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The Role of the Judge in the Proof

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Abstract
The means of proof are one of the most critical topics that individuals resort to protect their rights, and they are created by law to prove the disputed facts. Jordanian law has stipulated the means of proof in both civil and law of proof. The law specified these means that must be presented upon request from the court through a means. The claim is the lawsuit, and the legally charged with providing the means of proof or payment are the litigants, but does the judge have a role in the proof, knowing that the Jordanian law, in addition to other legislation, has taken the principle of the judge's impartiality in proof. The judge's impartiality in proof means that it is up to the litigants, in principle, to provide proof for the facts or legal actions they claim, and the judge has no choice but to rely on facts and proof presented in the lawsuit by the litigants.However, the judge's impartiality principle in the proof is not absolute. The law has given the judge, of his own accord, the right to direct an interrogation to one of the litigants, direct a supplementary oath, conduct inspection and expertise, and others, even if the litigants did not request it. These methods were given by the law, which gave the judge the right to resort to them during the consideration of the case, and they are the subject of this research.
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The Study Problem
The problem of the study lies in the search for the positive role of the court or judge in proof, in violation of the general principle, which is the principle of impartiality of the judge, and to clarify these aspects in the proof and to identify these aspects, through the authority granted to him by law.

The Study Justifications
The reasons for this research are to determine the means of proof that the judge may resort to in judicial litigation, bearing in mind that the parties to the case did not address these means when presenting their proof in this case, and to clarify these means and the role of the judge in that in violation of the principle of the judge's impartiality.

The Study Hypotheses
This study is based on the fact that the judge has to resort to the legally defined means of proof, which are mentioned in the law, to resort to them, and that he has the authority and is not restricted to following the means of proof presented by the litigants but that he can apply them himself without the consent of the litigants.

The Study Approach
The approach followed in this study is the analytical method by identifying these means that the judge can use in violation of the principle of the judge's impartiality.

Study Plan
This research is divided into two chapters

Chapter One: The nature of proof, the importance, and the burden of proof.

Chapter Two: Means of Proof in the Civil Case and the Role of the Civil Judge.

There is more than one law that governs civil disputes in the same way, and the dispute is regulated by several different rules, some of which are related to procedures, and some are related to proof. This research deals with the rules related to proof and the role of the judge in these rules. Therefore, it is necessary to define the role of the judge in a civil dispute. What is the role of the judge and the parties to the case in establishing the civil dispute? Is the role of the judge in this matter a negative or positive role?

Most of the principles and procedures laws have come to organize the civil lawsuit according to requirements committed to achieving justice between the litigants so that the judgment in it obtains the parties' confidence in the civil lawsuit. Therefore, it is said that the judgment is the title of the truth, as it is issued after the stages in which the case proceeds, where each party leads in presenting its claims and presenting its various defenses according to the law.

The role of the judge in modern procedural laws has evolved from what it was before, as it was a previous session limited to monitoring the progress of the litigation to the extent that he is considered an observer or an

arbitrator who monitors the dispute and this is what is called a negative role. With the development, it has an influential role in litigation. It has become a positive role even in the use of means of proof and in the conduct of judicial litigation, specifically in cases of hearing and questioning a witness, summoning witnesses to swear an oath, and conducting inspection and expertise.

The law gave the judge his power to achieve justice and facilitate the procedures so the case could proceed to its end. What came in the law is a guide to what the different legal systems have followed that the lawsuit belongs to the litigants at the expense of the substantive right. This in itself leads to prolonging the litigation period, and thus justice is delayed. This is unfair and may push the litigants to other means, unfair settlements, or abandoning their rights to avoid the suffering of litigation, which may sometimes reach several years.

The legal systems are trying to develop themselves to find a solution to this by paying attention to the development of legislation related to litigation procedures in violation of the principle that the lawsuit belongs to the litigants. It is not permissible to take the legal rules that are supposed to exist to protect rights and access to it as the reason that prevents it from accessing it. This study lies in the statement of the positive role of the judge in managing the civil lawsuit and the limits of this role, in particular in the application of some rules of proof without prejudice to the principle of impartiality of the judge and to achieve justice and the smooth conduct of litigation procedures. The role of the civil judge.

Chapter One: The nature of proof and its importance Burden of proof

In this research, we will discuss the definition of proof, the concept of the burden of proof, and the importance of proof. We will discuss this through the following:

The first topic: is the place of proof in the legislation.
The second topic: Doctrines that govern the rules of proof.
The third topic: is the nature of proof and its importance.
The fourth topic: is the rules of proof.

The first topic: the place of proof in legislation

Legal texts relating to proof include two types of rules: substantive rules and formal rules. The substantive rules define the different methods of proof and specify the person who bears the burden of proof and its place. While the formal rules look at the procedures to be followed when taking each of these methods.[1]

The jurists differed in determining the place occupied by the rules of proof in the legislation. Some of them considered that all the rules of proof (objective and formal) should be included in the Code of Procedure, which is what German legislation adopted. While the second opinion considers that the substantive rules should be in the civil law, while the formal rules are in the Code of Procedure, which Egyptian law has adopted. A third opinion says that all the substantive and formal rules of proof should be in a special law independent of the law of assets and civil law, which is what the Jordanian law adopted by Proof Law No. (30) of 1952, similar to the ish law.[2]

The second topic: Doctrines that govern the rules of proof

There are three doctrines and theories related to evaluating proof: the free doctrine, the legal doctrine, and the mixed doctrine.[3]

1. Free Doctrine: This doctrine does not specify specific methods of proof by law but instead leaves complete freedom to the litigants to present what they consider sufficient to convince the judge. It also leaves the judge free to form his conviction from any proof presented.
2. The legal doctrine is in contrast to the free doctrine, where the law precisely defines the means of proof and its evidentiary power, and the litigants and the judge are bound by them.
3. Mixed sect: This sect combines the free and legal sects. So that the proof in criminal cases is free, as the judge builds his conviction on the proof presented without exception. Likewise, proof in commercial matters remains free, as it is permissible in commercial matters to prove by all legal methods of proof, including testimony and presumptions, even if the value of the dispute exceeds the legal limit in which proof may not be proofed by testimony in civil matters.[4] As for civil matters, it is very restrictive, as a proof is prohibited by testimony if the value of the dispute exceeds a specific limit. This is what the Jordanian law adopted in the Jordanian Proof Law. The Jordanian legislator took the third doctrine completely, as the law determined the evidentiary power

[1] Rizkallah Antaki, Al-Wajeez in Civil and Commercial Procedures, I, Syrian University Press, 1959, p. (404).
[2] Muhammad Sadiq Fahmy, (Proof in Comparative Law), pp. (20–25), mentioned in Rizkallah Antaki, previous reference, pg. (405).
[3] Rizk Allah Antaki, op. cit. (1), p. (404-408).
[4] Law of Proof, Article (28) / A/1 states that "in contractual obligations, the following provisions shall be taken into account in the permissibility of proof by testimony: Proving the existence of the obligation or the innocence of it unless there is an agreement or text to the contrary.

of official attribution, ordinary attribution, testimony, acknowledgment, and oath. It also created some restrictions on accepting some means of proof, such as testimony and presumptions.

The third topic: the nature of proof and its importance

In this section, we will discuss the definition of proof, the concept of the burden of proof, and the importance of determining who is charged with it.

The first requirement: the definition of proof

Proof language is confirmation of the right by proof. The proof is the proof or argument. The legal meaning of proof is the confirmation of a disputed right that has a legal effect with the proof permitted by law to prove that right.[1]

The legal proof is essential to the right, but it is not part of it and not one of its pillars. However, the right without proof is non-existence because the judge does not judge the claimed right unless the proof arranged by the law proves it. Proof has three pillars:

1. That there is a disputed fact (legal or material).
2. That there is a provision in the law that gives this incident legal effect—previous reference, p. (32).
3. That it be proven by the proof permitted by law, i.e., its attachment to the subject matter of the case and its outcome, and it is permissible to accept it in accordance with the law, and the assessment of that is left to the judge, and with the proof permitted by law.

The second requirement: What is the burden of proof, and what is assigned to it?

Burden of Proof

In the language, the burden is called the burden, and the weight and its plural are burdens, and the burden is something heavy on the soul that it bears with difficulty.[2] As for the definition of proof, it is the confirmation of the truth with proof, and the proof is the proof or argument.[3] Technically speaking, the burden of proof is to oblige the legislator one of the two opponents to establish the argument and the proof for the validity of his claims.[4]

The burden of proof is to establish proof before the judiciary of a legal fact or action based on either request, payment, or defense. The burden of proof depends on the fate of the case, so the burden of proof falls on one of the two opponents, and it is the first and most important of the rules of proof. In a civil lawsuit, some claim and those who are accused, and the right may be established clearly and clearly for any of these two parties. In other cases, the right may be unclear between the parties, so it is necessary to determine who bears the burden of proof.[5] One of the principles governing proof is that the proof rests with the plaintiff. As for the defendant, if he suffices to deny the plaintiff's claim, he does not have the burden of proof.[6] This is what Article (323) of the Jordanian Civil Code stipulates: "The creditor must prove the obligation, and the debtor must prove his disposal." Accordingly, if the defendant submits a plea in the case, then he must establish the facts and procedures that support this plea, such as claiming acquittal and set-off, then in these cases, he must prove that. If he denies it, he does not have any burden of proof. This principle applies to both positive and negative facts, but it is not applied when the law provides for a presumption; in this case, the burden of proof shifts from the plaintiff to the defendant in cases where the law permit proving the opposite of the presumption.[7]

The establishment of proof before the judiciary burdens its owner, so it is termed the assignment to establish proof as the burden of proof.[8] The role of the judge during the stages of the case is to collect data to arrive at the judicial truth and settle the dispute before him.

The importance of determining the burden of proof

Assigning one of the litigants with the burden of proof is extremely important, as the right of the right may be lost if the judge assigns an opponent to prove it. The difficulty of proof lies in obtaining proof or in the subjection of this proof to refutation, denial, or skepticism by the other opponent or by the discretionary authority of the court for this proof, as in the testimony of witnesses and judicial presumptions, because the person charged with the burden of proof may lose his case if he is unable to establish proof by claiming that he is right holder. Especially since the burden of proof is not transferred to the defendant to present proof of his denial because proof of the denial is not possible; as a rule, the denial is not required to be proven, and it is sufficient

[1] Ahmed Nashaat, Letter of Proof, Part One, 7th Edition, undated, p. 14.
[2] Ibn Mansur, Lisan Al-Arab, Part One, pp. (117-118), the burden of breaking, carrying, and transferring from anything whatsoever, and the combination of burdens, which are works or works.
[3] Badani Mohieldin, the role of the judge and the litigants in distributing the burden of proof in civil matters, Master's thesis, Abdelhamid Ben Badis University, Mostaganem, Algeria, 2019, p. (7).
[4] The Noble Qur'an, Surat Al-Baqarah, Verse 111.
[5] Ahmed Nashaat, Letter of Proof, previous reference (6), pg (78).
[6] An opponent is not forced to present proof "that he believes it is not in his interest and that any opponent has the right to keep his papers." Judgment of the Egyptian Court of Cassation 11/4/190 published in Zaki Antaki - pg. (449).
[7] Jordanian Proof Law, Article (41), peremptory rulings are presumptions that cannot be proven otherwise.
[8] Badani Mohieldin, The Role of the Judge and Litigants in Distributing the Burden of Proof in Civil Matters, previous reference (9), p. (6).

for his denial to be abstract. Also, whoever claims otherwise is the one charged with proving it. The rule is that the denier is not required to prove that unless the event to be proven is absolute and not limited, as if a person claims that he never went to a specific place, it is impossible to find witnesses who testify to him in other places at all times because it is not possible for witnesses to be informed of that and the impossibility here arises On the fact that the incident is absolute and not limited, and not that the incident is negative[1]

As for the negative incident, there are ways of proof according to which the plaintiff may obtain proof from the defendant if he does not have proof, by interrogating the defendant or by directing the decisive oath, because the interrogation may lead to confession and the decisive oath if we deny it. This is considered an admission of the right.[2]

When the judge assigns one of the litigants to prove, this is an implicit acknowledgment by him of the approval of the other party who is not charged with proof and that his side is more likely in the case. Therefore, here lies the importance of determining who bears the burden of proof because the fate of the case depends on him. The importance of this appears in the case of adopting the principle of absolute neutrality of the judge because the judge here has a negative attitude that prevents him from interfering in the case to direct the litigants or one of them to present proof.

Jordanian law has adopted the principle of the judge's impartiality, which is based on the fact that the litigants, in principle, have to provide proof for the material facts or legal actions they claim. This principle follows that the judge may not base his judgment on facts and proof other than those presented by the litigants. He is not entitled to decide to Show documents that the litigants agreed not to produce or he decides to hear a witness. The litigants agreed not to hear his testimony. The principle of impartiality of the judge is based on the rule that determining the subject of the dispute in civil matters is the right of the litigants to the exclusion of others, and this is closely linked to the means of proof that support this claim. Likewise, the judge does not have the right to deviate from that because that leads to a breach of the right of defense. However, he did not take the Jordanian law to release it. Jordanian law has deviated in some cases, which are the cases that we will discuss in Chapter Two, and related to the positive role of the judge (interrogating one of the opponents, directing the decisive oath, inspection, experience, and others).

It is legally agreed upon, in Islamic Sharia and Islamic jurisprudence, that the proof is upon the one who claims the hadith of the Messenger of God, peace, and blessings be upon him, "proof is upon the one who claims, and the oath is upon the one who denies." Proof by proving a positive fact, such as a person denying that he did not stamp his paper with his stamp because he does not have a stamp, but sign what proves this that he signs all his transactions by signing.

The rule that the denial is not required to prove unless the denial is absolute (abstract denial) and that the burden of proof shifts between the litigants when the litigant succeeds in establishing proof for what he claims or on the preponderance of his claim, where the litigant is not satisfied with denying his claim, but rather goes beyond that to make a request or a defense contrary to what is originally established or apparent so that the loser in the case is the one who was unable to prove his claim, whether he was the initiator of proof or he was the one to whom the burden of proof shifted, and whoever claims otherwise has to prove his claim.

The opponent, charged with the burden of proof, will be in a difficult position as he cannot provide proof. The burden of proof may shift more than once until he settles on the obstacle of one of the parties and refrains from carrying it through his inability to throw it at the other party. Thus, he exposes his right to forfeit and the loss of the lawsuit, similar to the other party, who is exempted from the burden of proof and is in a stronger position than his opponent.

The litigant's exemption from proof and the fact he claims is considered to be proven evident if he bases his proof on a paper in his opponent's possession and this opponent refuses to present it on the condition that his possession of it is established. In this case, it is not allowed to adhere to the old rule that a person may not be obliged to submit a document against himself because good faith dealing must prevail in the presentation of proof, and the person should not ask for more than his right and give the person dealing with him all his right. The Prophet, may God's prayers and peace be upon him, said: "If people were given their claim, men would claim people's money and blood, but the proof is on the one who claims, and the oath is on the one who denies." The creditor must prove his right, and the debtor must deny it. Also, Article (77) of the Civil Code stipulates that "proof is for the one who claims, and the oath for the one who denies." These rules show how important it is to determine who bears the burden of proof. However, in many cases, it is difficult to distinguish the plaintiff from the defendant and, consequently, to determine who is assigned to establish the argument. Therefore, we will discuss by definition each of the plaintiff and the defendant and the distinction between them.

Section One: The burden of proof falls on the plaintiff

The plaintiff is anyone who alleges a fact that is contrary to the apparent or originally established situation, and

[1] Ahmed Nashaat, Letter of Proof, previous reference (6), pg (78).
[2] Ahmed Nashaat, Letter of Proof, previous reference (6), p. (83-87).

the reason for this is his approval of the majority, according to the nature of things, or an offer to prove his opponent to him, or a hypothesis, which is what the legislator supposes to be achieved by a legal presumption. This is what was stipulated in Article (78) of the Civil Code, "The Proof for the Proof of Proof of Contradiction and the Oath to Preserve the Original," and Article (76) of the Civil Code, which states that "the apparent is valid as an argument for payment, not for entitlement" and that the plaintiff in the proof may be the plaintiff who filed the case, the defendant, a party involved in the litigation, or an intervening party, whether what he claims is an original request or a consideration, or he is the author of a substantive or formal plea or a plea for non-acceptance, and determining who bears the burden of proof. Determining who bears the burden of proof is a legal matter subject to the oversight of the Court of Cassation.[1]

The plaintiff is the one who files the lawsuit against someone else, claiming it for a specific right, and if he proves what he is claiming, whoever claims a debt must prove the source of this debt owed by the defendant. The Jordanian states that the proof is on the one who claims, and the oath is on the one who denies it. It is worth noting that whoever files a claim against others for the ownership of real estate must establish proof of his ownership of this real estate, which is not absolute. From the obligation of the plaintiff to be the one who files the lawsuit, the plaintiff in the field of proof may differ from the plaintiff in the lawsuit. Expired by statute the of limitations or set-off...etc. But if the debt is denied, the burden of proof falls on the plaintiff, who has to prove the right's existence. The rule in civil law is to bear the burden of proof in the lawsuit on the plaintiff and in the defense on the defendant, both of which are the plaintiff in his lawsuit.[2]

As previously explained, it is not sufficient to specify the plaintiff in terms of formality, as it is necessary to determine who bears the burden of proof. In real estate cases, for example, the burden of proof falls on the defendant, and he is the one who must prove that he has a right of easement that permits the opening of a bridge or has a right of passage. The proof here is on the defendant and not on the plaintiff because the nature of the origin is that the property is free of easement rights until the stakeholder proves that. His argument is valid for payment, not for merit." The issue of who bears the burden of proof is inevitable, whatever the type of claim and the incident to be proven. Opposite.

Section Two: What is meant by the plaintiff in the burden of proof

The judiciary, jurisprudence, and jurisprudence have settled that whoever goes to the judiciary first to file a case against another or others is considered a plaintiff. He is the one who instructs his opponent to attend, and this opponent is the defendant or defendant.

In fact, in the laws of civil origins or civil procedures, the description of the plaintiff does not need to be limited to a person who files his claim only because the defendant has the right to pay the plaintiff's claim to prove otherwise. Here he becomes a plaintiff in this defense, and his opponent (the plaintiff) becomes a defendant. Therefore, civil law jurists worked hard to set the criteria by which the judge can distinguish between the plaintiff and the defendant, and the outcome of that was what was approved by the Jordanian Civil Code and other Arab laws.[3]

1. Originally shown.
2. Casually shown.
3. Hypothetically shown.

Accordingly, the burden of proof falls on those who claim contrary to the apparent, originally established deed or hypothesis, which is called a firm ruling. Accordingly, the burden of proof falls on whoever claims otherwise established in terms of deed or deed, which is what the Jordanian Civil Code considered in Article (78), "Proof to prove the apparent disagreement," and Article (76), "The apparent argument is valid for payment, not for entitlement."

Islamic Sharia jurists have presented several definitions of the plaintiff, and these definitions can be referred to in several directions:

The first direction: This is what most of the Hanafi jurists held, and some of the Malik saw where they knew the plaintiff is "the one who is forced into the litigation if he leaves it" and the defendant is "the one who is forced into the litigation."

The second direction: This is what the Shafi'i and Zaydi jurists have held, and it is a saying according to the Hanafis and the Malikis, and its meaning is that the plaintiff is "the one who contradicts the apparent saying" and the defendant is "the one who agrees." The one who clings to the appearance is the plaintiff, and the one who clings to the appearance is the defendant, and the appearance is the "clear and clear."[4] What is straightforward and clear is meant by what is clear and made clear to people, either according to the origin or because it is predominant in use and is customary in public life or is familiar in the course of things. The apparent here is

[1] Jordanian Court of Cassation, Decision No. (3958/2020); Jordanian Court of Cassation, Decision No. (3958/2020).
[2] Ahmed Abu Al-Wafa, Commentary on the Pleadings Law, Al-Wafa Legal Library, 2017, p. (25).
[3] Badani Mohieldin, The Role of the Judge and Litigants in Distributing the Burden of Proof in Civil Matters, previous reference (9), p. (13-14).
[4] Imam Al-Nawawi, Riyadh Al-Salihin, p. (88).

what appears and is derived from assets such as the original or the original patent. This is what was confirmed by Article (73) of the Civil Code, "The original is an acquittal, and the creditor must prove his right, and the debtor may deny it." This is a benefit from what people used to deal with and became familiar with them and accepted by them, which is custom and custom, such as a deposit, the sale price, and the criterion of defect with which the sale is returned.[1]

As for the second apparent meaning, it is an accident, which is to prove the religion by proof or argument. As for the apparent meaning, it is the apparent meaning that is accustomed to a legal text, as in the case of working with proof and proof of conditions, such as the saying of the Messenger, may God's prayers and peace be upon him, "The son is for the bed, and the fornicator is stone." He is here to prove the validity of the son's lineage to his father as long as the wife exists.

As for the third trend: which is what most of the Maliki and Ibadi jurists went to, as they defined the plaintiff as "whoever is impartial in what he says in the case of the case, whether he is authenticated by origin or known by tradition," or that the plaintiff is "the most distant of the claimants with a reason." Accordingly, the plaintiff is the one whose statement is contrary to the principle or custom, such as the trustee claimed by the orphan when he reaches puberty with his money that is under his hand.

The fourth topic: the rules of proof

The litigants are the ones who make the proof under the principle of the judge's impartiality and do not judge it with his knowledge. Assigning the litigants to establish an argument and proof of the disputed thing affects the course of the litigation and its outcome. The burden is on the litigant charged with proof, as he performs a positive action on which the lawsuit's outcome depends. In contrast, the other litigant is suspended negatively in the lawsuit, and it follows that his position is better. Therefore, we will discuss the most important rules related to proof. They do not depart from two bases, which are the proof for the one who claims and the oath for what he denies, and the rule for the one who claims the opposite of what appears to be proven, and we will discuss them in two branches.

The first requirement: Proof for the one who claims and the oath for the one who denies

The Jordanian project adopted this rule in Article (77) of the Civil Code, which is the basis for proof and the general rule that shows which party bears the burden of proof, as well as which party bears the burden of swearing an oath when the first party is unable to do what it was assigned to do.

First: Proof for the one who claimed

This rule means that the person charged with proof is the plaintiff. The plaintiff must establish proof because every piece of news bears false accusations, and the mere allegation does not go beyond being news. It must be proven with the argument because the plaintiff is a side that claims the opposite of the apparent, so he must have proof to reveal what is hidden, reveal what is hidden, and prove that the apparent matter that appears familiar to all is not what it is. As for the defendant, he is not required to establish his argument because his statement is supported. If the plaintiff establishes the proof, the court must pass judgment on the plaintiff as long as it is sufficient to prove the alleged right.

This is what Islamic Sharia has taken in that the person charged with proving is the plaintiff, while the defendant is charged with taking an oath if it is impossible to establish proof by the plaintiff. In the past, the defendant was the one charged with proof.[2] The consensus now is that the plaintiff is charged with the burden of proof; even if the defendant ensures to prove his right and fails to do so, the plaintiff is not judged simply because the defendant was unable to prove it.

Secondly: the oath upon the one who denies

This part of the rule states that if the plaintiff was unable to establish proof for what he claimed and was unable to convince the court of the validity of his demand or claim, there is a glimmer of hope for the plaintiff to resort to the defendant's conscience or religious scruples and take refuge in his responsibility so that he may speak the truth, the plaintiff and the defendant had accepted to invoke God's testimony of the validity of their claim. If he took the oath, the plaintiff's claim was repelled, and thus the doubt is cut off by the oath, and the oath is not made unless the argument is weak and the oath is a reference supporting what is apparent.[3]

This is what has been established by jurisprudence and modern legislation that if the plaintiff is unable to establish the argument on what he claimed, he is exposed to losing his claim if he resorts to the conscience of the defendant to ask for an oath on the truth in the thing claimed, where the position of the defendant is initially negative if he pleads The plaintiff in proving what he requested or claimed, it is open to the defendant to plead the invalidity of his claim. He must either acknowledge or deny what he claimed, and then the plaintiff will

[1] Muhammad Fathallah Al-Nashar, Provisions and Rules for Burden of Proof: In Islamic Jurisprudence and the Law of Proof According to the Latest Judgments of the Court of Cassation, op. Cit. (17), p. (96).
[2] Al-Sanhouri, Mediator in Explaining Civil Law (Proof), op. cit. (20), p. (68).
[3] Muhammad Fathallah Al-Nashar, Provisions and Rules for the Burden of Proof: In Islamic Jurisprudence and the Law of Proof According to the Latest Judgments of the Court of Cassation, op. cit. (17), p. (114).

resort to the defendant's conscience to ask him to swear an oath that he is the owner of the right to the thing claimed and the plaintiff has no right to it at all.

The second requirement: is the burden of proof on those who claim otherwise.

From a review of this rule stipulated in the Jordanian Civil Code in Article (78), this rule, considered fundamentals, shows that the origin is derived from reason and logic or by text. The incorrectness of this situation or position, so whoever says it according to the appearance, is not charged with proof but rather places the burden of proof on those who claim contrary to the apparent. It appears, for example, that the right of ownership is free from the burdens and costs of his eyes, so the owner who adheres to the appearance does not demand proof of it. Instead, the burden of proof falls on whoever claims otherwise, such as claiming that he has a right of passage or a right of the easement to prove that. The apparent is the meeting of all owners' powers of ownership (the right of ownership). As for the one who claims the right of Musalaha on the land, the king must prove this right, i.e., the ownership of facilities and trees on the plot of land, because the powers of the right of ownership (use, exploitation, and disposal) belong to the owner. After all, whoever owns the land owns what is above and below it, and whoever claims otherwise is required to prove that Article (1225) of the Jordanian Civil Code: "A right in kind that gives its owner the right to construct a building or plant on the land of others." Accordingly, whoever claims contrary to the original proof proves this as follows:

First: the burden of proof on the one who claims contrary to the original

The origin is considered one of the most likely matters for the side of one of the litigants over the other opponent, so whoever adheres to it is successful and strong. It appears that the right is on his side, and the burden of proof falls on those who say otherwise and are like the rules that are considered an original.

1. The original clearance

Accordingly, Article (73) of the Jordanian Civil Code stipulates, “The original is an acquittal, and the creditor must prove his right, and the debtor may deny it" because the principle is that a person is born. His dhimma is not preoccupied with any of the rights that accrue to others, so the proof is on those who claim contrary to the origin.

2. The origin of the contingent adjectives is non-existence.

Article (75/1) of the Jordanian Civil Code states that "1. The principle is that what was as it was, just as the principle in the occasional roles, is non-existence." An example is that every person is qualified to contract unless his capacity is taken away or limited by law or the judiciary. Whoever claims that the contracting party is incompetent or without capacity must prove that.

Likewise, the principle in contracts is that they are valid, and whoever claims otherwise has to prove that. In Islamic jurisprudence, it is meant by accidental attributes that did not exist with the described and were not characterized by them at the outset, such as disease, defect, or it is what its absence was the original state, and non-existence is particular because it is the natural state. As for the original attributes, they are the ones that exist with the described starting according to the origin or the majority, such as health and safety from defects - that is, the origin is in the original attributes, and the non-existence is contingent or accidental, and whoever claims the accidental attributes is charged with proving them because the origin in them is non-existence or contingent existence.

3. The original is to add the accident to its nearest time.

This is in the event of a dispute at the time of a disposition or order of things; then, this disposition is attributed to its earliest times, for example, the sale in the event of death. Whoever claims that the disposition took place in such circumstances must prove that time, a sale in a terminal illness is not complete unless authorized by the heirs. Otherwise, it is void. Moreover, what is proven by time is ruled to remain unless there is proof of a caliphate (Article 75/2 Jordanian civilian).

Second: the burden of proof on those who claim to be contrary to custom and custom.

Third: The burden of proof is on the one who claims contrary to the proof.

Legal presumptions suffice those in whose favor it has been decided by any other method of proof, without this presumption, may be contradicted by proof to the contrary unless there is a text to the contrary. It is left to the judge to derive every presumption not established by law, and it is not permissible to prove these presumptions except in cases in which the law is proven by testimony. The proof is of two types: definitive and non-conclusive, and the legal presumption is definitive, and it is an exempt way of proof, and the burden falls on those who did not benefit from the text that shows the conclusive presumption.

Fourth: Certainty is not removed by doubt.

Article (74) of the Civil Code states that certainty is sure with reliance on definitive proof, while doubt stands between two things so that the heart does not incline towards one of them with certainty and is not removed by doubt.

Fifth: the proof of a thing, and in internal matters, it takes its place

It means satisfaction or acceptance of the matter; for example, if someone buys a car and finds that it needs repair and begins to repair the car, this is proof of his acceptance of the defect.

Chapter Two: Means of Proof in the Civil Case and the Role of the Civil Judge

Introduction

The modern trend in most legislations is moving toward expanding the role of the judge in lawsuit procedures and revealing the truth. Deciding the matter and determining the truth of the role of the judge in the civil dispute is very important because the nature of what he performs will contribute fundamentally to adapting the process of searching and revealing the truth enshrined in the judicial ruling.

Jordanian law has adopted the principle of the judge's impartiality in proof. However, in principle, the burden of proof falls on the litigants in a civil lawsuit, so what is the judge's positive impartiality? Is this an objective fact approved by the judge after personally verifying its existence? Or is it just a subjective fact adopted by the judge and approved by the judge because its owner could prove it only? Accordingly, what is each party's and the judge's fundamental role in a civil dispute? Specifically, knowing the extent to which the law approved for the judge to have a positive role? Is the principle of the judge's impartiality absolute, or does the judge have the means to give him a positive role in the dispute?

The first topic: means of proof according to the law of evidence

The proof is one of the essential issues that litigants rely on to protect their rights. Jordanian legislation, as well as most other legislation, expresses specificity, the means that must be presented when filing a lawsuit under that legislation on.

Proof in the legal field is the means of establishing evidence before the court, resulting in the case's presence or absence. These means are presented to the judge, who has the discretion to weigh this evidence or positive intervention in following some of the means stipulated by the law and granting the judge an approving authority in proof; the judge is obliged to follow the means of proof approved by the law and which are presented by the litigants and to abide by positive impartiality, except for what was granted to the judge to follow some of the means stipulated by the law. He has a positive role in using them.

The first requirement: the means in the law of evidence

The Jordanian legislation adopted these means in the Evidence Law and its amendments in Article (2), the means of proof, where it specified these means as:

1. Written evidence.
2. Testimony in court.
3. The clues.
4. Acknowledgment.
5. Oath.
6. Preview and experience.

The judge has a positive role in conducting the case, correcting its form, and dropping the case when the litigants are absent from attendance; he may, of his own accord, order whomever he deems to be included in the interest of justice or to reveal the truth in terms of procedures.[1] In terms of proof, it is the judge's right to refuse, on his own, the request for proof if the incident to be proven is not productive in the dispute or not permissible for proof, and the judge may decide on his own to bring one of the litigants for questioning.[2] or directing the complementary oath to one of the parties to the civil litigation[3] or inspecting the disputed disclosure by bringing it or moving to it, or conducting expertise if it is necessary to settle the case even if the litigants did not request it[4] Or the court orders any party to produce documents in its possession or at its disposal that it deems necessary for the settlement of the case.[5]

Also, Article 73/1 of the Jordanian Civil Code stipulates that the Jordanian law took six means and considered inspection and experience as one method similar to the Syrian law. As for Egyptian law, these means are seven if the inspection is considered a means and experience is another method.[6] While the Algerian law took five means: writing, confession, oath, testimony, and evidence.[7]

Fiqh divides the methods of proof into several direct and indirect divisions, including:

First: Divide the methods of proof into direct methods and indirect methods

Direct methods of proof are directed directly to the event to be proven, such as written evidence, testimony, inspection, and experience. In contrast, indirect methods do not focus directly on the event to be proven but are

[1] Jordanian Civil Procedure Code No. (24) for the year, articles (113-114).
[2] Jordanian Civil Procedure Code, Article (76/2) "The court has the right to interrogate the litigants during the trial on matters it deems necessary."
[3] Jordanian Civil Procedure Code, Article (76/2) "The court has the right to interrogate the litigants during the trial on matters it deems necessary."
[4] Civil Procedure Code, Article (83/1) states: "The court may, in any of the trial sessions, decide to conduct the examination and expertise of one or more experts on any movable or immovable property, or any matter it deems necessary to conduct expertise on.
[5] Jordanian Civil Procedure Code, Article (100).
[6] In the Egyptian Procedures Law of 1988, the Egyptian legislator has stipulated that they are methods of proof.
[7] Algerian Civil Code, Articles (325-350).

extracted through deduction, such as presumptions, acknowledgment, and oath.

Second: Methods whose authenticity has been determined and methods whose authenticity has not been determined

This division is based on the fact that the law defines some means of proof as authoritative, and these means that have been identified as authoritative in the Law of Evidence are:

1. Written evidence.
2. Legal Evidence.
3. Oath.
4. Acknowledgment.

As for the means that have no authority in the law and leave the matter of estimating that authority to the judge who considers the subject matter of the case, they are judicial evidence, testimony, inspection, and experience.

Third: Faithful ways and half-evidence

There are insured means or methods of proof; That is, there are documents that allow secure procedures to be taken until the case is judged without hearing the defendant's defense. These documents under which the debtor's possession or under the control of others or precautionary seizure are seized. These documents or written evidence is considered secure evidence about the subject matter of the case until the defendant's defense is heard - payment of the debt, set-off, or denying his signature or challenging forgery or prevention of Travel.[1]

There are sometimes half-evidences, which are the ones that are mentioned regarding the obsolescence of some of the rights mentioned in Articles (451 and 452) of the Civil Code (the rights of workers and servants and the rights of merchants and craftsmen about things they returned) which oblige the one who adheres to the fact that the right has become obsolete to swear that he has paid the debt, however, the Jordanian law did not consider this, unlike the Egyptian law, as in the Jordanian law, if the limitation period has expired, it is a presumption of fulfillment.

Fourth: Evidence for material facts and evidence for legal actions

All the methods of proof can prove, the material facts stipulated in the law if the stakeholders are not forced to prepare specific ways to prove the material facts, so witnesses, presumptions, inspection, experience, acknowledgment, and oath may prove these material facts. As for the proof of legal actions, they are primarily subject to the system of evidence prepared in advance, which is written evidence. Therefore, it is not permissible to prove some contracts or legal actions with witnesses and presumptions; rather, there must be written evidence of this, such as real estate sales contracts, mortgage rights in kind, or contracts in which writing is a cornerstone of the contract, except for what is excluded from that and maybe proven by all means of proof. Also, some evidence dispenses with writing, such as acknowledgment, decisive oath, and legal presumptions, and these are not evidenced in the true sense of the word, but they are exempt from proof.[2]

The second topic: the place of the burden of proof

Evidence before the courts is either on a specific fact or a specific right; the place of proof is the fact or right that the law arranges has specific effects, and the plaintiff must establish the argument or evidence for that. We will address that in two demands.

The first requirement is the criteria for determining the place of the burden of proof.

The second requirement: is the conditions of the burden of proof.

The first requirement is the criteria for determining the place of the burden of proof.

Judicial litigation consists of two components: law and reality. Those charged with proving the incident are the parties to the case, the plaintiff and the defendant. The role of the court or the judge is only focused on applying the law to these facts. As for the judgment issued by the court, it is only an application of the law to these facts based on the evidence presented in the case and, accordingly, the place of proof performed by the plaintiff/defendant, according to the reality of the situation, is focused on the material fact.[3]

The first requirement: the criteria for determining the location of the burden of proof

Section one: Proving the legal fact

A legal event is a matter that results in the acquisition, transfer, modification, or expiration of a right. Legal facts include legal action, such as contracts, wills, and a material fact that the law has an effect, such as hand squatting or a harmful act. An example of this is the one who claims that he owns the land through a contract that transfers ownership, where he must prove the existence of this contract or ownership by way of time limitation, he is obligated to prove his possession according to the conditions set by the law and the period required by law to acquire property by prescription or the passage of time, and he must prove this. Moreover, if a debt has to prove

[1] Ahmed Nashaat, Letter of Evidence, previous reference (6), p. (94).
[2] Ahmad Nashaat Risala of Evidence, previous reference (6), p. (95); Rizkallah Antaki, previous reference (1), pp. (416-417).
[3] Ramadan Abu Al-Saud, Principles of Evidence in Civil and Commercial Matters, The General Theory of Evidence, University House for Publishing, Edition 1992.

the source of this debt, is it a unilateral contract, a harmful act, or an unreasonable enrichment? Likewise, it departs not to the truth's establishment but to the truth's expiration. As for the right claimed by the plaintiff, it does not acquire the description of the right unless it is based on a rule in the law that determines the existence of this right, and this entails the acquisition of the right as a result of a legal fact. Therefore he has the right to claim this right, and therefore, the burden of proof falls on him.

It may also be that the defendant is not the existence of a right or its demise but rather a legal description that attaches to the legal act or the material act, such as the fact that it is a contract and the invalidity of the contract is argued, or that the material act was in a state of legitimate defense. This description is a legal fact that must be proven as the original fact is proven.[1]

This leads to the transfer of the place of proof from the truth to the source of this right. Therefore the proof does not lead to complete certainty but rather to a degree of possibility or spontaneous conjecture without being sure of the defense of that because facts change.

Second branch: Proof of legal basis.

The plaintiff is the one who bears the burden of establishing the argument or proof of the legal fact that gives rise to the right claimed. As for the application of the law, that is left to the court, and it is up to the judge to know the law because this is at the heart of his work, and the parties have nothing to do with it, and the judge must "give me the facts, and I will give you the law." The judge is charged with searching for the legal rule or the relevant legal text, and he is subject to the oversight of the Court of Cassation in the extent of his application of the law and his interpretation of the law.

When interpreting the legal text, the legal rule turns into an objective issue, the burden of proof on the litigants. In principle, the judge is charged with establishing, implementing, and interpreting the legal rule for the national law. However, if the legal rule is for foreign law, under the principle of the personality of the laws, then the judge is obligated to apply the law of the country to which the foreign person belongs.

The second requirement: The conditions of the burden of proof.

The burden of proof has several conditions. It is only possible to prove the fact by fulfilling these conditions. These conditions aim to reach the conformity of reality to the truth as much as possible and to return the rights to their owners. Otherwise, the proof will be a burden that is useless to carry out.

1. The event must be specific and possible.
2. That the incident in question is related to the case.
3. That the incident is productive in the lawsuit.
4. That the incident is legally permissible to prove.

First: The incident must be specific and possible.

Evidence of the incident may be positive, negative, and negative, such as denying the failure to commit to a specific action, which is proven by all means of proof. That is, this incident should be specific and verifiable, and it should be specific to deny ignorance and harm, assess the acceptability of the evidence, and verify the evidence that will be presented related to it and related to it, such that the place of proof is a contract, it is necessary to indicate its type and specify its location, whether it is, for example, a ship, an aircraft, a car, or something else. The facts must also be specified in the burden of proof. It should be noted that the order of estimation of facts is not subject to the oversight of the Court of Cassation.

Second: That the incident in question is related to the case

This condition requires a statement of the fact in dispute, as the plaintiff claims and the defendant denied it. If the defendant acknowledges it, this relieves the plaintiff of the burden of proof. The fact that the fact is established does not mean that it is not provable by others if another dispute arises over it[2].

As for the acknowledgment, which distinguishes the incident as being fixed or not provable, if the defendant surrenders part of the plaintiff's requests, this is excluded from the field of evidence. However, it is a document of communication and link to the case, such as the previous dealings between them, and this leads to the fact being fixed or close to the possibility. It is not sufficient for the incident to be in dispute. However, it must be related to the case so that the incident to be proven is closely related to the claimed right; that is, it is the source of this right, such as the seller's adherence to the contract of sale, to demand the price. This is if the proof is direct. However, if it is indirectly, it proves another alternative fact that is not the source of the right.

Third: The incident must be productive in the case.

This fact contributes to the formation of the court's doctrine in recognizing the truth of the dispute before the court. It follows that it is not sufficient for the incident to be related to the case. However, it must have an impact on changing and influencing the dismissal of it by attributing the right to the plaintiff or not attributing it to him. That is, it is productive in proof, such as if he claims ownership of a property in unregistered lands and puts his

[1] Abdul Razzaq Al-Sanhoury, Mediator in Explanation of the New Civil Law, Theory of Commitment in General, Evidence, House of Arab Heritage Lovers, Beirut, Lebanon, p. (48).
[2] Al-Sanhouri, ibid. (36), pp. (59-60).

hands on it for eleven years. This incident is related to the lawsuit, but it is not productive proof because the statute of limitations is fifteen years until he acquires ownership.

Fourth: That the incident be an award of proof

There is nothing in the law that prevents the legal fact from being established, as the origin of the legal fact is the permissibility of proof if the previous conditions are met; however, the law may deviate from this principle for specific considerations and prevents the opponent from proving them because this is related to public order or public morals. An example of this is proving a gambling debt. Or the interest on the loan between individuals may not be claimed or proven contrary to non-conclusive evidence, such as the supposed error, because the law established responsibility for the supposed error (the guardian of things, the animal guard, the guardian, the trustee) and this is one of the issues of the law and is subject to the oversight of the Court of Cassation.

Evidence is of great importance when exercising rights. The judiciary cannot protect a right that cannot be proven. The rules of evidence are not from the public order, as they are related to private interests and closely related to her more than the general interests. The Jordanian Evidence Law is based on the principle of the legality of the evidence system, and this legitimacy results in the judge's adherence to the rules of evidence stipulated by the law because this aims to achieve the private interest and equality between litigants, the judge shall rule as the disputed right is established by just establishing the evidence against it with the request, which is required to prove the material fact or the legal act.

Evidence in civil matters depends on the legality of evidence; that is, evidence in civil matters is subject to the legal rules and procedures stipulated by the judge, and they bind the judge and the litigants in the lawsuit.[1]. The objective of proving the material fact or the legal act is to reach definitive evidence of the existence of this fact or act. The judge here uses the discretionary power to give preference to one opinion over another.

The modern trend in most legislation, including Jordanian law, has taken the positive role of the judge in conducting the case and in revealing the truth in the sense of proof. The judge is no longer a silent witness to the dispute, who only has the right to rule on it. Instead, the judge has a positive role in the conduct of the case, correcting its form and striking out or dropping the case when the litigants fail to appear. He may, of his own accord, order the entry of whomever he deems to be entered in the interest of justice or to reveal the truth in terms of procedures, in terms of proof, the judge has given a positive role, as he eases the burden of proof on one of the litigants in the case, especially in presumptions and oaths. In particular, the completed oath, hearing the litigants, calling and hearing witnesses, or conducting an experiment and inspection.

What is the positive role of the judge in a civil dispute? We will discuss the positive role of the judge and the manifestations of this role in civil matters through two demands:

The first requirement: The positive role of the judge in civil matters.

The second requirement: The manifestations of the positive role of the judge in civil matters.

The first requirement: The positive role of the judge in civil matters

Examining the role of the judge in civil litigation is the basis for clarifying whether he has a positive or negative role in civil litigation. A civil dispute is a judicial duel in which each of the litigants confronts the other, each with his evidence and size, within the limits of the framework of the allegations or the subject matter of the case and the requests of each of them in accordance with the procedural rules, and the evidence drawn by the law for them, this situation requires knowledge of the role of the judge and the parties. Is the role of the judge negative in the prosecution system, as he leaves the litigation to the litigants so that the ownership of the case belongs to the litigants? That is, the litigants are the only ones who have the right to raise the litigation (file the lawsuit), conduct it, and terminate it as they belong to them. Or is the conduct of the litigation subject to certain predetermined controls and rules that determine the role of each of the judges and the litigants in raising and running the case and ending the litigation?

Civil litigation is based mainly on the rights of the litigants. Therefore these litigants must prove their claims through the legal methods specified by law, even if they submit to the judge everything related to material aspects, the principle of ownership of the case by the litigants or the litigant, or the so-called impartiality of the judge. The judge's impartiality principle is based on the facts presented by the litigants through the judge's impartiality principle. That is, the judge separates the litigants in the light of the evidence they provide and what they hold to from the occurrence without the need to search for other evidence or seek to complete what was missing from it.

It suffices with what the litigants have presented in the case, and the principle of impartiality of the judge is one of the basic principles upon which the evidentiary system in civil disputes is based. What is the principle of impartiality of the judge?

We will discuss the principle of impartiality of the judge in two branches:

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[1] Jordanian Evidence Law, Article (28) states that "in non-contractual obligations, the permissibility of proof by testimony and its inadmissibility are taken into account in the following provisions: 1-a If the contractual obligation is in non-commercial matters, its value exceeds one hundred dinars, if the value is not specified, then it is not permissible to testify in proving the existence of the obligation or the innocence of it unless there is an agreement or a text stipulating otherwise.

The first section: The principle of impartiality of the judge and its development.
The second subsection: The legal controls for the positive role of the judge in the case.
The first section: The principle of impartiality of the judge and its development.

The principle of the judge's impartiality is based on the premise that the judge can only base his conviction on the evidence presented by the litigants in the civil lawsuit. The role of the judge has a negative role; that is, he does not interfere but rather extracts his decision from the evidence and arguments presented by the litigants. Thus, the court does not have to form, make or bring the arguments of the litigants. The court cannot, on its own, search for new evidence because that leads to a change in the subject matter of the case or its cause and leads to the introduction of new elements in the case that changes its system and subject matter and this is incompatible with the role of the judge in the civil litigation. This opinion is based on individual tendencies that consider the rivalry as a private dispute between its parties. Therefore, the judge has no right to interfere in it except to the extent necessary to regulate it[1] The basis on which the principle of impartiality of the judge is based is the lack of confidence in him. Therefore, impartiality must be adhered to. This impartiality appears in the passivity of his role about the litigants' evidence, completion, or submission, but he leaves that to the litigants. However, the judge's impartiality principle did not continue in his denial as it had arisen in the beginning, but it developed. Now the court's intervention, or its initiative, in the evidence does not necessarily lead to a change in the subject matter of the dispute, where the lesson, then, is not to change the facts before the judge, and he remains free to take the means he deems necessary to reveal the truth[2]. This trend is based on the assumption that litigation concerns society and is linked to the public interest, so there must be some kind of cooperation between the litigants and the judge so that the judgment issued in the case is closer to justice. Thus, the role of the judge departs from being a judge but rather searching for the truth himself. Accordingly, the judge intervenes in the litigation and research procedures within the scope of preparing the case for judgment. Neutrality does not mean ingratitude, nor does it mean negativity, because this contradicts the nature of the judicial function, which aims to achieve justice and equality among members of society; this intervention is based on two fundamental principles because civil conflict does not concern only one party, namely:

First: the public interest of society in civil conflict

The role of the judge is to search for the truth, and not only the judge's task is to settle disputes by the law, and judicial action cannot be positive unless it is based on correct data. The judgment conforms with the truth, so the litigants should not be left to dispose of the case at their whim because the judge's task is not merely to separate cases but rather to separate disputes by the law and based on correct data. This makes the judge not bound to use defense and documents presented by the litigants, as they may be incomplete. Instead, he has to search for the truth. Judicial action can only be positive if it is based on correct data, so the judgment conforms to the truth, and the judge must disclose it by taking the actions he deems necessary. That is, the view of civil conflict is based on two elements: the public interest, which goes beyond the private interest of the litigants, and the second is the duty of the parties to cooperate and assist the judge in revealing the objective truth and this is what Jordanian law has taken.

The second: The positive role of the judge

What is meant by the principle of impartiality is for the judge to take a negative attitude towards the two opponents concerning proving the case. However, this role has evolved, and the judge has given a positive role to the judge based on removing the judge from his isolation and giving him a role in the search for the truth because the judge must resolve the dispute and achieve the general interest of the community, as well as the implementation of this judgment by force through the competent departments. The judge must search for the objective truth to judge the right holder. Therefore, the obstacles obstructing the litigant and preventing him from proving his right must be removed. This can only be done by giving the judge a positive role in the case so that the court or the judge is given a role in editing the truth on the matter, asking questions to the litigants, interrogating them, and asking them for their support, and authorizing the completion of what is necessary to separate the case, which is one of the essential duties of the court and its role in this respect is not negative[3].

Section Two: Legal controls for the positive role of the judge

Two limits limit the role of the judge in a positive civil conflict: the inadmissibility of ruling with the judge's knowledge and the second is the necessity of preserving the principle of confrontation between opponents.

First: Preventing the judge from ruling with his knowledge

What is meant is that the judge does not rule with his knowledge is that he does not rely, when deciding on the dispute, on his personal information related to the factual aspect of the dispute, which he obtained from outside the context of the dispute and without being the subject of discussion and confrontation between the litigants. Whether this information was available to him by chance or as a result of special investigations he carried out

[1] Lamhim Zulaikha, "The Civil Judge's Role in Evidence in the Light of the New Civil and Administrative Procedures Law," Journal of Political and Law notebooks, fourth issue Hanafi, 2011, p. (196).
[2] Reda Al-Marighi, "Provisions of Evidence," Research Department, Saudi Arabia, 1407 AH, p. (127).
[3] Tunisian Court of Cassation Judgment No. 6957 of May 26, 1970.

without the knowledge of the litigants, which is expressed as "The judge must sit on the bench of the judiciary while he is empty-minded of any information about the case that is brought before him that would influence his ruling.[1] It should be noted that it is not considered a matter of judging by personal knowledge that the judge bases his wisdom on his information derived from his scientific experience and his general culture, as judging with the personal knowledge of the judge is incompatible with the principle of confrontation between opponents.

Second: The principle of confrontation between opponents

This principle means that each opponent's allegations, arguments, and defenses are presented to the other opponent and that he can discuss and respond to them. This principle is devoted to respecting the defense rights of both parties. Therefore, the judge must allow the litigants to discuss it. The court may only rely on his evidence if the litigants have been informed of it and discussed it. If the judge did not allow this or he relied on facts not discussed by the litigants, his judgment is subject to appeal because that violates the principle of the right of defense.

The second subsection: Aspects of the positive role of the judge in the civil dispute in the burden of proof.

The manifestations of the judge's positive role are represented in the evidence in civil disputes and the limitation of the litigants' authority over the elements of the case by controlling the material aspects of the dispute and the legal aspects. The Civil Courts Principles Law and the Evidence Law contain many legal provisions about the positive role of the judge, exiting from negativity and playing an essential role in the search for the truth, the realization of which has become one of the legislator's most prominent concerns. These laws confirmed that the role of the judge is no longer limited to the relative facts presented by the litigants but rather searches himself for the objective truth. The Civil Procedure Code has been presented in articles that enable the judge to determine the truth. The role given by the legislator to the judge is to reveal the truth and his contribution to the evidence and the conduct of the case procedures, and it shows the role of the judge in the actions revealing the truth himself, without being limited to the evidence presented by the opponents. The positive role given to the judge in the proof is an important role that leads to achieving the burden of proof, which is considered a burden on one of the two opponents without the other. This highlights the positive role of the judge in his right to refuse, on his own, the request for proof if the incident to be proven is not productive in the case or not permissible for proof. The judge may also decide to bring one of the litigants for questioning or direct the complementary oath to one of the parties to the dispute. Or inspecting the disputed and bringing it or moving to it, appointing an expert or several experts to investigate roles that require technical knowledge, or asking to bring evidence and not be limited to what the litigants presented, such as submitting commercial books, or the evidence necessary for deciding the case, even if the evidence is against the litigant himself, or if one of the litigants takes an oath. We will discuss these manifestations as follows:

- The right to interrogate litigants (Article 76/2) from the origins of civil trials.
- The right to question witnesses (Article 81/4) from the origins of civil trials.
- Examination and Expertise Procedure (Article 83/1) from the origins of civil trials.
- Show what documents the litigants have of documents if they are necessary for the determination of the case.
- Acceptance of the submission of evidence necessary to decide on the case (Article 100) Civil Procedure Procedures or reviewing it Directing the complementary oath (Article 15 of the Evidence Law) Traders' books, (Article 70 of the Evidence Law).
- Directing the decisive oath (M 54/2 evidence).

Section one: The role of the judge in directing the decisive oath

The decisive oath is a unique legal system established by the legislator to aid the opponent who cannot prove what he claims, as he invokes it to the conscience of his opponent to settle the dispute. He takes the oath to God Almighty as a witness to what he says implicitly and as confirmation of the truthfulness of his saying, and the decisive oath is exempted from proof. As for the oath, it is a legal fact because it is a material act that entails a legal effect, and whoever takes the oath becomes the burden of proof, so he owns the oath and has the right to transfer this burden to his opponent, it is he who has the burden of proof or recompense, then he returns. Which is considered an admission on the part of the violator, and he exempts his opponent from the proof. The Jordanian Evidence Law stipulates the positive role of the judge by directing the decisive oath in the text of Article (54/2) of the Evidence Law, which states that the court must spontaneously swear an oath in any of the following cases:

1. Suppose someone proves his claim of his right to the estate. In that case, the court swears by him that he did not fulfill this right by himself or through someone else from the dead, and he was not acquitted of him, did not replace it with others, did not collect his debt from others, and the deceased did not have a mortgage in return for this right.
2. If someone deserves money and his claim is proven, the court shall swear by him that he did not sell

[1] Ahmed Abu Al-Wafa, Commentary on the Code of Pleadings, previous reference (19), p. ().

this money, did not give it to anyone, and did not take it out of his possession in any way.

3. If the buyer wants to return the thing sold due to a defect in it, the court swears by him that he did not accept the defect explicitly or implicitly.
4. If the applicant proves his claim, the court shall swear that he has not forfeited his preemption in any way.

The second subsection: The judge's role in directing the complementary oath

The complementary oath is the oath that the judge directly spontaneously to either of the two litigants to complete his conviction when the judge estimates that the evidence presented in the case is not sufficient to form his conviction. The Jordanian legislator confirmed this in Article (70) of the Evidence Law, which states:

1. The court may, on its own, direct the complementary oath to any of the two litigants to issue its ruling on the merits of the case or the value of what it is ruling on, provided that there is no complete evidence in the case and that the case is not devoid of any evidence.
2. The litigant to whom the court directed the complementary oath may not return it to his opponent.
3. The court may return from directing the complementary oath before taking it.

The capacity required in the complementary oath is the litigation capacity because the complementary oath is not a legal act but a means of proof and is directed only to the original litigant. It is not directed to the creditor who files the lawsuit in the name of his debtor but rather to the debtor after being entered into the lawsuit. This is what Article (15) of the same law stipulates: "The merchant's books are not proof against non-merchants, except that the data contained therein about what the merchants reported are valid as a basis allowing the court to direct the complementary oath to either party."

Section Three: Interrogation of the opponents.

The interrogation of litigants is one of the cases in which the judge plays a positive role in the civil lawsuit, as he is entitled to this interrogation on his own, as stipulated in Article (76/2) of the Jordanian Civil Procedure Code.[1] The Egyptian Court of Cassation defined interrogation as "a method of investigation of a case by which the court aims to enable it to perceive the truth that leads to establishing the right to the case."[2] So, during the trial, the court has the right to interrogate the litigants about the issues it deems necessary, knowing that the Evidence Law did not refer to the provisions for interrogating litigants. However, it organized the acknowledgment provisions in Articles (40-52).[3]

The court has the right to interrogate any of the litigants who are present before it or decide to appear before it, and he must personally attend the hearing. It is up to the court to assess whether the case needs to be questioned by one of the litigants and if the court summons him and fails to attend without a legitimate excuse, this failure is considered a justification for considering the facts about which it was decided to be questioned as proven, or to accept evidence with the testimony of witnesses and presumptions. Interrogation is not permissible to deny the evidence (the authority of a judgment or a dispute in facts dealt with the decisive oath or an official paper).[4] Interrogation is only one of the methods of evidence or investigation of the case, which the judge resorts to on its own, and the litigant resorts to it to ask the other opponent about certain facts in the case, to obtain an acknowledgment from him.[5]

The interrogation concerning the litigants shall be before all courts of different degrees and in whatever state they are in (the case is provided that the request for interrogation is submitted before announcing the conclusion of the trial, except for the Jordanian Court of Cassation, which did not regulate such a case and it is the litigants' request to interrogate between them, and the interrogation is carried out by the litigant who is present at the session and it is not required in the interrogation that the opponent be informed of the questions that will be asked. In the case of interrogation by the litigant, he must present to the court the facts on which he will interrogate his litigant.[6] Since interrogation is closely related to the acknowledgment, a measure that often leads, after questioning, discussing, and confronting the opponent with facts, to abandoning his denial, through this interrogation, he can obtain evidence that is not included in the evidence of the case and is represented by obtaining the interrogator's acknowledgment of a particular fact that helps him to resolve the dispute. The interrogation of the litigants is one of the cases to depart from the principle of impartiality of the judge.

Section Four: Examination of Witnesses

Jordanian law gave the judge a positive role in examining witnesses. This role was stipulated in the Code of Civil Procedure in Article 84/4 " At any stage of the trial, the court may ask the witness what it deems consistent with the case of questions. It derives from this text that the examination of witnesses is about material facts related to the case and not regarding legal actions that go beyond a specific limit. This positive role in the proof

[1] Jordanian Civil Procedure Law No. 24 of 1988 and its amendments.
[2] Abbas Al-Aboudi, Explanation of the Civil Procedure Law, Dar Al-Thaqafa Publishing, Amman 2006, p. (233).
[3] Jordanian Evidence Law No. 30 of 1952 and its amendments.
[4] Ezz Al-Din Al-Dinosauri, and Hamed Akkar" Commentary on the Procedure Code, Rose Al-Youssef Press LLC, 1988, p. (875).
[5] Anwar Sultan, Rules of Evidence in Civil and Commercial Matters, University Publishing House, Beirut, 1984, p. (188).
[6] Lebanese Civil Procedure Code (1985), Article (218).

is a right in the stages of litigation before the courts of the first and second degrees. It is the right of the individual judge and the judges of the court, if they are more than one judge, where the head of the panel is the first to interrogate the witness and then ask the judges with him if they have any questions. After the witness has completed his testimony, the head of the session has to ask the judges if they want to put questions to him, and the court may summon any witness whose testimony has been heard before to question him again. The questioning of witnesses is not limited to the witness's attendance at the testimony session. However, when examining the case, the court has the right to re-summon the witness for re-examination by the court. The officer for this interrogation is that this interrogation should be based on the material facts related to the lawsuit submitted by the litigants: the Civil Procedure Code, Article (84/4).

Based on that, the court has a positive role in examining witnesses, which is a vital role in proving to achieve the public interest, and it is a departure from the principle of impartiality of the judge. The court or the judge has the full right to assess the testimony of witnesses. He is the owner of the right to assess the evidence presented in the case. It has the right to give precedence to a witness's testimony over another or cast the whole testimony aside for not being convinced of the truthfulness of their statements.[1]

Section Five: Conducting experience and inspection

The Jordanian legislator has given the judge a positive role in conducting expertise and disclosure in violation of the principle of the judge's impartiality. This role was not limited only to the litigants' request, and this is what Article 83/1 stipulates "the court in any of the trial roles may decide disclosure and expertise by an expert or more on any movable or immovable property, or on any matter that it deems necessary to conduct expertise.

It also represented the positive role of the judge or the court in terms of discussing the expert in his expert report, which is what was stipulated in Article 84/4, which states that: After depositing the expert report, each of the parties shall be notified of a copy of them, which shall be publicly recited at the session, and the court, on its own or at the request of one of the litigants, may invite the expert for a discussion, and it may decide to return the report to him or to them to complete what it sees as a deficiency or pledge the expertise to others who produce according to assets" It is clear from this Article that the court may, on its own, conduct expertise or inspection (examination) of any movable or immovable subject matter of the case, even if the litigants did not request that. According to this Article, the judge has a positive role, which is the examination or inspection, as well as conducting the expertise, it is a departure from the principle of impartiality, as the court or the judge does this to achieve the public interest, which is the separation of the case to achieve justice.

Examination or inspection is the court's transfer to inspect the disputed thing. As for the experience, it is the court or judge's use of experts whenever the resolution of the dispute before it is dependent on knowing technical information the judge's knowledge of it is limited, such as information related to engineering, medicine, accounting…etc. The court may not rule that it is aware of technical issues but must refer to the experts. The positive role of the court or judge in expertise as a means of evidence in the case does not depend only on the examination or expertise procedure, but also includes the discussion of the expert in his report and its role in returning the report to the expert to complete its deficiency or assigning other experts to carry out the task. The court has the discretion to accept or reject the expert report. As for disclosure or inspection, it is proof of the reality of the situation; that is, it is a material fact whose purpose is to establish the situation. The court also has a role in selecting experts in a disagreement over experts between the litigants. The Jordanian Court of Cassation emphasized the positive role of the expert procedure in its decision No. 6993/2019, as it overturned the decision of the Court of Appeal and returned the case to it to conduct the expertise. The decision stated the following:

In response to that, we find that the plaintiff's claim for damages and damages to her is based on her claim to confront the defendant that he failed in the administrative lawsuit that was assigned to her by the plaintiff for the reasons set out in the lawsuit- And that the Court of Appeal reasoned its decision that the plaintiff, to prove her claim, did not request an expert procedure to estimate the compensation for material and moral damage, since experience is among the evidence. The positive and leading role in proof remains left to the litigants, describing the civil action related to their interests. The judge does not have the right to search for means that reveal to him the truth of the facts presented, but the judge is not a silent witness in judicial disputes. He has no role but to rule in them, as reaching a just judgment is a matter that achieves community stability and tranquility. Therefore, the legislator granted the judge some role in proof, and this is what was stipulated in Articles (76/2, 83/1, 100, 185/b) of the Civil Principles and Articles 53/2 of the Evidence Law, therefore, the legislator granted the judge some role in proof, and this is what was stipulated in Articles (76/2, 83/1, 100, 185/b) of the Civil Principles and Articles 53/2 of the Evidence Law, and since the court in any role may decide to conduct expertise on its own for any matter that it deems necessary to conduct expertise on, resorting to expertise is a necessary matter that the Court of Appeal should have resorted to before issuing the decision since the Court of Appeal has decided on the case before the expertise is conducted, its decision It becomes premature and worthy

[1] Anwar Sultan, Rules of Evidence in Civil and Commercial Matters, op. Cit. (47), p. (111); Judgment of the Egyptian Court of Cassation No. (28/1/69).

of revocation and repetition.".

Section Six: Additional Evidence Necessary for Deciding the Case

The Jordanian legislator grants the court the right to accept evidence if it is necessary to settle the case, provided that the necessary evidence was not initially presented with the evidence of the case or the refuting evidence presented by the litigants in the case, where it permitted the submission of this evidence if it is necessary to decide the case. This evidence may be written evidence or a testimony of a witness, and this was stipulated in Article (185/1) of the Code of Civil Procedure, which states that: The parties to the appeal are not entitled to present additional evidence that they could have produced in the court whose judgment is being appealed, but:

A. If the appealed court refused to accept evidence that should have been accepted.
B. The appealed court held that it is necessary to produce a document or bring a witness to hear his testimony to be able to decide on the case or for any other essential reason, so it may allow the production of such a document for verification or bring that witness to hear his testimony.

Article (186) of the Civil Courts Principles Law also stipulates that "if the court permits the submission of additional evidence, it must hear the evidence itself." it derives from this Article that there is a positive role for the court or the judge in establishing evidence, accepting evidence or requesting evidence, as well as in hearing the witness's witness, as well as doing what it deems necessary to decide the case. This evidence must be necessary to decide the case. The additional evidence presented before the Court of Appeal is an exception to the original, which is the non-acceptance of the additional evidence because the evidence is the right of the litigants and among the things that may not be raised before it for the first time is that the legislator stipulated for accepting the additional evidence that the litigants could present it before the court of the first instance, meaning that he was negligent.

Additional evidence is accepted based on the appeal stage in three cases:

1. If the court of the first instance refuses to accept admissible evidence, provided that the litigant requests the presentation of the evidence and submits it in adjudication before the court of the first instance and that this court refuses to accept the evidence even though it is admissible.
2. That the evidence be necessary for the determination of the case and an essential character, related to the essence of the dispute, and required to decide the case, and require the presentation or presentation of this evidence produced in proving this issue, such as presenting a document or bringing a witness.
3. Acceptance of the evidence if the opponent is not presented to the first degree (as a face-to-face). This is what the esteemed Court of Cassation has followed. It has ruled that "It is understood from Article 185 that the court may if it deems it necessary to produce a document or bring a witness to hear his testimony, to be able to adjudicate the case, or for any other reason, and to allow the production of such a document for verification, or to bring that witness to hear his testimony, and where the trial court has used its authority granted to it under the previous Article, then this reason must be rejected. ([1]) Article 7/1/180 also stipulates giving the court a more positive role, as the Court of Appeal has the right, on its own, to allow any evidence to be presented and to assign it to the opponent.[2] From this, it was found that the Jordanian legislator gave the judge a positive role in the proof, in violation of the principle of the judge's impartiality.

Seventh Section: The role of the judge is to compel the litigants to produce the documents they have in their hands necessary for the settlement of the case.

Article (100) of the Code of Civil Procedure gives the judge a positive role in the evidence, as it states that "the court may order any party to produce documents in its possession or at its disposal that it deems necessary for the settlement of the case." Based on the incoming Article, the court may order any of the two parties to submit these documents that it deems necessary to settle the case and determine the extent of its necessity through the evidence and requests of the parties. The assessment that it is necessary to decide the case is up to the court and not the parties, bearing in mind that the Jordanian Evidence Law also gave the litigants the right to request such evidence within the conditions specified by the texts of the law and these are the articles (21, 22, 23, 24). These articles arranged a statement of what the documents and papers under his hand are in terms of:

1. Bond descriptions.\
2. The content of the predicate or the paper is estimated as detailed as possible.
3. The incident that is cited by the paper or the predicate.
4. Evidence or circumstances support that the paper or the predicate is in the hands of the opponent.

The legal consequences of denying it are arranged as if the opponent denies it; the court takes an oath that the paper or the document does not exist, and he does not know its existence and that he did not hide it or did not neglect the search for it in order to criminalize the opponent of citing it. If he does not take the oath, the court

[1] Jordanian Court of Cassation, Decision No. (459/2003) dated May 13, 2003; Jordanian Court of Cassation, Decision No. 2695/2004 dated 3/1/2005.
[2] Jordanian Court of Cassation, Decision No. (542/1992) dated 9/8/1992.

will take the fingerprint of the copy submitted by the opponent who requested the document, the paper; if a copy of a statement was not submitted regarding the form of the predicate or the paper, then these articles gave the judge the discretionary authority to oblige the opponent to submit these documents or papers at the request of the opponent. As for Article (100), it is the right of the court, even if the litigants do not request it if it considers it necessary to decide the case, and it is a departure from the principle that the litigant may not be forced to submit documents and evidence under his control. However, this is matched by a moral obligation incumbent on this opponent, who is required to submit an obligation to investigate the truth and seek the truth, and not to cover up the truth and hide its features and evidence and a denial of justice, which made the judge a positive role in the evidentiary procedures to arrive at the truth regardless of what the interests of the opponents dictate from the positions.

Well, the Jordanian legislator did in giving this role to the judge in the Civil Procedure Code. However, this Article did not clarify the penalty for the opponent's failure to submit these documents that the court requested from the parties and where necessary for the settlement of the case. The text here is absolute, as it is permitted regardless of the law, whether it is civil law or any other law, as long as the above Article permits the opponent's claim to submit it, as well as if these documents are shared between the two parties. Moreover, this is what happens most in construction contracts (contracting) and in the event that one of the parties withdraws the document from the case (Article 24 of the Evidence Law). The Egyptian Commercial Code Article (16/18) of it permitted the court on its own to order during the litigation to submit and review the books to prove the right of a plaintiff or to extract from it what is related to that litigation. And the basis for obligating the litigant to submit a document in his possession is one of the procedures for investigating the case. This was stated in the Jordanian Code of Procedure, Article (100). However, the Egyptian Court of Cassation ruled on this basis, as it ruled. "If the trial court had taken the procedures for preparing the case by instructing one of the litigants to submit one of the papers, but he did not submit it and claimed that it did not exist with him, then it has the right to rule on the merits of the case in favor of the litigant who is likely to have the right without other than him."[1] If some believe that obligating the opponent to submit a document in his possession is one of the evidentiary procedures, the court has the right to withdraw from it.[2] Accordingly, the basis for the power of the judge to compel the litigants to submit the documents under their hands necessary for the settlement of the case is presented on a controversial basis, which is the obligation of the litigants to clarify all the facts and submit all documents and papers that may have an impact on the judgment in the case.

Conclusion

We summarize from the above that the role of the judge in Jordanian legislation, particularly in the Evidence Law and the Civil Procedure Code, has given the judge a positive role in proving that he is no longer a passive conciliator and leaves the opponents the freedom of proof. Rather, he has a great role in that, to the extent that he gave a wide role, and this is represented in Articles (53) and (70) (25) of the Evidence Law and Articles (76/2) and (83/1) and (104) and (185/m/b) of the Code of Civil Procedure. And that this departure may serve the interests of the opponents, but it leads to serving the public and private interests at the same time. It leads to the achievement of justice, which is a departure from the principle of impartiality of the judge. This role given to the judge in establishing proof in the civil case is subject to appeal and oversight by the Court of Cassation in terms of the validity of the application of the law if this application violates the law.

Consequently, the role entrusted to the judge to prepare the final dispute requires him to achieve the equation between the judge's commitment to impartiality in his positive sense and diligence to reveal the truth. Therefore, the judge cannot replace the parties from the outset to search for evidence to prove their claim; on the other hand, there is nothing to prevent the judge whenever it becomes clear to him that there is serious litigation that requires him to decisively intervene to carry out the actions revealing the truth within the scope of what is authorized by the legal texts and to complete the evidence of the litigants in order to base his judgment on clear and firm evidence that would make the judicial rulings conform to the reality because the judge’s task is not merely to separate cases, but rather to separate disputes by the law and based on valid data. This calls on the judge not to be bound by the evidence presented by the litigants, and since this evidence may be incomplete, but rather he must search for the truth himself, the judge must reveal the correct data so that the judgment conforms to the truth, which is what the Jordanian legislator took and gave the judge an important role in the investigation and adjudication of the case, and that his role became positive, and this is what we touched upon in this research. The research came out with the following results and recommendations:

First: Results

1. The Jordanian legislator adopted the mixed system of proof.

[1] Ahmed Sedky Mahmoud, “A request to obligate the opponent to present a document under his hand”, Dar Al-Nahda Al-Arabiya, Cairo 2005, p. (23).
[2] Jordanian Evidence Law Articles (21 to 24).

2. The Jordanian legislator took the principle of discussing the litigants by the judge, but even if the litigants did not request that, he did not specify the procedures for that.
3. The Jordanian legislator has given the judge, in the Code of Civil Procedure and in Article (100) thereof, to order any party to produce the evidence in its possession or at its disposal of documents it deems necessary to settle the case.
4. The Jordanian legislator departed from the text of Article 59 of the Code of Procedure by specifying the time for submitting evidence and that it allowed the submission of evidence if it was necessary to settle the case, in the text of Article (185/1/b), which is related to additional evidence.
5. The Jordanian legislator has been more deviant from Arab legislation by deviating from the principle of impartiality of the judge or amending it, particularly in Article (100) of the Code of Civil Procedure.
6. The Jordanian legislator should have specified the procedures that must be followed in questioning the litigants according to Article (76/2) of the Code of Civil Procedure.

Second: Recommendations

1. We believe that the Jordanian legislator should take the expansion of the role of the judge as it is followed in the Islamic Sharia, with setting the necessary controls on this expansion, to reach the truth as much as possible, because people's dealings are so diverse that it is impossible to lay down a rule that leads to knowing the truth from the falsehood because this is contrary to the nature of things, it is inevitable that we leave the judge the freedom of insight into what he considers of the cases because that is guided to achieve justice.
2. The Jordanian legislator must set and expand the texts necessary for the interrogation of the litigants, and not remain in one text, as is in Article (76/2) of the law.
3. The Jordanian legislator must set the necessary texts on how to compel the litigants to present those under their control and set the controls for the text of Article (100) of the Code of Civil Procedure.
4. The Jordanian legislator should expand and specify the articles that allow the submission of evidence during the first- or second-degree stage if they are necessary to decide the case and remove the ambiguity contained in Article (185/1) of the Code of Procedure.

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