

- -

.

**2007**

- -

. 2007 /2 /22 :

-----	/	-
-----	/	-
-----	/	-

# اللهراء

إله الأركان محبتي ورفعتي ونفسي وخميري

إله من لا تنزع نفسي بأخلاقهم، فعمت بوحى منها وسأبقى إله ما شاء الله

إله الأمي والاني

إله اسمواني واسمواني الذين أسموني بطموح للبرانية طموح



1	
5	
<b>7</b>	:
8	:
8	:
11	:
17	:
17	:
19	:
<b>26</b>	:
27	:
28	:
43	:
50	:
50	:
51	:
	( )
<b>53</b>	:
54	:
54	:
56	:
59	:

60	:
61	:
62	:
	(                    )
66	:
68	:
<b>74</b>	:
75	:
75	:
80	:
85	:
85	:
87	:
91	
93	
96	
98	
b	

- -

.

.

ح







( )

.

:

.

:

1948 131

1976 43

.

:

.

.

:

.

.

:

.

.

:

:

.

.

:

:

.

:

:

:

:

.

.

:

:

( )

(Stipulation Poena)

(1)

(2)

1152

(3)

1134

1152

1975

"

"

(4)

---

Toellier, Le: Droit Civil Francais, 5e, ed, T.6 , N811, P.849. (1)

.19 1991 :

 (2)

.40 1974 :

 (3)

.21 :

 (4)

223

.

"

(1)

224

"

.

225

" :

.

"

.

<sup>(2)</sup>364

"

"

.

---

.1948	131	(1)
.1976	43	(2)





.

.

:

:

"

(1)"

-

-

"

1 5

:

(1)

.135 . . .

8

(1)“

:

”

(2)

(3)“

:

:

.1

”

”

(4)

.2

(5)

.675 1961  
.172 1997  
.186 1993 3 2 1

.851

2

11/221

.27

---

: (1)  
: (2)  
: (3)  
11/221 (4)  
: (5)

.3

.

.

.

:

(1)

.

:

.3

.

:

(1)

.11 1995

(1)

(2)

:

.5 1959

2 : (1)

.9 1981 :

.4 : (2)

:

:

**.1**

—

—

(1)  
.

:

**.2**

(2)  
.

:

**.3**

---

.127-126

:

(1)

1 (

)

:

(2)

Cabriel Khoury, Le, Clause penab. Les oblig, en dr. fronc. Et egyptd, these .56

paris 1939, 10.

(1)

:

.4

(2)

"

"

(3)"

( )

( )

(4)"

.86

127

:

(1)

:

(2)

2

.854 2000 4 3

99/1027

(3)

.1676 18 1967/11/14

34 129

(4)

.941 1998 4 6

(1/364)

"

"

(1)

"

(2)"

:

.5

(3)

:

.6

.75	2005					:	(1)
		8	1957/12/19	23	.92		(2)
			:	.74		:	(3)
					.172		

(1)  
.

: .7

(2)  
.

1 5

---

.18 : (1)

: (2)

.137 .



(1)

.

.

.126

:

(1)

.

:

.

:

:

:

.1

(1)

.

.41 1996 . 2

---

:

(1)

(1)

" (2)

(1/364)

"

(3)

.2

(4)

"

"

.

( ) :

(1)

.256 2003 6-1 68

240

223 (2)

:

(3)

(4)

: :

(1)  
.

(2)

:

: : :

: (3)  
.

:

.

. 86

2

---

.498 : (1)

: (2)

.50 : (3)

:

:

(1)

(2)

"

(3)"

"

115 1994

: (1)

.78  
( ) :

.73 1994  
81/117 (3)

.1473 1981  
.628 1966  
20

66/54

(1)〃

(2)

:

:

(3)

.

:

2328

.94

2005

1991/4/1

(1)

(2)

:

.63

:

863

2

:

(3)

.66-65

(1)

(2)

(4)

819

(3)

"

"

:

:

:

:

:

(5)

206

"

"

"

---

.140 : (1)

.78 (2)

.2005 24 [www.uluminisania.net](http://www.uluminisania.net) : (3)

(152) . . 687 (4)

.89 : 64 10142 2001/6/15 (5)

(1) . "

· ( )

(2)

∴ ∴

∴

"

(3)"

( ) " (1)  
( ) ( )  
7 1 ( ) ∴ .  
.300 1993-1992  
∴ 142 ∴ (2)  
880-887 1934 ( )  
.67  
5 27 982 81/316 (3)  
.394



(1)

(2)

(3)

.

:

:

.1"

(4)

209

.2

"

.

.69 1998

4

:

(1)

.165

:

(2)

"

. . . 466

(3)

"

.

155

153

(4)

(1)

.

.

.

2

25

---

: (1)  
.206 1998



( )

( )

(1)

:

.

:

.

:

" :

(1)〃

(2)

:

.

:

:

〃

:

(3)〃

(358)

〃

(4)〃

.

(5)

.

:

2001/6/12

70

2447 2444 01859

(1)

.176

(2)

.

1/234

. . 1/211

(3)

2 (

)

(4)

.262

1998

1

(5)

.884

(448)

"

.(1)"

"

. . (261)

.(2)"

( )

.(3)

(237)

. . (373)

(1)

. . . (165)

(2)

: .477

: (3)

.384

(2)

(1)

(4)

(3)

(5)

(6)

.461

:

(1)

:

(2)

:

:

:

.

.454

(

)

.567

1996

1

(3)

:

.573

:

.416

:

(4)

.

:

.

570

:

.414

458

.373

1978

1

:

(5)

.433

1991

:

.235

2003

3

:

(6)

( )

(1)

:

( )

(2)

1

:

.236

(1)

.248

2002

.264

:

(2)

.242

1987



"

(1)"

(2)

(3)

(4)

5

---

1984 983/426 (1)

.1045 .2

. 264 :

.245 (3)

.264 (4)

32

:

(1)

:

(2)

<sup>(3)</sup>2/217

.	631	1995	1	2	:	(1)
.239	:	.	:	905	.268	:
	:	.	:	905	1	:
					.266	"
						(3)
.	"					

"

(1)"  
.

2/684

<sup>(2)</sup>798

.(3)  
.

.1

.2

"

.(4)"  
.

.3

---

1/238 (1)

.1" (2)

.2

: .467 : (3)

.376

: .87/272 (4)

.330 1 1987

.  
 :  
 : **.1**

)  
 (

(1)  
 : **.2**

(2)  
 2/217

-48 : .236 : (1)  
 .49  
 .49 : (2)

.

:

:

(1)

"

(2)"

: **.1**

)

(

: .211 (1)

.299 2004

: .240 (2)

) : 1 (

.300 1996

(1)

221

239

(2.1/221)

(2)“

363

： .152 . (1)

.310 1988 ( )

1 : 1989/3/26 56 1556 (2)

. 68 3956 291 2005

.156 2000/5/28

"

"

(1)"

:

.2

(2)

				<hr/>		
	.2389	2388	200 8-7	99/475	(1)	
:		.303-302		:	(2)	
		.	3/238	.301		
			38			

(1) " ...

"

1/222

.

:

(2)

(3)

.

.1835 2000 6-5

---

99/526 (1)

.148 1996 :

(2)

.240 : :

(3)

:

267

"

"

( )

:

:

.

2000 24 3

(360)

.269-268



(1)

(2)

"

"

---

360 : : (1)

.269-268 2000 24 3

: .375 : (2)

. 1  
5 22

: .594

.2446 1995

:

"

"

(1)

.

.

(2)

.

(2/364)

"

"

(3)

.

:

.267

:

(1)

.136 1999

( )

)

(2)

.269

:

.(

.269

:

(3)

(1)

(4)

(3)

(2)

:

:

(5)

-

-

(6)

---

(1)

. (2/364) (2)

. (11/224) (3)

. (1/241) (4)

.287 1 (5)

.215 : .279 : (6)

(1)

"

(2)"

: :

(4)

(3)

(5)

288

"

(6)

(7)"

"

" . . (261) (1)

: . (181) . . . (165) "

.244 :

.2324 2000 8-7 98/2674 (2)

. (361) (3)

. (218) (4)

. (243) (5)

.133 : (6)

.181 : 1998/4/12 . 62 268 (7)

.1 :

"

"

(1)"

(2)"

.

(3)"

.

"

(4)

.

"

(5)"

.

			.86	1	:	(1)
1985		(19)			:	(2)
						.64
			.398	1		(3)
.94	5	:	.83	2	:	(4)
.135			1998/4/12	62	268	(5)
	.1382	1989	1987/1036			

.(1)

.1

.2

( )

( )

.(2)

.(3)

.1

.

.2

.

"

(219)

"

( )

:

(1)

.640 2003

(1/229) . . (2/207)

(2)

.640 2003 ( ) :

(3)

:

(1)

244

.

"

(361)

.

(2)"

.

:

.1

.2

.3

.

.4

.

.642

.104

:

(1)

.398

1

(2)

46

(1)  
.

(2)  
.

(3)  
.

:

:

"

(362)

.

:

.

.1

.

.2

.3

.

---

.153 : (1)

(3) .830 2 : (2)

.98 : .64 : (3)



."

.4

(221)

(245)

. (219)

.

:

.1

(1)

.

:

.2

243

1989/12/12

388

.832

4-1

.134

84/678

(1)

.(2)〃

〃 (1)

〃 .3

:

.(3)

: .4

.(4)

.5

.

1	71	_____	:	(1)
			.399	

.838	2	:	(2)
------	---	---	-----

1	.835	2	:	(3)
---	------	---	---	-----

.71	:	.398
-----	---	------

71	.839	2	:	(4)
----	------	---	---	-----

.399	1
------	---

.244

( )

.( )

:

:

(1)

.

.

(1)

(2)

( )

:

(3)

.61-60

:

(1)

.30

.63-62

(2)

.112

:

.74

:

(3)

.172

:

51

.

.<sup>(1)</sup> (                      )

(225)

"

.<sup>(2)</sup>"

.<sup>(3)</sup>

.

.851	2	:	(1)
.573			(2)
.461		:	(3)
52			

.

:

:

:

:

.

:

:

"

(215)

(1)"

.

-

-

(2)

.

(237)

(1)

.861

2

:

(2)

2/203 1/147 "

(1)" 203

(2)  
:

.1

" . . (2/355) .

: 1991/5/9 54 1886 (1)

.180

.63 : (2)



.(1)〃

.2

.(2)

.3

.4

.(3)

:

〃

.(4)〃 ...

.(225)	.. (2003)	(1)
.63	:	(2)
	.68	(3)
:	2001/6/24 67 228	(4)
		.183

:

:

.1

(1)

"

2/216 223 124 2/215

(2)

(3)

.69

:

(1)

:

2001/6/12 . 7

2447 2444 1859

(2)

.176

.67

:

(3)

:

.2

(1)

.

.

.223

58

:

:

(1)

.

.

:

:

:

:

:

:

:  
(1)

:  
.1

(2)  
.

.2

(3)  
.

.3

(4)  
.

.4

|

(5)  
.

(1000)

.439

: (1)

.432

: (2)

.509

: (3)

.429

: (4)

.511

: (5)

60

(1000)

(2000)

(500)

. (500)

(1000)

.

:

:

"

(647)

549

"

"

(1)"

.

:

.

.1

---

(589)

(1)

: .2

(1)

:(2)

:

.1

.2

.3

:

:

(3)

:( )

:

"

: . 1941/1/16 10 51 (1)  
          .89 1998 2  
              .637  
              .160 : (2)  
              86/59 (3)  
              62  
.408

.(1)“

.

( )

.(2)

(213)

(236)

.

(360)

(3)

”

.”

.

.158

: (1)

.64

: (2)

.57

19

: (3)

.64

:

:

63



:

:

:(1) ( )

.1

.

.2

.

( )

.3

( )

.(2)

.(3)

.1

.

.2

.

: 807 2 : (1)

.65

807 2 : (2)

.28 :

.66 : (3)

64

( ) .3

.

:

:

:

.(1) :

.1

.

( ) .2

.

.3

.

.(2) :

.1

.

.2

.

: .67-66 ( ) : (1)

.166

. 49 : . (2)

.3

.

.4

.

.5

.

:

:

" . . (1/407)

(1)"

.

(2)

.

" . . (2/407)

"

.

. (291) . . . (275) (1)

.156 :

(2)

;(1)

.1

.

.2

.

.

: :

:

(2)

.

: :

.1

	(292)	. . (276)	... (408)	(1)
.45		:	.206	:
		.8	:	(2)
		67		

—  
(1)  
.

—

.2

(2)  
.

.3

(3)  
.

.

:

:

:

:

.

" . . (411)

(4)"  
.

---

.53 :

(1)

.45 :

(2)

.146 1964 3 :

(3)

. (294) . . . (278)

(4)

(1)

:

:

:

:

.

:

:

(2)

.

.

(

)

"

.161

:

(1)

.54

:

(2)

(1)»

.1"

(107)

.2 .

(2)»

(3)

(4)

-

-

(5)

.75 : 73 : (1)

. (92) . . (103) (2)

(92) . . (103) (3)

. . . (107)

.73 : (4)

1977 2-1 1 : (5)

.76 : .58

(1)

.

.

"

(2)"

.

(2/107)

:

:

:

.1

.75

:

(1)

.811 1994 5- 4

92/677

(2)



(1)

.2

(2)

.3

(3)

.4

(4)

.1

.482-481 2004 4  
:  
.162

.482  
(243) ( )

---

: (1)  
: (2)  
.264 1  
: (3)  
(4)

(1)

.2

(2)

.3

.

.4

(3)

.5

(4)

.6

(5)

	:	468	:	(1)	
		.129	:	42	
		.129	:	(2)	
		.865	2	:	(3)
.483	:	.865	2	:	(4)
		.468	:		
		.81	:	(5)	

:

:

:

- -

)

(364

.

.

:

:

"<sup>(1)</sup>(2/224)

"  
.

---

(2/241)

(1)

:

:

:

(2/364)

(1)

"

(2)"

.

			:	.75		:	(1)
.51	1998	2	25		—		
.942			:	1968/12/5	34	563	(2)

76

: :

(224)

.

<sup>(1)</sup> (342)

(2/224)

.

:

"

- -

%7

(372)

(1)

(1)〃

(2)

(3)

(4)

(364)

〃

(5)〃

		<hr/>			
:		1970/4/30	36	71	(1)
					.423
		.81		:	(2)
:	.76			:	(3)
			.120		
		.51		:	(4)
.942	:	1968/12/5	34	563	(5)
78					

"

(2/364)

(1)"

"

(2)"

364 "

.1097 1984

.1933 1995

79

---

83/560 (1)

95/502 (2)



(1)»

:

:

.

(2)

.

.

:

:

(3)

(2/244)

.235 1990 4-1

871/391

(1)

:

:

(2)

.138 1992 3-1

(2/241)

(3)

.

"

(2/217)

"

.

:

:

.1

. . (225)

"

(1)"

.

:

:

168

1956/2/9

(1)

.1009

217

(1)

:

.2

" . . (217)

"

.

(2)

.

: .878 2 : (1)

.427

: .878 2 : (2)

.59

: .428

:

:

(2/364)

.

"

(2/358)

"

(270)

(1)

.

(364)

.60

:

(1)

(1)

"

)

(

(2)"

.

(3)

.2

.136

.78

84

---

	:	(1)
.213	1987	
:		(2)
:		(3)

:

:

:

:

:

.

(1)

.

(2)

.

.125

.53 1998

85

:

(1)

:

(2)

(1)  
.

(2)  
.

(3)  
.

	1	:		(1)
			.36 2001	
.28		:		(2)
	.39	:		(3)
	86			

(1)

.

.

:

.

:

:

:

(2/364)

.1

.

.49

87

:

(1)



.2

(2/358)

"

"

.

.3

%9

.

.4

"

(270)

"

.

.5

(2/364)

"

.

"

...

:

:

<sup>(1)</sup> (224)

.

:

.1

<sup>(2)</sup>  
.

.2

.

.3

"

(3/217)

"

(224)

---

(241)

(1)

.79

2  
89

:

(2)

.

.

.4

.

.5

.

.

(1)  
.

91  
312 1999 1  
:  
:  
(1)



)

.(

.

:







:

.1

.

.2

(274)

" :

"  
.

.3

.

: ... (364)

.4

" -

.

.

-

—

:

.

•

.

•

.

•

.

•

"

—

: :  
 :  
 .1994  
 .1956 :  
 1 :  
 .2002  
 .1996 2 :  
 - :  
 .1996 1 -  
 .2003 :  
 5 1976 43 :  
 .2001  
 .1981 :  
 .2005 - - :  
 :  
 .1998  
 :  
 .2003

( ) :  
.1997

:  
.1998 2

- - :  
.1934

:  
2  
1 :

. .  
3 :  
.1964

1 :  
.1978

7 1 - - :  
.1993-1992

:  
.1991

1 :  
.2001

:

. .

1 ( ) :

.1996

. . :

.1990 :

.1997 :

— :

.1988

2 :

. .

.1957 :

.1959 1 :

.1961 :

4 :

.2001

:

. . 1 5

		:	:
-	-	:	
	.1999		
		:	
	.1992		
.1998	4	:	
		:	
	.1999 1		
.1991		:	
		:	:
		:	
	.1998 2 25		
		:	
.2003 6-1 68			
1		:	
	.1977 2-1		
.2004 4		:	
		:	
	.1995 5 22		

:

.1987 2

:

.1992 3-1

:

.1977 2

.1985

19

:

360 :

.269-268 2000 24 3

:

:

( ) :

.1974

:

.

( )

:

.1998

)

(

)

:

.1994

(

:

( )

.1998

:

:

Cabriel Khoury, Le, Clause penab. Les oblig, en dr. franc. Et egypth, these  
paris 1939, 10.

Toellier, Le: Droit Civil Francais, 5e, ed, T.6 , N811, P.849.



**An-Najah National University  
Faculty of Graduate Studies**

# **Predetermined Reimbursement in Civil Law Comparative Study**

**By  
Tariq Mhommad Motlaq Abo Layla**

**Advisor  
Dr. Hussein A. Mashaqi**

*Submitted in Partial Fulfillment of the Requirements for the Degree of  
Masters in Law, Faculty of Graduate Studies, at An-Najah National  
University, Nablus, Palestine.*

*2007*

**Predetermined Reimbursement in Civil Law  
Comparative Study**

**By  
Tariq Mhommad Motlaq Abo Layla  
Advisor  
Dr. Hussein A. Mashaqi**

**Abstract**

This study deals with a very important topic at the economic level in general. Predetermined reimbursement refers to previous agreement on the assessment of the required reimbursement incurred due to default of either party of his liabilities according to the contract. Predetermined reimbursement plays a vital role characterizing the contracts with obligatory qualities that help in their execution. In addition, it decreases disputes that may erupt as a result of damages and the volume of incurred reimbursement. Therefore, it prevents the necessity to recourse to arbitration and assessment whether by the judge himself or through seeking assistance of experts. In this way, it is possible to save time, costs, efforts, and money of both the contracting parties and the judicial authorities.

This study plays an important role at the Palestinian legal level since it deals with the predetermined reimbursement in the proposed Palestinian civil law in contrastive analysis with the legal systems in both Jordan and Egypt.

This study aims at investigating the legal value of predetermined reimbursement. It is essential to recognize the concept of the predetermined reimbursement and the conditions of its realization, in addition to the range of its application, and its discrimination of similar legal situations. Assistance of Jordanian and Egyptian jurisprudence and judicial systems will be sought to reach a clear vision of the legal effects that come up from

the predetermined reimbursement and to determine its legal nature. These outcomes are extremely important at not only the commercial, economical and investment levels but also the legal advantages of those who work in both the legal professions and the economical investments.

Consequently, this study is demonstrated in a preface and four chapters. In the study's preface, the study investigates the development of the predetermined reimbursement idea in various legal systems.

Chapter 1 deals with the general regulations and principles of predetermined reimbursement through two parts: Part 1 deals with the concept of predetermined reimbursement which is divided into two sections: Section1 aims at recognizing the predetermined reimbursement, and its terms in various systems. Section 2 deals with the importance of predetermined reimbursement. Part 2 investigates the characteristics of predetermined reimbursement which is also divided into two sections: Section 1 deals with the quality of the contract. Section 2 deals with the quality of subordinate.

Chapter 2 investigates the conditions of realizing the predetermined reimbursement and its application range, divided into two parts. Part 1 deals with the conditions of realizing the predetermined reimbursement which is in turn divided into two sections: Section 1 deals with the general terms of the verdict of the predetermined reimbursement including errors, damages and causal relationship. Section2 deals with excuses presented from the indebted to the debtor. Part 2 deals with the application range of the predetermined reimbursement which is also divided into two sections: Section 1 deals with application of the predetermined reimbursement

within the range of the contract. Section 2 deals with the application of the predetermined reimbursement within the damaging act.

Chapter 3 deals with the issue of selection and combination of material execution and predetermined reimbursement in addition to its discrimination from similar legal situations. Chapter 3 is also divided into two parts: Part 1 is dedicated to the issue of selection and combination between material execution and predetermined reimbursement which is in turn divided into two sections: Section 1 is dedicated to the issue of selection between material execution and predetermined reimbursement. Section 2 is dedicated to the issue of combination between material execution and predetermined reimbursement. Part 2 deals with the discrimination of the predetermined reimbursement according to similar legal situations. This part is divided into five sections: Section 1 deals with the discrimination between the predetermined reimbursement and down payment. Section 2 deals with the discrimination between the predetermined reimbursement and peace-making. Section 3 deals with the discrimination between the predetermined reimbursement and material threat. Section 4 deals with the discrimination between the predetermined reimbursement and substitution commitment. Section 5 deals with the discrimination between the predetermined reimbursement and optional commitment.

Chapter 4 deals with the effects of the predetermined reimbursement and to what extent its regulations are related to the general system. This chapter is divided into two parts: Part 1 deals with the judge's authority in modifying the predetermined reimbursement which is divided into two sections: Section 1 deals with the judge's authority in assigning the predetermined

reimbursement. Section 2 deals with the judge's authority in increasing the predetermined reimbursement. Part 2 deals with the regulations of the predetermined reimbursement and general system which is divided into two sections: Section 1 deals with the issue of the general system. Section 2 deals with the regulations of the predetermined reimbursement and general system since the methodology of the legislator regarding this issue is a peculiar methodology in itself since the majority of laws permitted the contractors to agree upon the amount of reimbursement at the beginning of the contract and to make additions later on. This means that the legislator does not consider that the predetermined reimbursement does not contradict the regulations of the general system. However, the regulations of related to the predetermined reimbursement have violated the principle that they have adopted since they allow the judge to assign or increase the predetermined reimbursement if the amount of predetermined reimbursement is not proportional to the incurred damage, and they considered the judge's authority a part of the general system and that the predetermined reimbursement must not violate it.