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THE BASIS OF CONTRACTUAL LIABILITY FOR THE ACT OF OTHERS IN THE LEASE CONTRACT

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Abstract:
The aim of this research is to identify the impact of the commitment to achieve a result and the commitment to exert great care on building the rules of contractual responsibility. On the personal error of the lessor and the lessee, and all of this explains the impact that each of these two obligations left on the basis of contractual liability for the actions of others in the lease contract, by following the descriptive and analytical approaches and the comparative legal approach. In the end, some conclusions and recommendations were reached

Keywords: Contractual Liability; Lease Contract

INTRODUCTION

The lease contract is one of the binding contracts for both parties, as it arranges mutual and reciprocal obligations in the hands of both the lessor and the lessee. But the problem

arises when the obligations arising from the lease contract are breached by someone other than the lessor or the lessee, and this breach leads to damage to one of them, and the act of this third party is not considered a foreign reason that excuses the debtor from responsibility, as the parties to the lease contract may resort to third parties to help them implement the obligations generated by the lease Or they may enter others as an alternative to implement the obligations. The parties to the lease contract have the right to enter others as their assistants or substitutes for them, as we have previously mentioned. A breach of the lease contract may occur from those of them, so the responsibility of the party who entered the third party to implement the lease contract or with whom the third party was the one who enabled the third party to The breach here raises the following question: What is the legal basis for the liability of the parties to the lease contract for the actions of others? Especially since the general rules indicate by their provisions that responsibility is personal as a general rule (1) and we are talking about contractual responsibility, not tort, so the mind does not turn to the text of Article (218) and Article (219) of the Civil Code, which stipulates the responsibility of the subordinate for the actions of his subordinate on the grounds that this responsibility It is a tort liability for the actions of others and is not contractual. 1

- See the text of Article (168), as well as the second paragraph of Article (169), an Iraqi civilian. 2 Hence the importance of searching for the basis on which the contractual liability of the landlord or tenant is based on the actions of others, and we believe that it is not sufficient to say that the landlord or tenant has done their work by introducing others to the implementation of the lease contract, and therefore they must bear the responsibility resulting from his act, as this is not considered a sufficient legal justification It is necessary to search for a logical and legal explanation that makes the debtor responsible for the act of others, and given that the responsibility of the lessor or lessee for the act of others is only an application of contractual liability for the act of others in general. General, perhaps we will find in one of them what will help us in answering the questions we posed, trying to give preference to what fits with the contractual liability of the lessor or lessee for the actions of others. We point out that the civil law jurists who defended the existence of contractual responsibility for the act of others (1) have developed many theories to explain the basis on which this responsibility is based. These theories can be returned to two groups. Personal error of the lessor or lessee as a basis for responsibility and to address these theories in research, we will divide this research into two sections.

The first topic

Three of the theories that were said to explain the basis of the debtor's contractual liability for the actions of others agree in the presence of a personal error of the debtor that justifies his accountability for the actions of others who made a mistake, but the method of determining this error differs from one theory to another. The first theory considers that the debtor when. A contract concluded, he is obligated to

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implement this contract and achieve the desired result. If he fails to achieve this result, he shall be considered. He is mistaken, whether the reason for the failure to achieve the result is due to his action or to the act of someone else. This theory is called the theory of obligation to achieve a result. As for the second theory, it assumes that the personality of the third party who caused the damage is an extension of the debtor's own personality, so the error issued by others is like the error issued by the debtor himself, and thus the debtor bears Responsibility and this theory is called the prosecution theory. As for the third theory, the debtor's accountability for the actions of others goes back to 1 - It should be noted that the word jurisprudence in Iraq and Egypt agrees on the existence of contractual responsibility for the actions of others, so it is considered a matter for granted. In France, the word jurisprudence is almost agreed on This is with the exception of the French jurist (Rodier), who does not recognize the existence of contractual responsibility for the act of others and considers that the responsibility can only be personal, see in detail the opinion of Professor (Rodier), Dr. Hasan Ali Al-Thnoon, the previous source, p. 14-15, where he indicated his opinion in detail. 3 The impossibility of considering the act of a third party a force majeure or a sudden accident that absolves the debtor from liability. This theory is called the theory of the absence of force majeure. A requirement for each of these theories. The first requirement Commitment theory to achieve an outcome Clarifying the concept of the theory of obligation to achieve a result and identifying its advantages and the responses or criticisms leveled to it and the extent to which it can be considered a basis for the contractual responsibility of the landlord or tenant for the actions of others requires that we deal in this section with each of the content of this theory and then evaluate it in light of the contractual responsibility of the landlord or tenant for The action of others, which we will explain successively. The first section: The content of the theory of commitment to achieving a result The theory of obligation to achieve a result is based on the fact that the object of the debtor's obligation is not to perform a specific activity, but rather The object of the obligation is to achieve the result of this activity (1). If the result imposed by the contractual obligation on the debtor is not achieved, his responsibility will be realized, whether the failure to achieve the result is due to his personal error or the mistake of others, which determines the nature of the obligation. If the nature of the contract was to take care) and if the result was not achieved, this means that the debtor did not perform his obligation, whether the implementation was due to the fault of the direct debtor or to the fault of the people he used to help him achieve the result and they failed to do so the (2), the painter who undertakes to paint a painting Certain according to agreed-upon specifications at a time when If a certain person has to fulfill what was agreed upon or pledged, otherwise his responsibility would be realized to fail the agreed result in 1 - d. Abdul Rashid Mamoun, Doctrinal Responsibility for the Action of Others, Dar Al-Nahda Al-Arabiya and Cairo University Press, 1986, p. 61. 2- Abbas Hassan Al-Sarraf, Doctrinal Responsibility for the Action of Others in Comparative Law, a letter submitted to the Faculty of Law, Cairo University to obtain a Ph.D., Mataba, Dar Al-Kitab Al-Arabi, 1954, p.79. 4 The contract, whether the failure to achieve the result is due to his action or to the act of one of his employees or assistants to whom the debtor entrusted some obligations to assist him in their implementation, as the issuance of any defect from them leads to a breach of the contractual obligation means that the desired result of the contract has not been achieved, which constitutes a contractual error that justifies the establishment of the contract. Contractual liability of the debtor for their actions (1). Likewise, when the lessor undertakes to enable the lessee to enjoy quiet use of the leased property for a period of two years, for example. If the result is not achieved, he is considered mistaken (2), whether the error is due to the lessor or to those who seek help from them. It is understood from the foregoing that the real basis of the debtor's contractual liability for the actions of others is the failure to achieve the result of his obligation due to the breach of the persons whom the debtor has used in the implementation of the obligation (3) or who have been entrusted by the debtor in the implementation of this obligation and were substitutes for him. A part of French jurisprudence has defended this theory, as Professor (Safaté) says in this regard (If the debtor asks about the error of his subordinates in the implementation of the obligation, it is because the debtor has pledged to implement either himself personally or through those who help him or take his place in the implementation and the error of those in the implementation It is the debtor's own fault, and this is considered a breach of his contractual obligation, and the debtor is responsible for it because it led to the failure to achieve the result that the creditor intended to conclude. contract) (4). Professor (Magret) says regarding the responsibility of the owner for the actions of the janitors (that the responsibility of the contracting party for the act of others is in fact nothing but the responsibility of the contracting party for his personal act, and this results from the same definition of contractual error, the owner falls into error by simply not implementing the obligation, that the gatekeeper did not comply at all Before the lessee, he is not questioned in his confrontation with him. Rather, the responsible is the owner himself who contracted an obligation that he

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could not implement. The act constituting the responsibility is the breach of the contractual obligation. This breach can only be attributed to the owner himself. The obligated debtor had set up someone else in his place to carry out his obligation, and the latter was unable to perform (5). 1 - d. Muhammad Hanoun Jaafar, previous source, p. 199. 2 - d. Abdul Majeed Al-Hakim, a. Abdul-Baqi Al-Bakri A. Muhammad Taha Al-Bashir, Civil Law and Sources of Obligation, Part One, Legal Library, Baghdad, Fourth Edition, 2010, p. 12_13. 3 d. Muhammad Hanoun Jaafar, previous source, p. 199. 4 - Savate, Lessons in Obligations, Part Two, 1939, p. 172, referred to by Abbas al-Sarraf, previous source, p.
79. 5 - (Margret) Jean Maicrit, his letter in Paris, p. 181 and thereafter referred to him, Abbas al- Sarraf, previous source, p. 79 From all of the foregoing, we say that the theory of obligation to achieve a result, its concept is summed up in the fact that the landlord and tenant are obligated in return for each other, as an obligation to achieve a result. contractually, and therefore each of them is asked about this breach, according to the circumstances. The second subsection: Evaluating the theory of the obligation to achieve a result in light of the responsibility of the lessor or lessee Nodal for the act of others The theory of the obligation to achieve a result may seem logical at first sight for some of the obligations of the lessor and the lessee if either of them undertakes to implement his obligation and achieve the desired result of this obligation, and given the obligations generated by the lease contract, we find that they are many and varied, and the Iraqi Civil Code referred to these obligations under the title of provisions The lease referred to the obligations of the lessor first, and then to the obligations of the lessee, and the Egyptian Civil Code referred to these obligations under the title of rent effects. Looking at these obligations, we find that some of them imagine that the landlord or tenant will seek the assistance of others to perform them or transfer them to third parties in their entirety, such as carrying out repairs of both necessary types, which are considered among the obligations of the landlord and minor ones that are considered among the tenant's obligations and which are called (rental) in the Egyptian civil legislation (1). What concerns us from the obligations arising from the lease contract are those that the parties to the lease contract may use to perform with others, or that others may replace them in the implementation of these obligations. Are these obligations an obligation to achieve a result or an obligation to take care? The principle of obligations is that they be taken with care unless the law stipulates or the parties agree otherwise This is what was indicated in Article (1/251) of the Iraqi Civil Code. Therefore, the original obligations arising from the lease contract, whose body is to do an action, is that they are an obligation. By taking care, such as carrying out repairs by the lessor or maintaining the leased property by the lessee, which is to take care as indicated in Article (764), which indicated in its first paragraph that the leased property is in the hands of the lessee, and then referred in its second paragraph to (the use of the lessee in conflict with the The usual infringement guarantees the damage generated by it) and the text of Article (764) corresponds to Article (583) of an Egyptian civilian, and the Court of Cassation ruled 1
- See the text of Article (567) of the Egyptian Civil Code and Article (582) of the same law, as well as Article (1755) of a French civil reference to (any restoration was one of the repairs for the tenants, the expenses of which are not calculated on the tenants if the reason for the restoration is the old of the shop or the strength of force majeure) and the concept of violation of this text refers to the tenants' commitment to repairs that are not due to the old shop or force majeure
Egyptian (peífoíming the text of Aíticle (583,591) of theCivil Code that the legislatoí has made the standaíd of caíe that he imposed on the tenant in the use and píeseívation of the leased píopeíty a mateíial cíiteíion,

Which is the caíe of the usual man, and that the tenant is íesponsible foí damage to the leased píopeíty íesulting fíom the illegal use of the píopeíty) (1). It should be noted that the tenant's obligation to maintain the píopeíty is the most fíequent obligation that his liability aíises when thiíd paíties bíeach this obligation. I'he same applies to the lessoí, and without going into the details of the natuíe of his obligations, which theíe is no evidence that it is an obligation to achieve a íesult, except with íegaíd to ensuíing the exposuíe of his followeís, which we íefeíied to eaílieí. I'he theoíy of commitment to a íesult is not sufficient to include all theobligations of the lessoí and the tenant, and that the píoblem of contíactual liability foí the actions of otheís, as it aíises in the case of commitment to a íesult, also aíises in the case of the obligation to exeícise caíe, with íegaíd to the commitment of the doctoí, which is íecognized as an obligation to exeícise caíe. If the doctoí íetuíns I'o a colleague to take his place in the tíeatment oí to help him, and the second doctoí's mistake íesulted in haím to the patient, does not aíise heíe the doctoí's contíactual íesponsibility foí the actions of otheís? (2) It should be noted that the píovisions of the lessoí's and the tenant's guaíantee of the actions of otheís, as we will explain in detail lateí, aíe not fíom the public oídeí and theíefoíe it is peímissible I'he lessoí and the lessee may amend the píovisions of this guaíantee. If it is agíeed that all obligations aíising fíom the lease

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contíact aíe an

Obligation to achieve a íesult, is the theoíy of obligation to achieve a íesult valid in this Foí a case to be a basis foí contíactual liability foí the actions of otheís in the lease contíact? We say even in this case, the theoíy of the obligation to achieve a íesult is not a sound basis foí the contíactual liability of the landloíd and tenant foí the actions of otheís, because adopting this theoíy leads to saying that the íesponsibility will be peísonal oí diíect and not foí the actions of otheís, given that this theoíy sees the failuíe to achieve the íesult as a peísonal eíioí and that l'he non-íealization of the íesult was attíibuted to the action of otheís (3) and this matteí is not consistent with what we establish in holding the debtoí íesponsible without making any mistake fíom him, and one of the commentatoís says in this íegaíd (l'he theoíy of commitment to the íesult of Al-l'antawi, 1 - Appeal No. (122) yeaí (24)) Q., on 5/15/85/1985, p. 9, pg. 47,
íefeííed to by Counseloí Fahmy Al-Daíawi, Dí. l'aíek, l'he l'enancy Contíact in Civil Law, Centeí foí Reseaích and Legal Studies, Caiío, 1988, pg. 360. 2- Abbas Al-Saííaf, píevious souíce, p. 80. 3- See Dí. Hassan Ali Al-I'hnoon, píevious souíce, pg. 60

It makes raising the contractual responsibility for the act of others an empty buzz. From all of the
foregoing, we say that the theory of the obligation to achieve a result is not suitable to be a basis for the contractual liability of the landlord and tenant for the actions of others, because the obligations arising from the lease contract and which it is envisaged that the debtor will seek the assistance of third parties or replace him in their performance are not all an obligation to achieve a result. This responsibility arises in the case of commitment to a result, as in the case of commitment to take care. In addition, this theory considers the failure to achieve the result as a personal error, and therefore the responsibility will be direct and not for the actions of others. The second requirement Prosecution theory One of the theories put forward by jurisprudence as a basis for contractual responsibility for the actions of others in general is the theory of prosecution. To address this theory by researching and clarifying its concept and then evaluating it, we will address in this section both the content of the prosecution theory, and then we will discuss secondly the evaluation of this theory in light of the contractual responsibility of the landlord and tenant for the actions of others, which is What we will explain later. Section one: The content of the prosecution theory This theory is based on the idea that the debtor's assistant in his contractual obligation does the work for his account The person of the debtor and in his name, and with this description he is considered as his representative (2). This theory is called the theory of professors (Henry and Leon Mazo), as these two professors say that in order to understand the legal basis on which the contractual responsibility for the actions of others is based, we must search first and foremost for the basis on which the tort responsibility for the act of others is established by the law. The one who is followed by the actions of his subordinates is the responsibility stipulated in Article (1384) of the French Civil Code, because this article includes the general principle of accountability of the principal for the act of his deputy in civil liability, whether tortuous or contractual, and this rule stipulates that when a person acts on behalf of another, he takes his place 1 - Abbas Al-Sarraf, previous source, p. 80. 2 - see d. Muhammad Hanoun Jaafar, previous source, p. 201
Legally, by proxy, the character of the original is merged with the character of the representative, so the act of the representative is considered as if it was issued by the original same(1) Because the character of the representative, as the Italian jurist (Nirara) says, is not an extension or an extension of the character of the original. Or as he put it in French: ((Elle, est le development, la prolongation, irridiation de son imdliuidualit)) (2) If this assistant did not carry out the work assigned to him, or carried out a defective implementation, which led to the damage With the creditor, the debtor is responsible for it (3) The third party who dealt with the representative in Daher is, in fact, considered to have dealt with the original A debtor who intervenes in the implementation of the debtor's obligation, his breach of this implementation is considered to have been issued by the representative same(4) And part of the jurisprudence goes, as we mentioned earlier, that when the members of the house use the leased property, they are They use it as deputies for the lessee, and therefore he is asked about their actions as his deputies in using it hack (5). It concludes from all of the foregoing that as long as the debtor is the one who chooses the assistant or the alternative and gives him confidence at a time when the creditor does not know anything about him, the harmful effects that emanate from the person with whom the debtor has used go to him as they are his representatives in the implementation of the obligation (6). This means that the legal basis that justifies the contractual liability of the debtor (the lessor or the lessee for the actions of others) is due to the idea of representation. 1 - He referred to the opinion of the brothers (Mazo) Dr. Hassan Ali Al-Thnoon, previous source, p. 63. 2 He referred to the opinion of (Nirara) Hassan Ali Al-Thunun, the previous source, p.3, and the translation of the phrase of Professor (Nirara) is (that the character of the representative is an extension, extension or radiation of the personality of the original one). 3- See Dr. Muhammad Hanoun Jaafar, previous

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source, p. 201. 4 - see d. Hassan Ali Al-Thnoon, previous source, p. 63. 5 - See Kazem Sheikh Jassim, Investigate the property rent, previous source, p. 299. 6 - See Dr. Muhammad Hanoun Jaafar, the same source, p. 201

His personality The sound basis for the responsibility of the lessor or lessee for the actions of others lies in the idea of (confusion), which the idea of representation creates between the personality of the principal and the personality of the representative (1). A part of the jurisprudence expresses the foregoing meaning of merger that the debtor's assistants are not just representatives of the debtor, but rather they are members of it. It is issued by the person of the debtor himself, and this opinion represents what is known as the theory of the wide prosecution or of general content (2). Based on the foregoing, the real basis of the contractual liability for the actions of others in the lease contract according to this theory lies in the union between the personality of the debtor and the personality of the third party for which it is being executed. The obligation is considered a contractual error (3). The second subsection: Evaluation of the prosecution theory in light of the contractual responsibility of the landlord or tenant for the actions of others The prosecution theory may seem somewhat convincing at first glance in justifying the contractual liability of the parties to the contractual lease contract for the actions of others. In order to be a sound basis for the contractual liability of the landlord or tenant for the actions of others, for the following reasons. 1- The natural scope of the prosecution is to carry out legal actions without material acts (5), which is excluded for the alternatives of the lessee or the lessor, as well as their assistants or other categories they enter in the implementation of the lease contract, except in some cases for the representatives of the lessor or his legal representatives, and this does not happen except rarely. The rest of the categories for which the lessor or lessee is asked about their actions are limited to material works such as carrying out repairs or other matters without legal work. The same applies to the lessor's assistants such as doormen, garden workers and the guard. All the actions that come out of these categories are purely material works, and it is not envisaged that any action will come from them. Legal and the same applies to the tenant. The most important categories that he is asked about are those who share with him in the rental housing (household members) and all the actions that occur from this category and harm that category. 1 - see d. Hassan Ali Al-Thnoon, previous source, pg. 64. 2 - see d. Abdul Rashid Mamoon, previous source, p. 87. 3- See the same meaning. Dr.. Abbas Al-Sarraf, previous source, p. 4 - see d. Hasan Ali Al-Thnoon, the previous source, p. 64, where he supports the theory mentioned 5 - see Dr. Atef Al-Naqeeb, The General Theory of Responsibility arising from the Action of Others, Oweidat Publications, Beirut - Paris, first edition, 1987, p. 106. Consider the same meaning d. Muhammad Reda Abdul-Jabbar Al-Ani, Agency in Islamic Sharia and Law, Al-Ani Press, Baghdad, 1975, p. 182

With the leased eye, they are material and not legal actions. From all of the above, we say that the lessor is asked about the actions of his legal or consensual deputy on the basis that they are his representatives, but this theory does not extend to include. Which the landlord asks about, as well as the case for the tenant. Categories all 2- The representative, even if he performs the work assigned to him in the name of the principal and for his own account, but he enjoys a degree of freedom and independence when completing the work assigned to him, as he performs his work without being subject to the direct supervision of the principal (1). And the tenant, the worker or contractor who makes minor repairs often does them, and the tenant is in the house, which means that the tenant monitors the worker who makes the repairs, and the same is the case with the members of the house, in addition to that, some of the categories that the tenant asks about, even if they enjoy a degree of independence In the use of the leased property, however, it does not use the leased property in the name and account of the lessee. Rather, it uses the leased property in its name and for its account, like the sub-tenant, where he uses the leased property under a new contract between him and the original lessee. The sub-tenant is a party to it. (2). 3- In addition to the foregoing, this theory suffers from the multiplicity of opinions that were said to explain the concept of this representation, so even if it was found to be a basis for contractual responsibility for the actions of others, in reality it is not based on a single idea in explaining the nature of this representation between others and the debtor, as we passed before when Discussing the concept of this theory, some interpreted the prosecution as an extension of the debtor's personality, while others merged the representative with the debtor's personality and considered him part of, so this theory originally suffers from the problem of determining the legal basis that justifies the responsibility of its original parts for the act of his deputy (3). A part of the commentators indicates that the opinions that were said to establish the responsibility of the principal for the act of the representative may exceed what was said in the discussion of the legal basis for the contractual responsibility for the act of others, which means that the idea that a part of jurisprudence tries to make as a basis for the contractual responsibility for the act of others already suffers from a problem search based on it (4). 1 - see d. Abdul Rashid Mamoun, previous

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source, p. 94. 2 - See Ibrahim Antar Fathi Al-Hayani, previous source, p. 171. 3 - d. Ismail Abdul Nabi Shaheen, The Responsibility of the Agent in Islamic Jurisprudence, Scientific Publication Council, Kuwait, 1999, p. 208. 4 - See Muhammad Hanoun Jaafar, previous source, p. 204

From all of the foregoing, it seems clear that the idea of prosecution is not suitable to be a sound basis for the contractual liability of the landlord and tenant for the actions of others, not to mention that adopting this theory leads to saying that the contractual responsibility of the landlord and tenant for the actions of others is only a personal responsibility, given that the representative's breach of the original obligation It is considered a mistake from the original itself for the integration of the personality of the representative with the original, and this contradicts what we are trying to establish by holding the responsibility of the lessor or the lessee without an error on their part. The third requirement Force majeure theory In this section, we will deal with the force majeure theory as one of the theories that have been proposed to justify the contractual responsibility of a person for the actions of others. The first section: the content of the theory of the absence of force majeure This theory is attributed to the French jurist (Pique) as he was the most defending it. Rather, he considers that this theory represents the sound basis that justifies the contractual liability of the debtor for the act of his assistants or substitutes (1). Professor Pique, in his article in the Quarterly Journal of Civil Law in 1914, argues that the legal basis for contractual liability for the actions of others should be returned to the idea of force majeure, because Article (1148) of the French Civil Code obligates the debtor to compensate for non-performance or for delay in payment Execution unless there is evidence that this was the result of a foreign cause in which he has no hand. Considering that the debtor has a hand in it, so the debtor must ask about it (2) Article (1147) of the French Civil Code stipulates: "The claimant shall be liable to pay the loss, whether it was due to the failure to implement what he was obligated to do or because of the delay in implementing that, unless it is proven that the failure to implement or delay resulted from an accidental cause that could not be prevented, and not from his negligence or fraud, nor His betrayal) and this text corresponds to Article (211) of the Iraqi Civil Code, where it states (If a person proves that the harm arose from a foreign cause in which he had no hand 1- Viney, Drot civil elares ponsability L.G.D.J.1982, P944, referred to by Muhammad Hanoun Jaafar, previous source, p. 205. 2 - He referred to the opinion of (Bekiya) Abbas Al-Sarraf, the previous source, p. 80, and one of the supporters of this theory is also Professor Exner and Stephanie. He referred to the opinion of (Beckyah) also d. Hassan Ali Al-Thnoon, previous source,p. 65

As a celestial calamity, a sudden accident, force majeure, the act of a third party, or the fault of the injured party, he was not bound by the guarantee unless there is a text or agreement to the contrary). We note that both articles place the burden of proof on the debtor. Burden of proof of foreign cause. We hope that the reader's mind does not deviate from the fact that the act of a third party referred to in the above article is the same as the other that the debtor's responsibility for his action is raised, for what is not intended by the above article is completely alien to the debtor. Article (1148) of the French Civil Code stipulates: "The person who is required to pay the loss shall not be judged if he prevents him from delivering what he owes or doing what he is obligated to do by an obstacle that obliges him not to fulfill that completely forcibly or by force majeure." Pique is derived from the combination of these two texts. In order for the act that prevented the debtor from carrying out to be considered a force majeure or a sudden accident, it must have two characteristics, the first is the absence of a mistake on the part of the debtor, and secondly, that the act is outside the debtor's activity, meaning that his will does not have anything to do with its occurrence (1) and this is the element The external force majeure, which is called an aspect of the explanation by the (external) element (2). It is clear that the act of those whom the debtor has used or replaced in the implementation of the obligation is not considered foreign to the debtor's activity and therefore they are not considered as the foreign reason according to which the debtor is exempted from liability (3). In the sense that it is not sufficient for the absence of liability that there is no error on the part of the debtor, but in addition to that, the act must be outside him in the sense that it is not attributed to his action and he has no hand in it. the debtor himself) (4). Based on the foregoing, the debtor is responsible for the non-performance of the contractual obligation as long as his act or the reason that led to the breach was not characterized by an external quality (5), and accordingly the debtor is responsible for the act of his substitutes and assistants due to the lack of force majeure conditions, especially the external condition (6). If the lessor or the lessee entrusts their assistants or their substitutes with the implementation of some or all of the obligations arising from the lease contract and they fail to implement these obligations partially or completely, then the lessor or the lessee shall bear 1 - see d. Suleiman Morcos, Theory of Paying Responsibility, PhD thesis, Al-Etimad Press, Cairo, without a year of publication, Pg. 411, and see in the same sense, Hassan Ali Al-Thunun, previous source, p. 65. 2 - see Dr..

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Muhammad Hanoun Jaafar, previous source, p. 205. 3- See Dr. Hassan Ali Al-Thnoon, previous source, p. 65. 4 - see d. Abbas Al-Sarraf, previous source, pp. 85-87. 5 - See Muhammad Hanoun Jaafar, previous source, p. 205. 6 - See Dr. Abdul Rashid Mamoun, previous source, p. 94

Responsibility for their actions, because it is not possible to consider their actions as a foreign cause (force majeure), given that the intervention of the substitutes or the assistants was made by the will of the lessor or the lessee, which means the absence of the external condition, given that the lessor or the lessee has a hand in the intervention of others. The second section: Evaluation of the theory of the absence of force majeure in light of the responsibility of the lessor or the lessee Nodal for the act of others After clarifying the content of the force majeure theory, which is known as Professor Becky's theory, we come now to evaluate it and see if it can be considered a sound basis for the contractual liability of the landlord and tenant for did others? We believe that this theory did not succeed in finding a sound basis that can be relied upon to justify the contractual liability of the lessor and the lessee for the actions of others for the following reasons. 1- The two professors (Henry and Leon Mazo) respond to this theory that what Becky said does not happen except in the case if the debtor's obligation is specified in the words of the two professors (1) (that is, in the case of commitment to a result) where the debtor cannot be exempted from Responsibility unless he was able to establish evidence that the non-performance or delay in it was the result of a foreign cause and that Becky's idea is incorrect and cannot be taken into account unless the subject of the debtor's obligation is a commitment to a result and there is no room to talk about it if the debtor's obligation is an obligation to exercise care as it does not occur In this case, the debtor has the burden of providing such evidence in order to get rid of liability (2). In this regard, Professor Demoges says in his response to Pique's theory (If we consider what Pique said to be true and say with the external element of force majeure, then the debtor's responsibility for subordinate actions is upright from itself, and in this case it goes back to the same theory that attributed the legal basis to responsibility debtor for investigation result) (3). It can be rightly said that Pique, when he referred to Article 1147 of a French civil to support his theory on the legal basis of contractual liability for the actions of others, assumed that the debtor must provide a result 1 He referred to the opinion of Professors (Mazo) Dr. Hassan Ali Al-Thnoon, previous source, p. 65. 2 - see d. Hasan Ali Al-Thunun, previous source, p. 66. 3 - He referred to the opinion of (Demoj) Abbas Al-Sarraf, previous source, p. 89

Certain specifics for the creditor, the Beckian theory is not valid in the cases in which the debtor undertakes to exercise a certain care To reach the desired result (1).

We have previously indicated that most of the obligations arising from the lease contract, which arise from the responsibility of the lessor or the lessee when others violate them, are obligations by a means and not as a result. Therefore, there is no room for applying this theory and establishing the contractual liability of the lessor or lessee for the actions of others on the ideas it came with.

2- The jurisprudence adds another criticism to this theory and considers that adopting this theory leads to the denial of the general principle of contractual responsibility for the act of wrongdoing. And the debtor's act and considering this act as if it was issued by the debtor himself, that is, it is spent in its sum with the

theory of representation (3).

In this regard, Professor Reno says, "We are in fact in front of two actions, and not one act, the debtor's act represented by relying on others to implement the obligation, and the third party's act represented by breaching the obligation, and if it was right that if the debtor had not returned to his assistants, the breach of the obligation would not have occurred as it is nothing more From this, it is true that each of the two verbs is independent of each other in terms of the nature and the time it was issued and in terms of the person from which it was issued) (4) Hence it is clear that all the criticisms made against the prosecution theory can be

It is also argued against this theory.

3- Jurisprudence adds another criticism of this theory, which is represented by saying that adopting this theory leads us into a vicious circle if we ask the following question. Why is the debtor asked about the actions of his subordinates and aides? The answer comes, because it is not possible to consider their action a foreign reason. And if we ask why their act is not considered a foreign reason? The answer was because they

are his assistants, and so on (5).

4- In addition to all the foregoing, this theory does not give a clear explanation of the responsibility of the tenant for the actions of the members of the house. A foreigner from the debtor, and therefore his action is not considered a force majeure. Beckett's theory is incapable of justifying the tenant's responsibility for the actions of his family

- See Abbas Al-Sarraf, previous source, p. 89. 2 - see d. Hassan Ali Al-Azun. Previous source, p. 65.

3- See Dr. Muhammad Hanoun Jaafar, the previous source, p. 206.

4 - He referred to the opinion of Renault (Abbas Al-Sarraf, previous source, p. 87). 5- See Abbas Al-Sarraf. The same source, p. 89, and consider the same

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meaning. Dr.. Muhammad Hanoun Jaafar, the previous source. p.
207.
And everyone who finds his home, since it cannot be said that the tenant has entrusted one of these people with the order to carry out the obligation that was placed upon him by virtue of preserving the property.
The second topic Theories that are not based on the personal fault of the lessor or lessee
The theories that we are going to discuss are distinguished from the aforementioned theories in that they do not build this responsibility on the basis of a mistake from the debtor, but rather build this responsibility on other foundations that differ according to each theory (2). His accountability for the actions of others, and this theory is called the theory of liability. On the other hand, one of the theories assumed the existence of an implicit agreement between the creditor and the debtor, which stipulates that the debtor bears the consequences of the actions taken by those he used or who replaced him in the implementation of the
obligation, and this theory is called the theory of implicit guarantee.
The third theory is to establish the contractual liability of the debtor for the actions of others on the basis of the guarantee
It is assumed by the text of the law and this theory was called the theory of legal guarantee, and for further clarification it is necessary to
Each of these theories was dealt with in research, which requires dividing this topic into two sections devoted to it Each of these theories. The first requirement liability theory among the theories put forward by jurisprudence to justify the contractual liability of the debtor for the
actions of others, which are not based on the debtor's error in justifying this responsibility is the theory of liability. Nodal for the act of others.
A - See Abbas Al-Sarraf, the same source, p. 91. 2 - Dr. Abdel-Baqi Mahmoud Al-Sudani, the lawyer's civil liability for his professional mistakes. House of Culture and Information and without a year of printing. 228

The first section: the content of the theory bearing the liability

This theory is of German origin, as Dr. Hassan Ali Al-Thunun says, and according to the proponents of this theory, that as long as the debtor benefits from the activity of those whom he uses or whom he replaces in the implementation of all or part of the obligation, the logic of reason judges that the return for this benefit that the debtor reaps from the work of the assistant or The alternative is that the debtor bears the consequences
of the harmful actions that come out of these (1).
The French jurisprudence was influenced by this theory, including the scholar (Planiol), where he says, "In order to obtain profit, a person often undertakes to do a work that may be out of his ability and ability to do it himself, so he seeks the assistance of several other people, whether or not they have increased in the capacity of workers or assistants to him, and in this case appears from It is fair and equitable that he bears the loss and damage alone, because he is the one who will get the profit from the work, and I think that no other reason can be given for assuming responsibility for the work of other persons (2).
The debtor is asked about the actions of those who seek his help, and if he does not commit any mistake, the debtor who reaps the fruits of this seeking assistance must bear the risks of this assistance (3). In the event of the implementation of the obligation and a conflict of interests between the creditor and the debtor about who is responsible for the third party's breach of the contract, especially if no mistake was made by the debtor, then the common sense requires that the party who was interfering in his interest bears the
responsibility. Persons (4).
A part of Iraqi jurisprudence supports this theory as a basis for the responsibility of the servant or the subordinate, and that the accountability of these can only be established by using the theory of bearing the liability in exchange for obtaining the profit. With the position of Islamic jurisprudence, which recognizes the rule (finance for sheep) (5).
It is clear from all of the foregoing that this theory assesses the contractual liability of the lessee or the lessor for the actions of others on the basis that each of them only benefits from the intervention of assistants, substitutes or the rest of the art, and they must accordingly bear the responsibility arising from their breach
of the obligations arising from the lease contract.
- Al-Zar Hasan Ali Al-Zhanun, previous source, p. 62. You do not agree with Dr. Al-Danun that this theory is derived from German, if you find that the roots of this theory go back to Islamic jurisprudence and specifically to the famous jurisprudence rule (fining sheep). 2 - Planiol, A Study on Civil Liability, The Critical Journal, p. 282. He was referred to by Dr. Hasan al-Khatib, Scope of Contract and tort Civil Liability, Haddad
Basra Press without a year of printing, pp. 206-207
1 - See Muhammad Hanoun Jaafar, the previous source, p. 207. A - Dr. Abdel-Baqi Mahmoud Al-Sudani, the
previous chest, p. 228. e - see d. Hassan Khatib. Previous source, p. 207.
The tenant who transfers the implementation of the lease contract to a sub-tenant, or who waives his right

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to rent to the assignee of the lease in return for a certain price, is only benefiting from this act as a result of the difference in consideration. Or the difference between rent allowances in the case of sub-lease, he must accordingly bear responsibility for their actions, as well as the lessor (according to this theory) benefits from the work of the contractor or engineer who performs the necessary repairs to the leased premises, and therefore he must bear the damages resulting from the engineer or contractor's breach of their obligations In return for the return that he derives from their work, he who benefits from the activity must bear the
consequences (1).
The second section: Evaluation of the theory of bearing the liability in light of the responsibility of the lessor or the lessee

Nodal for the act of others
Although this theory gives a simplified idea and a means of the basis of contractual responsibility for the actions of others except
It has not escaped criticism, and in turn, we say that this theory is not suitable as a sound basis for the contractual liability of the lessor or lessee for the actions of others, for the following reasons. 1- It fails to explain the recourse of the landlord or tenant to the assistant or substitute who has breached the lease contract.
The creditor against (the third party) whose act was the cause that led to the breach of his contractual obligation, whether it was an alternative or his assistant (2).
If the basis upon which the contractual liability of the landlord or tenant for the act of others is based on bearing the responsibility for the harmful activity of the persons who were sought in the implementation of the contractual obligation imposed by the lease contract, the tenant or tenant would have to bear the burden of compensation alone and they have no recourse against third parties to recover the compensation they
paid (3).
A part of the jurisprudence responds to the foregoing criticism that the claim of the right of recourse established for the person responsible for the work of others against others is the scope of its application, the provisions of Article (1382), a French civil, while the theory of liability rules
See Abbas Al-Sarraf, the previous source, p. 105 and look at the same meaning, Dr. Atef Al-Naqeeb, the previous source. P. 104. 2 - See Abbas Al-Sarraf, previous source, p. 105. - See Dr. Hasan on the permissions,
the previous source, p. 63. The relationship between the contracting parties and its importance appears in the absence of the need to prove error on the part of the debtor, and there is no doubt after that that the servant or the subordinate has the right to return to the servant or the subordinate (1).
Here, we are not inclined with either direction (as for the advanced criticism) and we do not rely much on this criticism for not taking this theory. If the mentioned criticism is dropped, what about the following
criticisms?
2- It is taken from this theory that the desired interest from the interference of others in the implementation of the contractual obligation may not be limited to a person who enters the third party alone, but in many cases includes both the lessor and the lessee separately.whether (2).
The worker who performs the necessary repairs, which are considered among the obligations of the landlord, does not benefit from the landlord alone. The tenant also benefits from it, given that he is an occupant of the leased property and benefits from any repair or restoration that occurs on it. The same applies to the tenant's assistants who carry out customary minor repairs) so everyone benefits from it. From the lessor as well as from the lessee, who is the beneficiary who has to bear the responsibility for his benefit
in this case?
3- In addition to the foregoing, the interest may be completely negated for those who ask about the act of others, as you may not find a trace of the profit or material benefit that the debtor derives from the intervention of others. leased (3).
4- Professor (Pique) provides another criticism of this theory, saying (if the matter is as claimed by the proponents of the theory of liability, then the debtor should be asked not only about the actions or mistakes of the subordinates and substitutes, but about all Harmful consequences, even those that occur as a result of force majeure or a forced accident (4).
It is clear from all of the foregoing that it is not possible to take the theory of liability as a basis for the responsibility of the lessor or the lessee.
Nodal for the act of others. The second requirement
1 - see d. Hassan Khatib. Previous source, pp. 207-208. 2 - See the same meaning. Dr.. Abdul Rashid Mamoon, previous source, p. 87. 3- See Dr. Abbas Al-Sarraf, the previous source, p. 104, and looked at the same meaning. Dr.. Hassan Ali Al-Zanoun, previous source,
p. 63. 4 - He referred to the opinion of (Pique) Abbas Al-Sarraf, previous source, p. 105. The relationship between the contracting parties and its importance appears in the absence of the need to prove error on the part of the debtor, and there is no doubt after that that the servant or the subordinate has
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meaning. Dr.. Hassan Ali Al-Zanoun, previous source,p. 63. 4 - He referred to the opinion of (Pique) Abbas Al-Sarraf, previous source, p. 105.
For actions that are issued by a third party who is responsible for each of them for his action, the principle is the guarantee of the parties to the contract for the auxiliary acts, and the exception is the lack of guarantee,
so the text on the guarantee does not need a text in the contract (1).
Second subsection: Evaluation of the theory of implicit warranty in light of the responsibility of the lessor or lessee Nodal for the act of others This theory has been criticized by a number of jurisprudence, and in turn, we believe that this theory cannot be accepted as a basis for the contractual liability of the lessor and the lessee for the actions of others, for the following reasons.
1- It has been said in the right of this theory that it is based on pure imagination by assuming the existence of a will that does not exist in the first place, as how can it be recognized that the debtor who uses the authority granted to him by law to seek the assistance of others in the implementation of his contractual obligation that he intended in this to arrange matters that harm his interests so that he bears The responsibility is in favor of the other contracting party. When interpreting the will of the contracting parties (the lessor or the lessee), it is necessary to say that each party accepted what was expressly expressed in the contract. As for outside this explicit expression, there is no justification to say that the debtor has been obligated to implicitly
guarantee the harmful acts of his assistants and substitutes (2).
2- In addition to the above, we believe that this theory contradicts the general rules contained in the Civil Code Especially the text of Article (166) of the Iraqi Civil Code, which states that doubt is explained in the interest of the debtor. Is it required to guarantee the contract?
The answer to this question according to the above article should be interpreted in the interest of the debtor, and the interpretation of this doubt according to the theory of implicit guarantee is an interpretation in the
interest of the creditor, not in the interest of the debtor, and in that conflict with the general rules. 3- The issue of revealing the real, tacit or esoteric will is not as easy as this theory assumes.
1 - see d. Saeed Saad Abd al-Salam, The Civil Liability of the Lawyer for the Mistakes of His Assistants, No Reprint, 1995, AD 100. 2 - See Abbas Al-Sarraf. Previous Source, p. 108.

Warranty (1) in some cases, but it is not possible to confirm the existence of such a guarantee in all cases at all, because this burdens the will of the two parties more than it can bear (2).
4- In addition to the foregoing, this theory is built to justify the contractual liability of the lessor or the lessee for the actions of others. It is assumed that the debtor has committed to an investigation as a result of which this guarantee is cast upon him, and in that a reference to the obligation theory By achieving a result (3), which we have already mentioned the criticism leveled at. One of the theories put forward by

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jurisprudence to establish contractual liability for the actions of others in general is the legal guarantee theory. This theory is considered one of the range of theories that are not based on the debtor's mistake in justifying liability. The theory in light of the contractual liability of the lessor or lessee for the actions of others. He uses them to carry out his contractual obligation (4). However, it differs from it in the issue of determining the source of this guarantee. At a time when the implicit guarantee theory is the implicit will of the two contracting parties as a source of this guarantee, the legal guarantee theory is a source 1 - taking into consideration that when you evaluate this theory, we do not look at the legal texts that established such a guarantee 4 - Looking at Muhammad Hanoun Jaafar, the previous source, p. 212. Consider
the same meaning d. Atef Al-Naqeeb, the previous source. Mr 110. The third requirement legal guarantee theory The first section: The content of the legal guarantee theory This theory shares with the previous implicit guarantee theory in that it refers the basis of contractual liability for the actions of others to the existence of a guarantee that obliges the debtor to bear the consequences of harmful acts issued by the persons who
This guarantee is the law itself, where the law recognizes the guarantee of the actions of others and imposes
them on the person of the debtor (5).
The legal basis that justifies the contractual liability of the debtor for the act of a third party is the legal guarantee stipulated by the law, according to which the debtor is liable for the harmful act of a third party that he uses in Execution of the contractual obligation (1).
Because this theory establishes liability on the basis of the guarantee borrowed in the contract with complete detachment from the provisions of the law. 2 - see d. Muhammad Hanoun Jaafar, the previous source, p. 212.
L - See Abbas al-Sarraf, the previous source, p. 109.

E - See Abbas Al-Sarraf, previous source, p. 109.
Those who advocate this theory point out that even for those laws that did not provide for such a guarantee, considerations of the public interest and the achievement of justice between the contracting parties are sufficient to acknowledge the existence of this guarantee, as they are real and important considerations in
the eyes of the civil legislator (2).
The Egyptian jurist (Bahgat Al-Badawi) is one of the most prominent advocates of adopting this theory as a basis for contractual responsibility for the actions of others, as he says in this regard (As for the basis of this responsibility, some saw his response to the idea of an implicit guarantee. He may not invoke their act and promise him a foreign reason that absolves him of responsibility for the non-performance and an objection to this principle except by making this guarantee voluntarily by the debtor's acceptance of it tacitly, as this acceptance cannot be extracted in all cases. (3).
In sum, the basis on which this theory is based is represented by the text of the law. It is the law that compels the debtor to bear the responsibility resulting from the breach of those who sought help from them or
replaced them in the implementation of the obligation, and that
No fault was issued by the debtor. Second subsection: Evaluation of the legal guarantee theory in light of the responsibility of the lessor or Lessee Nodal for the act of others
A number of criticisms were directed at this theory, especially from the side of jurisprudence, whose laws do not contain texts that refer to the contractual responsibility for the actions of others.
It was said in the right of this theory that there is no room to talk about it in light of laws that do not contain a text that establishes contractual responsibility for the actions of others, so it was said that it is based on imagination and unrealistic assumptions, as is the case with the theory of implicit guarantee (4).
It was also said that saying that considerations of justice and stability of transactions are sufficient to acknowledge this responsibility is a confiscation of the will of the civil legislator, as well as that these economic and commercial considerations, no matter how strong they are, are
1 - see d. Yassin Al-Jubouri, Al-Mabsout in Explanation of Civil Law, Part One, Sources of Personal Rights, previous source, p. 342. 2 - see d. Yassin al-Jubouri, the previous source, pg. 78. Consider the same meaning d. Muhammad Hanoun Jaafar, previous source, p. 213. 3 - d. Bahjat al-Badawi, Paris Letter, 1929, p. 61, referred to by Abbas al-Sarraf, previous source, p. 110. 4 - see d. Abdul Baqi Mahmoud Al-Sudani, previous source, p.
229.
It is not sufficient to create a legal basis and therefore cannot be relied upon on its own to accept the general principle of responsibility Nodal for the act of others (1).
In turn, we believe that this theory is more acceptable than the previous theories, and we will explain our opinion in detail in next requirement.
Through our research on the issue of contractual liability for the actions of others in the lease contract, we came to a number of The results and suggestions

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are presented successively

CONCLUSION: First: the results

1- The concept of a third party who is responsible for the actions of the lessor and the lessee differs from the concept of third parties within the framework of a relativistic rule following the lease contract, while the concept of third parties within the framework of a relativistic rule following the lease contract does not include the general successor, the private successor, and the ordinary creditors of the lessor or lessee if it is transferred to them as a result of the contract. We find that the concept of third parties within the framework of the contractual liability of the parties to the lease contract for breaching the lease contract is more extensive, as it includes everyone who was not a party to the lease contract and his relationship with the lessor or lessee enabled him to breach the obligations arising from this contract. From the concept of others within the framework of a relativity base effect of the lease. 2- It is not required that the third party who is asked about the action of the lessor or the lessee should carry out their work under the supervision and control of the lessor or the lessee. Rather, in many cases we find that there is no subordination relationship between the third party and the person responsible for his action. Therefore, you have reservations about using the term subordinate to denote the third party who is asking About the debtor in the context of contractual liability for the act of others, it is possible to use this term (subordinate) in the context of tort liability for the act of others (the liability of the subordinate for the actions of his subordinate), but in the context of contractual liability for the act of others, we prefer to use (the third for whom the debtor is asked) This expression is more accurate and more comprehensive than the expression of the subordinate, and we found that a part of jurisprudence mixed these two expressions and used the term subordinate within the framework of the contractual responsibility for the actions of others, and it became clear to us that this approach is inaccurate. 3- The theories that were put forward to establish the contractual liability of the debtor for the actions of others are generally classified into two groups: the first group is based on the
debtor's error (the lessor or the lessee) and the second group does not
1 - See Abbas al-Sarraf. Previous source, p. 111. It is based on the debtor's error, and we noticed that the second group is closer to the logic of contractual
liability for do others. 4- The civil laws of different countries have different positions regarding their containing an explicit text that establishes the general principle of contractual responsibility for the actions of others in general. The Swiss civil law as well as the civil law of what was called the People's Democratic Republic of Yemen, and the second group did not mention and its civil law did not contain a text explicitly stating the general principle of contractual liability for the act of others, but its civil law contained some special applications of contractual liability for the act of others, such as the responsibility of the lessee for The act of those who share the dwelling, as did the French Civil Code in Article (1735), and the third group referred to the general principle of contractual responsibility for the actions of others, but indirectly, such as the Egyptian Civil Code in Article (2/217), as well as the Iraqi Civil Code in Article (2/259).). 5- Contractual liability for the act of third parties cannot be raised in the lease contract during the negotiation stage
Likewise, there is no room to talk about it after the lease contract ends. 6- It is stipulated in the lease contract that it is valid in order for this responsibility to rise. a decade. But it is possible to rise tort liability for the act
of others if the conditions are met.

SECOND: SUGGESTIONS

1- Doctrinal responsibility for the actions of others in general has become a given nowadays. Its existence is no longer a controversial issue. Therefore, we believe that the presence of a text that refers indirectly to this responsibility is not sufficient. The absence of an explicit text that refers to this responsibility directly is a legislative deficiency. It is high time to add this text to our civil law, and in turn, we suggest to the civil legislator to add a text explicitly referring to the debtor's contractual responsibility for the act of others who is not considered alien to him, and we believe that the appropriate place for such a text is to be as a second paragraph to the text of Article (168). 2- Although Article (2/259) referred indirectly to the general principle of contractual liability for the actions of others, we believe that this Article has been marred by some shortcomings, given that it indicates that the debtor has the right to stipulate that he be exempted from fraud and serious error that is issued From people he uses to carry out his commitment and it was
The phrase (he uses them to carry out his obligation) has raised a jurisprudential dispute, as we have seen, as a juristic trend has gone to that this expression restricts the ruling to (assistant) only on the grounds that this category is used by the debtor in the implementation of his obligation and therefore the rule of this article is limited to assistants without Substitutes and other categories about which the debtor is contractually questioned, although the reason for the judgment is also available to them. Therefore, we suggest
reformulating the second paragraph.

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From Article (259). 3- When comparing the Iraqi civil law with the French civil law, we found that the latter contains a text that explicitly indicates the responsibility of the tenant for the actions of the members of the house, or in the words of the French Civil Code in Article (1735) (who share the housing), so we suggest that it states The Iraqi Civil Code expressly provides for such a guarantee, and we believe that the best place in which the legislator can provide for such a guarantee is the text of the first paragraph of Article (764).

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