence, and all this we will explain in two branches, as we will address the position Comparative laws in the first section, and the position of Islamic jurisprudence and Iraqi law in the second section.

#### **First branch**

##### **The position of comparative laws**

The hypothesis of the obvious circumstance tracks down its foundations in Roman law, and it might follow its authentic beginning to the renowned Latin rule that blunder produces right, and it was likewise considered in French law, and this is the thing that occurred in 1807 when an informative choice was given by the Council of The French state, in which I perceive the legitimacy of true papers gave without a limit<sup>9</sup>.

Some have called attention to that this hypothesis depends principally on equity, yet it was smarter to



allude in its report to Article (1382) of the French Civil Code, just like the case with the genuine successor who neglected to show up and guarantee his freedoms<sup>10</sup>, as Article (1382) specifies That (each demonstration of one individual that outcomes in mischief to another, the person who got it through his issue will be obliged to redress). This demonstrates that others here have experienced mischief emerging the proprietor of the genuine circumstance, so he is by his slip-up the person who caused an evident circumstance, which showed a clear and not genuine circumstance, and this matter is borne by the person who caused it, and here he is the proprietor of the genuine circumstance. Some credited it to the normal mistake, yet the French Court of Cassation didn't take the normal blunder in rectifying a part of the utilizations of the obvious hypothesis, which is the clear office. (The benevolent Gentiles who act affected by great confidence don't get their privileges either from the genuine proprietor or from the evident proprietor, however, they get it from the law)<sup>11</sup>.

Likewise, the theory of the apparent situation we find in the Egyptian Civil Code, in Article (897) of it, states that the creditors of the estate who did not fulfil their rights because they did not appear in the inventory list and did not have insurances on the money of the estate, they may not refer to the one who earned good A real intention in real on that money, but they have recourse to the heirs because of their enrichment. We also find it in the legislation when the debt is paid by the debtor to an apparent creditor, believing that he is the real creditor<sup>12</sup>, and the Egyptian Court of Cassation ruled in a decision in which it indicated that the behavior of others may be directed towards the right holder due to considerations imposed by justice and stability of transactions, and if they were achieved The conditions of the apparent situation, although as a general rule the behavior of others does not go towards the owner of the right , and therefore it is necessary here to meet the conditions for the realization of the apparent situation from external material evidence and error by the owner of the legal position, and this is what the Egyptian Court of Cassation ruled by a decision issued by it came In it by extrapolating the texts of the civil law, it shows that the legislator has applied several important applications to the apparent situation of considerations necessitated by justice and the protection of the movement of dealings in society and all of them are regulated in the unity of its cause and the consistency of the common ruling in it, in a way that prevents it from being described as an exception,

and it becomes an enforceable rule when the requirements for its implementation and conditions for its application are available The effect is that if the right holder has, by his mistake, negatively or positively contributed to the appearance of the person in possession of the right in the appearance of its owner, which leads a bona fide third party to contract with him, due to the evidence surrounding this position, which is likely to generate an arrest , It is common for this center to conform to the truth, which requires the enforcement of the act concluded with a consideration between the owner of the apparent situation and the third person in good faith vis-à-vis the right holder<sup>13</sup>, the theory of the apparent situation would lead to the transfer of the effect of the contract to a person other than the contracting parties, who is the third here, as in The case of the apparent agent, so his behavior applies to the owner of the right, even though he did not participate in its convening<sup>14</sup>.

#### **Second branch**

#### **The position of Islamic jurisprudence and Iraqi law**

The evident status hypothesis has space in Islamic statute, as on account of the clear beneficiary. The successor here is the missing individual who shows up in the wake of being condemned to death. He can guarantee his cash with what survives from it, which is under the main beneficiaries' hands just, so the clear beneficiary is an individual who is certainly not a genuine successor. Rather, individuals, for the most part, view him as a genuine beneficiary<sup>15</sup>, and it was likewise said that the more right is that assuming the evident successor is darkened by the meriting one as another sibling who recognized the child of the perished, the heredity is demonstrated to the child because the obvious owner successor has merited him, and he has no legacy for the critical job, The equivalent is the situation as to the clear type of organization that had a presence in Islamic statute<sup>16</sup>, and there are different principles also that show the obvious circumstance, as the Noble Messenger Muhammad (harmony arrive) sanctioned in his decent hadith: who fails in the discipline." And among those doubts is the doubt that the wrongdoing is demonstrated or not. An individual who confesses to perpetrating wrongdoing and afterwards gets some distance from it. Surrender is viewed as a doubt of the absence of confirmation of the wrongdoing, and it brings about turning away the discipline, and the justification behind this standard is That the regulation ensures the evident circumstance, and it falls on the offended party, in any case The obvious evidence of it,





since Islamic Sharia knew this standard before other regulation tracked down it so I realized that the guideline is the guiltlessness of the , and the endurance of what was as it was, and the beginning in the unintentional qualities is non-presence, and sureness doesn't vanish by question <sup>17</sup>, and in the foundation of the beginning is the endurance of what was as it was ; The essential rule is that what was as it was until the shocking shows up, as in the legitimate promise with respect to the litigant, either to deny or to keep what was as it was, which is the arrival of his commitment , on the power of Al-Sadiq (harmony arrive) who was gotten some information about a man who comes to the Sacred Mosque and circumambulates At home, he (harmony arrive) said: Yes, as long as he isn't taboo, and this demonstrates that his ihram stays, as per the standard of the endurance of what was as it was, just as the standard of conviction isn't taken out by question, deception doesn't eliminate assurance, and in light of the fact that assurance doesn't vanish by question, so dream comes first, whoever is sure of an immaculateness or an occasion and a condition, for example dithering in the equivalent or prevalence of both of them as in minutes, act with assurance, since conviction isn't eliminated by doubt <sup>18</sup>.

As for the Iraqi law, although legal jurisprudence has taken the theory of the apparent situation, pointing to the enforcement of the behaviour related to the apparent situation, which is deceptive to the truth, the Iraqi legislation did not take this theory as an independent theory by itself<sup>19</sup>, but there was a reference to it in some legal texts As stated in Article 384 of the Iraqi Civil Code. Which states that (if the fulfilment is for a person other than the creditor or his representative, the debtor is not discharged unless this fulfilment is approved or the payment is made in good faith to a person to whom the debt is apparent, such as the apparent heir)<sup>19</sup>.

One of the judicial applications is the apparent idea of the prosecution, in a decision of the Iraqi Court of Cassation, in which it stated "that the attorney in the event of his dismissal and then notifying him of this dismissal does not affect the validity of the behaviour he took after that, with the existence of a relationship between him and his client, so it cannot be invoked against others. The good-faith person who contracted with the dismissed agent based on this on the presence of a legal agency, a copy of which was extracted from the notary, and the principal had a duty to notify the notary of the dismissal to be recorded in his record, to refrain from giving the agent

a copy of the agency, and the principal here must prove knowledge of the He contracted with the agent that the latter was isolated from the agency.

### **The second topic**

#### **The appearance of the situation**

We may see a conflict that may occur between the owner of the right and others who dealt in good faith with the owner of the apparent situation, believing that he is the owner of the right; Which may result in acknowledging the appearance of matters and taking into account it, and saying otherwise may be a reason that threatens the security and stability of legal relations, because the third party dealing with the owner of the apparent situation has obtained the right or legal position from one who does not have the authority to dispose of it while he is in good faith and does not know who The truth of the matter is<sup>20</sup>. And this conflict that occurred and then the reliance on the apparent situation results in certain results related to the persons of the apparent situation, and to clarify all of this, we will address in this section the conflict between the legal centres and the actual centres in the first requirement, and the effects of reliance on the apparent situation in the second requirement.

#### **The first requirement**

##### **The conflict between the legal centres and the actual centres**

A conflict may arise between two centres, one of which is a legal centre that the legislator approves and protects, and another virtual and actual centre that exists, the third party dealing with the apparent situation believes that it is the real situation, and therefore the legislator may consider the apparent situation according to justifications that may be based on to justify this presumption, and in light of this, In this requirement, we will deal with the legal and actual positions in the first section, and the legal basis for invoking the apparent situation in the second section.

#### **First branch**

##### **Legal centres and actual centres**

Legitimate life without a doubt includes a combination of presumption and truth, and the hypothesis of the clear circumstance has a noticeable field of contention that happens between the supposition and reality, an individual might guarantee a specific lawful focus that seems to exist, however actually it doesn't exist, and another may consent to contract with this individual insincerely. Aim, placing his confidence in this obvious circumstance <sup>21</sup>, the lawful places that people can possess in the public eye and the conditions that empower them to involve these positions are dictated by the guidelines of the



law, so every individual knows his privileges and can't surpass them, and the obligations he needs to Commitment to it. The individual who infers his position, regardless of whether monetary or non-monetary, is from the law. Consequently, he is the proprietor of a legitimate position, empowering him to utilize the powers and powers of this middle,<sup>22</sup> and to keep the obligations and limitations forced by the law on his quality in and possessing this position, and there are real situations According to which the individual seems, by all accounts, to be the proprietor of the right or the proprietor of a lawful position, so he manages individuals and they manage him as the proprietor of the lawful position, albeit indeed he isn't described all things considered<sup>23</sup>, and this normally prompts a contention between the lawful focuses and the focuses the Actual. The guideline is that the administrator considers the legitimate focus that he depends on in controlling and directing the connections and activities of people locally, and this outcome in managing the proprietors of these focuses in regards to the powers, capacities, benefits and activities they give him for every one of the impacts that are supported by law because these focuses are endorsed and ensured by law since they It emerged and was shaped inside its structure and is predictable with its standards and provisions"<sup>24</sup>, which brings about the interest of the outsider who contracted with the proprietor of the evident circumstance being given need despite the proprietor of the right, as the obvious has given lawful assurance to the individuals who contracted with the proprietor of the clear circumstance<sup>25</sup>.

### **Second branch**

#### **The legal basis for invoking the apparent situation**

The official has the option to mediate and give security to others by permitting him to obtain privileges and expect commitments that don't have any impact on him as per the common guidelines<sup>26</sup>, and the administrator by his intercession is propelled by two contemplations, the first is contemplations of equity<sup>27</sup>, the prerequisites of equity license other people who were not a party In the agreement by procuring freedoms, despite the fact that equity here and there remains, as some portray it, between the interest of the genuine proprietor who requests that his right not be encroached, and no mistake might be ascribed to him, and the assurance of other people who request the requirement of the removal of the right of the genuine proprietor, and clings to the shortfall of a default that can be ascribed to him when

His agreement with the proprietor of the clear circumstance, and the second, is the dependability of the exchange, which drives the lawmaker to conclude that the impact of the agreement will withdraw towards the individuals who are not involved with it, for example, the conduct that is given by the evident beneficiary, it applies to the genuine successor (others) despite the fact that the last option was not a party In it <sup>28</sup>, since the need of settling exchanges might require the takeoff of the impact of the agreement to an outsider, for example, satisfying the obvious lender, as the law sets a model for the evident loan boss with the clear legacy . restricting A subsequent time, as the first council thinks about legitimate situations without considering the clear circumstance<sup>29</sup>, then again, actually this beginning contains special cases, remembering the instance of satisfaction for great confidence to the evident beneficiary, and this is the thing that Article 384 of the Iraqi Civil Code specifies.<sup>27</sup>Hence, it is noted from the contention that occurred between the genuine reality and the legitimate focus, for which the hypothesis of the clear circumstance attempted to observe the proper answer for it through the standards it set up and the conditions it set,<sup>30</sup> that the legal executive plays an extraordinary part and liked to outweigh everything else in setting up those standards, through what was introduced to it from Diverse and entwined issues searching for arrangements without one party keeping away from the other. As per all of this, equity and security of exchanges is the legitimate premise on which to depend on the evident circumstance.<sup>31</sup>

### **The second requirement**

#### **Consequences of appreciating the apparent situation**

Considering the behaviour concluded between the owner of the apparent situation and the good-faith disposed to him who dealt with the first person with a justified belief that he is the owner of the right or legal position<sup>32</sup>, leads to the contract's effect of rights and obligations being transferred to the right holder (non-contracting) in contradiction with the rule of relativity The effect of the contract, and accordingly, is it possible for the right holder to intervene to implement this contract or the disposition that was concluded between the owner of the apparent situation and the disposer despite his non-participation in concluding it. The owner of the apparent situation against the right holder, all of this will be clarified in this section, as we will deal with the departure of the effect of the contract to the right holder first,<sup>33</sup> and then we will address the non-compliance of the right holder with



the personal obligations of the owner of the apparent situation secondly.<sup>34</sup>

#### **First branch**

#### **Assignment of the effect of the contract to the right holder**

We mentioned that the effects of the contract concluded between the owner of the apparent status and the one who disposed of it are limited to them in terms of origin and do not go to the owner of the right, and this is expressed in the relativity of the effect of the contract. A tripartite relationship, but the jurisprudence differed as to whether it is a tripartite relationship or a tripartite relationship; We find that some indication that the apparent situation represents a three-way relationship, so the first is the owner of the right, the second is the owner of the apparent situation, and the third is the disposer of it<sup>31</sup>, but others have argued that the apparent situation represents a three-way relationship, so it is a tripartite relationship in its entirety.<sup>35</sup> But it is dual in its detail, since the person who disposes of it, i.e., the person dealing with the owner of the apparent situation is considered a third party and not a party to the existing relationship between both the owner of the apparent and the right holder, and the latter is considered a change to the relationship between the owner of the apparent and the person dealing with him<sup>36</sup>, and this is what we prefer because there is a difference Between the meaning of the person and the meaning of the party on the one hand. On the other hand, we find - in terms of origin - that there is no direct relationship between the owner of the right and the one who disposes of it, and therefore each of them is considered to be something else. The holder of the right here - which is related to our research - is not a party to the disposition concluded between the owner of the apparent situation and the person to whom it is disposed of in good faith. In the face of the right holder, and in return for that the right holder has the right to demand the person disposed of in good faith for his obligations that correspond to the right holder in accordance with this contract or disposal,<sup>37</sup> and perhaps this joining is due to justifications including, that the obligations that the parties to the apparent relationship are bound by are related to each other, despite Although the contract according to the original has been concluded between the owner of the apparent situation and the disposer in good faith, however, the failure of the latter to implement his obligation makes the right holder, as a joined party, the ability to push not to implement the effects of the apparent situation until the third party implements his

obligations, not only related to him but also his obligations towards the owner The apparent situation, and that the accession of the right holder to the contractual relationship may be due to granting the right holder a situation in which a balance of interests is achieved. The latter also has the right to demand the implementation of the obligations imposed by the contract on the shoulders of the disposer<sup>38</sup>.

#### **Second branch**

#### **Failure of the holder of the right to comply with the obligations of the holder of the apparent personal status**

That the right holder is bound exclusively by the commitments emerging from the demonstration alone, that is, connected with his right without the commitments that the agreement involves on the proprietor of the clear circumstance, as the last option is just limited by those individual commitments and the proof for this is that this hypothesis came as an exemption from the common principles in relativity The impact of the agreement, and the standard is that the special case may not be developed and others can't be estimated against<sup>39</sup>, so the demonstration here as indicated by the possibility of the obvious circumstance is a deliberate demonstration that doesn't influence other than its gatherings, and its immediate impacts are for nobody else, since the increase of others (the person who discards the right) of the right is the immediate impact, As for the deficiency of the right holder's right, it is the aberrant impact of the demonstration, since it isn't the consequence of the demonstration, yet rather it is the aftereffect of the addition of the person who discards it, and accordingly the right holder stays unsusceptible from the commitments that the evident proprietor actually attempts, which are excessive for the presence or endurance of the right, if the proprietor of the evident acted In this limit,<sup>40</sup> in a property possessed by another and embraces to set up specific offices or upgrades in the property, or promises to keep up with them, for instance, such commitments stay with the proprietor of the obvious and the proprietor of the right isn't limited by them by any means<sup>41</sup>, however he takes note of that regardless of whether these commitments or t pledges essential for the presence or propagation of the right, for the proprietor of the right isn't limited by them besides by his will.

It is obvious to us that the gatherings to the evident circumstance have each, as indicated by their job, added to the development of the present circumstance, wherein both the legitimate and genuine



focuses might be upset, and thusly the way that the proprietor of the clear circumstance acts with someone else,<sup>42</sup> with an error with respect to the lawful status holder, may bring about the reception of focuses Actual without lawful, that is, in the clear circumstance that follows the implementation of the demonstration towards the proprietor of the genuine circumstance, however this doesn't permit the individual commitments emerging from the disposer (the proprietor of the clear circumstance) to be moved to the proprietor of the genuine circumstance, for the last option here isn't answerable for any commitment that was outside the restrictions of removal, He is just limited by the constraints of what he has subscribed to,<sup>43</sup> and here and assuming the proprietor of the genuine circumstance has conceded to the requirement of this activity towards him, there is no commitment besides by his will.

It is additionally evident that the proprietor of the genuine legitimate circumstance didn't take part in the finish of the agreement, however, he played a functioning part in the execution of the agreement, and with this, the remainder of the individual commitments given by the proprietor of the obvious circumstance is not carried out, and that the rebelliousness of the right holder with the individual commitments that the holder submitted The clear circumstance concerning the disposer affirms that the right holder doesn't supplant the proprietor of the evident circumstance and subsequently procures the situation with the contracting party.<sup>44</sup>

## RESULTS

1. The hypothesis of the obvious circumstance is a real, incredible circumstance, seen by the conviction of the non-contracting party with the proprietor of the evident circumstance that the present circumstance is the genuine circumstance and that he is contracting with the right holder, and this conviction is because of material and moral components that added to the development of this conviction.
2. It is noticed that the obvious circumstance requires the accessibility of three gatherings in it, so the agreement starts between two gatherings just, in particular the contracting gatherings to whom it is arranged, and the proprietor of the clear circumstance, until another party, shows up, who is the proprietor of the genuine circumstance, and with the accessibility of its conditions, it involves taking the evident circumstance, and that is to secure

For the steadiness of exchanges, which the right holder, who is the holder of the lawful status, plays a part in executing the agreement, after joining the legally binding relationship.

3. The proprietor of the solidly in the evident circumstance, regardless of whether he plays a part in contributing and going into the execution of the agreement, however, he doesn't gain the limit of the contracting party to stay qualified as an outsider, since he doesn't supplant the proprietor of the obvious circumstance with every one of his attributes and commitments.
4. We see that the Iraqi law didn't take the evident circumstance, as a free hypothesis by its own doing, not at all like some different laws like the French law.

## RECOMMENDATIONS

1. Since the Iraqi lawmaker didn't sort out the hypothesis of the obvious circumstance as an autonomous hypothesis, so we prescribe the Iraqi administrator to connect incredible significance to the evident circumstance, by outlining this subject with a particular structure and making it an independent hypothesis, similar to the case with different laws that made the present circumstance a free hypothesis.
2. We approach Iraqi legitimate law to have a functioning and useful job in featuring and explaining the significance of the clear circumstance, since it doesn't fall inside the field of common law just, however, stretches out to incorporate different spaces of law, through their jurisprudential conclusions that solidify and foster the idea of the evident circumstance, particularly With the rise of certain ideas or terms that fall inside the present circumstance, consequently adding to making it a free hypothesis dependent on the arrangements and messages of Iraqi law, which is a portion of its messages alluded to the presence of the obvious circumstance and its pertinence.
3. We likewise approach the Iraqi legal executive to consider current realities of each case and study them well, as far as the accessibility of its conditions, and afterwards issue the proper choice in it, because of significant standards and rules, including the guideline of sincere





trust, and the commitment to cling to what exactly requires solidness in exchanges to accomplish equity.

#### REFERENCES:

1. Louis Maalouf, *Al-Munajjid in Language*, 35th Edition, Dar Al-Ilm Insight Foundation, Qom, pg. 482.
2. Ahmed bin Faris bin Zakaria, *Dictionary of Language Measures*, House of Revival of Arab Heritage, Beirut, 2008, pp. 618-619.
3. Ibn Manzur, *Lisan Al Arab*, Volume 3, 4th Edition, Dar Sader, Beirut, 2005, pg. 200.
4. Ahmed bin Abi Sahl Al-Sarkhi, *The Origins of Al-Sarakhsi*, Volume 1, Edition 1, Dar Al-Kutub Al-Ilmia, Beirut - Lebanon, 1414-1993, pp. 163-164.
5. Wahba Al-Zuhaili, *Al-Wajeez fi Usul Al-Fiqh*, 1st Edition, Dar Al-Fikr, Damascus, 1994, p. 175.
6. Taj al-Din Abd al-Wahhab bin Ali al-Subki, *Collection of Mosques in Usul al-Fiqh*, 2nd Edition, Dar al-Kutub al-Ilmiyya, Beirut - Lebanon, 1424-2002, p. 54.
7. Numan Muhammad Khalil, *The Elements of Al-Zahir as a Source of Truth*, Institute of Research and Studies, Cairo, 1977, p.4.
8. Abdel Basset James, *Theory of Apparent Situations*, PhD thesis, Cairo University, 1955, p. 5.
9. Mohsen Abdul Hamid Al-Bayh, *The Theory of the Apparent Inheritance*, Al-Jalaa New Library, 1993, p. 7.
10. Muhammad Saeed Abdel Rahman, *The Apparent Situation Theory in the Pleadings Law*, 1st Edition, Dar Al-Fikr Al-Jami'i, Alexandria, 2007, pp. 56-57.
11. The decision of the Civil Court of Cassation, No. 73 on 11/7/2013, Baz Group, No. 52, 2013, pp. 499-504.
12. Decision 30/11/1971, Total Judicial Provisions, 22, No. 161, p. 959. Referred to by Mohamed Said Abdel Rahman, *Theory of the Apparent Situation in the Pleadings Law*, 1st Edition, Dar Al-Fikr Al-Jami'i, Alexandria, 2007, p. 63.
13. Abdel Halim Abdel Latif, *Good faith and its impact on behaviour in Islamic jurisprudence and civil law*, University Press, Alexandria, 2004, pp. 294-295.
14. Najwan Abdel-Sattar Ali Mubarak, *The Apparent Situation in Civil Law*, PhD thesis submitted to the Faculty of Law, Tanta University, 2013, p. 77.
15. Abdel Moneim Farag Al-Sada, *Sources of Obligation*, Dar Al-Nahda Al-Arabiya, Cairo, 1986, p. 329.
16. Resolution 29/1/ 1948, Court of Cassation in Civil Matters, Part 2, Part 1, No. 4097, p. 1507. Referred to by Muhammad Saeed Abdul Rahman, a previous source, p. 77.
17. Majed Ragheb, *The Apparent Theory of Administrative Law*, research published in the Kuwaiti Law Journal, Year 4, No. 1, 1979, p. 50.
18. Atef Muhammad Fakhry, *Protection of the apparent situation, the basis and limits of protection*, research published in the Egyptian Lawyer Journal, 58th year, Issues 5 and 6, May / June 1978, p. 72.
19. Joseph Adrien Rogron, *le code civil expliqué par ses motifs, par des exemples, et par la jurisprudence*, société typographique Belge, Bruxelles, 1838, p211.
20. Muhammad Sharif Jamal, Maaqasi Rashid, *Theory of the Apparent Situation and Transactional stability*, Master's thesis, submitted to the College of Law and Political Science, 2019, p. 2.
21. Abdel Salam Zhni Bey, *On General Theoretical Obligations*, Egypt Press, an Egyptian joint stock company, p. 169-170
22. Abdul Hai Hegazy, *The General Theory of Commitment, Provisions of Commitment*, Part 3, Al Faggala New Press, 1954, p. 13.
23. Decision No. 4338/61/ on 12/1997, published in the collection of rulings of the Egyptian Court of Cassation, year 48, part 2, Amiri Press, Cairo, p. 1114.
24. Muhammad Hassan Qassem, *Civil Law, Obligations*, Volume 2, 1st Edition, Al-Halabi Human Rights Publications, Beirut, 2018, p. 137.
25. Muhammad Abu Zahra, *Laws of Legacy and Inheritance*, Dar Al-Fikr Al-Arabi, without a year of publication, p. 224.
26. Issam Abdel Aziz Al-Dafrawi, *The Impact of Death on the Agency Contract in Islamic Jurisprudence and Civil Law, A Comparative Study*, Dar Al-Kutub Al-Ilmia, Beirut, without a year of publication, p. 269.
27. Muhammad bin Ahmed al-Sherbiny, *Mughni al-Muhtaj*, part 2, House of Revival of Arab Heritage, Lebanon, 1377 AH - 1958 AD, p.



- 263; And Sheikh Al-Jawahiri, *Jawahir al-Kalam*, Volume 39, 3rd Edition, Dar al-Kutub al-Islamiyya, Tehran, 1368 AH, p. 61.
28. Sheikh Al-Jawahiri, *Jawahir al-Kalam*, Volume 29, 2nd Edition, Dar al-Kutub al-Islamiyya, Tehran, 1366 AH, p. 195.
29. Al-Sarakhsi, *Al-Mabsout*, Part 11, Dar Al-Maarifa for Printing, Publishing and Distribution, Beirut, 1406 AH-1986, p. 83.
30. Allama Al-Hilli, *Various Shiites*, Volume 4, Edition 1, Islamic Publication Institution, Qom, 1413, p. 230.
31. Allama Al-Hilli, *Muntaha Al-Matalib*, Volume 1, i 1, Institute of Printing and Publishing in the Holy Astana Razavi, Mashhad, 1412 AH, p. 294.
32. Muhammad bin Ahmed al-Sherbiny, *Mughni al-Muhtaj*, Part 1, House of Revival of Arab Heritage, Lebanon, 1377 AH-1958 AD, p. 39; and Ibn Najim Al-Masry, *Al-Bahr Al-Ra'iq*, Volume 1, 1, Edition, Muhammad Ali Beydoun Publications, Dar Al-Kutub Al-Ilmiyya, Beirut, 1418 AH-1997 AD, pg. 60.
33. Abdul Majeed Al-Hakim, *Abdul Majeed Al-Hakim, Mediator in Contract Theory*, Contract Contracting, Volume 1, Al-Ahliya Printing and Publishing Company, Baghdad, 1967, pg. 488.
34. Court of Cassation Decision 759 / m 77 / 1 of 4/6/1978 Al-Mashhadani, previous source, pg. 745, citing Dr. Conscience Hussain Al-Maamouri, *The Apparent Agency*, research published in the *Journal of Babylon University, Humanities*, Vol. 15, No. 2, 2007, p. 385.
35. Adnan Ibrahim Sarhan, *Apparent Conditions and their Protection in Iraqi and Comparative Law*, Master's Thesis, College of Law, University of Baghdad, 1986, p. 3.
36. Muhammad Saeed Abdel Rahman, *The Theory of the Apparent Situation in the Pleadings Law*, Dar Al-Fikr Al-Jami'i, 1st Edition, Alexandria, 2008, pp. 7-10.
37. Muhammad Saeed Abdul Rahman, *The Apparent Situation Theory in the Procedure Code (a comparative study)*, 1st Edition, Al-Halabi Human Rights Publications, Beirut, 2011, p. 11.
38. Shawki Mohamed Salah, *The Apparent Theory of Civil Law - A Comparative Analytical Study in the Egyptian and French Legal Systems*, Dar Al Fikr Al Arabi, Cairo, 2002, p. 11.
39. Jerome Hoyer, *Extended in Civil Law, Major Private Contracts*, Volume 1, 1st Edition, Glory of the University Foundation for Studies, Publishing and Distribution, Beirut, 2003, p. 104.
40. Ali Hamid Kadhim Al Shukri, *Stability of Financial Transactions, A Comparative Study*, Doctoral Thesis Submitted to the Council of the College of Law, University of Karbala, 2014, p. 56.
41. Abdul Majeed Al-Hakim, *Abdul-Baqi Al-Bakri, Dr. Muhammad Taha Al-Bashir, Al-Wajeez in the Theory of Commitment in the Iraqi Civil Law, Sources of Commitment, Part 1*, New revised edition, Al-Sanhoury Library, Baghdad, p. 141.
42. See the text of Article 384 of the Iraqi Civil Code, which states (If the payment is made to a person other than the creditor or his representative, the debtor is not discharged unless this payment is approved or the payment is made in good faith to a person to whom the debt is apparent, such as the apparent heir).
43. Nibras Dhahir Jabr Al-Ziyadi, *Legal Rooting for the Enforcement of the Contract in the Right of Others*, Research published in *Al-Qadisiyah Journal and Political Science*, No. 2, Volume 6, Year 2015, p. 20.
44. Fatiha Kara, *The New Judicial Theory of Apparent Conditions*, *Mansha'at al-Maaref*, Alexandria, p. 29.