Publishing Contract

In the Jordanian Law of the Author’s Right protection

Written by:

Dr. Mohammad Khalil Yousif Abu Baker

Assistant Professor

Dean of the Faculty of Law

Head of the Department of Law

Al-Zaytoonah Private University

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**Introduction:**

The author has the right to exploit the work he has written financially. He has also the right to do that through publishing this work - whether it was artistic, literary, or scientific –by himself. The author can transmit his work to the audience directly. He can do that through presenting it to the audience directly, reciting it publicly, playing music, acting, or presenting it publicly, or through presenting it through radio, amplifiers, or television. The author can also transmit his work to the audience indirectly. He can do that through copying, carving, typing, drawing, photocopying, translation or through art.

There is another mean which the author resort to, in order to public his work and exploit it financially. This mean includes referring to a publisher through a publishing contract. In such case, the publisher is the one who perform such a task. The publisher usually performs the works of typing, distribution, offering to sell, publishing the work, or presenting it through theatrical exhibition, acting or through public performance. Upon that, the author will assign his financial rights in these works to the publisher, without assigning his moral right or future production, due to the Inadmissibility of assigning such rights. The form of the publishing contract can be in the form of a selling contract. Through such contract, the author assign his financial right unlimitedly. The publisher will also print this work unlimited copies. Then he’ll publish and distribute these copies, in addition to publishing them electronically and selling them for his own benefit. This process is called selling the right of exploiting the work, in exchange for paying the author a certain amount of money that is agreed upon with the publisher. This amount of money can be paid through one single payment or several payments.

Another option is for the author to assign his financial right limitedly, in exchange for the publisher’s printing a limited copies and the author will sell them through the publisher for his own benefit. In such case, the publisher is entitled to print, distribute, and sell these copies, in addition to publishing them electronically in exchange for a certain amount of money that is paid to the author through one single payment or through installments.

**As for the second form, the publishing contract can be in the form of a contracting contract:**

In such case, the author will reserve his right to exploit his work financially, provided that the publisher will print the work at the expense of the author, in addition to distributing, publishing it and offering it for sale or translating it from the author’s money. In addition, the right to print belongs to the author. The publisher will present it to audience as we said, and he will distribute, sell it and publish it electronically. The publisher will get paid a certain amount of money for each copy sold. In such case, this contract is called a contracting contract, in which the work’s author is considered as the employer, and the publisher is considered as the contractor.

In addition, the publisher will entrust several authors. Each author will be entrusted to write an article in a book, magazine or any other thing. In exchange for every part, the publisher will pay each author a certain amount of money for his work. In this case, we are witnessing a contracting contract, in which the publisher is considered as the employer, and the author is considered as the contractor. This contract – whether it was a selling contract or a contracting contract - will keep maintaining its characteristic as a publishing contract.

As for the third form, the publishing contract will be in the form of partnership contract:

This contract is based on having a shared responsibility in publishing the book between the author and the publisher. In such case, each one of them will participate in printing, publishing and distributing the agreed upon work or translating it. As for the publisher, he will participate in printing, publishing and distributing, in addition to publishing it electronically. As for the author, he will participate through his work. In such case, the copies ownership will belong to the partners, and these copies shall be exploited. Each partner will have a certain percentage in profit and loss. Publishing, distribution and selling will be for the account of the company. This form is one of the publishing contract’s forms too. It will also keep maintaining its characteristic as a publishing contract.

As for the fourth form of the publishing contract’s forms, it is the employment contract, which was laid down by the Jordanian law of the author’s right protection in article (6) and article (20) from the Jordanian Labor Law. These articles identify the Intellectual Property Rights for the employer and the employee through a written agreement between them. They will also identify the financial exploitation of the work.

As for the fifth form of the publishing contract’s forms, it is publishing through theater:

Theatrical exhibition contract: Through such contracts, the play’s author, movie’s director, or the musical piece composer may resort to perform these works in public. That can be done through presenting these works through theater, cinema, radio, or TV.

A contract will be concluded with the owner of the theater, radio, or TV channel to be transmitted to the audience. Thus, an agreement will be concluded between the author and the owner of the theater or any other place, that the author will be responsible for all the expenses in exchange for an earning to the author and remuneration for the theater owner, and it might be a be a certain percentage.

The author might offer his theatrical, musical, or singing band to the owner of the theater, cinema, radio, or TV channel for public performance. The author will get paid a certain lump sum or a certain percentage from the earnings.

Due to having these forms of publishing contracts, this subject has gained significance. That is because this contract raises many problematic issues between the author and the publisher, concerning the contract’s nature, the obligations of the author and the publisher, the termination of the contract, and the violation of it.

In addition, all the laws that protect the author’s right did not set rules for concluding this contact. As we can see, many of these contracts opened a room for dispute and disagreement between the author and the publishers. Thus, it is necessary to set rules and provisions for this contract due the spread and increase in such contracts, especially the electronic publishing contracts.

This contract raises other problematic issues, which are the rules that has been assigned by the author to the publisher, the regional limits for this assignation, and the contract’s duration. These problematic issues can also include the case in which the publisher doesn’t print, publish, distribute, and offer for sale, and setting the remuneration.

These problematic issues may include future rights and their effect on the contract, the publisher’s right in modifying the work, the penalty for violating the contract, indemnity, and the way the author publish his name on the work whether it was a pseudonym or wasn’t mentioned.

These problematic issues are still considered controversial. In addition, many of these problematic issues the Jordanian legislator did not tackle in the Jordanian law of the author’s right protection.

In addition, associations have an important role in protecting the authors’ rights and facilitating the practicing of these rights. Thus, it is very necessary to establish associations for the aim of protecting the authors’ rights.

I resorted to choosing the analytical method for the law provisions of the Jordanian law of the author’s right protection. That was done with the aid of doctrinal references, and law precedents in some countries due to the scarceness of court judgment which were issued in Jordan concerning this subject.

This analytical method was adopted because it provides us with a clear definite idea about the subject. This method also suits the subject through highlighting the subject’s elements and tackling them.

**This research includes the following:**

Introduction: It dealt with the research’s significance, its problematic issues, and the method that was adopted in this research.

The research also included two chapters. The first chapter dealt with the definition of the publishing contract and its elements. This chapter included two sections. The first section included the publishing contract definition, characteristics and forms. This section was divided into two parts. The first part was represented in the characteristic of the publishing contract. The second part which was included in the section was represented in the forms of the publishing contract.

The first chapter included a second section, which dealt with the: elements of the publishing contract and how it is concluded. This section included two parts. The first part was represented in the elements of the publishing contract, while the second part was represented in the provisions that are related to concluding it and verification.

As for the second chapter, it dealt with the impacts of the publishing contract and its termination. This chapter included two sections. The first section dealt with the impacts of the publishing contract and it included two parts. The first part was represented in the author’s obligations. As for the second part, it was represented in the publisher’s obligations.

As for the second section, it dealt with the termination of the publishing contract, and the liability resulting from violating the contract.

This section was divided into two parts. The first part included the termination of the publishing contract due to the end of its period and canceling it.

The second part: The liability resulting from violating the contract.

Then, the researcher mentioned the results, recommendations, and the list of references.

**The First Chapter**

**Definition of the publishing contract and its elements**

The law the Jordanian author’s right protection has permitted the author to practice his rights of exploiting his work financially. However, that is required by making that written and by identifying the underlying rights, the contract’s limits and purpose, and the duration and place of exploitation.[[1]](#footnote-2)

In addition, it should be noted that the author usually practices his financial rights under the publishing contract, despite the fact that the Jordanian legislator did not mention the forms of this contract, through which the author assign his rights to others.

Through this chapter, I will mention through the first section the publishing contract definition, characteristics, and forms in addition to mentioning how it differs from other contracts. Through the second section, I will be mentioning the elements of the publishing contract.

**The first section**

**The publishing contract definition, characteristics, forms and aspects that make it differ from other contracts**

**The First Part**

**The publishing contract definition and characteristics**

1. **The publishing contract definition**

The publishing contract has a special nature. That is because the author entrust others to publish artistic, literary, or scientific works, and usually the other party is the publisher. The author concludes a contract with the publisher within the conditions that have been set by the law, and that is what we call the “publishing contract”.

The publishing contract is the “agreement between the author and the publisher, which in accordance to it, the author will commit himself to submit his intellectual product to the publisher. The publisher will commit himself to printing this product at his own expense and to distributing it under his own liability”.[[2]](#footnote-3)

According to article (13) from the Jordanian law of the author’s right protection, and according to article (17) from the Lebanese law of artistic and literary intellectual property protection, we can define the publishing contract as a “contract concluded between the author and the publisher, provided that the publisher shall print the work and publish it to be bought by the audience, in accordance with the way that was agreed upon in the contract, with identifying the extension of the contract, its purpose, and duration and place of exploitation, in exchange for a certain percentage of the earnings that is paid to the author by the publisher”[[3]](#footnote-4).

It has been also defined as being a “contract that is concluded by author or by anyone who acquired his rights, and which upon he assign his work –his right of production - under certain conditions to a contractor who is called a “publisher, or the publisher might create a number of copies on behalf the author, in the purpose of guaranteeing their distribution and publication”.[[4]](#footnote-5)

The French law has defined the publishing contract as being a “contract which upon the author or his heirs assign the production right to the publisher or the right to produce a certain number of the work, provided that the publisher shall commit himself to printing and advertising”.[[5]](#footnote-6)

The Swiss law has defined the publishing contract as being a “contract which upon the artistic or literary work’s author or his heir commit himself/ themselves to submit this work to the publisher, and upon this contract the publisher shall commit himself to publishing this work”[[6]](#footnote-7)

Based on that, I believe that the publishing contract shall be defined as “a contract which upon the author – or one of his heirs - assign his work that he has written it partly or in full to another person called the publisher and under certain conditions. That is provided that the one who was the work assigned to shall commit himself to copying, producing, or presenting the work, and that shall happen in exchange for paying the author a certain amount of money”.

In the light of the above, the Jordanian legislator has required for the publishing contract to be written and that it shall include the underlying right. It also required it to identify its limits, purposes, and time and place of exploitation. That was mentioned in the Egyptian law[[7]](#footnote-8).

Article (73) and article (17) from the Lebanese law of artistic and literary intellectual property protection – state that: “the contracts of exploiting the author’s financial rights or using them – whatever their subject was – shall be concluded in writing, otherwise they would be considered invalid to both parties; the author and the exploiter of his work or innovation. Such contracts shall be mentioning the underling rights of the contract in details, with specifying their place and time. Such contracts shall include a mandatory condition about sharing a certain percentage from the earnings with the author for the sales and exploitations operations. If such contracts did not set a specific duration, then the duration of such contracts shall be considered as being for ten years starting from the date in which the contract was concluded in”.[[8]](#footnote-9)

In this contact, it must be mentioned explicitly the assigned rights, their nature, the regional limits for assignation, its duration and the party that the contract has been concluded with. That is provided that the assignee shall publish the work and distribute it to the public. The contract shall include the interests of the assigner with identifying the rate. It shall also include if the work was renounced partly or fully with identifying ways of exploiting the work. The contract shall also include the penalty resulting from violating the contract in case the publisher violate the contract. The contract shall also include the right to compensation, and to cancelling the contract. In all cases and situations, the contracts, or authorizations shall not include the author’s future works. In addition, article No (9) from the Arab agreement for the protection of the author’s rights and related rights has stated that “it is required for the author’s assignations for one of his rights to be concluded in a writing”.[[9]](#footnote-10)

Renouncing the artistic, literary or scientific work from the author to the publisher shall be done upon this contract. That also includes artistic works that will be presented front of an audience. It also includes plays, public performance, and practical works”.

“It is usually permitted to conclude the contracts that are concerned with assigning these rights in any form that both parties may desire. However, some courtiers may require having a written contract for assigning the rights or for transferring the money that concern such rights”.[[10]](#footnote-11)

It is usually identified for these contracts a specific duration, in addition to the identification of assigned rights with listing them. They also identify the geographical domain for such contracts in which the work will be used in, in addition to identifying the rate that shall be paid, the liabilities of each party and methods of settling dispute. This type of contract is subjected to the codes of the civil law for disputes, which include the widest rules for contracts, and to the generality of the Jordanian Civil law. It is also necessary to set a specific duration for such contracts. That is in the aim of giving the author an opportunity to renegotiate to get better benefits. Usually, the underlying rights of such contracts are transferred to the heirs after the death of the author during their period of validity. I believe that the Jordanian legislators should set a specific duration for the publishing contract that shall not be exceeded, provided that in case the contract did not set duration for it, then this duration shall be set according to the duration that has been already set by the law.

1. **Characteristics of the publishing contract**

**The publishing contract has special characteristics that make it differ from other contracts:**

1. **It is binding for both parties:** That means that there are consequent liabilities upon both parties; the author and the publisher. For instance, the author will commit himself to renouncing his artistic, literary or scientific work to the publisher, with the publisher committing himself to publishing the work according the form that was agreed upon in the contract.
2. **It is a** **consensual contract:** The publishing contract should be a consensual contract, which shall be concluded upon offer and acceptance. Thus, the publishing contract shall be considered as being concluded and having consequent legal implications, upon having the acceptance of both parties that fulfill the legal conditions. However, the legislator of the Jordanian law has stated that it is required for such contracts to be in concluded in writing and this condition must be fulfilled. This latter condition is a condition for verification in the Jordanian law, and it is not a condition for concluding the contract.
3. **It is a compensatory contract:** It means that both of the contract parties will get paid for their efforts. For instance, the author will get paid from the publisher, either through a lump sum, revenue by installments or through a certain percentage from the work’s sales. As for the publisher, he will get paid the sales money of the work he is publishing, distributing or selling.

As we can see, articles (10)[[11]](#footnote-12)from the Arab agreement of protecting the author’s rights and related rights has stated: “The author has the right to get paid in exchange for assignation of one or more of his rights to exploit his work on the basis of sharing a certain percent from the earnings that result from exploiting the work. He is also entitled to conclude a contract on the basis of a lump sum or to combine between both”.

1. **It is a reciprocal contract:** It means that both of the contract parties have liabilities towards one another upon this contract. Each party in this contract has liabilities and rights. Each party shall commit himself to what’s required from him according to the contract. Violating these liabilities and rights means that the concerned party shall compensate the affected party. The contract may be cancelled upon committing one of the parties any violation in what was required from him to do which was stated in the contract.
2. **It is a mixed contract:** Since one of the contract parties is the author, then it is considered a civil contract from the author’s perspective and it is considered a commercial contract from the publisher’s perspective, and due to the methods of verification that are subsequent to this contract. Since the author is considered as a civilian, then the lawsuit that he’ll file for shall be subjected to the methods of and rules of verification of the civil law. As for the publisher, the lawsuit that he’ll file for shall be considered as subjected to the verification methods that regards business men, and which are stated in the commercial law.
3. **This is a configurable contract:** The Jordanian Law of the author’s right protection – in article number (13) which tackles the issue of verification - has required for such contracts to be concluded in writing. In the Jordanian law, that is considered as a condition for verification not for concluding the contract.[[12]](#footnote-13)

However, the Lebanese legislator - in article number (17) from the Lebanese law of artistic and literary intellectual property protection – has stated that such contracts shall be considered as being invalid in case they were not concluded in writing. Thus, such contracts can’t be concluded verbally[[13]](#footnote-14).

It is required to conclude the publishing contracts in writing, for the purpose of protecting the rights of the publisher and the author. That is because there are conditions that must be included in such contracts. In addition, writing is required to verify the contract that is concluded between both parties, because such contracts may have been set for a long period of time. That was stated in article no (9) from the Arab agreement of protecting the author’s rights and related rights.

“The author’s assignation of any of his right shall be concluded in writing”[[14]](#footnote-15).

**E- It is a specified contract:** Each party of the publishing contract parties shall determine the duration of the publishing contract. As we can see, the Jordanian legislator – in article (13) / 1 – has stated that both parties must identify the period of exploiting this contract”.[[15]](#footnote-16)

As for the Lebanese legislator, he has set the duration in article No. (17). He has stated that: If these contracts did not set a specific duration, then it shall be considered as being set for a duration of ten years only, starting from the date of signing the contract. This contract shall also identify the liabilities of each party; the author and the publisher, including the rate, and the publishing rights. The contract shall also identify its limits, purposes, and place – whether inside or outside the provision. It shall also include the rights of exploitation, printing, publishing, distribution, selling and offering for sale. It shall include the right of practicing these rights that were assigned to the publisher, except for the moral rights”.[[16]](#footnote-17)

Article (11) from the Arab agreement of protecting the author’s rights and related rights has stated that: “in case the other party did not exploit the work within the period that was agreed upon, or within one complete calendar year, then the author is entitled to terminate the contract, without violating the right of compensation if there was a need for that”.[[17]](#footnote-18)

**F-This contract shall be subjected to the provision of the law of the author’s right protection:** The terms of this contract are subjected to of the law of the author’s right protection. That includes the liabilities of both; the author and the publisher. That also includes the contract’s compensation in case the contract was violated. It shall also include the contract liabilities, tort, and insurance for the financial and moral damages that might affect one of the contract’s parties. In case there wasn’t a specific term, the provisions of the Jordanian civil law shall be in force.

**The second part**

**Forms of the publishing contract**

There are many forms for the publishing contract currently, which the author might resort to for the purpose of assigning his financial right, in the aim of publishing his work between individual from the audience. There are multiple forms of this contract and methods of concluding it, which both parties may resort to, in the aim of assigning their financial rights, but not their moral rights which can’t be assigned. These forms are the following:

1. **The selling contract:**

The first form of this contract is: the author will assign his financial right to the author unlimitedly. That shall include the publisher’s rights in printing, distributing, and publishing the work, in addition to publishing it electrically, offering it for sale, importing and exporting it. That shall also include the publisher’s right in selling the work at his own expense, without specifying the number of the copies. In other words, that means that the author will sell his right in exploiting his work, in exchange for a certain amount of money that has been agreed upon, which shall be paid through one installment or through several ones.

This contract is binding and consensual for both parties. In this contract, the author shall renounce his right in exploiting his work to the publisher in exchange for a certain amount of money, and that is called a “selling contract”.

The second form of this contract is the one in which the author assign his financial right of his work to the author limitedly. That shall be done in exchange for the publisher printing, distributing, and publishing, importing and exporting the agreed upon work a limited copies, in addition to offering these copies for sale and publishing them electronically. That shall be done in exchange for a specific amount of money that is paid from the publisher to the author, whether through one installment or through several ones.

This contract shall be considered as being consensual and binding for both parties. The author shall not renounce his moral right through such contract.

1. **Contracting contract:**

Article (780) from the Jordanian civil law has defined the contracting contract as being a: “a contract in which one of its parties shall commit himself to performing a work or giving something in exchange for a certain amount of money that the other party shall commit himself to paying it”.[[18]](#footnote-19)

This contract shall be considered as being consensual and binding for both parties. In such contracts, the author shall reserve his right to exploiting his work financially, and he shall entrust the publisher to print the work at the own expense of the author. The publisher shall sell, distribute and publish the work, in addition to offering it for sale and publishing it electronically. Printing and the author’s money belong to the author. The publisher will sell and distribute to the public, in exchange the publisher shall get paid a certain percent per each sold copy. In this case, the contract shall be sold as a contracting contract, in which the author will be considered as the owner, while the publisher will be considered as the contractor.

That is considered one of the forms of the contracting contract.

However, there is another form of the contracting contract. Through this form, the publisher will entrust an author - or several authors –to write an article in a book, journal or other. In exchange that, each author will get paid a certain amount of money for the work he has done. In this case, the author will be considered as the contractor, and the publisher will be considered as the owner.

In both forms, the contract shall stay as being a publishing contract, and keep being characterized as the publishing contract.

1. **Partnership contract**

In this contract, the author will share the right of exploiting the work with the publisher. That shall be done through sharing the right to print, distribute, publish, sell and expenses by both parties. The exploited item (object) is the work. Each partner has a shared percentage in loss and profit that is agreed upon.

“If the author wanted to share with the publisher. Then, the latter shall participate in profit and loss, which may occur. In such case, the contract shall be considered as a company and in the following form: The author shall participate through his work and the publisher shall participate through the copies’ expenses for instance. In this case, the copies will be under the company’s ownership and each partner shall have a certain percentage in profit and loss that is agreed upon”. [[19]](#footnote-20)

However, the French law considers this contract as a publishing contract in article (2, 132) in clause one. Upon it, the author – or one of his heirs – shall entrust the publisher to publishing the work within certain measurements and within limited copies, in addition to publishing and distributing the copies. That is provided that the profits and loss shall be shared according to the agreed upon percentages. That is similar to a limited partnership company”[[20]](#footnote-21)

1. **Employment contract:**

The Jordanian law of the author’s right protection in article (6) has stated the rights of the employee who comes up with an innovation in the field of intellectual property protection. In such case, the innovation will be considered as the property of the author, unless there has been an agreement on something other than that”.[[21]](#footnote-22)

Article (20) from the Jordanian labor law states that: “the intellectual properties rights are identified for the employer and the employee through a written agreement that is concluded by both”[[22]](#footnote-23)

Article (5, 8) from the Jordanian labor law has defined the employment contract as being a: “contract in which one of its parties commit himself to performing a work for the other party under his supervision, or administration in exchange for a certain amount of money”[[23]](#footnote-24). The parties in the employment contract are the author (the employee) and the publisher (the employer).

The work is the artistic, literary or scientific innovation. An example on that is the newspaper, in which its authors commit themselves to preparing and editing articles. Another example on that is the engineer who commits himself to making designs for the engineering company in exchange for a remuneration that has been agreed upon.

The publisher will publish these works and benefit from them, and the employer shall pay the author the remuneration that has been agreed upon.

I believe that such contracts are considered one of the forms of the publishing contracts, and does not exceed that.

1. **Theatrical exhibition contract:**

The author of the theatrical work, the director of the movie, or the composer of a musical work may resort to one of the forms of exploiting his work financially, which is the public performance for such works and presenting it to the audience. The author has the right to perform musical works and present it to the audience, whether through playing music, or through a musical signature for the voice. The author has the right of performing plays publicly through theatrical acting, or through public reading for artistic or literary works, such as reciting poems front of an audience or through theater. He has the right to present that publicly to the audience through TV, radio, or cinema.

In such works, the author will conclude a contract with the owner of the theater, the cinema, radio, or TV channel to present these works front of an audience in public. That is called a theatrical exhibition contract. This contract can be in the form of a contracting contract or in the form of contract of sale.

The theatrical exhibition contract may be in the form of a contracting contract, in which the author will conclude a contract with the theater’s owner. Through such contract, the author will commit himself to present his artistic or literary work on stage, and to paying all the expense at his cost. The author shall also receive the earnings, in exchange for paying the theater’s owner a certain amount of money, which is agreed upon by both parties, or in exchange for paying him a certain percent from the earnings.

In such case, the author shall assign his artistic or literary work to the theater’s owner, to that the latter would commit himself to paying all expenses, and expenditures. The latter shall also receive the earnings in exchange for paying a certain amount of money to the author. In such case, that is considered as a contract of sale, which sells the right of the author in publishing his work through theater.

Sometimes, the theater’s owner might ask the author to come up with a literary or artistic work, or a piece of music, or to sing, act, or perform a play to be presented front of an audience. Thus, in such case, this contract will be in the form of a contracting contract, in which the author is the contractor, and the owner of the theater is the employer.

Both of the author and the contractor or the theater’s owner are required to identify a specific duration for this contract, and the contract limits in usage and exploitation for the author’s right. They should also identify the right of renouncing to others and agree on it, and that the contract’s limits shall not be crossed. In addition, it is required to conclude this contract in writing. The contract’s profits and remunerations shall be mentioned, in addition to mentioning that both parties shall not cross the contract limits. The contract shall also mention that both parties shall preserve the author’s financial rights and respect his moral rights.

The contract shall also mention agreeing on the author’s submission of the required work to the owner of the theater in the specified time, which has been agreed upon. The contract shall also mention the number of times of performing and the work’s retrieval. The contract shall mention the obligation of the owner of the theater, cinema, radio channel, or TV channel to public performance, acting and presenting.

That shall be done within the specific period that has been agreed upon, and efforts shall be exerted to make the work succeed. Efforts can be exerted through assigning people who are able to perform the work. Efforts can be also exerted through staying committed to paying the amounts of money or the earnings that have been agreed upon in contract.

“The author – as being owner of his work – has the right to exploit or dispose his work, in addition to the right of assigning his financial rights whether partially or in full. When the author exploit his work, that is usually done through contracts, which he concludes with others, such as the printing and publishing contract, presenting or acting contract, audio visual production contract, audio-visual adaptation, and others”[[24]](#footnote-25)

**The Second Section**

**The Publishing Contract Elements and Concluding It**

In this research, I will be dealing with the publishing contract elements, and the provisions that is related to concluding it, in addition to the contracts forms and verification. This section includes two parts, which are the following:

**The First Part:** Elements of the publishing contract

**The Second Part:** Concluding and verification

**The First Part**

**Elements of the Publishing Contract**

The publishing contracts – whatever their forms were – have common elements according to the general codes of any contract. These elements are: consent, object, and reason (purpose). Consent in the publishing contract is linked with offer and acceptance. As for the object of the publishing contract, it refers to the scientific, literary, or artistic work that has been agreed upon by both parties; the publisher and the author, and it is considered as the contract’s topic. The third element is the remuneration. Remuneration differs between the author and the publisher, depending on the contract form. We will be dealing with the three elements of the publishing contract, in the following way:-

1. **The first element: Consent:**

The parties of the publishing contract are the author and the publisher. The publishing contract is a consensual contract, which is concluded through offer and acceptance. The Jordanian legislator – in article (13) – has required both parties to conclude this contract in writing, which is a condition for verification. However, article No (17)[[25]](#footnote-26) from the Lebanese law for artistic and literary intellectual property protection has stated that the publishing contract shall be concluded in writing, otherwise it would considered as invalid for both parties. The condition of writing in the Jordanian law is for the purpose of verifying the contract. It can’t be verified for both parties, unless it was written, and it is not a condition for concluding it.

The Lebanese legislator required for the publishing contract to be in writing as a condition for concluding it, otherwise it would be considered as invalid. Thus, this condition is considered as configurable, which is added to the elements of the contract in the Lebanese law. That is done in the purpose of preserving the moral and financial rights of the author. It is also done in the purpose of identifying the renounced rights, the contract’s period, limits and the liabilities of both; the author and the publisher.

Consent is a necessary condition for concluding the publishing contract, and both wills must meet consensually. That is done through agreeing on the essential and detailed issues of the contract. Essential issues include the contract’s nature, which is a publishing contract, in addition to its topic, the agreed upon work, renounced rights, remuneration, and duration. As for the detailed issues, they include the issues that are related to submission, correction procedures, rehearsals, number of copies, method of performing, renounced rights and the contract’s limits.

To obtain consent, it is required for both parties shall be eligible for that. They shall also express their consent with their free will, without any eligibility or consent default. That is a condition for concluding the contract. The validity of the contract depends on being free from consent defaults, which are compulsion, boosting, error, and eligibility. In the Jordanian civil law, article (430) has stated: “Each person who is considered an adult, and possess healthy mental abilities and was not denied access for his property, and he has full eligibility to perform his civil rights. The age of adulthood is eighteen calendar year”[[26]](#footnote-27).

Consent in the publishing right – by the author and the publisher – is only applied upon the assignation of the financial rights of the author, and its topic is the financial right only. Thus, the author’s moral right will stay considered as the right of the author, which can’t be the topic of the contract and may not be assigned.

1. **The contract’s Object (the topic):**

The second elements in the publishing contract are the scientific, literary or artistic work. It is considered as the contract’s object or topic, regardless to what field it belonged, whether the field of science, art, literature, or anything else. That also includes the translation of the work”.

The artistic works – which may be the contract’s object or topic – may include drawings, engrave, photos, sculpture, songs, plays, dances, acting, movies, musical piece, and ornaments.

The artistic works – which may be the contract’s object or topic – may include books, brochures, verbal works, lectures, lectures, and their translations. As for the scientific works, they include scientific books.

Usually, the author and the publisher identify the agreed upon work, which has been renounced upon the contract. They also identify how the work will be used, its area, limits, and duration. If it was a book, they will identify number of copies, and how they will be published, distributed, imported and exported and offered for sale. If it was a play, they will identify the number of times of presenting it, and the times in which it will be presented in.

As for movies, photos and other types of works, they will identify the object that shall be renounced, in addition to the form that is agreed upon in the work. They shall also identify the price in which the object will be sold upon or the earning for each party.

In case, the form and price were not identified, then that shall be subjected to the tradition. Renouncing an artistic work does not mean that the publisher has the right to exploit the work in something other than what has been specified: “The publisher is not entitled to exploit the work – which is the contract’s object – in anything other than what has been agreed upon. Thus, he is not entitled to transfer the work into a theatrical work. He is also not entitled to translate, adjust, or edit the work without taking the permission of its author”.[[27]](#footnote-28)

The contract and concluding it shall not include future issues, but they may contract upon issues that may occur in the future, in a field other than the author’s right.

Article (14) from the Jordanian law of the author’s right protection has stated that: “The author’s dispose in his future intellectual property shall be considered invalid”.[[28]](#footnote-29)

Article No (18) from the Lebanese law of artistic and literary intellectual property protection has stated that: “Discussing future works in advance shall be considered as being invalid”.[[29]](#footnote-30)

In addition, article (153) from the Egyptian law of protecting the author’s right and related rights has stated that: “Every act of the author’s act in his future intellectual property shall be considered as completely as being invalid”.[[30]](#footnote-31) Based on that, the action of disposing the future intellectual property of the author shall be considered as being invalid”.

1. **Remuneration:**

It is the third element of the publishing contract, and it shall differ depending on the form of the contract. It should be noted that the forms of the publishing contract have been mentioned earlier.

Renouncing the work – in the form of a contract of sale –means that the publisher shall pay the author an amount of money that has been agreed upon, whether through one lump sum installment or through several installments. That is in addition to a number of copies that shall be given to the author as a gift.

If renouncing the work to the publisher is limited to a number of editions, then the remuneration shall be identified through a certain percent of the sold books and editions. The contract may be in the form of a contracting contract, in which the author concludes a contract with the publisher through agreeing on a certain amount of money in exchange for selling. If the contract was an employment contract, then remuneration shall be a certain lump sum, or an amount of money through installments.

If it was a theatrical contract or a public performance, then it shall be through earnings. Article (17) from the Lebanese law of artistic and literary intellectual property protection has stated that “it is obligatory for the author to share a certain percent of the earnings for the operations of exploitation and selling”.[[31]](#footnote-32)

The lump sum may be set be the parties of the contract, such as books and newspapers.

As for the remuneration through percent, it can be applied in audio-visual works, theatrical works, and public performance. It may be applied upon written works, if there was a percent of earnings from the sold books.

Article (10) from the Arab agreement of protecting the author’s rights and related rights has stated that: “the author is entitled to get paid an amount of money in exchange for renouncing one or more from his rights of exploiting his work on the basis of sharing a percentage from the earnings that result from the exploitation. It is also permitted to conclude the contract on the basis of a lump sum or through combining between both”.[[32]](#footnote-33)

**The second part**

**Provisions that concern concluding and verification of the publishing contract**

Article (13) from the Jordanian law of the author’s right protection has required to conclude this contract in writing. It also required that this contract shall identify every underlying contract implicitly and in details. It also required to identify its limits, purposes, duration of exploitation, and place. In other words, the Jordanian legislator has required writing, and did not specify if the writing is a condition for concluding or for verification.

As for the Lebanese legislator, he required –for the contracts of financial rights exploitation or disposing them –in article (17 / A) the following: “A- They should be concluded in writing, otherwise it would be considered invalid. B- They should mention in details the rights that the contract includes. C- They should be specified in time and place. D- They should state the author’s share from the earnings”.

**Through all these legal provisions, we can conclude the following:-**

1. The author has the right to dispose his rights of financial exploitation and assign them to others.

For instance, article (13) from the Jordanian law of the author’s right protection has given the author the right to dispose his rights of financial exploitation and assign them to others.

1. **Fulfillment of the condition of writing:** The Jordanian and Lebanese legislators have required the condition of writing in this contract. However, the Lebanese contractor has considered the unwritten contract as being invalid, and it is a requirement for concluding the contract. However, the Jordanian legislator has required writing, but he did not consider the contract as invalid if it was written. Thus, the Jordanian legislator considered writing a condition for the contract’s verification not for concluding it.[[33]](#footnote-34)
2. The inadmissibility of disposing the future intellectual property of the author:

The Jordanian legislator has stated – in the Jordanian law of the author’s right protection – that the contract shall be considered as invalid[[34]](#footnote-35) if it included the right of disposing the future intellectual property of the author, as being a penalty for that. The Lebanese legislator – in article (18) - has stated the same in the Lebanese law of artistic and literary intellectual property protection, when he considered “discussing the future works of the author in advance as an invalid act”.[[35]](#footnote-36)

1. **The publishing contract shall not discuss the moral right of the author:**

The author’s literary rights are considered as being closely related to the author’s character. It is not permitted to dispose them in any kind of disposal, such as: selling, donation, transfer. That is because such rights along with their nature can’t be disposed. That can be concluded from article (12, 13) from the Jordanian law of the author’s right protection. This law has stated that it is not permitted to dispose the moral rights of the author. As for the Lebanese legislator, he has stated in article (22) that “it is not permitted to dispose the moral rights of the author. It is also not allowed to deny access to them”[[36]](#footnote-37)

1. **The Renounced Work:**

The contract should explicitly and clearly identify the renounced work whether it was artistic or literary. The contract shall also identify the description of the work. If it was a book, the contract shall identify the title, number of pages and topic. It shall also identify everything that is related to the literary work. If it was artistic, it should identify the work, its description, and everything that is related to the work. That is in the aim of not having any dispute or controversy in the future.

1. **Place of Exploiting the Work:**

The place of exploiting the work shall be identified. For instance, both parties may set the place of exploiting the work to be within a certain provision, and that it shall not be in other provisions.

1. Identifying the number of copies that have been agreed upon in the contract:

Both parties shall identify the number of copies and editions. If the work was theatrical, then they shall identify the number of times of public performance. If it was a song, they shall identify the number of times of singing it. If it was a dance, or “Dabke”, then they shall identify its number.

1. **Price, Remuneration, and Earnings:**

Both parties shall identify the price. It may be a lump sum, installments, remuneration, earnings, or percent, which shall be paid to the author upon the contract.

1. **The Contract’s Limits:**

Both parties shall identify the contract’s limits and the renounced rights. For instance, the renounced right may include the right to print, publish, translate, perform publicly, sing, or act. They shall also identify the number of times for each. They shall also identify if the right to export and import belongs to the publisher.

That was stated in article (9) from the Arab agreement of protecting the author’s right and related rights: “It is required for the author’s assignation of any of his rights to be written. This contract shall identify the assignation explicitly and in details, and each right separately. The contract shall identify its purpose, duration of exploitation, place and means”[[37]](#footnote-38)

**10-Assigning this Right to Others:**

It is permitted for the author to agree with the publisher to assign this right to others. If they made an agreement, but without the author’s consent, then the publisher does not have the right to assign this right to others. The same applies on the transmission of this right to the heirs. Both parties have the right to decide the extent of transmitting this right to the heirs or not.

**11-The Author’s Assignation the Same Assigned Right to Others:**

Or producing a literary or artistic work on the same topic. The author is not entitled to assign the underlying right to others. The author shall commit himself to not republish this work with others. He shall also commit himself to not producing a literary, artistic or scientific work with the same topic.

**12- Specifying the Contract’s Duration:**

The Jordanian legislator has required – through article (13) from the Jordanian law of the author’s right protection –to specify the contract’s duration. However, the Jordanian legislator did not specify the contract’s duration in case it was not identified. The Lebanese legislator – in article (13) –has stated that the contract’s duration shall be set for ten years in case it was not specified”.[[38]](#footnote-39)

**13- Interpreting the Contract, and Settling Disputes:**

The contract shall identify the rules of interpretation. It shall also include the rules that are applied upon this contract. The contract shall also identify the specialized agency to settle the dispute or arbitration in case a dispute occurred.

14- Penalties that results from not respecting the contract:

Both parties are entitled to identify guarantees and compensations in case one of them violated what has been agreed upon.

**Verification of the Publishing Contract:**

Verification refers to establishing evidence front of the judiciary, in the methods that the law has identified. Such pieces of evidence aim to prove (verify)the occurrence of a disputed legal event, which affect the case.

To verify the publishing contract, the Jordanian law has required to conclude the publishing contract in writing. The Jordanian legislator considered that a requirement for verification, not for concluding it.

Both of the author and the publisher are not entitled to resort to written methods of verification to verify the contract. That is because the legislator required writing. Based on that, verification through writing is not permissible to verify the publishing contract.

As for the Lebanese and Egyptian legislators, they considered the unwritten contract as being invalid. They have also stated that it is not allowed to file a claim on the basis of unwritten contracts, because they are considered as being invalid. These are the decisions that have been decided by the Egyptian [court of cassation](http://www.arabdict.com/en/english-arabic/court+of+cassation).[[39]](#footnote-40)

We concluded that the publishing contract that requires writing is not subjected to all rules of verification and to the provisions of the Jordanian law for evidence. It is also not subjected to all the general rules of verifying contractual obligations in the Jordanian civil law. The Jordanian legislator - in the Jordanian law of the author’s right protection – has identified the verification methods for the publication contract and limited them to writing only. The latter legislator has also stated that it is not allowed to prove the opposite of what was stated in the written publishing contract – in any other method from the verification methods.

**The Second Chapter**

**Implications of the publishing contract and its termination**

The publishing contract – in which the author assigns the publishing rights to the publisher –would result into liabilities upon both of the contract parties. As we can see, there is no legislation that ensures the rights and obligations of both the author and the publisher. There are legal provisions that ensure the rights of the author. As for the liabilities of each party, they are left to the contract’s parties to be set be them. In addition, the legislator did not set the rules that concern its termination, and expiration, but he left that to the general rules of the Jordanian Civil law.

**I have divided this chapter into two sections:**

**First section:** Implications of the publishing contract

**Second section:** Termination of the publishing contract

**The First Section**

**Implications of the publishing contract**

The Jordanian legislator – through the Jordanian law of the author’s right protection – has enforced liabilities and rights for both of the publishing contract parties; the author and the publisher. That can be seen through the following:

**The first part**

**The author’s liabilities**

The Jordanian law of the author’s right protection – has enforced liabilities upon the author towards the publisher. That is in the purpose of guaranteeing the publisher’s practice for the right that has been announced in the contract. It is also done for the aim of respecting the contract and protecting it. It is also done in the aim of helping the publisher in printing and publishing the renounced contract, and marketing the copies. We can identify these liabilities in details through the following:

1. Submitting the agreed upon work to the publisher

The author shall commit himself to submit the agreed upon or renounced work to the publisher, upon the publishing contract. That is after the author have decided to publish the work and put it at the disposal of the publisher. That is to enable the author from producing the work that is intended to be published and to enable him from submitting the work. It is also to enable the publisher from preparing it to be published or enable him from photocopying it. The author shall also commit himself to submitting the work during the period that has been agreed upon in the contract. The publisher is entitled to demand the author to submit the work, in case he wasn’t committed to submitting the work with the period that has been agreed upon in the contract. In case the author violated the period of submission and after giving excuses, the publisher is entitled to demand the court to terminate the contract. If there was an opportunity to claim for compensation, then the publisher is entitled to claim for compensations for the damages that has affected the publisher.

The question that arises here is: does the publisher have the right to force the author to a specific performance of the contract?

By answering his question, it should be known that the author’s rights are moral and financial dual rights. Thus, the author shall not be forced to a specific performance in the publishing contract. That is because the contract’s agreed upon right which the author has renounced is the financial right. As for the literary right, it is not permissible for the author to renounce it. The literary right may not be the underlying contract of the publishing contract, because it is highly attached to the author. In addition, forcing the author to execute may sometimes harm his interests, especially his literary reputation. For instance, the author may believe that publishing the work may harm his moral reputation. In such case, the author has the right to refrain from renouncing the work to maintain his moral reputation. It is not permissible to force the author into specific performance. For instance, it is not permissible for the publisher to take over the original copies or the photocopies through force. That is because such acts are considered as being inconsistent with the author’s literary right in refraining from publishing his work if he believed that his literary reputation might be harmed, or if he believed that his conscience required him not to publish it”.[[40]](#footnote-41)

However, what is the legal verdict that results from the author’s refusal to submit the work, under the pretext that publishing the work may harm his reputation, or that there is a modification to be done, or that there is a political ideology that may make him subjected to prosecution. This pretext may be to avoid executing the contract and to conclude the contract with another publisher.

By identifying the verdict upon that, then it is not permissible for the author to use a pretext in the aim of not submitting through using such excuses. Once the author concludes a contract with another publisher, the publisher is entitled to claim for execution or termination. The latter shall be also entitled to claim for compensations against the harm that has affected him. However, it should be known that that it is not allowed for the author use these excuses as a pretext to refrain from his commitment, so that he can conclude an agreement with another publisher that will provide him with more profits”.[[41]](#footnote-42)

1. **The author’s commitment to correcting the work:**

The author shall be committed to correcting the copies that have been agreed upon in the contract, which are the experimental copies. These copies will be printed by the publisher. They shall be corrected and returned to the publisher within the period that has been agreed upon in the contract.

Correction shall include correction of physical errors and non-physical errors of the work. Correction can occur through changing, adding, or elimination. These errors may have occurred while printing the work. An example to that is the legal texts, which may be adjusted, eliminated, or add to it during printing. Thus, the author is the one who correct the material of the work and returning it to the publisher, without violating the liabilities of each party towards the other one.

1. **Commitment to Guarantees**

The author shall commit himself to not exploiting the work that has been agreed upon in the contract by him personally. He shall also commit himself to not renouncing this work to others upon another contract, because that would harm the publisher.

The author is not entitled to print a work under the same title or under the same content of the work to be exploited by him. That is because such act would harm the publisher.

There are many authors who may resort to writing a work or a book, but with changing the title and a little of the content, in the aim of manipulating the publisher, and publishing their work by another publisher or for their own benefit, which would result in harming the publisher.

However, if the publisher renounced the work to another publisher, then the publisher is entitled to file a lawsuit to claim for compensations for the financial and moral harm that has affected him. As for the second publisher, the first publisher has the right to demand the second for compensations, if it was proved that the second publisher was acquainted with the contract between the author and the first publisher on the same work.

The author has to guarantee for the publisher his right in practicing his publishing right solely and with no competitors, unless there was an agreement that states other than that. The author shall respect this right and protect it from anything that may cause harm to it. He shall also protect this right from case of the “author’s personal interference”. An example of the author’s personal interference is “when the author republish this work with another publisher”.[[42]](#footnote-43)

Thus, the author shall guarantee for the publisher executing the contract smoothly, simply, and solely without having any competitors. In addition, the author shall guarantee for the publisher not to have interference from others upon the work. That includes protecting the work from attempts to imitate it or attack it, in addition to filing lawsuit against anyone who committed an infringement against this right.

**The Second Part**

**The publisher’s liabilities**

The publisher shall be committed to the contract and its terms that have been agreed upon with the author. These terms may include printing, publishing, distributing, selling, offering for sale, and investing the work commercially. These terms may include respecting the financial rights of the author and conducting the accounting procedures according to what have been agreed upon.

It is also required to respect the moral rights of the author. The publisher shall not make any modification upon the work without having a written permission from the author. The publisher shall also put the data that concern the work on the copies. These data may include the work’s title, the author’s real name– whether it was a pseudonym or an anonymous -, and edition. The publisher shall be committed to the editions, its number, number of copies, the contract’s duration, and the author’s financial remuneration. The publisher shall not give the publishing right to another publisher. The publisher shall pay compensations in case a violation of the contract occurred. The publisher shall submit a copy of the work at the department of the National Library. The publisher shall defend the author’s right from any infringement. He shall also file for claims and complaints against any such infringement.

Based on the aforementioned, the liabilities of the publisher can be summarized through the following:

1. Publishing the work
2. Commercial publishing and continuous and sequential investment
3. Respecting the financial rights of the author
4. Respecting the moral rights of the author
5. Not to conclude any modification without having a written permission from the author
6. Executing the contract according to the duration or editions that have been agreed upon by the contract.
7. Not giving the publishing right to any other publisher
8. Putting the required data on the printed copies and putting a copy in the National Library department. He shall also make an advertisement, in addition to protecting the work from any attack against it.
9. **Publishing the work**

The publisher shall be committed to printing, publishing, distributing, and selling the work, in addition to presenting it to the audience to be sold, so that both; the publisher and author would benefit from that morally and financially. For instance, that would benefit the author from moral aspect and that would also result in a financial benefit through offering it for sale. The publisher shall be committed to providing the author with experimental copies to make modifications upon the work.

That should be done during the duration that has been agreed upon in the contract. The author usually agrees with the publisher upon the number of copies that have been agreed upon to be printed and published.

1. **Commercial publishing and continuous and sequential investment**

The publisher shall be committed to printing and publishing the work within the agreed upon duration. The work shall not lose its significance if its publication was delayed. The work shall be published between individuals from the audience to exploit it financially and morally. In case all copies were sold, the publisher shall hurry into reprinting the work several times, in the way it was agreed upon in the contract. The publisher shall do that sequentially to exploit the work commercially. That shall be done in accordance with the number of copies and editions that have been agreed upon in the contract. If the contract’s duration ended, the author shall be entitled to publish the work. The publisher shall also use means of advertising to make the work known and identify it. Article (11) from the Arab agreement has set a duration which both parties shall exploit the work within it, otherwise it would be allowed for the author to terminate the contract”[[43]](#footnote-44)

1. **Respecting the financial rights of the author**

The author has financial rights that are entitled to him upon the publishing contract. These rights shall be entitled to him upon a copy of the agreed upon publishing contract, whether it was in the form of a contract of sale, or editions. Upon that, the author shall have the right of getting remuneration. The publisher shall be also committed to following the accounting procedures and to paying the author his remuneration upon the publishing contract after doing the accounting procedures. In case the publisher was not committed to publishing, the author is entitled to claim for specific performance or to terminate the publishing contract, regardless the nature of the publishing contract, whether it was a contract of sale, contracting, or remuneration.

The publisher shall provide all the pieces of evidence that shall verify the validity of his accounts. The publisher shall pay the required compensation and shall not exploit the work after the contract is terminated. The Jordanian law of the author’s right protection has considered that the compensations which shall be paid to the author upon the court’s ruling as a preferred debt through article (49)

1. **Respecting the moral rights of the author**

The publisher shall respect the literary rights of the author and preserve them. These rights may include the right to make any deletion, addition, or change, in addition to other kind of rights. There should be a written permission by the author to do such modifications. The publisher is not entitled to use the work for any purpose other than the purpose that is written in the contract.

Thus, “the publisher is not entitled to make any modification in the work that he is publishing. He is also not entitled to make any deletion or addition upon the work, unless there was a permission written by the author”.[[44]](#footnote-45)

However, the publisher is entitled to correct typing errors, which the publisher did not notice. One of the publisher’s liabilities is to “abide the generally accepted rule of advertising in designing the cover of the book, so that it won’t harm the reputation of the author, or wouldn’t make people dislike buying the book”.[[45]](#footnote-46)

If the work contained expressions that may be considered as an insult to certain people, then the publisher shall inform the author that he is required to delete such expressions to preserve the moral right of the author. However, if the author refused to delete these statements, the publisher is entitled to resort to the law of court to file for a lawsuit to claim for the invalidity of the contract because it violates the public system. “If the publisher discovered - after publishing the contract – that the book contains statements that are considered as an insult to certain people, then he does not have the right to delete these statements by himself without having a permission from the author. However, if the author refused to give permission for that, he has the right to file for a lawsuit claiming for the invalidity of the contract because it violates the public system”.[[46]](#footnote-47)

1. Not to conclude any modification without having a written permission from the author

The author only has the right to make any modification, deletion, change, or addition upon the work. This kind of right is considered as one of literary rights of the author, which shall be performed by the author. These kinds of modifications may be attributed to reasons that require such modifications. These reasons may include the existence of a default in the work, or the work’s inconsistency with the reality or with scientific advancements. These reasons may include the inconsistency of the work’s ideas with his intended purpose from the work. These reasons may also include affecting his reputation, dignity, or character. Another reason is the occurrence of political changes, which require making modification upon the work, such as changing the borders of the country, making a union with another country, demise of the country, or adjusting programs related to education as a result of scientific development.

The Jordanian legislator has stated - through clause (C) from article (8)[[47]](#footnote-48)the Jordanian law of the author’s right protection – that it is the author’s right to make any modification upon his work, whether this modification was a change, deletion, or addition.

The Jordanian legislator has stated - through clause (E) from article (8) the Jordanian law of the author’s right protection – that the author is entitled to withdraw his work from the market if he saw that there are legitimate reasons that have emerged. In such case, it is required from the author to provide the party who shall benefit from the financial exploitation of the work with compensations.

The Lebanese legislator has dealt with the author’s right in modifying his work through clause (5) from article (21)[[48]](#footnote-49) from the Lebanese law of artistic and literary intellectual property protection. He stated through this article that the author is entitled to draw back from the assignation contract, or from the financial exploitation contract even after publishing the work. That shall be done in case such draw back was necessary to maintain the author’s character and his reputation due to a change in his beliefs or his circumstances. However, in such case the author shall compensate the other party for the harm that has affected him which has resulted from his drawing back.

The Lebanese legislator has dealt with the same right through clause (4) from the same article, which stated:

“The author only has the right to make any modification, change, addition, or deletion upon his work. That shall be based on a reason, such as the inconsistency of the work with reality, or with scientific progress, or the inconsistency of the work’s ideas with the intended purpose from it”[[49]](#footnote-50).

The author has the right to interfere in these modifications to make changes on his work, and that shall be done through phases:

1. Before publication: The author has the right to make changes, additions, or deletions on his work before publishing the work. That is in accordance to what he sees as appropriate. He has ultimate authority in such procedures.
2. After publication, and before transmitting the work to the other: The author is entitled to make modifications upon his work if he believed that the work is inconsistent withhis method in publication
3. Transmitting the work to others: If the author found linguistic, syntactic, spellingor formal errors, then the author is entitled to correct these errors without resorting to judiciary. The author may assign others to make such modifications or such simple or formal change.

However, if the nature of the work requires that the other party should seize the work upon the publishing contract, then the author shall resort to judiciary to make such modification.

1. Transmitting the work to the other, with having essential errors that affect the general framework of the work

“There may be essential errors that affect the work’s topic. These errors may require making modifications, changes, addition or deletion on the work due to political changes, such as changing the country’s borders, making a union with another country, demise of the country, or developments that concern scientific or educationalprogress”.

In such case, if the other party or the publisher refused to make modification, deletion, or addition on the work, and this refusal may harm the author’s reputation, rank, or public morals or feelings, then the author may resort to judiciary. He shall resort to judiciary to make such modification, deletion, or addition on the work, provided that this author shall pay the publisher a compensation for the harm that may affect the publisher due to such modifications. The author is entitled to prevent the publisher from making any modification or change on the work.

The author is entitled to assign the publisher - or the party who concluded the contract with – to make this modification, change, addition or deletion. All of that shall be done with having a permission from the author. There are many examples on cases in which the publisher - or the party who concluded the contract with – asksfor a permission from the author to make a modification on the work. If the other party undertook doing these modifications without taking the author’s permission, then that shall be considered as an infringement to the author’s moral right or violating the work[[50]](#footnote-51)

The publisher is entitled – after taking the author’s permission – to make some modifications which he believes that they will serve the interests of the publisher and the author. That is considered from the primary principles of the author’s rights[[51]](#footnote-52). These rights shall give the publisher the right to make any modification on the work under the author’s permission, if he believed that these modifications are appropriate to satisfy the publishing standards, provided that these modifications shall not affect the work’s content or form.

However, this is considered as an exception. For instance, the other party is entitled to make modifications in the following cases:

1. Translation: If the translator missed some words, provided that this shall not cause any harm to the author
2. The publisher who is already authorized in the contract, provided that this shall not cause any harm to the author
3. The literary work if it was submitted to be directed through cinema or TV
4. Spelling mistakes: That shall not be considered as an infringement to the literary rights of the author or violation of the work[[52]](#footnote-53)

However, the question that arises here is: does the author have the right to ask the publisher to get rid of the work (burn)or to withdraw it from the market and stop its publication?

The author is entitled to ask the publisher to get rid of the work (burn) or to withdraw it from the market and stop its publication. That is in case this work was considered as harmfulto the author’s reputation, honor, popularity, or his artistic, literary or scientific rank. Most of the laws of the author’s right and international agreements[[53]](#footnote-54) have acknowledged this right.

For instance, the author may believe that there are personal reasons that concern him that shall require withdrawing his work from the market, with paying the publisher compensations for the harm that has affected him.

That was stated in clause(E) from article (8) from the Jordanian law of the author’s right protection[[54]](#footnote-55).

That was also stated in clause(5) from article (21) from the Lebanese law of artistic and literary intellectual property protection[[55]](#footnote-56). The Jordanian legislator has required the following to withdraw the work from the market:

1. Having serious legitimate reasons, and the author is the only one who have the right to withdraw the work from the market
2. The legislator has required from the author to pay the publisher an adequate compensation. The same applies in case of getting rid of work (burning) the work
3. Executing the contract according to the duration or editions that have been agreed upon by the contract.

The publisher hall abide the duration that has been agreed upon in the contract. The Lebanese legislator – through article (17)[[56]](#footnote-57) from the Lebanese law of artistic and literary intellectual property protection – has set this duration to not exceeding ten years only.

The Jordanian legislator did not set the duration of the contract, and left that to be set by the contract’s parties. The author may conclude an agreement with the publisher that aims at selling the financial rights permanently for the publisher. The contract’s money shall be paid either through one installment or through several installments within a specific duration.

The agreement of selling the financial rights may be concluded with providing the other party with a percent in exchange for selling. As for the number of editions, the publisher shall be committed to the number of copies and editions that have been agreed upon.

In case the contract’s duration ended andthe editions werenot all sold, then the publisher is entitledto continue offering them for sale, until these editions are all sold out, or until the author agreed to take them back in exchange for paying their price to the publisher. The author is entitled to control the publisher in setting the number of copies and editions. The publisher is required to present these copies and editions to the audience and exploit them commercially for the benefit of both; the author and the publisher. The author is entitled to control the publisher in setting the agreed upon price. The publisher shall stop printing and publishing after the contract’s duration ends, or after doing the agreed upon editions. The author is entitled to control the publisher in the place of executing the contract and its limits. The contract shall identify if the place is within a certain provision, or within a certain country, or if it exceeds that to include another country.

1. Not giving the publishing right to any other

The publisher is not entitled to renounce the publishing contract to another publisher or transfer it to him. Suchrenunciation shall not occur without the author’s permission. This permission shall be stated in wiring in the contract or in another contract after concluding the publishing contract.

However, there are cases in which this right can be transferred without the author’s permission. That shall be done through concluding a contract with a legalpersonality, who is the publisher. This personalitycan be transferred through selling or renouncing according to the corporate laws to other legal people other than the natural people. Another case is the death of the publishing house owner, and moving this right to the heirs. The transfer of this right shall be done automatically upon provisions of the law, and there shall be no need to take a permission from the author.

8-Putting the required data on the printed copies or the renounced work and putting a copy at the National library department and making an advertisement for it

The publisher is required to put the required data on the work that is intended to be published. If it was a book, the publisher shall put the name of the book that has been agreed upon. He shall put the name of the author whether it was anonymous or pseudonymous, edition number, year of publication, and the publisher’s name to identify the work. The publisher is entitled to put next to the author’s name the title of his scientific degree. The publisher shall also deposita copy of the work at the national library department[[57]](#footnote-58).

The Jordanian law of the author’s right protection has identified the place of depositing a copy of the work - through article (2)- to be the National Library department or any official agency that may be adopted by the Ministry of Culture.

As for advertisement, it is necessary for marketing. That is because the publisher must listthis work within his publication list. The publisher shall also make an advertisement for this work to be exploited commercially. He shall also market this work. The publisher shall also put a list of the author’s works on the cover of the book[[58]](#footnote-59)

9-Protect the work from any attack against it

Article (46) from the Jordanian law of the author’s right protection has stated that the agreed upon work shall be protected through protecting it from any attack against it. Upon the request of the owner or his heirs, the court is entitled to take the procedures that are identified below against any attack or infringement done against the rights that were mentioned in articles (5, 9, 23) from this law[[59]](#footnote-60).

In addition, article (81) from theLebanese law of artistic and literary intellectual property protection[[60]](#footnote-61) has stated that the author, the holders of related rights, their private or public heirs, or the companies or associations of collective rights management have all the right to take [precautionary measure](http://www.arabdict.com/en/english-arabic/precautionary+measure)s that may be required to prevent any attack or infringementagainstthe rights of the author before it happens

**The second section**

**Termination of the publishing contract and the Liabilities that result from violating the contract**

Contracts are terminated for various reasons, such as termination of the contract upon the expiration of its period, or uponfinishingthe editions that have been specified in the contract. These cases are considered as normal cases of terminating the contract. However, there are abnormal cases in which the contract is terminated upon. These abnormal reasons may include reasons that appear before executing the work. For instance, one of the contract elements may not exist. These abnormal reasons may occur during the contract’s execution or after it. For instance, one of its parties refuse to execute the contract. These abnormal reasons may include the invalidity of the contact.

There are other reasons such as unforeseen circumstances. The publishing contract is like any other contract. For instance, it is terminated by the expiration of its period. It is terminated through cancelling it. It is also terminated through claiming for its invalidity due to a default in one of its elements at the time of concluding it. Thus, a violation in the contract would result in liabilities.

This section has been divided into two parts, which are the following parts:

* The first part:Termination of the publishing contract upon the expiration of its period,annulment it and its invalidity
* The second part:The liabilities resulting from violating the contract

**The first Part**

**Termination of the publishing contract upon the expiration of its period, annulment it and its invalidity**

**First: Expiration of the publishing contract period or fulfillment of its purpose**

The publishing contract is terminated upon the expiration of its period or fulfillment of its purpose that was concluded for. Publishing contracts are usually concluded for a certain period, or upon fulfillment of certain editions or certain copies. They may be concluded to be performed on stage for a certain duration or to be performed for a certain number.

The Lebanese legislator has set a specific periodfor the publishing contract, and has set the maximum of this period to be ten years. In case the contract did not set a temporal period for it, then the Lebanese legislator considered it as being concluded for ten years. However, the Jordanian legislator did not set a period for the contract. It should be known that the Lebanese legislator has set a period for the publishing contract.

The author may conclude an agreement with the publisher to fulfill a number of copies, editions, theatrical exhibition, actingthe work,or numbers of presenting the work on TV, radio, or newspapers. In such cases, the contract would be terminated upon the fulfillment of its purpose, or upon selling out all copies, editions,theatrical exhibition or acting it.

Both parties are entitled to terminate the contract before the expiration of its period through their free will. That shall be done through a “dismissal of the contract’s parties after concluding the contract with the free will of both parties[[61]](#footnote-62)”.

In addition, according to the general principles of the civil law, if it was impossible to execute the contract due to unforeseen circumstances, then this impossibility shall lead to terminating the contractatomicallyupon provisions of the law.[[62]](#footnote-63)

The impossibility of executing the contract may be attributed to reasons that concern the author or the publisher. For instance, the author may be affected by a mental disease which would make him unable to decide publishing the work. Another unforeseen circumstances is the publisher – whether he was an artificial entityor a company –declaring his bankruptcy, liquidation, or being under seizure. Unforeseen circumstances may also include any reason that the publisher did not have relation to it. An example to that if the publisher was subjected to a fire that reunited his institution.

Article (11) from the Arab agreement for the protection of the author’s rights and related rights has stated that that author is entitled to terminate the contract in case the other party did not exploit the work within the agreed upon period, or within a duration that exceeds one year. In such case, the author is entitled to terminate the contract, without violating the other party’s right in being compensated for the damages that has affected him in case that was required[[63]](#footnote-64)”.

Thus, “the contract shall be terminated if an unforeseen circumstances occurred which make the execution of this contract as impossible. In such case, there shall be a liability towards the other party”[[64]](#footnote-65)

**Second: Invalidity of the contract &and annulment of it**

The valid contract is the contract that is free from any default in its elements or features. The validity shall exist through having eligibility at both of the contract parties. It shall be considered valid upon stating the requirements and purpose of the contract.However, if there was a default in any of the contract’s elements, or did not match the form that was required by the law, then the contract shall be considered as invalid. This contract that is considered as invalid – due to a concluding it for illegal purpose or due having a default in its element, purpose or its form that was required by the law to be concluded upon – has no effect nor any implication. There are no liabilities that result from such invalid contract. There shall be no authorization given upon the contract.

Any interested party should claim for the invalidity of the contract. In such case, the court shall rule that the contract is invalid on its own[[65]](#footnote-66).

The question that arises here is: When shall we consider the contract as invalid?

The general principles in considering the contract as invalid include having a default in one of the contract’s elements, and such default shall make the contract considered as invalid. The Jordanian legislator – in article (13)[[66]](#footnote-67) from the Jordanian law of the author’s right protection -did not require writing as a requirement for concluding the contract which is the basis of considering the contract as valid. However,he considered writing as a requirement for verification.

However, according to article (17)[[67]](#footnote-68), the Lebanese legislator believed that the contracts of the financial rights exploitation or practicing them as should be concluded in writing, otherwise they shall be considered as being invalid.

The Lebanese legislator considered the requirement of writing as a matter of formality. He also considered it as being one of the contract’s elements and not fulfilling this requirement would lead to consider such contracts as being invalid. It looks like the Lebanese legislator was strict in the contract’s formality. That applies on the contracts of printing, theatrical performance and acting, and audio and visual performance. Thus not having this requirement in the contract would lead to making the contract as being invalid. The Lebanese legislator believed that the renounced rights should be identified separately, in addition to identifying the purpose of renouncing to protect the author’s right.

In addition, there is a case in which the author is entitled to file for a lawsuit to the court claiming for considering the contract as being invalid, because it violates the public morals and system. That shall occur in case the publisher refused to delete some words in the work, or in case he refused to burn or withdraw the work from the market. This is in case having things in the work that are considered as an insult to certain people, or in case the work is considered as would be subjecting the author to liability.

The same applies if the author refused to delete some words that are considered as an insult or harmful to certain people reputation, or if these words violate the public morals and system. In such case, the publisher may request the court to consider the contract as invalid.[[68]](#footnote-69)

The third reason for terminating the contract is when one of the contract parties violate his commitment towards the other party. This shall be decided upon the court’s ruling. For instance, article (246) – clause (1) from the Jordanian civil law states that: “in the contracts that hold responsibility to both parties: If one of the parties was not committed to his responsibilities, then after notifying the other patty, the concerned party is entitled to claim for executing or terminating the contract[[69]](#footnote-70)

If the annulmentwas due to such cases, then it shall be decided by judiciary that both parties are entitled to conclude an agreement, on the basis of considering the contract as being terminated by itself without the need to issue a court judgment. That shall occur when one of the contract’s parties commits a serious violation in his commitments towards the other party.[[70]](#footnote-71)

These rules shall be applied on the publishing contract in case one ofthe contract parties was not committed to his contractual liabilities, because the contract is considered as binding for both parties. Originally, a verdict of termination shall not be issued, if it was not preceded by a notification issued by one of the contract’s party. Notification means that it is required to notify the other party with the necessity of executing his commitment with giving him a deadline for this execution. However, it should be noted that if one of the contract’s parties claimed for terminating the contract, the judge is not obliged to execute his request, but the other party should be given time to execute his contractual obligations.

If the judge issued a verdict of termination, then the contract shall be considered as terminated. It shall be also considered as if it was never concluded. In such case, everything shall be set as it was before concluding the contract. That was stated in article (248) from the civil law. If it was impossible to execute the contract, then the court shall issue a verdict of compensation. It is permitted for both parties to agree on consideringthe contract as being terminated without the necessity to resort to a court ruling. That shall be applied when one of the contract parties does not fulfill his commitment to executing the contract. That is called consensual termination. Article No. (245) from the Jordanian Civil law states that: “it is permitted to agree on considering the contract as being terminated by itself without the necessity to have a court verdict. That shall be applied in case one of the contract’s parties does not show commitment to his contractual liabilities. This agreement does not exempt the contract party from notifying the other, unless both parties have agreed upon having an exemption from issuing a notification.

As for the cases which can be considered as a violation of the contract that requires to terminate the contract, these violation may be done from the author, such as refusing to submit or correct the agreed upon work, committing personal disturbance, disturbing the publisher by others,renouncing the underlying work to other party or the author’s committing himself to help the publisher in distributing. Other examples may include refusing to renounce the financial rights of the work, exploiting the work for personal interests, requesting the publisher to withdraw the work from the market, or revealing his real name after a certain period of time.

There are violations that are committed by the publisher and which require to terminate the contract. These violations may include his refusal to print, distribute, publish, or sellthe work. The publisher’s violations may include refusing to present the work to be sold, ormaking adjustments or corrections on the work. These violations may also include his refusal to withdraw the work from the market, or refusal to burn the work’s copies. These violations may also include renouncing this right to others.

According to the general rules, the contract terminationis usually done through setting everything into the way it was before concluding the contract, and through issuing a verdict to compensate the other party in case that was required.

It is permitted for both parties to set a guarantee value in advance through mentioning it in writing in the contract or through mentioning it in a subsequent agreement with abiding the provisions of the law.

That was stated in article (364 / A) from the Jordanian civil law which states that it is permitted for both parties to agree on the compensation in advance[[71]](#footnote-72)

**The second part**

**The liabilities resulting from violating the contract**

Both of the author and publisher are required to execute the publishing contract with abiding the principle of good intentions. The author shall guarantee for the publisher execution of the agreed upon work easily, simply, and solely without having any competitor. The author shall also guarantee for the publisher that he will respect the contract and won’t disturb the publisher personally. He shall also guarantee that he will be committed to the liabilities resulting from personal disturbance, including the compensation resulting from the harm the have affected the publisher. He shall also guarantee that he will be committed to the liabilities resulting from personal disturbance that was done by others and the author was the reason behind it. The author shall be responsible for any renunciation of the underlying rights of the contract to others.

In addition, the publisher shall complete the publishing process according to the contract. He shall also do the processes of printing, publishing, distributing, and depositing. He shall also refuse to renounce the underlying work of the contract to others. He shall also exert an effort in the aim of exploiting the work commercially, so that both parties (the publisher and the author) would benefit from the work. The publisher shall also abide the number of copies and editions, the contract’s duration, the accounting procedures, and paying the contract’s remuneration to the author.

These are the liabilities of both; the author and the publisher.However, one of the contract’s parties may commit a violation concerning his contractual liabilities. Such violation may be a reason in terminating the contract. There are penalties resulting from theviolation committed by one of the contract partiestowards his contractual liabilities. In addition, a compensation shall be claimed for in case a harm has affected the contract party. The liability resulting from violating the contract is called contractual liability. However violating the contract may result in having a “tort”. For instance, the publisher may make replicas from the copies that were submitted to him. Another example is making addition, modifications or change on the work in a way that may harm the author. Another example is when the publisher put the name of another author on the work and cause harm to the author. Another example is when the publisheradd chapters to the work that are not expected. The elements of the contractual liabilities are three and they are the following:

1. Contractual error
2. Harm
3. Causal relationship

These are general rules for all contracts that shall exist to have contractual liabilities. However, if one of the contract parties did not execute what was required from his to do upon the contract shall be considered as a contractual violation. The contractual liabilityis the same as the liability resulting from doing a harmful act, that both can’t be established without having the three elements; contractual error, harm, and causal relationship[[72]](#footnote-73)

In order to establishconsequent liability, there must be a harm that results from such liability. There shall be also a compensation paid upon the contractual liability, which shall be based on the financial and moral harm that have affected the contract party, unless both parties have agreed in advance on “consensual compensation[[73]](#footnote-74)”

1. That is called “penalty clause”, in which both parties set the amount of compensation in case one of the contract parties commits a contractual violation with having a causal relationship. Thus, it is not adequate to have an error and harm, but the error must be the cause for harm. Thus, there must be a causal relationship between the error and harm.

Article (246) – clause (2) from the civil law has stated that the court is entitled to oblige the debtor with instant execution or to give him a deadline. The court is also entitled to rule for terminating the contract and for having a compensation in case that was required.[[74]](#footnote-75)

It is not permitted to combine the contractualliability with tort (Liability for damage due to misfeasance) when claiming for compensation. Thus, creditor is required to resort to one of them.

If one of the contract parties resorted to claiming for compensation based on having a tort (Liability for damage due to misfeasance). Then in such a case, compensation shall not be done on the basis of the Jordanian Civil Law, but on the basis of the Jordanian law of the author’s right protection, especially on the basis of article (49)[[75]](#footnote-76)from it. It shall be also based on:

1. The author’s educational rank (Status)
2. The artistic, literary, or scientific value of the work
3. The extent of the aggressor’s benefit from exploiting the work

The compensation that the court rule for is considered in such case as being a preferred debt from the net selling price of the things that have been used in committing an infringement against his right, and from the amounts of money that are seized in the lawsuit

It shall be the court’s responsibility solely to set the value of compensation for the moral and financial harm that has affected the contract party. However, it should be fair and based on article (49) and onspecial considerations that concern the author, work and benefits

**Recommendations**

In this research, I have dealt with the issue of the publishing contract in the Jordanian law of the author’s right protection. I have also dealt with the problematic issue that may arise from this contract. I have dealt with the forms of the publishing contract and the rights that are renounced upon this contract. I have also dealt with the elements of this contract, provisions that are related to concluding the contract, the requirement of writing, the contract’s duration, and the liabilities of both; the author and the publisher. I have also dealt with the publishing contract termination, the contractual liability,and tort (liability for damage due to misfeasance). However, there are some considerations and suggestions that I hope to be taken into consideration. These considerations and suggestions are stated through the following:

1. Adding the requirement of writing to the provisions of the Jordanian law of the author’s right protection, so that writing would be a requirement for concluding the contract, and not for verification. The contract shall be also considered as being invalid if the requirement of writing did not exist
2. Identifying the forms and text of the publishing contract. The contract shall also identify its parties, the renounced work in specific, the renounced rights, and the contract’s duration. That is because the publishing contract can’t remain withoutsetting its duration.
3. Giving the publishing the right to make some modifications that does not affect the moral rights of the author. That is in the purpose of correcting the mathematical errors and provisions of the law.
4. Giving the publisher the right to stop any infringement against the author’s rights. He shall be also given the right to claim for compensation for any aggression, because the publisher has an official status, and interests in stopping any infringement that may harm the financial interests of the publisher.
5. Protecting the author from any exploitation. That is because many people may exploit the author needs and conclude a contract to publish the work upon conditions that include submission. In case of discovering conditions that include submission for the author, these conditions shall be considered as being cancelled, such as the conditions of duration, number of copies or the price
6. Considering the author’s remuneration, compensation or any amount of money that is due for him as rights that are preferred upon the publisher’s money
7. To state in wiring the necessity of keeping accounts that are related to the publishing contract, such as the number of agreed upon copies of the work, the sold copies, the copies that the author received, and the copies that are left unsold
8. Identifying the electronic publishing contract. It is necessary for it to include publishing in all forms of direct and indirect act, and publishing in all forms of direct and indirect transmission. It is necessary to include publishing electronically. Thus, the provisions of the Jordanian law of the author’s right protection shall include a definition for both; the electronic publishing and the electronic publishing contract
9. It is important to differentiate between the publisher contractual liabilities, tort (Liability for damage due to misfeasance). It is the author’s right to resort to one of these liabilities in case the publisher violates the publishing contract or made a replica of the work or committing forgery. Then, in such case it is the author’s right to resort to tort (Liability for damage due to misfeasance).
10. It is necessary to establish associations, companies, and assemblies which are concerned with the authors’ right and preserving their rights. That is done in the aim of managing the author’s rights and representing them. It is also done in the aim of protecting their rights. That shall be done on the basis of having laws in this concern.

After all of the aforementioned, this study is the outcome of modest efforts that I aimed through to deal with the issue of the publishing contracts. That was done through analyzing texts from the Jordanian law of the author’s right protection and from the general rules of the contracts. I have recommended to do some modifications in this concern. I have also mentioned some recommendations. I have also recommended to add some legal texts. Thus, I submit this modest research and I pray that God would make my work beneficial and useful. I also wish that God will bless my path

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33. Egypt, Al Jizza Court of first instance, division (11) Civil in (22) May 1991, Case No. (8610) for the year of 1989, Case of Almashrabeye Restaurant, Brochures of the World Intellectual Property Organization– The primary principles of the author’s right and the legal provision in Arab countries… Dr. Mohammad Hussam Lutfi – Geneva (2000), page 113.

    “The decision has emphasized that it is required to conclude the contract in writing to enforce disposal. Writing is a requirement for concluding, not just a mere method for verification. [↑](#footnote-ref-34)
34. Article (14) from the Jordanian law of the author’s right protection [↑](#footnote-ref-35)
35. Article (17) from the Lebanese law of artistic and literary intellectual property protection [↑](#footnote-ref-36)
36. Article (22) from the Lebanese law of artistic and literary intellectual property protection [↑](#footnote-ref-37)
37. The Arab agreement of protecting the author’s right and related rights, Previous reference [↑](#footnote-ref-38)
38. Article (17) from the Lebanese law of artistic and literary intellectual property protection [↑](#footnote-ref-39)
39. Egypt, Al Jizza Court of first instance, division (11) Civil in (22) May 1991, Case No. (8610) for the year of 1989, Case of Almashrabeye Restaurant, Brochures of the global organization for intellectual property – Previous Reference –Page 113 – The court has ruled that the restaurant manager to compensate, with emphasizing that writing is a condition for concluding any act that concerns the financial rights of the author.   
    The court has also stated that it is required to enforce disposal to make it written. Writing here is a requirement for concluding. Thus, writing here is not merely a method for verification. The court has stated that it is required for the contract to identify explicitly and in details each right that the author has renounced to others, with identifying the limits of the right that has been renounced to others. It is also required to state the contract’s purpose, and duration of exploitation if it was less than the duration which the law has set. It is also required to state the place of exploitation if it was peculiar to a certain country.

    \*Egypt, [court of criminal Cassation](http://www.arabdict.com/en/english-arabic/court+of+Cassation), 16 October 1980, Almaktab Alfane Group, 31, No. 17, Page 898.

    The court has ruled that: “Agreement between the author and the publisher to publish a work – does not eliminate the requirement of getting a written permission. This permission was required by the law, so that the person – other than the author – would be permitted to publish the work and exploit it financially”. [↑](#footnote-ref-40)
40. Al Sanhoory, Abed Al Razeq, Intermediate in explaining the civil law, previous reference, page. 335 [↑](#footnote-ref-41)
41. Al Sanhoory, Abed Al Razeq, Intermediate in explaining the civil law, previous reference, page. 335 [↑](#footnote-ref-42)
42. Abo Baker, Mohammad Khalil, The Author’s Right in Law, Previous reference, Page 106. [↑](#footnote-ref-43)
43. Article (11) from the Arab agreement for the protection of the author’s rights and related rights, previous reference, page 118, “If the other party did not exploit the work within the agreed upon period or for a complete calendar year, the author is entitled to terminate the contract without violating the other party’s right in getting a compensation if that was required”. [↑](#footnote-ref-44)
44. Al Sanhoory, Abed Al Razeq, Intermediate in explaining the civil law, previous reference, page 34 [↑](#footnote-ref-45)
45. Alqadi, Mukhtar, (1982), The right of the author, The first and the second book, Alanglo Egyptian library, Cairo, page 111 [↑](#footnote-ref-46)
46. Al Sanhoory, Abed Al Razeq, Intermediate in explaining the civil law, previous reference, page 342 [↑](#footnote-ref-47)
47. clause(C) from article (8) the Jordanian law of the author’s right protection, that holds number 22 for the year of 1992, which states that that it is the author’s right to make any modification upon his work, whether this modification was a change, deletion, or addition. clause(E) from the same article has stated that the author is entitled to withdraw his work from the market if he saw that there are legitimate reasons that have emerged. In such case, it is required from the author to provide the party who shall benefit from the financial exploitation of the work with compensations. [↑](#footnote-ref-48)
48. clause(5) from article (21) from the Lebanese law of artistic and literary intellectual property protection has stated that “the author is entitled to draw back from the assignation contract, or from the financial exploitation contract even after publishing the work. That shall be done in case such draw back was necessary to maintain the author’s character and his reputation” [↑](#footnote-ref-49)
49. Abo Baker, Mohammad Khalil, The Author’s Right in Law, previous reference, page 58 [↑](#footnote-ref-50)
50. Brochures of the World Intellectual Property Organization, previous reference, page 63

    Nezar Qabani poem (The cup’s fortune teller). In this poem, Abed Alhaleem replaced “Oh boy, the one who died as a martyr is the one who died believing in the religion of the beloved” with “is the one who died sacrificing himself for the sake of the beloved”.

    The poem of Ahmad Shafiq (You are my life), Um Kulthum replaced the beginning of the poem “due to my longing to your eyes” into “Your eyes made me remember”.

    Ahmad Najji poem (Ruins on which we remember our loved ones) and some of the poems of Ahmad Rami were replaced the beginning of the poem with “My heart, do not ask me where love is” [↑](#footnote-ref-51)
51. primary principles of the author’s rights, UNISCO Brochures, previous reference, page 25 -26 [↑](#footnote-ref-52)
52. Abo Baker, Mohammad Khalil, The Author’s Right in Law, previous reference, page 61 [↑](#footnote-ref-53)
53. Berne Convention, article (6), Repeated [↑](#footnote-ref-54)
54. the Jordanian law of the author’s right protection, clause(E) from article (8) [↑](#footnote-ref-55)
55. The Lebanese law of artistic and literary intellectual property protection, clause(5) from article (21) [↑](#footnote-ref-56)
56. Lebanese law of artistic and literary intellectual property protection, article (17) [↑](#footnote-ref-57)
57. Al Sanhoory, Abed Al Razeq, Intermediate in explaining the civil law, previous reference, page 341 [↑](#footnote-ref-58)
58. Al Sanhoory, Abed Al Razeq, Intermediate in explaining the civil law, previous reference, page 342 [↑](#footnote-ref-59)
59. Article (46) from the Jordanian law of the author’s right [↑](#footnote-ref-60)
60. article (81) from theLebanese law of artistic and literary intellectual property protection [↑](#footnote-ref-61)
61. Article (242) from the Jordanian civil law , which holds number 43 for the year of 1976 [↑](#footnote-ref-62)
62. Article (247) from the Jordanian civil law , which holds number 43 for the year of 1976 [↑](#footnote-ref-63)
63. Article (11) from the Arab agreement for the protection of the author’s rights and related rights, previous reference, page 1148 [↑](#footnote-ref-64)
64. Article (247) from the Jordanian civil law , which holds number 43 for the year of 1976 [↑](#footnote-ref-65)
65. Article (168) from the Jordanian civil law , which holds number 43 for the year of 1976 [↑](#footnote-ref-66)
66. Article (13) from the Jordanian law of the author’s right protection, which holds number 22 for the year of 1992. It states that “the author is entitled to dispose the rights of financial exploitation of his work. Such disposal shall be concluded in writing [↑](#footnote-ref-67)
67. article (17) from the Lebanese law of artistic and literary intellectual property protection. It stated that the contracts of the financial rights exploitation or practicing them – whatever their purpose was – shall be concluded in writing, otherwise they shall be considered as being invalid for both of its parties [↑](#footnote-ref-68)
68. Al Sanhoory, Abed Al Razeq, Intermediate in explaining the civil, previous reference, page 342 [↑](#footnote-ref-69)
69. , article (246) – clause (1) from the Jordanian civil law. It states :”In the contracts that hold responsibility to both parties: If one of the parties was not committed to his responsibilities, then after notifying the other patty, the concerned party is entitled to claim for executing or terminating the contract [↑](#footnote-ref-70)
70. Article (245) from the Jordanian civil law states that: “It is permitted to conclude an agreement on the basis of considering the contract as being terminated by itself without the need to have a court judgment. That shall be applied in case one of the contract’s parties was not committed to his liabilities that result from the contract. Such agreement does not exempt the party from notifying the other party, unless both parties agrees on exempting the contract’s party from notifying the other party. [↑](#footnote-ref-71)
71. article (364) / Clause (A) from the Jordanian civil law which states that it is permitted for both parties to agree on the guarantee value through mentioning it in writing in the contract, through mentioning it in a subsequent agreement with abiding the provisions of the law [↑](#footnote-ref-72)
72. The decision of the Court of Cassation, which holds number 88 / 390, page 537, for the year of 1992, Magazine of the Lawyer’s Association:

    “It is agreed upon that the contractual liability is the same as the liability resulting from doing a harmful act, that both can’t be established without having the three elements. These three elements are: contractual error, harm, and causal relationship. Error in the contractual liability is an error that results from committing a violation that concern the contractual liabilities. [↑](#footnote-ref-73)
73. Article (364) – clause 1 – from the Jordanian Civil Law: “It is permitted for the contract parties to set a guarantee value in advance through mentioning it in writing in the contract, or through mentioning it in a subsequent contract with abiding the provisions of the law [↑](#footnote-ref-74)
74. Article (246) – clause (A) from the Jordanian Civil Law which holds number 43 for the year of 1976 [↑](#footnote-ref-75)
75. Article (49) –) from the Jordanian law of the author’s right protection that holds number 22 for the year of 1992 [↑](#footnote-ref-76)