

The Co-Owner in Joint Ownership Between the Right of Enjoyment and the Consequences of Violations in Algerian Law. (An Analytical Study)

الشريك في الملكية المشتركة بين حق التمتع وآثار المخالفات في القانون الجزائري. (دراسة تحليلية)



¹ Imen CHAABNA, ² Nouha CHIROUF, ³ Ismahane FECIOU

¹ University of 20 August 1955, Skikda, Algeria

i.chaabna@univ-skikda.dz

² University of 20 August 1955, Skikda, Algeria

n.chirouf@univ-skikda.dz

³ University of Ahmed Ben Yahia Al-Wancharissi, Tissemsilet, Algeria

ismahanefeciou@gmail.com

Date of transmission: 25/03/2025 date of acceptance: 13/11/2025 date of publication: 01/12/2025

Abstract: Joint ownership is the result of real estate development housing in all its forms. It constitutes a form of mandatory co-ownership, where shared spaces are enjoyed, managed, and administered collectively without the possibility of individual owners transferring ownership rights. The objective of this research is to demonstrate that a co-owner's right in joint ownership differs significantly from their right in exclusive ownership, despite their coexistence. Indeed, a co-owner's rights over common areas; such as usage, exploitation, and disposal; are highly restricted by a set of obligations primarily based on the important basis of not causing harm to neighbouring co-owners. Violating these obligations can lead to personal tort liability as well as liability for the actions of others, animals, and objects. Consequently, the co-owner is obligated to compensate for the damage.

Key words: Real Estate Development; Joint Ownership; Right; Obligation; Liability; Arbitrariness.

ملخص:

الملكية المشتركة هي نتيجة التطوير العقاري السكني بكافة أشكاله. وهو يشكل شكلاً من أشكال الملكية المشتركة الإلزامية، حيث يتم الاستمتاع بالمساحات المشتركة وإدارتها وإدارتها بشكل جماعي دون إمكانية قيام المالكين الأفراد بنقل حقوق الملكية. الهدف من هذا البحث هو إثبات أن حق المالك المشترك في الملكية المشتركة يختلف بشكل كبير عن حقه في الملكية الحصرية، على الرغم من وجودهما معاً. في الواقع، حقوق المالك المشارك في المناطق المشتركة؛ مثل الاستخدام والاستغلال والتخلص؛ مقيدة بشدة بمجموعة من الالتزامات التي تركز في المقام الأول على أساس مهم وهو عدم التسبب في ضرر للمالكين المشاركين المجاورين. يمكن أن يؤدي انتهاك هذه الالتزامات إلى مسؤولية الضرر الشخصي بالإضافة إلى المسؤولية عن تصرفات الآخرين والحيوانات والأشياء. وبالتالي فإن المالك المشارك ملزم بالتعويض عن الضرر.

الكلمات المفتاحية: التطوير العقاري؛ الملكية المشتركة؛ يمين؛ فرض؛ مسؤولية قانونية؛ التعسف.

Introduction:

Most wilayas in Algeria have experienced significant expansion in their urban fabric, characterized by modern architectural features governed by real estate promotion laws. Through these laws, the state aims to create, organize, and manage cities to accommodate the continuous population growth. This expansion addresses the increasing demand for residential real estate, whether through social housing initiatives or private developments, as facilitated by the Bureau of Real Estate Promotion and Real Estate Management.

The ownership of private individual residential property within the framework of real estate promotion combines two forms of ownership: the ownership of a detached property and ownership in forced commonality. Under this framework, the built property is divided into apartments or floors shared among multiple owners. Each owner holds exclusive ownership of their allocated apartment or floor, with full legal rights for its utilization and disposal as a private property. At the same time, certain portions of the property are designated as common areas, which are considered shared property under forced commonality. The use and exploitation of these common areas are subject to frameworks and restrictions outlined in legal texts, including provisions from Civil Legislation 75-58¹, Executive Decree No. 83-666², and Executive Decree No. 14-99³.

Joint ownership represents a modern form of ownership wherein a group of individuals share a single property. This arrangement often gives rise to legal disputes and conflicts regarding the utilization of the shared property.

In this research paper, we address a legal issue closely tied to the restriction and regulation of ownership freedom for individuals within their legal status as co-owners of shared real estate property. This raises the following question: What are the forms of legal disputes arising from the utilization of common parts within the framework of their indivisibility and inalienability?

To address this issue, the research has been divided into two sections:

- **First Section:** Utilization of the common parts of a residential building by the partners.
- **Second Section:** Liability for a partner's breach of the provisions governing the enjoyment and utilization of the common parts.

¹ Ordinance No. 75-58 of September 26, 1975, on the Civil Code, as amended and supplemented.

² Executive Decree No. 83-666 of November 12, 1983, defining the rules governing joint ownership and the management of collective buildings, as amended and supplemented by Decree No. 94-59 of March 7, 1994.

³ Executive Decree No. 14-99 of March 14, 2014, published in Official Gazette No. 14 of March 16, 2014, establishing the model joint ownership system applicable in real estate development.

First Section

Utilization Of the Common Parts of a Residential Building by the Partners

The enjoyment by partners of the common parts of a residential property is a significant topic that has been regulated through general and specific legal texts. It embodies a situation where more than one individual shares ownership of a built property. Each partner holds ownership of their separate property and shares in the common parts, such as stairs, entrances, roofs, and more.

Utilization of these common parts requires coordination among partners regarding management, use, maintenance, and modification.

This topic is particularly relevant in the sphere of housing and collective buildings across various forms and programs, as proper regulation of the use and enjoyment of common property helps mitigate numerous legal and financial disputes between co-owners. Through this research, we will address the rights enjoyed by the partners during their utilization of the common parts and the restrictions associated with them. This will be presented in two requirements:

- **First Requirement:** The rights of co-owners in joint ownership.
- **Second Requirement:** The obligations of co-owners in joint ownership.

First requirement: The rights of co-owners in joint ownership.

The common parts outlined in Article 743 of the Algerian Civil Code include built and unbuilt portions that are jointly owned by all owners of strata and apartments. These parts consist of roofs, courtyards, entrance corridors, stairs, elevators, and similar areas. The ownership of these parts is defined as the right of the partner within a framework of permanent, compulsory commonality, which is indivisible. Each owner's share in these common areas is proportional to the value of the individual part they own in the building. This form of ownership requires a collective coexistence among the group of owners, ensuring the use of these common parts in accordance with established controls and organizational rules that are binding on all. Therefore, in this requirement, we will examine the various rights granted by the legislator to the co-owners for the utilization of the common parts of the building.

First Part: The Right to Use the Joint Parts

According to Article 749 of the Civil Code¹, co-owners of the joint parts are granted the right to freely use and enjoy the common property, provided it is not utilized in ways prohibited by laws and legal regulations. The legislator further clarified the method

¹ Article 749 of Ordinance No. 75-58 states:

"Every co-owner has the right to enjoy the private parts associated with their share, as well as to freely use and benefit from both the private and common parts, provided that this does not infringe upon the rights of other co-owners or cause harm to the intended use of the property."

of using the common parts in Executive Decree No. 14-99¹, specifically in the second part under the title concerning the use of common parts. It emphasizes that the co-owner or their occupant may use the common parts allocated to them, provided this does not hinder other partners in their usage. Additionally, any amendments or changes to the common parts, such as water, gas, and electricity distribution channels, elevators, and all common equipment, are prohibited without the knowledge and consent of the other co-owners. From this, it can be concluded that the right to use the common property is heavily restricted by concerns over neighborhood harm, which is not tolerated by laws and regulations. As such, the right to use the common property is narrower than the broader concept of its utilization.

Second Part: The Right to Exploit the Joint Parts

The exploitation of property is a power held by the owner of a separate private property, granting them the right to use and dispose of it either directly or indirectly by allowing others to exploit the property in exchange for a fee. However, this right does not extend to common property, as a clear distinction exists between the individual exploitation of common property by one partner and the collective exploitation by all partners. Referring to the provisions of Article 08 of Executive Decree No. 94-69², the exploitation of common property by an owner or tenant (the beneficiary of the detached property through a lease contract) grants them the same rights and responsibilities enjoyed by a partner in the common property. Consequently, the owner of a detached property governed by the provisions of common property is prohibited from individually exploiting the joint parts attached to their detached property, such as by renting them out. In contrast, collective exploitation allows all partners to mutually agree to rent out the common parts to third parties, such as renting the roof of the building or one of its facades for purposes like hanging advertisements³.

Third Part: The Right to Dispose of the Joint Parts

The owner has the right to dispose of their share in their allotment⁴ through all legal means, including transfers of ownership such as sale, gift, or assignment, as well as management dispositions such as renting. However, this right does not extend to the common property that is distinct from the detached property owned collectively by the group of co-owners in the same property. It is not permissible to engage in property-transferring acts involving the common property, either individually or collectively.

¹ Executive Decree No. 14-99, previously cited.

² Executive Decree No. 94-69 of March 19, 1994, approving the model lease contract provided for in Article 21 of Legislative Decree No. 93-03 of March 1, 1993, on real estate activity, published in Official Gazette No. 17 of March 30, 1994.

³ Belkacem Belkadi, *The Legal System of Joint Ownership*, Master's thesis in Algerian Real Estate Law, University of Blida, Faculty of Law Saad Dahlab, Academic Year 2000-2001, p. 48.

⁴ Article 674 of Ordinance No. 75-58 on the Civil Code, previously cited.

The Co-Owner in Joint Ownership Between the Right of Enjoyment and the Consequences of Violations in Algerian Law. (An Analytical Study)

Instead, the common property can be disposed of through administrative actions concerning the common parts or rights associated with them, as governed by legal and organizational obligations. This includes actions such as constructing buildings to create new shops for private use or adding structures, provided these actions are approved by the consensus of all partners through voting. Proceeds resulting from such acts of disposal are allocated to the budget of the General Assembly or distributed among the partners in the property, with each partner receiving a share proportional to their ownership stake¹.

Considering the points previously outlined, it is evident that the legislator has imposed a range of legal restrictions governing the use, exploitation, and disposal of the common parts. These restrictions aim to ensure that the neighborhood remains unharmed, requiring that the use of common property stays within the boundaries of its allocation, nature, and compatibility with the use of the separated property, and without obstructing its utilization by other partners. It is strictly forbidden to introduce modifications or changes to the common parts or services without obtaining the consent of the other partners. Regarding disposal, the legislator has entirely prohibited legal dispositions that transfer ownership, whether compensated or not, as well as those that do not transfer ownership, such as renting out areas like gardens, shared courtyards, and elevators. These joint parts continue to remain undivided property, protected from division or sale through public auction, and are utilized and disposed of strictly in accordance with the framework of the segregated parts².

Second Requirement: The Obligations of Co-Owners in Joint Ownership

The enjoyment of the segregated parts of the property places an obligation on the owner to cover all maintenance and upkeep expenses related to their individual property. However, the situation differs for joint ownership. The Algerian legislator has introduced a distinct system for the management and administration of common parts to ensure their preservation. Under this system, all co-owners are obligated to contribute to the associated costs. Furthermore, co-owners are required to respect the established restrictions on enjoying the common property, ensuring that their actions do not infringe upon or prejudice the rights of other co-owners. In this requirement, we will outline these obligations, which must be adhered to within the framework of civil liability.

First Part: Paying the Costs of Maintaining the Common Property

¹ Executive Decree No. 14-99, previously cited, Title II: Conditions for Decision-Making by Majority in the General Assembly.

² Article 747 of Ordinance No. 75-58 on the Civil Code, previously cited.

The costs associated with running and managing the joint parts are classified into two categories¹:

First: The costs of private minor repairs. These are expenses shared equally among co-owners, regardless of whether they are the actual occupants or tenants of the detached property. These costs pertain to the regular operation of the common property and include the following:

a) Paying the salaries of:

1. The administrator appointed by the General Assembly.
2. The janitor or janitors, as well as any other employees employed by the disposer to assist in performing their duties.

b) Paying the expenses for:

1. The consumption of water and electricity for the joint parts.
2. The maintenance and repair of equipment in the compressor station.
3. Collective heating and related expenses.
4. Materials and tools for maintaining access doors, staircases, cages, roofs, and the lighting of entrances, roofs, and other common-use parts and shops.

Secondly: Costs of Major Repairs and Security

These costs fall exclusively on the partners and not on other occupants of the property, with each partner's share determined proportionally². They relate to major property renovations and the provision of security for co-owners. They include:

a) Reimbursement of major renovation expenses for:

1. Restoration of massive walls, external roofs, ceilings, facades, balconies, terraces, chimney heads, water, gas, and electricity channels (excluding those for private use), pipes, rainwater drainage systems, and similar elements.
2. Restoration of collective equipment, such as arranging and replacing elevators and collective heating systems, along with associated expenses.

b) Reimbursement for:

1. Taxes and potential fees of any kind applied to all objects and parts of the common real estate complex.
2. Insurance premiums against fire, accidents, civil liability, water damage, and other risks.

¹ Executive Decree No. 14-99, previously cited, Title IV: Duties of the Real Estate Developer in the Transitional Management of Joint Ownership.

² Article 746 of Ordinance No. 75-58, previously cited.

From a legal standpoint, the legislator aimed to address various scenarios in which partners are obliged to bear financial burdens. These are mandatorily submitted to the disposer for management and administration to ensure the preservation of the common parts. However, the method of distribution adopted for these burdens faces practical challenges.

In the first category of burdens, equality in distribution is the adopted principle, while in the second category, distribution is based on shares. It is important to note the distinct differences between the joint parts and joint equipment elements, particularly elevators, both in terms of their types and utilization¹.

Second Part: Compliance with the Restrictions on the Enjoyment of the Parts of the Common Property

The Algerian legislator has granted co-owners the right to enjoy the various parts of the common property within the limits permitted by law, ensuring that this enjoyment does not harm the interests of other partners. This approach is not significantly different from the restrictions placed on the right to enjoy detached property. It highlights the co-owner's obligation to:

Firstly: Not arbitrarily use their right to enjoy the common property.

Article 691 of the Civil Code stipulates that an owner must not cause significant harm to their neighbors while exercising their rights of use, exploitation, and disposal, taking into account local customs and the nature of the property. In the context of common property, this is especially relevant, as residents often own apartments on opposite floors or levels. The legislator has also imposed obligations on co-owners of common property to avoid actions that harm neighboring residents. Law No. 14-99 reinforces this by restricting the use of segregated real estate to ensure it does not infringe upon the rights of other co-owners. Such infringements include disturbing peace and psychological stability through excessive noise, using machines that generate foul odors, or keeping dangerous animals. Additionally, the law prohibits modifications that could expose the building to risks such as collapse, posing a significant danger to neighboring properties. As a result, proving arbitrariness becomes easier by simply establishing the presence of unusual harm to neighbors, allowing for compensation. This approach alleviates the difficulties typically faced by injured parties in proving the existence of tort liability².

Secondly: The Obligation to Use the Property for What It Was Intended For

With reference to Article 749 of the Civil Code, the legislator has obligated owners of built property to use the property according to its designated purpose. This is further reinforced by the law governing the organization of common property, as outlined in the

¹ Meriem Toumi, *The Legal System of Joint Ownership*, Dar Al-Kitab Al-Hadith, 2015, p. 182.

² Hadda Ben Saida, *Restrictions on the Right of Joint Ownership in Algerian Legislation*, Vol. 6, No. 2, June 2021, p. 559.

second chapter under the title of the rights and duties of property participants. For example, if the collective property is intended for housing, owners are prohibited from changing its allocated purpose, such as using it for commercial activities like party halls or converting a commercial shop into a parking lot.

It is important to note that the concept of common ownership, which includes private parts in the form of floors and apartments, generates automatic and permanent subsidiary obligations. For instance, the horizontal housing system establishes a fundamental principle: the surface of an upper-floor apartment (as the private property of its owner) acts as the ceiling for the apartment owner below. This creates common property shared between them, which both must utilize within legally approved limits to avoid causing harm to one another.

Additionally, the owner of the top floor holds specific rights over their neighbor on the lower floor, such as the right to use the corridor above their neighbor's space and the ability to pass water drainage channels through their house. These channels fall under common parts, which must remain dedicated to their assigned function without interference. Furthermore, the owner of the upper floor has the right to ensure that potable water can flow through the channels passing through the lower floor apartment or shop without obstruction.

All these rights granted to the owner of the upper floor do not exempt them from a set of obligations towards the owner of the lower floor, as they are also restricted from causing harm to the lower-floor owner:

- a. Not raising the building in a way that harms the owner of the lower floor: Even if the upper-floor owner possesses a building permit allowing them to raise the building, proving harm to the lower-floor neighbor restricts the use of this permit. The raising of the building must therefore respect the rights of the owner of the neighboring lower property.
- b. Restoration and maintenance of their floor: The law obligates the upper-floor owner to undertake the necessary maintenance, repair, and upkeep of their floor as their private property. They are solely responsible for these costs, with no recourse to the lower-floor owner, even though the floor constitutes a common property between them¹.

¹ Samah Abdel Fattah Atiya Afifi, *Provisions on the Ownership of Building Roofs (Comparative Study)*, Issue 2, Part 1, Vol. 58, 2016, pp. 537–538.

Second Section

Liability for a partner's breach of the provisions governing the enjoyment and utilization of the common parts.

The overlap created by the joint-ownership system in collective housing, with its accompanying obligations for co-owners, inevitably results in a system of liability. Within this system, each co-owner assumes responsibility for the consequences of their own negligence, whether concerning their obligations or the objects or animals under their care. Consequently, a co-owner's exposure to tort liability depends on the fulfillment of its key elements: fault, damage, and the causal relationship between them. In the absence of specific legal provisions governing tort liability in the joint-ownership system, a co-owner's default falls under the general provisions of tort liability as outlined in the Civil Code.

First Requirement: Liability of the Partner for the Personal Act

The fundamental principle upheld across all legal systems is the responsibility of individuals for violating legal frameworks and boundaries. Every person who commits an act causing harm to others is obligated to provide reparation through compensation. This principle is articulated in Article 124 of the Civil Code, which states: "Any act whatsoever committed by a person that causes harm to another person shall be compensated by the person who was the cause of its occurrence."

This principle is further reinforced by Executive Decree 14-99, specifically in its annex outlining the common ownership system model applied to real estate development. Title II of this annex, entitled "Rules for the Management and Administration of the Building or Group of Buildings," includes item 11, which addresses liability. Therefore, the co-owner is not only subject to tort liability for errors and acts associated with the ownership of the detached property but is also obligated to compensate for damages caused by their errors or non-compliance. Such errors may expose the building to significant risks, including partial or total collapse, major modifications to their private property, explosion risks, or fire hazards that could affect neighboring apartments¹.

First Part: Tort Liability for His Own Mistakes and Actions

Jurisprudence and law have established that tort liability arises from a person's intentional breach of their legal obligation, involving deviation from normal and customary behavior while being aware that their wrongful conduct causes harm to others².

¹ Naim Meghebgheb, *Joint Ownership of Apartments, Chalets, and Commercial Premises*, 2nd ed., Lebanon, n.d., p. 269.

² Khalil Ahmed Hassan Qadada, *The Concise Explanation of the Algerian Civil Code: Sources of Obligation*, Part 1, 1st ed., 1994, p. 242.

In Algerian legislation, the approach to tort liability emphasizes two key points¹: Firstly: The existence of fault, without delving into its concept. This fault stems from the individual's negligence, lack of caution, or refusal to act responsibly. Secondly: The requirement that the fault be committed by a person of legal majority or distinction. Incapacitated individuals do not bear any form of responsibility. These faults and illegal acts may occur before the co-owner exercises their right to enjoy the common parts, but they can also arise during the use of these common parts, which we will examine further in the context of the idea of abuse of rights.

Second Part: Liability for Arbitrariness in the Use of the Right

Jurists have differing opinions on the legal nature of arbitrariness in the use of the right. Some argue that arbitrariness in the use of the right constitutes a form of tortious error, making it an extension of tortious liability. These are the proponents of the traditional theory. In contrast, advocates of the modern theory view arbitrariness as a separate and independent concept, distinct from tortious error².

One of the most notable supporters of the modern theory is the esteemed jurist Hussein Kira, may God have mercy on him. He connected the idea of arbitrariness to the right as a prior issue of responsibility. According to him, a right holder can be restricted from using their right arbitrarily even if no damage has occurred, meaning no tort liability would arise in such cases³.

This perspective was adopted by the Algerian legislature with the introduction of Article 124 bis of the Civil Code, which explicitly differentiates arbitrariness in the use of the right from the tort liability defined in Article 124 of the same code. Article 124 bis states: "Abuse of the right constitutes a fault, especially in the following cases: If it occurs with the intention of harming others ..."

It can be concluded from the above that arbitrariness occurs during the exercise of a person's right to the joint parts, not merely in their fear of exercising that right. If harm is caused to others during such use, the individual is liable for compensation.

The legislator emphasized this principle in Executive Decree No. 14-99. Under the liability section, the decree recognizes the responsibility of each co-owner towards others for damages resulting from their negligence or caused by a person, object, or animal for which they are legally accountable. Additionally, it stipulates that "each co-owner who does not occupy their shops themselves remains personally liable for ensuring the implementation of this regulation by those who occupy the said shops,

¹ Larbi Belhadj, *The General Theory of Obligations in the Algerian Civil Law*, Part

² Chawki Benassi, *Abuse of Rights in Light of Article 124 Bis Introduced by Law 05-10 Amending the Civil Code*, *Algerian Journal of Legal, Economic, and Political Sciences*, Issue 49, No. 03, published on 15/09/2009, p. 187.

³ Chawki Benassi, *Op. cit.*, p. 197.

unless an appeal is filed against such an occupant." To mitigate these risks, it is the co-owner's responsibility to obtain insurance coverage.

Second Requirement: Liability of the Partner for the Actions of Others, Animals, and Objects

The legislator not only holds the co-owner accountable for their personal faults but also extends this liability to encompass the actions of persons who occupy their property through a contractual arrangement or anyone who visits them. Furthermore, the co-owner is also responsible for animals and objects under their control.

First Part: Liability for the Actions of Others

The tort liability of the co-owner in common property is grounded in the principle of controller responsibility as outlined in Article 134 of the Civil Code¹. When the controller causes harm to third parties through their actions, this liability comes into effect. This represents an exception to the general rule, as the co-owner becomes liable for actions that cause harm or pose a danger to neighboring owners.

Article 134 of the Civil Code does not specifically identify the individuals who fall under the control of the co-owner but instead ties this responsibility to cases affecting the validity of the actions of certain persons. These cases include minors (distinguished and non-distinguished), mental states such as insanity, dementia, and inattention, as well as physical conditions such as disabilities and impairments like blindness or mobility challenges. Consequently, the responsibility for compensation excludes adults, as accountability is directed toward the person causing the harm.

However, Article 137 of the Civil Code provides for the possibility of recourse against the individual responsible for the offense if it results in physical impairment. This provision appears to conflict with Executive Decree No. 14-99 under the liability clause, where the legislator extends the co-owner's liability to include all individuals for whom they are legally responsible, as well as the occupants of their property allocated by contract. These occupants are considered legally as adults unless an appeal is filed directly against them.

That said, under Article 134, the controller may be exempted from liability if they can demonstrate that they fulfilled their duty of control, thereby refuting their presumed fault. Alternatively, they may prove that the damage was inevitable even with the required level of diligence².

¹ Article 134 of Ordinance No. 75-58, as amended and supplemented, states: "Anyone who is legally or contractually required to supervise a person in need of care due to minority or a mental or physical condition shall be liable for compensating the damage caused by that person to others through their harmful act...".

² Ali Ali Souleiman, *Studies in Civil Liability*, Diwan Al-Matbouat Al-Jazairia, 1989, p. 25.

Second Part: Liability for Animals and Objects

The Algerian legislator addressed liability for things and animals in the Civil Code, specifically in the third section under the title of "Liability Arising from Things," which forms part of the third chapter titled "The Act Due to Be Performed." Article 139 makes no distinction between objects and animals, treating them under the same conditions. These conditions establish the general liability of the owner and, in particular, the co-owner of joint property, recognizing both objects and animals as possessing financial value that can constitute the subject of a right in kind¹.

Referring to the provisions of Executive Decree 14-99 under the title of "Use of Exclusive Property," the legislator prohibited co-owners from misusing their belongings in ways that cause harm to others. Such harm may include physical damage, such as using machinery to drill walls between rooms, which could lead to the deterioration of neighboring residences or even the collapse of the building, and moral damage, such as using loud and disruptive sound equipment, which disturbs the peace and comfort of residents.

The decree also prohibits the ownership of animals that pose a threat to neighboring co-owners. However, it permits the ownership of pets, defined as domesticated living creatures, such as cats and dogs², that are cared for and raised by humans. Nevertheless, the responsibility for such pets, as well as other things and animals, is governed by the principle of the owner's responsibility to guard and ensure safety.

Conclusion:

The collective housing formulas within the framework of the Real Estate Promotion Activity Law have established two interconnected systems: the system of separate private ownership and the system of joint ownership. These systems grant the co-owner the right to enjoy their separate part as well as the common parts, which must be utilized within the limits prescribed by the law. The co-owner is also required to adhere to all obligations necessary to safeguard neighboring owners and the building from any danger or damage that could result from their exploitation or disposal of the property. Under the penalty of tort liability, the co-owner is accountable for their actions as well as the actions of those under their control, including third parties. Furthermore, they bear responsibility for damages caused by objects and animals under their custody. Such damages are subject to reparation through compensation.

¹ Article 682/01 of Ordinance No. 75-58, as amended and supplemented, states: "Anything that is not excluded from transactions by its nature or by law is eligible to be the subject of financial rights."

² Djamila Temani, *The Legal Status of Animals in Civil Law*, Algerian Journal of Legal and Political Sciences, Vol. 60, No. 04, December 2023, p. 111.

The Co-Owner in Joint Ownership Between the Right of Enjoyment and the Consequences of Violations in Algerian Law. (An Analytical Study)

This research has led to several findings, outlined as follows:

1. The partner's right to enjoy the common parts through use and exploitation is restricted to actions that do not harm the other partners, whether causing material or moral damage. This restriction also applies to the ownership of the detached part.
2. The joint ownership system is intricate and expansive, with its concept and provisions deeply linked to the rights of the partner who owns the detached property. The partner's utilization of the common parts depends on their status as a beneficiary of one of the collective promotional housing formulas.
3. The violation of the co-owner's obligations results in liability for their personal actions, whether arising from their personal fault or arbitrary use of their right of utilization. Notably, the theories of fault and arbitrariness in the use of the right remain distinct and independent from each other.
4. The legislator has extended the co-owner's liability to include the actions of individuals under their control, as well as the occupants of their private property within the framework of a contract. Furthermore, the co-owner is liable for damages caused by objects and pets under their custody if these cause risks or harm to neighboring owners.

Among our suggestions and recommendations regarding the restriction of the co-owner's liability in the use of shared parts, the following points are essential:

1. Incorporating punitive legal provisions to deter co-owners from violating the principles and obligations set forth in the legal framework of joint ownership.
2. Differentiating the personal liability of the co-owner from that of the occupants in their private property, ensuring rational and responsible utilization, characterized by commitment and respect for the neighboring co-owners.
3. Amending the legal framework of joint ownership, specifically concerning indivisibility and division, to permit co-owners to divide the usufruct without negatively affecting other partners. This approach would significantly reduce conflicts arising from the use of common parts and safeguard the privacy and sanctity of co-owners' residences.

References :

1. Ordinance No. 75-58 dated 26/09/1975 regarding the Civil Code, Official Gazette No. 78 dated 30/09/1975, amended and supplemented by Law No. 07-05 dated 13/06/2007.
2. Executive Decree No. 83-666 dated 12/11/1983, defining the rules related to joint ownership and the management of collective buildings, amended and supplemented by Decree No. 94-59 dated 07/03/1994.
3. Executive Decree No. 14-99 dated 14 March 2014, Official Gazette No. 14 issued on 16 March 2014, regarding the model of the joint ownership system applied in real estate promotion.
4. Larbi Belhadj, *The General Theory of Obligations in the Algerian Civil Code*, Part 2, 1st Edition, 1999.
5. Hadda Ben Saida, *Restrictions on the Right of Joint Ownership in Algerian Legislation*, Volume 6, Issue 2, June 2021.
6. Djamila Temani, *The Legal Status of Animals in Civil Law*, Algerian Journal of Legal and Political Sciences, Volume 60, Issue 04, December 2023.
7. Khalil Ahmad Hassan Qaddada, *The Concise Explanation of the Algerian Civil Code: Sources of Obligation*, Part 1, 1st Edition, 1994.
8. Samah Abdelfattah Atiya Afifi, *The Provisions of Ownership of Building Roofs (Comparative Study)*, Issue 2, Part 1, Year 58, 2016.
9. Chawki Benassi, *Abuse of Rights in Light of Article 124 Bis Introduced by Law No. 05-10 Amending the Civil Code*, Algerian Journal of Legal, Economic, and Political Sciences, Issue 49, No. 03, dated 15/09/2009.
10. Ali Ali Souleiman, *Studies in Civil Liability*, Algerian Printing Bureau, 1989.
11. Meriem Toumi, *The Legal System of Joint Ownership*, Modern Book Publishing, 2015.
12. Naim Meghebgheb, *Joint Ownership in Apartments, Chalets, and Commercial Premises*, Printing House, Lebanon, Publication Year Unknown.