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**Introduction to the Laws of Kurdistan, Iraq**

**Working Paper Series**

# **Property Law**

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**Iraq Legal Education Initiative (ILEI)**

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## **Preface to the Series: *Introduction to the Laws of Iraq and Iraqi Kurdistan***

Iraq and Iraq's Kurdistan Region is at a compelling juncture in their histories. In the wake of the transition to a democratic state, the country and region economy has prospered and its institutions have grown more complex. As institutional capacity has grown, so too has the need for a robust rule of law. An established rule of law can provide assurances to investors and businesses, while keeping checks on government and private powers and protecting citizens' fundamental rights. Institutions of higher learning, such as universities and professional training centers, can and should play a key role in stimulating and sustaining this dynamic. Indeed, education is foundational.

This paper is part of the *Introduction to the Laws of Iraq and Iraqi Kurdistan*, a series of working papers produced by the Iraqi Legal Education Initiative (ILEI) of Stanford Law School. This series seeks to engage Iraqi students and practitioners in thinking critically about the laws and legal institutions of Iraq and Iraqi Kurdistan. Founded in 2012, ILEI is a partnership between the American University of Iraq in Sulaimani (AUIS) and Stanford Law School (SLS). The project' seeks to positively contribute to the development of legal education and training in Iraq.

The working paper series devotes significant attention to pedagogy. By writing in clear and concise prose and consulting with local experts at each step of the writing process, the authors strive to make the texts accessible to diverse and important constituencies: undergraduate law students, lawyers and judges, government officials, members of civil society, and the international community. By discussing the Iraqi and Kurdish legal regimes and applying specific laws to factual situations, the authors model how to "think like a lawyer" for the reader. They also use hypothetical legal situations, discussion questions, and current events to stimulate critical thinking and encourage active engagement with the material.

These working papers represent the dedicated efforts of many individuals. Stanford Law School students authored the texts and subjected each working paper to an extensive editing process. The primary authors for the initial series including papers on Commercial Law, Constitutional Law, and Oil and Gas Law, were John Butler, Mark Feldman, David Lazarus, Ryan Harper, and Neil Sawhney (J.D., 2014), under the guidance of the Rule of Law Program Executive Director, Megan Karsh (J.D., 2009), and me. Jessica Dragonetti, Kara McBride, Cary McClelland, Neel Lalchandani, and Emily Zhang (J.D., 2015) authored papers primarily concerned with Iraq's engagement with international law. I also thank the former and current deans of Stanford Law School, Deans Larry Kramer and Liz Magill, for their financial support, and the Stanford Law School alum, Eli Sugarman (J.D., 2009), who acts as an advisor to the project.

The faculty and administration of American University of Iraq in Sulaimani provided invaluable guidance and support throughout the writing process. Asos Askari and Paul Craft in particular played a leadership role in getting the program off the ground and instituting an introductory law class at AUIS. Ms. Askari taught the first law class in the 2014 spring semester. Former presidents of AUIS, Dr. Athanasios Moulakis and Dr. Dawn Dekle, provided unwavering support to the project. And finally, a special thanks to Dr. Barham Salih, founder and Chair of AUIS, without whose foresight and vision this project would not have been possible.

Finally, the authors of this series of papers owe an extraordinary debt of gratitude to many thoughtful Kurdish judges, educators, lawyers, and others who work within Iraqi institutions for their critical insights. In particular, the textbooks received vital input from Rebaz Khursheed Mohammed, Karwan Eskerie, and Amanj Amjad throughout the drafting and review process, though any mistakes are solely the authors' responsibility.

ILEI plans to continue publishing working papers. All texts will be published without copyright and available for free download on the internet.

To the students, educators, legal, and government professionals that use this set of working papers, we sincerely hope that it sparks study and debate about the future of Iraqi Kurdistan and the vital role magistrates, prosecutors, public defenders, private lawyers, and government officials will play in shaping the country's future.

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## 1. INTRODUCTION

You are a property owner. The computer you own, the bag you put your books in, the shoes you walk around in – these are all examples of your property. **Property** is the name for the things that people own. Property can be very large, like a car, an apartment, or an entire factory. It can also be very small, like the snack you have in the afternoon, or the button on your jacket. Property surrounds us and we all need it in our daily lives. Students need computers to do their homework. A taxi driver needs his car to drive people around. Property is important for human society to function properly and to be productive.

We cannot do whatever we want with our property. People who own cars have to drive under the speed limit. If you own a piece of land that has a river running through it, you cannot cut off the supply of water to those who live downstream from you. How we use our property have impacts on other people who live in our community.

**Property law** is the set of rules and responsibilities that govern property. Some of these categorize property into different groups. Other rules tell us what we can and cannot do with our property. Property law also tells us what our relationship is to each other when it comes to property. In many cases, we share property. In others, we allow other people to use our property, or we use someone else's property.

One of the important ways in which property defines rules and responsibilities is by assigning **property rights** to people. Property rights determine what you can do with your property. We often refer to property rights as many fruits in a basket. Each property right is distinct, but in many situations, we have more than one that we can use.

The most fundamental property right is the **right to ownership**. This is the basic right to call what you own yours. Consider this the biggest fruit in your basket.

Imagine that you do not have the right of ownership. Nothing you own is yours. Your classmate can just take your computer away from you. Your neighbor can come to your house and take your furniture. That would be terrible! You would have to keep everything you cared about close to you all the time and protect it from other people. Having a right to ownership allows you to know what belongs to whom. It gives you the power to say that something is “yours”, that it belongs to you. It gives you certainty that when you own something, other people cannot just take it away from you.

The right to ownership implies the **right to exclude** others from your property. Your right to exclude is your right to say to everyone else in the world that they do not own your property. If you own a piece of land, it is your right not to let others on your land. If you own a cookie, it is your right not to share it with anyone.

This matters a lot for society. People would not buy anything if others could just take it from them. People would also not improve on what they have if they do not think they could keep it and benefit from the improvements. For example, imagine you had a house. You would not want to put money into improving the house if you thought that your house could be taken away at any time. The right of ownership gives us certainty that we have full control over the property that

we own. In this way, the right of ownership encourages people to have more property. Part of the reason why we are willing to work hard to get more property is because we know we can keep it. These are all reasons why the right to ownership is so important.

How do you prove you have ownership? When you buy clothes from the mall, you receive a receipt to prove that you paid for them. The receipt is proof that you paid.

Now imagine a family wants to buy a house, or a factory that is very expensive. You want proof to the world that you own the house. Therefore, when it comes to buying and selling land, for example, the government makes new owners register their new property with the government. We normally call property rights in land “**title**”. The government has a department called the Real Property Registry, and it keeps records of who owns which piece of land. It is called the Real Property Registry because we refer to land as “real property”. Whenever you buy or sell land, you must go to the Real Property Registry so that they can record the sale. This helps to secure your property right because now you can prove that the land is, in fact, yours. Anyone else who wants the piece of land can go to the Real Property Registry and they will know that you own it.

Another important fruit in your basket is the **right to modify, use, and enjoy**. Take, for example, a cookie that you buy. Your right to exclude allows you to say “this is my cookie” and prevent other people from eating it. The right to modify, use and enjoy allows you to do things to your cookie. You can modify it by cutting it in half. Of course, you are also allowed to eat it and to enjoy it. You also have the **right to transfer and sell** your property. You can give your cookie away to anyone, or you can choose to sell it. Remember, that these are rights that you can choose to exercise. Therefore, it is also your right to not modify, use or enjoy your property.

These rights are broad, but they are often limited. This chapter explores those restrictions and limitations on the broad property rights that we have just discussed. As you read this chapter, think about why those restrictions are important for the community. Land, in particular, will be a big topic in this chapter. As you can imagine, land is an important resource. Restrictions on some property rights are necessary to ensure that property is used in a responsible and beneficial way.

This chapter will be organized in the following way. It will first ask the question of what is property. Then it will discuss the different ways to categorize property. We will explore why those different categorizations are so important that the law that applies to them should differ. Then we will explore what it means to own property. We will look closely at what exactly are the sticks in your bundle. Then we will look at the many ways in which you can allow other people to use your property, even if you are still the owner. In other words, you can give away some of your sticks. Finally, we will look at a few ways in which you can acquire ownership over property. How do you get the bundle of sticks in the first place?

Throughout the chapter, we will draw from two different sources of law: the Constitution and the Civil Code of Iraq. The source of the law affects how powerful the law is. This is expressed as a **hierarchy of laws**. Not all laws are equally important. Higher sources of law are more important than lower sources. The highest source of law is the Constitution, and it must be obeyed above other lower sources of law. However, we will not encounter many constitutional laws in this chapter because there are only a few articles that address property. Instead, we will mainly look to the Iraq Civil Code. This chapter will always include the actual text from the

codes, and also indicate to you where it is from. Do not worry about understanding everything in the Code. Focus on the examples that are provided and use those examples to understand the rule.

## 2. CONSTITUTIONAL BACKDROP

Because it is the highest source of law, we must first ask what the Constitution has to say about property. Property comes up in many of the articles of the Constitution. Although these articles may not be as specific as the articles in the Civil Code, they establish broad principles that we must remember as we work through the rest of the chapter.

### 2.1. Protection of Private Property

#### Constitution of Iraq

**Article 23:**

First: Private property is protected. The owner shall have the right to benefit, exploit and dispose of private property within the limits of the law.

The Iraqi Constitution guarantees protection of private property. The right to **benefit, exploit and dispose** is basically the same as the right to use, modify and sell that we discussed earlier. Of course, we will learn about limitations on your rights throughout this chapter, but we always start by assuming that you have your rights to use and sell your property to someone else in a lawful fashion.

#### Constitution of Iraq

**Article 23:**

Second: Expropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law.

**Expropriation** is the act of taking from people what is rightfully theirs. **Compensation** is something you give to someone for the damages and the harm you have caused them.

Sabeen owns a piece of land between Sulaimani and Bazian. Malik wants to use her land to open a bakery. He cannot take her land away from her in order to open his bakery. The Constitution does not allow for someone to take what Sabeen owns away from her.

The government, however, is different. Say for example, the government wants to build a highway between Sulaimani and Bazian in order to help transport people and goods more quickly between the two cities. Sabeen does not want to move. The Constitution tells us that although normally people cannot expropriate other people's things, the government is allowed to do so if it is for the benefit of the public *and* there is just compensation. The government has to pay Sabeen for the land at a price that is just.

Who decides whether it is a public purpose? The Constitution tells us that when the government expropriates private property for a public benefit, this process must be regulated by law. This means the government must come up with rules before private property can be expropriated. Many of these rules are provided in the Civil Code. For example, there are rules on what counts

as a “public purpose”. There are also be rules on what is considered “just” compensation. Only by following those rules can the government then expropriate private property.

### Discussion Questions

The Constitution does not define what “public purpose” is, nor does it define what “just compensation” is. Discuss with your classmates how you would define these terms.

Should “public purpose” be defined by what public officials decide is necessary? Does this open the door to corruption?

Should “just compensation” be defined by what the price of the property is on the market? This is often referred to as the **market price**.

### Constitution of Iraq

#### Article 28:

First: No taxes or fees shall be levied, amended, collected, or exempted, except by law.

What about **income**? The money that people earn from providing goods and or services is their income. Can the government take your income away through taxes and fees? Yes, the Constitution says, but again, this process must be regulated by law. You can think of taxes as a form of expropriation for a just cause, but instead of property like land, the government takes away your income to do things like build roads, schools and other things in the public interest.

An individual tax collector cannot come to your door, asking for however much she wants. The amount of tax you pay from your income must be decided by the government, and collected in a way that is lawful. Similarly, your taxes cannot be changed in an unlawful manner. The Constitution also says that you cannot be **exempted** from taxes except through a lawful way. To be exempted is for the law not to apply to you. This means that even if you are good friends with the tax collector and she is willing to let you keep your taxes, you still have to pay your taxes like everyone else.

### Constitution of Iraq

#### Article 28:

Second: Low income earners shall be exempted from taxes in a way that guarantees the preservation of the minimum income required for living. This shall be regulated by law.

However, not everyone makes enough money to support themselves and their families. The Constitution guarantees that you will never be taxed beyond the minimum income required for living. The Constitution includes this exemption is to ensure that those who are making a low income have enough money to live.

Again, as noted above, what counts as a “low income earner” will again be determined by law. As you can see, many constitutional provisions are vague. Article 28, for example, does not determine precisely what counts as “low income”. Is it someone who earns less than 2000 dinnars? 4000 dinnars? Article 23 also does not define exactly what counts as “just” compensation, or what is public purpose. Hopefully through these provisions, you are getting an idea of what the Constitution is concerned with. The Constitution gives us broad principles, but it cannot tell us exactly what we must do in every situation. It is up to society, and the government, to define more precisely what the protections in the Constitution are and how they can be realized.

## 2.2. The public interest

While one of the broad principles that the Constitution upholds is the right to private ownership, the Constitution also recognizes that there are many things that we all share. The roads that you use to get to school, street lights, buses, public parks – these are all used by members of the public.

### Constitution of Iraq

#### Article 27:

First: Public assets are sacrosanct, and their protection is the duty of each citizen.

The Constitution makes clear the distinction between the statuses of private and public property: what is public should be protected, and it is the duty of each citizen to protect it. In fact, public assets are sacrosanct. **Asset** is the same thing as property. **Sacrosanct** means sacred, special and very important. We have a responsibility to use public property with care, and in a way that does not affect other people’s ability to enjoy it, too.

### Constitution of Iraq

#### Article 27:

Second: The provisions related to the preservation of State properties, their management, the conditions for their disposal, and the limits for these assets not to be relinquished shall all be regulated by law.

Moreover, the Constitution tells us that the government has the responsibility of owning, managing and transferring public property. **Relinquish** is to give up. The Constitution tells us that public property cannot be given away unless the government regulates it by law. You can see that the Constitution treats public property as very special, and insists that public property is always regulated by the government. We will continue to see examples of this as we move further in this chapter.

## 2.3. Equality

The Constitution also cares about equality principles when it comes to owning property.

### Constitution of Iraq

#### Article 23:



Third: A. Every Iraqi shall have the right to own property anywhere in Iraq. (abridged)

Article 23 states that every Iraqi citizen can own property anywhere in Iraq. Imagine yourself after you graduate from AUIS. Maybe you want to stay in Sulaimani, or move to another city in Iraq: Erbil, Baghdad, etc. The Constitution tells us that as long as you are in Iraq, as an Iraqi, you can own property anywhere in Iraq. You can own a car in Baghdad, or buy an apple in Erbil. It also means you can own land anywhere in Iraq. This is your Constitutional **guarantee**. A guarantee is a promise. The Constitution promises you that you can move to any part of Iraq, and if you choose to do so, you are allowed to own property there.

The Constitution gives us broad principles and values that underlie property law. We shall now look at the Civil Code of Iraq. We will refer to it as the Code in short throughout the rest of the chapter. The Constitution and Code are distinct sources of law, but the Constitution is higher in the hierarchy of laws. This means that if the Constitution and the Code were to conflict, the Constitution should be followed instead of the Code. However, conflicts between the two sources of law rarely arise. The Code mostly serves to provide more detailed rules on the broad principles in the Constitution.

Not all of the Civil Code concerns property. The Code itself is very long and provides many legal rules that touch on all aspects of life. You will study the Code again when you read the Working Paper of Civil Responsibility.

### 3. WHAT IS PROPERTY?

“Property”, as defined in Iraqi law, covers a broad range of things.

#### Civil Code of Iraq

**Article 65:**

Property is every right having a material value.

**Article 61:**

(1) Everything which by its nature or in pursuance of the law is not excluded from dealings may be the object of pecuniary rights.

Instead of providing a list of what is property, the Code chooses to address a feature of property. It is something people want. Something with **pecuniary** or **material** value is something that people will pay money in order to have.

Is air property? Well, property is something with material value. Does air have material value? Is it the object of pecuniary rights? Normally, it is not. You would probably not pay to have more air. But what about air in space? Yes, it would probably be property. There is no air in space, and humans who travel to space would be willing to pay to have air to breathe. It has pecuniary value because people would probably be willing to pay money for it. Therefore, some things might not be property in one place, and be property in another.

As we have determined, property as defined under Iraqi law is a very broad concept. However, we also know that there are many different kinds of property, and it does not make sense for the law to treat land the same as it treats an apple, a tree the same way it treats a factory. Since the definition of property is so broad, the law has ways to categorize property so that some rules apply to only certain kinds of property.

### 3.1. Movable vs. immovable

#### Civil Code of Iraq

##### Article 62:

(1) The immovable (realty) is every thing which is fixed so that it would be impossible to move or convert it without causing damage thereto such as land, buildings, plant(atations), bridges, dams, mines, and other real estate things.

(2) A movable is anything which can be moved and converted without causing damage thereto and includes currency (nuqud), commodities (‘arudh), animals, and things that can be measured by volume or weight and other movable things.

The law separates immovable and movable property. Immovable property is what cannot be moved, or if it were to be moved, would be damaged in the process. As the Code says, immovable property is also known as **realty** or real property, such as land, or factories. Movable property is everything that you can move, such as money, a bag, clothes etc. Imagine Fareed has a piece of land outside Erbil, and on that land, he has built a house and planted a tree. He filled the house with furniture and he parks his car on the path leading up from the road. His land, house and tree are his immovable property. His furniture and car are his movable property.

#### Civil Code of Iraq

##### Article 63:

A movable which is placed by its owner in an immovable owned by him with intent to serve or exploit such immovable is deemed to be an immovable.

What if Fareed wanted to put pipes into his house so he can get running water? What if he wanted to install lights into his ceiling? What about a sink in his kitchen and bathroom? The pipes, lights and sink are all movable property before they are installed in the house. But once they are placed by their owner, Fareed, into the immovable (the house), then they become immovables. As long as the pipes, lights and sink are placed in the house to serve the house, they become a part of the immovable property.

### 3.2. Fungible vs. nonfungible

**Fungible** property refers to things that can be replaced by basically identical objects. Let us say you have a twenty-dinar coin in your pocket. Would you be unhappy if someone were to give you a different twenty-dinar coin in exchange for the one you have? Probably not. What about a pound of rice? You would probably be happy to lend your neighbors a kilo of rice, if they agreed to return the same amount the next day. A kilo of rice is exchangeable for another kilo of rice. A

one hundred dinar coin can be replaced with a different one hundred dinar coin. These are fungible goods.

#### Civil Code of Iraq

##### Article 64:

(1) Fungibles are things which may be substituted one for the other when making a payment; they are normally (customarily) assessed in dealings among people by number, measure, volume, or weight.

(2) All other things are non-fungibles.

As the code tells us, everything that cannot be substituted is **nonfungible** property. The painting you drew for your mother when you were six years old cannot be replaced by an identical object. A handwoven blanket made by your grandmother cannot be replaced. As you can see, nonfungible property is special to us. The law distinguishes between these two types of property so that we can have different rules for them. Since fungible property is easy to replace, the law can make it easier for people to buy and sell it. Since nonfungible property is impossible to easy, the law makes it harder to sell non-fungible goods. The law wants to ensure that people only sell non-fungible goods after careful consideration.

### 3.3. Tangible vs. intangible

#### Civil Code of Iraq

##### Article 70:

(1) Intangible property is that which relates to a non-material thing such as copyright – the rights of inventors and artists.

(2) The provisions of specific laws shall apply in respect of the rights of authors (copyright), inventors, and artists and of trademarks and other intangible property.

The law also distinguishes between tangible and intangible property. Something that is **tangible** is something that you can see, feel or touch. It is something that is physical. **Intangible** properties are those that are not physical. They exist in someone's head or imagination. The song that a musician writes or plays is her intangible property. A story that someone writes is his intangible property. This chapter will only address tangible property. Intangible property is dealt with in another area of law called Intellectual Property.

However, even though intangible property is different, many of the principles that we have discussed also apply. Can you see why we would want to give people rights over their ideas? Why might it be bad for society if someone can just steal someone else's idea? If you invent a faster computer, why should you be allowed to exclude others from taking your idea? Think again about why we allow people to own private property and exclude other people. We give people ownership over their property because we think it encourages people to own property in the first place. If people have ownership over their ideas, then maybe they will spend more time thinking of good ideas.

### 3.4. Public vs. private

Recall our discussion on the Constitution. The Constitution respects private property, but insists that public property should be treated differently.

**Civil Code of Iraq**

**Article 71:**

(1) The immovables and movables of the State and of the public juristic persons which are in fact or pursuant to the law allocated for a public utility are deemed to be public property.

(2) This property is not alienable, attachable. (abridged)

The Code makes it clear that public property can be either immovable or movable. The public can own immovables like land and buildings, and it can also own movables like money, computers, etc. The Code mentions a “**public juristic persons**”. The law can create a “juristic persons” for a group of people so that the group can act like a single person and own property. In the case of public property, think of all the people of Iraq as one person, who own all kinds of public property. What does this mean? When we normally think of property, we think about the person who owns it. What if a property is owned by a lot of people? Maybe a piece of property can be owned by everyone in your class. Or everyone in your university. Or maybe all the people of Iraq own some pieces of property. You can think of all those people as forming a group, and becoming a single body that can own things for the group. For example, a company can own chairs, tables, and factories, even though a company is a collection of many different people. In fact, the Code tells us that when a piece of property is allocated for public use, it is then owned by every member of the public.

Notice that the Code does not define what is private property. It only defines what is public property. We can assume that everything that does not fall within the definition of public property is therefore private.

What is so special about public property? The Code tells us that public property is not **alienable**. This means public property cannot be transferred to someone else.

**Civil Code of Iraq**

**Article 72:**

Public property will forfeit its status by termination of its allocation for public benefit(utility); the allocation is determined in pursuance of the law de facto or by termination of the object for which it had been allocated for public benefit (utility).

When does public property become private property again? **Forfeit** means to lose or give up. Public property loses its status as public property when it is no longer used for the public’s benefit. Recall our discussion about public property from the Constitution. Public property can only stop being public property through lawful means. The government needs to decide that a certain piece of public property will no longer be used for a public purpose. Only then will it stop being public property.

Say, for example, that there are 10 bus routes that run through the city of Sulaimani. The government decides that the city only needs 5. The extra buses for the other 5 routes are no

longer used for a public purpose. The government can now sell them and they can become the private property of someone else. Remember, however, that status of public property can only be forfeited by the government.

We have now been through the major ways in which the law categorizes property. This will be important as we continue to discuss what the legal system allows you to do with your property. As you can imagine, we may have different rules based on what kind of property it is, immovable or movable, public or private etc. As we move on through this chapter, always ask yourself what kind of property we are discussing, and which laws apply.

## 4. OWNING PROPERTY

Remember from our introduction that property rights are like fruits in a basket. Ownership is what gives you the basket of fruits in the first place.

### 4.1. Perfect ownership

#### 4.1.1. General

##### Civil Code of Iraq

##### Article 1048:

Perfect ownership vests unto the owner a right to dispose absolutely of that which he owns: through use, enjoyment, and exploitation he shall enjoy (avail himself of) the thing (ayn) owned as well as its fruits, crops, and produce and may dispose of the thing itself (ayn) by all the allowable means.

Perfect ownership is the most powerful property right you can have. Remember the cookie from the beginning of the chapter? You are allowed to eat the cookie or give it to someone else. Remember that you are also allowed to do nothing with it. You can leave it to rot, or throw it in the garbage. Perfect ownership is a very powerful right. Throughout the rest of this chapter, we will learn the many limitations on perfect ownership. Some kinds of property, such as immovable property like land, have more limitations.

##### Civil Code of Iraq

##### Article 1049:

(1)The owner of a thing also owns everything which is deemed by usage to constitute an essential element thereof such as it cannot be separated therefrom without the thing owned perishing, deteriorating, or changing.

What about a property more complex than a cookie? What about a car? When you own a car, do you also own the wheel? The Code says yes. As long as the wheel is an essential element of the car, then the owner of the car also owns the wheel. **Essential** means something necessary. Obviously you would not be able to use the car without the wheels. What about a cup of tea that you bring into the car? That is probably not an essential element of the car. Also, as the Code notes, it is not essential if it can be separated from the car without changing or damaging the car.

##### Civil Code of Iraq

**Article 1050:**

No one can be deprived of his ownership except in the cases and in the manner provided for by law and in consideration of a fair compensation payable in advance.

Moreover, ownership is a very powerful right because it is hard to take away. Recall again from the Constitution that property can only be taken away in a lawful fashion, and with fair compensation. The Code tells us something more. The compensation must be paid **in advance**. This means that it must be paid before the property is taken away. So let us continue the example of Sabeen who owns a piece of land between Sulaimani and Bazian that the government wants to expropriate. Not only does the government have to pay her a fair amount in order to take her land. The government must also pay her before they take her land away.

**4.1.2. Land**

As we discussed earlier, land is a special kind of property. It is so special that it has many different names, like realty or real property. In the following section, we will examine limitations on the right to ownership of land. As you go through this section, think about why land is so special and why these limitations may benefit society.

**Civil Code of Iraq**

**Article 1049:**

(2)The ownership of land includes that which is above and below as far as can be usefully enjoyed in height and in depth.

(3) The ownership of the surface of the land may by agreement be separated from that which is above it and that which is below it.

Let us start with what land ownership means. When you own a piece of land, do you only own the top of the land? What if there is water running beneath the land? Does the owner of the land own the water as well? The Code tells us that the owner of the land owns what is above and below the land, as far as it can be usefully enjoyed. Therefore, if Hakim owns a piece of land, and there is oil in the ground, he owns the oil as well. Lucky Hakim!

Furthermore, the Code tells us that he can separate his ownership of what is on top and below the land. Hakim owns the oil in his land, but he doesn't know how to get oil out of the ground. It is expensive and it requires special skills. Hakim's friend Leyla knows how to get oil out of the ground. The Code tells us that Hakim can sell Leyla the part of the land that is below the surface. The Code allows Hakim to separate his ownership right to the land. This way, the oil can be extracted from the ground, and both Hakim and Leyla benefit.

**Civil Code of Iraq**

**Article 1051:**

(2)The owner whose property is threatened with sustaining harm as a result of excavation or other work being carried out in the neighbouring land may demand the taking of the necessary precautions to avert

the harm and may also demand the suspension of the work or the taking of such urgent precautions which are necessary until the court has decided the dispute.

Let's say Leyla begins the work of removing gold from the ground. Leyla digs into the ground and pours dirty water on the neighbor's land. The neighbor, Gabir, does not like it when Leyla throws dirty water onto his land! As we know, Gabir has full right of ownership to the enjoyment of his land, too. Gabir has the right to ask a court of law to decide the dispute. In the meantime, the Code tells us that Gabir has the right to demand Leyla to do something to prevent the dirty water from getting onto his land. Perhaps she could build a dam. He can also demand for her to stop digging on the land until the court has decided the dispute.

This shows you that although the perfect right of ownership is very broad, there are limitations, especially with land. Although Leyla would perfectly enjoy her land if she could dig as much dirty water as she needs to get the gold out, it prevents Gabir from enjoying his land fully. In these cases, law plays an important role in balancing their rights.

#### 4.1.3. Water on Land

The law is particularly concerned with land issues as they relate to water. Water is a precious resource that we rely on in order to live, to drink, to wash and to nourish our crops. In the months of the summer in Sulaimani, for example, sometimes there is no rain at all. However, water can also be dangerous. When a lot of rain suddenly falls, flash floods can occur, which means floods that develop very quickly. These happen all over Iraq. Flash floods can cause damage to property like houses, roads and cars, and can sometimes endanger lives. Water management is therefore an important function of property law. We will come to examine several provisions in the Code that address these issues.

#### Civil Code of Iraq

##### Article 1052:

The lower land will suffer (tolerate) the water which comes down by a natural act from the higher land such as rain water and the water of natural springs; the owner of the lower land may not erect a dam to prevent the flowing of the water and similarly the owner of the higher land may not carry out an act which may increase the tolerance of the lower land except within the limits provided for in the law.

In this provision, the Code describes two pieces of land. There is a piece of land that is higher up (the higher land), and one that is lower (the lower land). When water flows, it flows down the higher land to the lower land. In this way, the lower land **suffers**, or **tolerates** the water. The rain falls, but it hurts the lower land more because it ends up holding the water and flooding it, ruining everything on it. The Code tells us that the owner of the lower land may not erect a dam to prevent the water from flowing to it, nor can the owner of the higher land do anything to increase the water flowing to the lower land.

Imagine Amman lives on the top of a small hill outside of the city. Basma lives down this little hill, and she has a small but cozy home, and a small garden as well. Sometimes the rain comes down suddenly, and it floods her land. Her house starts to sink into the ground, and she is worried every year that this will be the year where the rain destroys her house. Amman is less worried about the rain. Since he is on top of the hill, the water does not stay on his land and instead flows downwards, towards Basma's land.

However, the Code tells us, even if Basma's land is suffering, she cannot put up a dam between her land and Amman's land to prevent the water from flowing to her land. Why not? If she can put up a dam, her house and garden will not be flood. It would help her fully enjoy her ownership of the land.

Well, Amman also has a right to enjoy his land. If Basma builds a dam to keep the water on Amman's land, Amman's land becomes flooded and he cannot enjoy his land fully. Furthermore, it can actually be dangerous for Amman's land to be too flooded. Soil that has too much water in it can become slippery, and also can flow downwards. If Amman's land becomes too flooded, his land may become unstable. This would be dangerous not only for Amman, but also all his neighbors, including Basma. Therefore, the Code tells us that Basma may not erect a dam to prevent the water from coming onto her land in order to protect both Basma, Amman and all of Amman's neighbors.

Similarly, the Code tells us that although Amman may want to keep water away from his land, he is generally not allowed to do so. The law provides several exceptions, but generally, the same principle applies to Amman. He cannot make Basma's land suffer, even if it helps him better enjoy full ownership of his land.

#### Civil Code of Iraq

##### Article 1053:

(1) The owner of the land may use the rain water which falls in his land and the water of natural spring emanating from his land; if however its use or the method of directing it tends to increase the burden of the rivulet (brook) which the lower land must tolerate in accordance with the provisions of the preceding Article a compensation must be paid to the owner thereof in consideration of such increase in the burden of the rivulet.

Normally, the Code tells us that the owner of land may use the rainwater that falls on her land and the water that comes from her land. But Article 1053 provides an exception. However, let's say Amman wants to pave his land with concrete so that water will not stay on the land. Although in the spring, it can rain a lot very suddenly, during other times of the year it can be very dry. Normally water flows from Amman's to Basma's land through a stream of water that we call a **rivulet** or a brook. The concrete on Amman's land causes water to flow quickly onto Basma's land, and now the rivulet is carrying more water downhill onto Basma's land.

The Code tells us that Amman must pay Basma compensation. Her land is now taking in more water. In order to deal with this water, Basma may need to plant more trees on her land to soak up the water. Maybe she needs to use a different material for her house so it will not sink during a flood. Amman needs to compensate Basma for these costs she must take on in order to deal with the increased water on her land. If Amman and Basma are friends, they can come to an agreement on their own about how much Amman should pay Basma. If not, they can get a judge to decide how much the compensation should be.

#### Discussion Question



Look at the following provision in the Code:

### Civil Code of Iraq

#### Article 1053:

(2) If by sinking, digging, or such other means the owner of the land has struck water in his land the lower land must tolerate the rivulet of his water and the owner thereof will be entitled to compensation for any harm resulting therefrom (caused thereby).

What if Amman was not trying to dig a reservoir? What if he was just trying to improve his land? Maybe Amman wanted to expand his house by building a basement. When he was digging into the land, he struck an underground spring of water. He did not intend or want to find water! However, once this water is discovered, it increases the flow of the rivulet that runs onto Basma's land. The Code tells us that Amman must also compensate Basma for the damage that the extra water causes. She is entitled to compensation because now she must spend money in order to protect her land. Is this fair to Amman? Now he needs to find a way to deal with all the unwanted water on his land, and also compensate Basma!

### Civil Code of Iraq

#### Article 1056:

A person who constructs a private rivulet or drain conforming with the laws and regulations in force for the time being has the exclusive right to the use thereof.

Now imagine there is a lake near where Amman and Basma live. Although there are sudden rains in the spring, it can be very dry in other months when there is no rain at all. Basma grows oranges and sells her oranges at the market. She decides to dig a rivulet from the lake to her land. Amman also wants to grow some oranges trees on his land. Can he use the rivulet that Basma made for his land?

The Code tells us that he can only if Basma allows him to. The Code tells us that because Basma was the one who constructed the private rivulet, she has the **exclusive** right to use it. Exclusive means that she is the only one with a right over the rivulet. Basma can let Amman use the rivulet for free, or she can make him pay. It is entirely her decision. After all, she was the one who spent time, energy and money in digging the rivulet.

One of the biggest reasons for giving Basma the exclusive right to the rivulet is because it encourages people like Basma to put in their effort and time to dig the rivulet. Let's say Basma worked very hard on digging this rivulet. What if she does all the work, and Amman is allowed to take as much water from the rivulet as he wants. Is that fair? What if he takes away all the water to use on his land? If Basma knew that she would not get full control over the rivulet, maybe she would not have worked so hard to dig it in the first place! Why should we care whether Basma builds the rivulet? Well, we want Basma to build the rivulet, because we want her to grow her oranges and sell them on the market. We want water in the lake to be used

productively. Society grows and becomes richer when people can take sunlight, land and water and turn it into some we can eat and enjoy.

#### **For Further Consideration**

The reason for giving Basma exclusive ownership over the rivulet is because it encourages her to build it in the first place. However, giving Basma exclusive ownership may also end up being socially wasteful. What if Basma does not want Amman to get any water? She does not want Amman to grow oranges because she does not want competition at the market. Even though Amman is willing to pay a lot of money to use her rivulet, Basma refuses to give him permission. Amman then digs his own rivulet from the lake. Isn't it wasteful to have two rivulets when one is enough?

As students of the law, you should try to understand how laws are important and useful to achieve social goals. However, you should also think hard about why they may sometimes be counterproductive or unsuccessful at reaching those goals.

#### **Civil Code of Iraq**

##### **Article 1058:**

(1) The owner of a land must allow passage through his land of the water needed for the irrigation of the land of another person which is situated at a distance from the source of the water and which does not have water for agricultural purposes and there is no means for the water to reach it directly, as well as the drainage water coming from the neighbouring lands to flow into the nearest public drain provided he pays in advance to the owner of the land an annual fee and provided also that such flowing will not disturb significantly the enjoyment of the landowner; when the land suffers damage by a canal or drain which crosses it regardless of whether the same results from failure to clear the drain or by reason of the bad conditions of the bridges, dams, or otherwise the owner of the land has a right to claim compensation for the damage done.

(3) Where the parties have failed to agree on the remuneration the court will estimate it.

Now let us imagine that Basma and Amman have another neighbour, Hadad. Hadad owns a large piece of land next to Basma, but the water does not flow to his land. He cannot reach the lake without crossing Basma's land, but he really wants to grow watermelons to sell at the market.

The Code tells us that when Hadad owns a piece of land that does not have access to water, Basma is required to allow Hadad to use her land in order to get water. If Hadad also does not have access to public drainage on his land, he is also allowed to put his pipe across Basma's land in order to drain dirty water from his land.

We are again encountering a situation where we have to balance between not only the rights of Basma and Hadad, but also what is the best outcome for society. If we allow Basma to have exclusive ownership rights to her land, then she can completely exclude Hadad from using her land in order to get water for his watermelons. But if we allow Hadad to use Basma's land to get water, we may be harming Basma's right to enjoy her land. The Code tells us that Hadad is allowed to cross Basma's land in order to get water.

Why might this be good for society? We want land to be irrigated and to be used productively. It is wasteful, from society's point of view, for Hadad's land to be useless. We want him to grow watermelons or any other kind of food. Society is benefited when Hadad puts his land to use and produces food that society can buy and consume. Similarly, if Hadad cannot get access to drainage, he cannot use his land. That does not seem fair for Hadad not to be able to use his land, just because it is not near a public drainage.

Therefore, society allows Hadad to use Basma's land for the purpose of getting water for irrigation, and also for draining dirty water. But the Code also sets conditions. First, Hadad has to pay Basma an annual fee for the use of her land. In fact, he needs to pay her in advance, which is before he uses her land. Furthermore, he cannot "significantly" disturb Basma's enjoyment of the land.

What does "significantly disturb" mean? The Code tells us the general legal rule, but it cannot tell us what "significantly" disturb means in any given situation. It is the job of the judge to decide, in each case, whether the owner's enjoyment of the land has been "significantly disturbed". Your job as a lawyer is to argue for your client. You should look out for important facts that would persuade a judge. For example, say you are Basma's lawyer. In order to direct water onto Hadad's land, some of Basma's orange trees would have to be removed. This is an important fact of the case, and you should bring it to the attention of the judge.

The Code also tells us that if, in order to get water to and from Hadad's land, there is damage caused to Basma's land, Hadad must also pay Basma for the damage. If Hadad builds a canal that crosses Basma's land that causes some of Basma's orange trees to be flooded and they die, Hadad needs to compensate Basma for that damage. The same should happen if Hadad builds a pipe that carries the waste water from his house to a public drain on Basma's land. If that pipe breaks and causes dirty water to run on Basma's land, then Hadad must also pay Basma for the damage.

The Code tells us that normally, Hadad and Basma can come to their own agreement on how to build the canal or the pipe that runs through Basma's land. They can also decide how much Basma should be paid for the canal or pipe to run through her land. If there is damage, they can decide on how much Basma should be compensated for that damage. However, if they cannot agree, the Code tells us that the Court will determine the amount. The Court will try to get as much information as possible about how bad the damage is, and also how much it would cost to fix the problem.

#### **4.1.4. Access to Roads**

Much like water, roads are also necessary for landowners to fully enjoy their land.

#### **Civil Code of Iraq**

##### **Article 1059:**

(1) The owner of a land which is cut off from or has no adequate exit on to a public road shall if he cannot obtain an exit to the public road without great expense or great difficulty have a right of way over the neighbouring land as may be necessary for the appropriate exploitation and use of his land subject to payment of an annual remuneration payable in advance provided that he does not exercise this right of way except over the land and at the place where the passage causes the least possible burden.

Just as the Code worries about land that does not have water, and land that cannot drain water, the Code also wants to ensure that landowners can get access to public roads. If Hadad cannot get access to a public road from his land without crossing Amman's land, then he is allowed to use some of Amman's land to access the public road. He has to pay Amman an annual fee in advance of using the land. Also, he has to use Amman's land in a way and in the place where it causes the least burden to Amman.

Say for example, that Hadad only needs to cross a small, unused corner of Amman's land in order to get to the road. He cannot drive his car or walk through Amman's watermelon fields, or around his house. That causes an unnecessary burden to Amman. It is not Amman's fault that Hadad's land cannot access the public road. Although Amman has an obligation to let Hadad use his land, Hadad must try to minimize the burden he is causing to Amman.

In summary, in this section, we have explored how powerful full ownership is. If you have full ownership of your property, you are permitted to fully enjoy and exploit the property. However, we have also learned that land is a unique kind of property, and there are some limitations on your right of full ownership. You cannot build a dam on your land if you are a lower land that receives water. Also, if your neighbor cannot get access to water, drainage or public roads, you must let them use your land. As you can see, landowners do not have full and complete ownership in the same way as you may have ownership over an apple, or your computer. Given the importance of land to people's lives, we have learned that the law places some limitations on the general rule of full ownership. We have also explored some balances and compromises that the law helps us make in order to more equally benefit the people involved, and also society more generally.

## **4.2. Joint ownership**

### **4.2.1. General**

In the previous section, we only addressed cases in which property is owned by a single person. **Joint ownership** is when property is owned jointly, that is by two or more people.

Jameela and Jazib were classmates at the American University of Iraq in Sulaimani. When they were students, they noticed that they were always losing their pens and pencils because they would always fall off their small table. After they graduated, they wanted to make tables with little pockets in which students can put their pens and pencils. They decided to buy land and build a factory to make these tables. Jameela and Jazib own the land and the factory together. This is very useful because if Jameela were to start a business on her own, she may not have been able to find the money to buy a big piece of land, and build a factory on it. But if Jameela and Jazib own the property together, they can buy a big piece of land and make a lot more tables than each on their own.

Therefore, people tend to have joint ownership over property that is expensive. This is commonly the case with land, and immovable property like factories and expensive machines. Although it is possible for you to jointly own a cookie with your classmate, it is not common because you can each just have your own cookie!

**Article 1061:**

(1) When two or more persons own a thing they are co-owners of the joint ownership and their shares will be equal save proof to the contrary.

The Code tells us that Jameela and Jazib are called **co-owners** of the land and factory and that their shares are equal. Therefore, we would assume that each of them own half of the land and the factory. This means that if Jameela and Jazib sold the land, they would each get half of the money paid. However, they can also decide when they buy the land together what each share will be. If Jameela contributes more money than Jazib does, they can decide that Jameela would own 80% of the land and Jazib would own 20%. No matter how small a percentage of the land one of them they owns, they are both co-owners of the land.

**Civil Code of Iraq**

**Article 1063:**

(1) The co-owners may avail themselves of the entire jointly owned thing.

**Article 1061:**

(2) Every co-owner in common is the absolute owner of his joint ownership share and is entitled to avail himself of and exploit it in such manner that does not cause harm to his co-owners and may dispose of it by sale, mortgage, or other kinds of alienation even without their permission.

The Code tells us that when a property is jointly owned, each co-owner owns the whole property and is an absolute owner. Jameela is the absolute owner of the entire land and the entire factory. So is Jazib. Each of them is allowed to use the whole of the property, as long as it does not harm the co-owner. Jameela can park her car on the land. Jazib can grow a small garden behind the factory. They are free to use their property as they would like, as long as it does not cause harm to the co-owner.

The Code also tells us that all owners are allowed to give up their ownership of the land without the permission of the other co-owner(s). If Jazib decides that he does not want to make tables with Jameela, he can sell his share of the land. If he sells his land to Khalid, then Khalid becomes the co-owner with Jameela. Remember, Jazib cannot sell Khalid what he does not have. He cannot sell Jameela's share of the land. Khalid becomes the co-owner with Jameela, and he is allowed absolute ownership to all of the land, but Jameela also keeps her ownership.

Let's say Jameela and Jazib and Khalid were all equal co-owners of some land, meaning that each owned 1/3. Jazib can sell his share of the land to Khalid. But again, Jazib cannot sell to Khalid what is not his. He can only sell his share of the land. After Jazib sells his share to Khalid, Khalid now owns 2/3 of the land, and Jameela owns 1/3. Jameela is still allowed to use the whole of the land because she is also an absolute owner. She is also allowed to sell her share without telling Khalid. However, if Jameela and Khalid decide to sell the land, Jameela gets 1/3 of the money and Khalid gets 2/3.

**4.2.2. Management of Joint Ownership**

**Civil Code of Iraq**

**Article 1064:**

(1) Unless there is an agreement otherwise the co-owners of the jointly owned property shall manage it jointly.

As for management of the property, the Code tells us that normally co-owners manage together. Of course, co-owners Jameela and Jazib may decide to let Jameela manage the land. You can imagine if Jameela owns 80% of the land, and Jazib owns 20%, maybe Jameela will want to make an agreement with Jazib for her to manage the land. However, unless there is an agreement, the law says that they will manage it jointly.

Why might it be good for the co-owners to manage the land together? If Jameela and Jazib manage the land together and decide to build a factory, they have both agreed to use the land this way. If we allow Jameela or Jazib to manage the land alone, then maybe they will do something that makes the other one upset. The law wants to encourage co-owners to work together and manage the land together. If there is a disagreement, the law wants Jameela and Jazib to work it out before they do something to the land.

Otherwise, what if Jameela decides to build a very big factory, and Jazib wants to build a small one? If Jameela is allowed to manage the land on her own, Jazib will get upset afterwards. They will have to bring the dispute to a judge. This takes up a lot of time, and if the court decides that Jameela was wrong, they have to take down the factory that she has built. This would be wasteful. It is much easier for Jameela and Jazib to discuss what to do with the land before anything is done. Maybe Jazib can convince Jameela that they should build a small factory first, and then expand it later!

**Civil Code of Iraq****Article 1067:**

The management and maintenance expenses of the common (joint) property as well as the taxes levied thereon and such other costs which result from the communality or which are prescribed on the property shall be borne by all the co-owners each according to his share.

With large and expensive property, there also tend to be expenses that must be paid. The Code tells us that these expenses will be paid according to the share of each co-owner. If the property is land, then one major expense is tax. Therefore, if Jameela owns 80% of the land, and Jazid owns 20% of the land, they each pay that same percentage of the taxes and any other expenses on the land. If Jazid sells his ownership of the land to Khalid, then Khalid has to pay 20% of the taxes and other expenses on the land.

Recall from our previous rule that if Jameela does not have an agreement with Jazid, then they have to make management decisions together. Imagine that they decide to build a small fountain in the front of their land. Every month, they must pay for the water for the fountain, and also for someone to come and clean the fountain. Although Jameela must make the decisions with Jazid, she needs to pay for 80% of all expenses. This may not seem fair. Therefore, Jameela must be very careful before she decides to buy a piece of land with Jazid if she is to own more of the land than Jazid. Not only does she own more of the land. She also has to pay more of the expenses.

As you can imagine, owning a piece of property with another person can be quite difficult. Jameela and Jazid may disagree over many things, for example how big the factory should be, or where to put the factory on the land, etc. There may be many reasons why they may want to end their joint ownership. Maybe they cannot agree on anything, or maybe they realized that universities do not have a lot of money to spend on new tables for students. Their joint ownership can be terminated.

#### 4.2.3. Termination of Joint Ownership

The law lays out several ways that joint ownership may be terminated. The first one is to partition the land. Partition means to divide into pieces.

#### Civil Code of Iraq

##### Article 1070:

Every co-owner may demand the partition of the common property unless he is obliged to remain in the communal ownership pursuant to a provision or stipulation; the partition may not be prevented pursuant to the stipulation for a period exceeding five years; an agreement by the co-owners to maintain the communality for a longer or an indefinite period shall not be effectual except for five years; the stipulation of maintaining the communality shall be enforced against the co-owner and against anyone who succeeds him.

The Code tells us that both Jameela and Jazid can demand that the land be **partitioned** into two pieces, one for Jameela and the other for Jazid, as long as they did not previously agree that it should not be divided. Before they bought the land together, imagine that Jameela and Jazid decided that they do not want the land to be divided in any way, because the undivided land is more valuable to them. Neither Jameela or Jazid will be able to demand partition later. If either sells his or her ownership rights, the subsequent co-owner is also unable to request partition.

Think of Jameela and Jazid's agreement to disallow partition as the glue that keeps the land together. However, the Code tells us that this glue is only effective for a limited time of 5 years. This means that the maximum amount of time Jameela and Jazid can agree to put this glue on their land is 5 years. Why does the Code allow for such agreements? Allowing Jameela and Jazid to put this "glue" on the land can make the land more productive, since larger pieces of land tend to be more productive. This is especially the case when you think about large immovables like factories, or complicated machinery.

#### Civil Code of Iraq

##### Article 1071:

- (1) If none of the co-owners have been interdicted they may partition the common property among themselves by mutual consent.
- (2) A mutual consent partition of a real estate is not concluded until registration in the Real Estate Registration Department

Normally, if there is no disagreement or legal reason, the land may be partitioned by the parties in any way they choose. Let's say Mubashir now owns Jazid's part. He can discuss with Jameela

how to partition the land. They can partition it however they want. There is no limitation on how they may choose to partition the property.

After Jameela and Mubashir agree on how to partition the land, the process is not complete. They must register the land at the Real Property Registry. We studied this in the introduction. Let us refresh our memories on why it is important to register land in the Real Property Registry.

When you go to the snack shop to get a candy bar during break, do you need to go to an office to register it? No. Candy bars are relatively inexpensive, and they are fungible. Remember, fungible means replaceable. If you bought one candy bar, and your friend wanted it, she could easily buy another one.

Land is different. No two pieces of land are identical, making it non-fungible. Moreover, it can be very hard to identify an individual piece of land. If you look out into the mountains around Sulaimani, you would not be able to tell how many pieces of land there are. This is because land is divided into parcels, and we need to know where to draw the line between one person's land and someone else's. You can imagine why this might be a problem when buying property. When the store sells you a candy bar, you know exactly what you are getting. When you buy a piece of land, you will want to know exactly how far that land goes.

You also want to make sure that the seller is selling you what they actually own. Imagine that you want to buy Bazma's land from her because she has orange trees on her land. What if you buy her land, and then realize that the orange trees are actually on Amman's land?

This is where the Real Property Registry can help you. When you want to buy Bazma's land, you check in the Real Property Registry where the boundaries of her land are. You make sure that everything that you want is within those boundaries.

The Real Property Registry can also help prevent conflict. Amman raises some chickens, and he allows them to run around on his land. The chickens like to eat some of the little plants that grow along Bazma's land, and Bazma is upset about it. If there is a Real Property Registry, then we know exactly where their respective boundaries are. Once we know where that boundary is, Bazma can put up a fence along the boundary to keep out Amman's chickens.

#### Civil Code of Iraq

##### Article 1073:

(1) If it is revealed to the court that the joint ownership is not capable of partition it will order the sale thereof.

Now imagine a very difficult scenario. Five years have passed since Jameela and Jazid bought the land together. They share a big factory, but they have come to hate each other. They want to partition the land, but they cannot agree on how to partition the land. They bring the issue to a judge. The judge collects information about the property, and realizes that it is almost impossible for them to partition the land. There is no way to give both Jameela and Jazid an equal share of the factory. The Code tells us that the judge should order the sale of the property. Jameela and Jazid will then receive money for their property, according to their percentage of ownership.



Is this fair? This may not be what Jameela or Jazid wants. Maybe they both want to keep a part of the land. However, if they cannot come to an agreement, the law does what is most fair to both of them.

## 5. SEPARATING YOUR PROPERTY RIGHTS

Although we like owning things, sometimes we are unable to use everything we own. On the other hand, there are other people who would like to use what we own. In this next section, we will look at some of the ways in which you can give your property rights to other people.

### 5.1. Lease

#### 5.1.1. General

In the previous section, we discussed people who were able to own property and use it themselves. But what if you need an apartment to live in, but you cannot afford to buy one? A lease allows you to live in and use an apartment that someone else owns.

#### Civil Code of Iraq

##### Article 722:

A lease is the alienation of a definite advantage (benefit) in return for a defined consideration for a certain specified period by (pursuant to) which the lessor will be bound to enable the lessee to enjoy the leased premises.

Remember our discussion about how property rights are like fruits in a basket? One of the fruits is the right to enjoy your property. Another fruit is the right to use your property. Another fruit is the right to sell your property. The basic idea behind a lease is for someone to pay you to borrow one of the fruits in your basket for a certain period of time. This is what the Code means by **alienation** of an advantage. To alienate is to separate. A lease is a person's ability to separate one fruit from her basket and give it to someone else for a certain period of time.

Nadeem is a student who recently graduated from AUIS. He works in Erbil but his family is not from there. Mrs. Bayati is an old woman who owns an apartment close to where Nadeem works, but she lives with her family in Dereluk. However, she does not want to sell her Erbil apartment. As the owner of the apartment, Mrs. Bayati has a basket of fruits of her property right. One of the fruits is her right to use and enjoy the apartment. The lease allows her to lend this fruit to Nadeem for some time. In exchange for the fruit, Nadeem has to pay Mrs. Bayati a certain amount of money. We normally call money that is exchanged in these situations a "consideration". You can refer to "Commercial Law", another paper in this series, *An Introduction to the Laws of Kurdistan, Iraq Working Paper Series* to learn more about contracts.

#### Civil Code of Iraq

##### Article 733:

He who has leased a thing which he did not view will have an option when he views it either to accept or rescind the lease; the lessor who has leased a thing which he did not see does not have an option.

Before Nadeem moves to Erbil, he calls Mrs. Bayati on the telephone to ask about her apartment. During the call, Nadeem and Mrs. Bayati agree that Nadeem will lease the apartment and pay

Mrs. Bayati a certain amount for rent each month for a year. He arrives in Erbil and sees the apartment for the first time. It is nice, but very noisy because it is next to a busy street.

The Code tells us that if Nadeem does not like the apartment after he sees it for the first time, he can choose whether or not to keep the agreement he made with Mrs. Bayati on the phone.

**Rescind** means to end something. When the Code says Nadeem has an option, it means that he has a choice whether to keep the lease or change his mind.

Nadeem now has to look for another apartment. He looks in the newspapers and sees a small apartment that is very cheap and close to where he will work. The owner is Saim. Saim is a busy man who bought the apartment as an investment. He did not even look at the apartment when he bought it. When Nadeem calls, Saim agrees to rent it to Nadeem for little money because he thinks the apartment is very small.

On the day that Nadeem arrives, Saim meets Nadeem at the apartment to give him the keys and show him the apartment. Saim sees the apartment for the first time, like Nadeem. He realizes that although the apartment is small, it is very beautiful. Nadeem would have been willing to pay even more in order to live in this lovely apartment. The Code tells us that Saim cannot rescind the lease after he sees the apartment, even if he was mistaken about it.

Why this difference? Throughout the rest of this section, we will look at different property rules that treat lessors and lessees different. **Lessor** is the person who owns the property, like Saim and Mrs. Bayati. **Lessee** is the person who want to use the property, like Nadeem.

Lessees tend to be looking for somewhere to live. Oftentimes, they do not have their own property, which is why they must rent from someone else. Nadeem is in a more vulnerable position than Saim. What if Mrs. Bayati or Saim lied to him about the apartment? Giving Nadeem the choice to rescind the lease protects him.

What about Mrs. Bayati and Saim? Well, in Mrs. Bayati's case, she is protected because she knows about her property, and she can ask for the right price. Saim is the one who has never seen the apartment, even though he owns it. All he has to do in order to protect himself is to go see the apartment so he knows what price to ask. The law wants to encourage people who own property to know what their property is like.

Moreover, although the law does not seem to favor Mrs. Bayati, she is in a good position to protect herself. When she talks to Nadeem about the apartment over the phone, she will want to make sure she tells Nadeem everything about the apartment. With today's technology, she may even want to take a lot of photos of the apartment to show Nadeem. This way, Nadeem has a good idea of what the apartment is like before he arrives, and he is therefore less likely to rescind the lease.

The law treats lessors and lessess differently for a reason. Lessors and lessees are different to begin with, and they have different abilities and information. As we work through the rest of the section, we will continue to look at examples of such rules, and always think about what the reason for the rule is.

### 5.1.2. Repair

**Article 750:**

(1) The lessor is bound to repair and restore any defect in the leased property which has disrupted the use for which it is intended.

Mrs. Bayati ends up leasing her apartment to Adeel, who opens a computer repair store. The door, which is very old, breaks. The Code tells us that it is Mrs. Bayati's responsibility to fix the door. Ultimately, she is the one who owns the property, and the damage is her responsibility.

Is this rule fair? Adeel is the one who is using the store. He is also the only person who could have prevented the door from being broken. Mrs. Bayati owns the space, but she no longer uses it. She has given that fruit in her basket to Adeel. Maybe it should be his responsibility to take care of the space!

There are a few disadvantages to this rule. Firstly, Adeel would know better what kind of repairs would need to be made. Secondly, Adeel may be more careful with the property if he has to pay for damages. Thirdly, it seems fairer for Adeel to pay for the damages that he caused. It seems unfair to make Mrs. Bayati pay for damages that she did not cause.

However, despite these problems, why might we prefer for Mrs. Bayati to be responsible for repairs?

Mrs. Bayati is the ultimate owner of the apartment. She cares more about whether her property is good condition. If Adeel breaks the door, he may not repair it. It would be hard for Mrs. Bayati to know that the door is broken and therefore to ask him to fix her property. When Mrs. Bayati has to pay for the repair, Adeel will want to call her immediately to fix the property. Property law is concerned not only about avoiding conflict and solving conflicts. Property law always wants to ensure that property is well taken care of and maintained. If Mrs. Bayati, the lessor, has to do the repairs, then it is more likely that the repairs will be done at all.

**Civil Code of Iraq****Article 750:**

(2) If the lessor has refrained from carrying out the restoration the lessee may rescind the lease or carry out the restoration subject to obtaining leave from the court and claim from the lessor the beneficial sum which he has incurred.

What if Mrs. Bayati does not do the repairs? Adeel calls Mrs. Bayati about the broken door but she does not fix it. The Code tells us that Adeel can ask Abdullah, a repairman, to fix the door. It costs 2,000 dinars. The next time Adeel pays his rent to Mrs. Bayati, he can deduct the repair fee from the rent. If he pays 200,000 dinars for rent, he now only has to pay 198,000 dinars next month because he had to pay for the repairs that Mrs. Bayati did not make.

This rule is therefore written in order to make sure that Mrs. Bayati actually does the repairs. Otherwise, you can imagine that Article 750 (1) may not be effective in getting repairs done on the property.

**5.2. Servitude****5.2.1. General**

Now let us learn about another way in which you can give one fruit in your basket to someone else. Remember Basma, Amman and Hadad? We learned from their troubles that even when you own a piece of land, your right to enjoy it may not be absolute. When your neighbors need water, drainage or access to public roads, sometimes they can burden your land. We are about to learn more about “burdens” on land.

**Civil Code of Iraq**

**Article 1271:**

A servitude is a right which limits the enjoyment of an immovable for the benefit of another immovable belonging to another owner.

When Hadad is allowed to use a small part of Basma’s land in order to get water, Hadad has a servitude on Basma’s land. Hadad has a right to use Basma’s land to obtain water, and this limits Basma’s enjoyment of her immovable, which is her land.

You can also think about a servitude in terms of our example of the fruits in the basket. You have a fruit that says you have the right to complete ownership of the land. A servitude breaks a little part of that fruit off, and is given to your neighbor. Now you have a much smaller fruit, and your neighbor has a small part of that fruit.

**Civil Code of Iraq**

**Article 1272:**

(1) The right of servitude is acquired by a contract, by inheritance and by will.

How do you obtain a servitude? Basma is also neighbors with Fareed. Fareed’s land has a small river, and is also next to a public road. Basma is right next to a big lake, and also another public road. Since there is a river on Fareed’s land, he does not need to use the water from the lake. However, he does not want to use the water from his river. He wants to use the water from the lake, but in order for him to get the water, he will need to put pipes through Basma’s land. He can obtain a servitude from Basma by making an agreement with her.

Basma can make a contract with Fareed that allows him to use her land. She can ask Fareed to pay a fee, or she can exchange servitudes with Fareed. They can come to an agreement where Fareed is allowed to put pipes through a part of Basma’s land and Basma is allowed to take a small path from her land onto Fareed’s land to walk around the river. Can you see how each Basma and Fareed are breaking away a small piece of their fruit to complete and exclusive enjoyment of their property, and giving it to the other piece of property?

After Basma and Fareed make this agreement, the servitudes become attached to the land, not to the owner of the land. This means that... Fareed sells his land to Feroze. As owner of the land, Feroze has the servitude to use Basma’s land for the pipes. He also needs to allow Basma to use the path to take walks around the river. The servitudes are not given to people. Of course, they benefit the owners of the property, but ultimately, the servitude is attached to the property.

This servitude can also be acquired by inheritance. Many years pass and Basma and Fareed are now both dead. Basma’s daughter is Badia and Fareed’s son is Fahad. Each owns their parent’s

respective properties. Again, because the servitude goes with the land, she must honor the agreement her mother made with Fareed. She cannot take away the pipes from the land, but she has the right to walk on the path to Fahad's land around the river to see the fishes. Of course, Badia and Fahad can come to a new agreement to destroy the servitudes, but they would both have to agree for that to be possible.

Why should servitudes go with the land, not with owners? Most servitudes improve the land, and the law wants those improvements to stay. Many servitudes concern access to water, drainage or public roads. Land often remains a long time after people live and die. Having servitudes attach to land allow Fareed and Basma to not only benefit themselves but also future owners. This is also a reminder that servitudes are very powerful and will burden the land even when the owners change. These agreements should only be made after seriously considering their advantages and disadvantages.

#### Civil Code of Iraq

##### Article 1272:

(2) Time limitations may be adduced in regard to the right of way, the right of stream, the right of drain and the other apparent rights of servitude.

When Basma and Fareed initially made the agreement, they could have placed time limitations on their agreement in order not to burden the land for too long. They can agree, for example, that Basma can only use the path to the river for 50 years.

### 5.3. Surface right (Musataha)

Let us now turn to another case where someone who owns land can give one of their fruits away to someone else.

#### Civil Code of Iraq

##### Article 1266:

(1) The surface right is a real (in rem) right which vests unto its holder a right to construct a building or other installations, other than plantations, on the land of another person pursuant to an agreement concluded by him and the owner of the land setting down the rights and obligations of the holder of the right (surfacier/musateh).

(2) The surface right must be inscribed in the Land Registration Department.

There is a small corner on Basma's land that she is not using. She recently hired Jarrar to take care of her orange trees. Jarrar just moved from the village of Chammah, and he does not have a home. Basma decided to let Jarrar use the corner of her land that she is not using to build a house for himself. If Basma were to sell her land to Jarrar, it would be too expensive for Jarrar. Basma also does not want to lose ownership of her land. In this case, she can decide to sell him a surface right to the land. In exchange, Jarrar agrees to take care of her orange trees for 3 hours a day every day.

What does a musataha allow Jarrar to do? Jarrar becomes the **musateh**/surfacier. He is the one who now owns the right to use the surface of the land. The Code tells us that he can build a

building or some other physical structure, although he is not allowed to use it as a plantation. The Code also tells us that Jarrar and Basma can come to an agreement that limits the right of the musateh. For example, Basma may ask for Jarrar not to build a factory on the land. She can also request that he does not build a house that is more than one floor. Jarrar agrees to these conditions, but he wants to be able to park his little car on the land, too. Basma agrees, and they now have an agreement. Jarrar becomes bound by the terms that he agreed to when he received the musataha from Basma.

The Code also tells us that this right must be registered with the Land Registration Department. Imagine if Basma wanted to sell her land to Bilal after she gave the musataha to Jarrar. Bilal is a responsible buyer, and he decides to check Basma's land title at the Land Registration Department before he buys the land. He would be able to see that Jarrar registered his surface rights, and he knows that if he buys the land from Basma he must also honor their agreement. The registration of the surface right in the Land Registration Department protects Jarrar, because it ensures that new owners will also respect his surface rights. It also protects Bilal because he knows exactly what he is buying from Basma, and what his obligations to Jarrar are.

#### **Civil Code of Iraq**

##### **Article 1267:**

(1) The term of the surface right may not be for more than 50 years; if the term has not been fixed either party (the surfacer as well as the landowner) may terminate the contract (aqd) after three years from the time when notice has been served on the other party to that effect.

The Code also tells us that there is a time limit on how long a musateh may have surface rights on the land. The maximum is for a period of 50 years. The Code also tells us that if Basma and Jarrar do not decide on how long the musateh lasts, either can terminate the surface right as long as they let the other person know 3 years before. If Basma wants the surface right to her land back so she can build a little house for her daughter Badia, she needs to let Jarrar know. Jarrar has three years to use the land and then his surface right is over. Similarly, if Jarrar wants to leave, he needs to let Basma know, and then the surface right is over 3 years after.

What does this tell us about a musateh? It is a powerful right, but it does not last very long. Most people live over 50 years. You would probably not build a very expensive building on a piece of land that you will lose after 50 years. Also, a musataha can disappear 3 years after either Jarrar or Basma wants it to end.

What would you do if you were Jarrar? You would probably not build a very big house. You would not spend a lot of money on it. You would try and get enough money to buy your own land so that you can build a house for yourself on it. However, you can also see why a mustaha can be quite useful. It allows Jarrar to have a place to live in without having to own land. For many people, 50 years is enough for them to live in for the rest of their lives, and a musataha gives them a chance to live in their own house.

## **6. HOW TO ACQUIRE PROPERTY**

## 6.1. Sale

Jarrar makes enough money and he decides to buy his own land so he can build a house on it. Najaf is selling a piece of land. Jarrar can simply buy the piece of land from her.

### Civil Code of Iraq

#### Article 1126:

(1) The ownership of movable and immovable things is conveyed by contract.

A sale is a contract. Jarrar agrees to buy Najaf's land for a certain amount of money, and Najaf agrees to transfer title and ownership to Jarrar. The Code tells us that a sale can either be for movable or immovable things.

In most cases, when you buy something from someone, you obtain all the rights that the seller had. If your seller sold you their apple, then all the rights they had with the apple now go to you, unless they put certain conditions on the contract. Again, remember that the seller cannot sell what she does not have. If the seller is selling you a piece of land with a servitude on it, the land you obtain also has the servitude on the land.

## 6.2. Authentic mortgage

Buying real property can be very expensive. Jarrar may not have enough money to buy the land from Najaf but, though a **mortgage**, Jarrar may still be able to purchase Najaf's land. A mortgage is a loan that is guaranteed with land.

Jarrar has become very good at repairing cars, and his customers trust him. He knows that he will be able to earn the money in 20 years to afford a very nice piece of land for himself and his family. In the meantime, Jarrar can borrow money from someone who has a lot of money. In many cases, people borrow money from banks, because banks have a lot of money. The bank does not know Jarrar and they cannot trust him to pay back the money. So the bank investigates Jarrar and asks him what his job is and how much he makes. This is in order to see if he would be able to return the money in the next twenty years.

It is not enough for Jarrar simply to be known as a trustworthy person. He also needs to put in money in the beginning to show that he is serious about buying the land, and also that he has enough money to afford at least a part of the land. So Jarrar puts in what is called a **down payment**. This is his first payment to the bank. Jarrar collects all the money he has saved up, and he gives that to the bank as his first payment. This is normally a lot of money. It can be any amount, but normally it is between 5 to 25% of the total price of the land.

What does the bank get? The bank charges a certain percentage of the total amount, so the bank earns money by lending Jarrar money. This is called the **interest**. Jarrar and the bank determine how much the interest should be. The more likely Jarrar is to return the money, the lower the interest should be.

Jarrar now has a mortgage with the bank. The technical definition of a mortgage in the Code is complicated, but just remember that a mortgage is basically a loan from a bank so that a person may buy immovable property.

### Civil Code of Iraq

**Article 1285:**

An authentic mortgage is a contract by which a creditor acquires over an immovable destined to pay his debt a right in rem by which he obtains preference over ordinary creditors and the creditors who come after him in rank (order) for the repayment of his right out of the price of the immovable no matter into whose hands (possession) the immovable has passed.

What makes a mortgage special from a normal loan? The bank has an ultimate guarantee that they will not lose everything, even if Jarrar cannot pay. The bank has bought the land, and the land is worth a lot of money. Even if Jarrar loses his job and he cannot pay back his loan, the bank acquires the land, which it can sell for money.

When the Code refers to the “preference” of creditors, the Code is talking about what happens in the case of a default. A **default** is what happens when Jarrar cannot pay his debts. Imagine that Jarrar borrowed money from many different people, who became his creditors, just like the bank. If Jarrar defaults on his loans, his possessions will be sold in order to repay his creditors. The same thing will happen with Jarrar’s land. The land will be sold, and the money from the sale will be used to pay the bank. The Code tells us that the bank has priority when it comes to the money from the sale of the land. Even though Jarrar owes his other creditors money too, the Bank is the first lender that can claim money from the sale of the land.

Let us be more specific. The land Jarrar wants to buy is 10 million Iraqi dinars. The bank agrees to the mortgage, as long as he can put a down payment worth 20% of the value of the land. Jarrar agrees. However, his business fails, and he cannot repay his loan. What happens now?

The bank takes possession of the land, but the bank does not want land. The bank wants money, so it sells the land. The land is now worth 20 million Iraqi dinars. The bank takes everything that it is owed, including the interest on the loan. Remember, even if Jarrar has other creditors, the bank is the first creditor who can claim money from the land. Then Jarrar gets to keep whatever is left. He can use the rest of the money to pay the other creditors. Otherwise, he can keep the money.

But what if the price of the land has fallen? What if the land is now only worth 5 million dinars? The bank sells the land, but it is not enough to repay the loan and the interest. Then Jarrar still owes money to the bank. He will need to find a way to work and pay the bank back.

Mortgages are important because they encourage banks to lend money to people who need it. The mortgage protects the bank from the risk of borrowing money to Jarrar. Even if Jarrar is very reliable and trustworthy, bad things can happen. Lending money is always very risky. Allowing the bank to have the land makes it less risky.

Lowering risk for creditors is not only good for creditors. It is also better for people who want to own land, like Jarrar. As we have seen, if Jarrar cannot own land, he has limited options. He can get a mustaha from someone else so he can use the land and build a home for himself. However, we have already discussed that a mustaha does not last over 50 years, and if he will lose it later, he may not want to build something too nice. Making it easier for creditors to lend money for people who want to buy land also helps people who want to buy land.



**Article 1292:**

(1) An authentic mortgage includes the accessories of the thing mortgaged which are deemed to be an immovable.

(2) An authentic mortgage includes in particular the trees and buildings which existed at the time of constitution of the mortgage or those which have been introduced thereafter as well as the rights of servitude and the immovable specifically and all improvements and installations which have been made on the mortgaged immovable.

Also, when Jarrar gets a mortgage, he can use the land right away. He does not need to wait twenty years until he finishes paying for the mortgage. He can build a house on the land, plant a garden and an orchard. Often times, this increases the value of the land. The Code tells us that the things that Jarrar adds to the land also become a part of the land. Therefore, even if Jarrar defaults, and the bank has to sell the land, the land will be more expensive because he has improved the land. Maybe he dug some canals so the land has more water, or maybe he built a nice house on the land. Maybe he obtained a servitude from Basma to make a path through Basma's land for Jarrar to reach a public road. These are all improvements to the land, and increase the value of the land. The Code tells us that all of these things become a part of the land, and the mortgage.

Furthermore, Jarrar can use the land for his income, and he can use the income to pay the bank. Jarrar grows oranges on his land, and sells them at the market. When it is easier for Jarrar to buy and own land, we may all benefit because Jarrar uses the land in a productive way.

**6.3. Possessory mortgage**

Jarrar decides to move to Erbil and start a big car repair company. He does not have enough money to hire workers or buy materials. Again, Jarrar can borrow money from the bank. But he cannot get an authentic mortgage. An authentic mortgage is only for buying land.

Why might an authentic mortgage only work for land? If Jarrar defaults, the bank takes possession of the land and sells it. Land is relatively easy to sell. Land also does not tend to change too much. In fact, as we discussed before, land tends to improve, so land tends to increase in value. What about with machines and tools? What about the money that Jarrar wants to use to hire workers? If Jarrar's business fails, the bank cannot possess his workers! Also, the machines and tools are used and dirty. It may be very hard to resell. Jarrar may use the money to buy oils and other things like tires that he sells to customers. The bank cannot repossess the oils and tires. Land, by contrast, is easier to possess, and to sell.

However, a possessory mortgage allows Jarrar to borrow money in the same way as an authentic mortgage, with land as the guarantee. The only difference is, in this case, he is not buying land itself. However, he borrows money to hire workers and buys machines, but he promises the bank that if he cannot repay the money, he will give the bank land that he owns. Therefore, the bank will not be too worried about Jarrar defaulting on his loan. Even if he defaults, the bank knows that they can possess his land, sell it and receive the money from the sale to repay the loan.

**Article 1321:**

A possessory mortgage is a contract by which the mortgager gives property to be held in possession of a mortgagee or of an ('adl)\* against a debt which the mortgagee may collect (claim whole or in part) from such property having precedence over the ordinary creditors and the creditors who come after him in the order of precedence regardless of whoever has possession of said property.

The definition seems complex, but let's start with its basic parts. A possessory mortgage is a contract between the person who borrows money (mortgager) and the person who lends the money (mortgagee). The mortgagee agrees to lend money to the mortgager, but under a condition. That is, the debt may be collected from a piece of property. In our example, this is Jarrar's land. The Code also tells us that this gives the bank priority over ordinary creditors. Therefore, if Jarrar borrows money from other people, the bank gets to be the first person to collect from his land because of this contract they have made.

Notice too, that Jarrar does not have to give the bank the whole piece of his land. He can use a piece of it as the guarantee. Maybe the land is worth a lot more money than the loan. In that case, Jarrar can arrange a possessory mortgage with the bank where the bank will only take a small part of his land if he defaults.

As you can imagine, a possessory mortgage may make it a lot easier for Jarrar to get a loan. It can also reduce his interest rate. Say Jarrar just wanted to borrow 20 million dinars without the guarantee of his land. A bank may be very unwilling to lend him so much money. A bank may be worried that he may not be able to return the money in the future. With the land as a guarantee, the bank is happy to lend Jarrar money. The bank may also be willing to charge a lower interest rate, making it cheaper for Jarrar to borrow money.

## 7. CONCLUSION

Property law covers many areas of our lives. You learned some of the major constitutional provisions that deal with property. You understand that private property is protected, because it encourages people to own and maintain good property. When people own and maintain property, they use it for productive purposes. With private property, when you grow oranges on your land, you know that no one else can take your oranges away from you. This means you will plant more orange trees. You have also learned how public property is treated very differently. We all have a duty to protect public property because we all share it.

Then you learned about how to categorize property: immovable and movable, fungible and nonfungible, tangible and non-tangible and public and private.

You also learned about perfect ownership. You learned about what a powerful right ownership is. It includes the right to exclude, the right to enjoy, the right to abandon, the right to use, the right to sell etc. You also learned about some limitations on that right, especially when it comes to land. Both too little water and too much water can be a major problem for land, and there are many rules in the Code that help people deal with these problems. Property law wants land to be productive, and it wants land to be used.

You also learned about sharing ownership, and some of the problems that may arise from joint ownership.

You also learned about how you can give some of the fruits in your basket to someone else. One of ways you can do this is to lease your property to someone else. You learned about the rights and responsibilities of lessors and lessees. You also learned about servitudes that burden land, and you learned what a serious burden it can be.

You then learned about how you acquire property. In cases where you cannot afford the entire value of land, you can get an authentic mortgage. When you are trying to buy something else, and you have land, you can get a possessory mortgage. The possessory mortgage allows you to borrow money more easily, because your lender knows that if you default, at least they won't lose everything.

In all of these rules, you have learned about whom the rule benefits. You have looked at whether these rules are fair. After you have learned about all these legal concepts, try and think of other situations beyond those provided in this textbook. The law does not only apply to Basma, or Jarrar or Mrs. Bayati or Amman. The law applies to everyone. Different people may have different needs and may also have different abilities. Think about how the law might apply in different scenarios, and how they may be fair or unfair in those scenarios.