

## ABUSE OF RIGHTS DURING LEGAL PROCEEDINGS (COMPARATIVE STUDY OF ISLAMIC JURISPRUDENCE AND CIVIL LAW)

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### **Introduction**

*The procedural right holder has the right to use it within the limits set for him to achieve its purpose without any deviation. However, it may use methods that involve procrastination, distortion, procrastination, and the use of the right in litigation procedures other than what they are legislated for. Because the right of defense is permissible for all, except for those whose intransigence and deviation has been proven to harm his opponent. This is considered exaggeration and abuse in the use of the right and the damage resulting from it, which, in turn, harms the applicant for compensation within the jurisdiction of the judiciary. The right holder does not have an absolute power to use his right as he likes, for the law limits his authority to legitimate ends and draws limits for his right, because use of right without a limit is an outrageous injustice, and there is no difference between the objective right and the procedural right, since the latter is being used as a means of violating the opponent.*

**Keywords:** Legal Proceedings, Definition of Right and its Divisions, Abuse of Right.

### **First Requirement**

#### **Definition of Right During Legal Proceedings**

The right is the comprehensive concept through which various applications are dealt with within the framework of the so-called “Abuse of Rights Theory”. Therefore, we must give it sufficient care and careful research, by presenting the various directions that dealt with the subject as well as the important divisions of right. It is one of the most profound legal issues that have been raised about reaching the proper definition of right. Because discussion arose a long time ago amongst the defenders of the theory of Right about defining its nature, and there is no doubt about the difficulty and importance of such a definition, and it is a dispute that is still circulating in jurisprudence to this day. Defining right during Legal Proceedings requires us to define right in general sense first, which is presented in the first division, and then we will deal with the divisions and forms of right in the second division.

#### **First Division**

##### **The Concept of Right**

The Iraqi civil law and the civil laws in question are devoid of a definition of right, and this is a trend worthy of support, because it is not the legislator’s task to formulate definitions of legal terms, but rather the task of jurisprudence and the judiciary, because the legislator, no matter how accurate he is, cannot encompass all developments in the future. Hence, setting a specific definition for a particular issue may limit the development that can affect this issue.

To define this concept, we review the definition of right by law commentators, as well as its definition by Islamic Sharia jurists, as follows:

##### **First: Definition of Right according to Law Commentators**

As a result of the difficulty of defining the term “Right”, the theories that have been concerned with defining it have resulted in numerous jurisprudential attempts in this field. One of the law’s commentators went on to say that “Right is a person’s monopoly over certain values or things that guarantees him authority or necessity, and aims to achieve an interest that is protected by the system and laws because it has a social value”. There is another opinion that sees right as a legal link or bond between persons, i.e., a legal bond between two persons, in which, law authorizes one

of them, namely the creditor, to demand the debtor to do an act, refrain from an act, or give something, and also means the jurisdiction and exclusivity of a person in a specific legal position.

**Law commentators have been divided according to their definition of Right into three schools of thought:**

**The first doctrine (Personal):** they define Right as (the ability or voluntary power granted by the law to the right holder within a known scope), that is, it considers it an attribute of the right holder to make his will enjoy power and authority in relation to certain actions that are the content of the right, and this doctrine makes the right close to personality, it becomes a voluntary ability, but this Will is being governed by the law that grants it and defines its scope.

**The second doctrine (Objective):** unlike the personal doctrine, and according to this doctrine, right is an interest that is protected by law, and here the interest is material. The one who advocated this direction is the German jurist (Rudolf von Jhering), who established rights on the basis of the interest that the law recognizes for the right holder. He defines the right based on the subject of the right, as: (a legitimate interest protected by law).

**The third doctrine (Hybrid):** It indicates that the right is a voluntary ability or authority, recognized by the law or the system, and protected by a person in order to achieve a specific interest. It establishes the right on the basis of authority and interest together, and he defines Right as: (a legitimate interest whose realization is based on an authority or voluntary ability approved by law).

One of the law's commentators came to the conclusion of a modern definition of the right as: "the exclusivity of a certain value granted by the system to a person and protecting him, or it is the exclusivity of a person with a specific value protected by the system from authoritarianism and necessity in order to achieve an interest for this person that society deems worthy of care". So, based on this trend, the right can be defined as: (the advantage of excluding a specific interest that is recognized by law for a particular person and determines the ways to protect it), so that person has an advantage or a position assigned to him by the law and bestowed upon it his protection.

We can define the right as: (a legal idea that involves jurisdiction over a certain value legally or legally established for a specific person in order to achieve a legitimate interest surrounded by law with care and protection).

## **Second: The Concept of Right among Islamic Jurisprudents**

**Right** in language: indicates the ownership and the existing fixed matter, and the scholars of Islamic law did not distance their understanding of the truth and their portrayal of it from this linguistic meaning.

The word "Right" is one of the frequently used terms in research, literature and footnotes. Therefore, we find that most of the older jurists did not pay much attention to giving an end to this term, due to the prevalence of

its use, and depending on them on the linguistic meaning, while contemporary jurists have given the right a great deal of attention, as their definitions of this term have been elaborated, and among these definitions: "a competence that Sharia recognizes an authority or mandate". It is noted on this definition that, despite its generality, it included all kinds of rights, such as the right of God Almighty, and moral rights such as the right to obey in what is good for parents, rights of public guardianship, and enjoining good and forbidding evil, because all of that and the like are either an authority that belongs to the one who is proven to him by the Legislator, or Assigning an order to a legally mandated person. It was also stipulated that the Shariah approve this competence and the authority or assignment that results from it, because the Sharia view is the basis of consideration, so what the Sharia considered right was right, and what it did not consider was null.

This definition is clearly formulated, but it is not a complete and comprehensive definition of this term, because it is vague and unclear and contains a lot of confusion, it says (authority or assignment) it is not clear "who has this authority" or "on whom is this assignment" only after reading the explanation, and it is not Just by definition.

Some defined it by saying: “A right is a fixed interest of an individual or society, or of both, that is decided by the legislator.” It is also noted on this definition that he defined the truth with its purpose, and this is wrong, because the right is not the interest, but rather it is a means to the interest.

Professor Al-Darini also defined it as: “A competence by which Sharia recognizes an authority over something or a requirement for performance from another in order to achieve a specific interest”.

We believe that the definition of Professor Al-Darini is the most accurate definition and the best formulation, as it was distinguished by its quality in giving a comprehensive concept of the right and preventing the entry of other than the meaning of the right in the definition, as he differentiated between the right and the purpose of the right, and it was reconciled to a large extent in explaining the essence of the right, its source and purpose according to a unique connection between both of them.

## **Second Division**

### **Divisions and Forms of Right**

There are many forms and divisions of rights, and in this section, we will try to show the most important divisions of rights among law commentators, as well as among Islamic Jurisprudents.

#### **First: Divisions of Rights**

Rights have several divisions, and these divisions differ according to law commentators, which differ from the divisions of Islamic Sharia jurists, so we will explain them respectively:

##### **1- Divisions of Rights among Legal Jurists:**

Rights are divided among legal scholars by several considerations, as they are divided first into political rights and civil rights, the first being granted to the person as a partner in establishing the political system of the group. For example, “the right to candidacy, the right to vote, in other words, they are the powers decided by the branches of the common law for some people to enable them to carry out certain works in which they participate in the management of the political affairs of the community, which are limited to citizens.

As for civil rights, they are rights that seek to enable people to do certain actions in order to benefit from them in their lives and activities, and they are not limited to citizens.

These rights are divided into general rights established by branches of common law such as constitutional law and criminal law. These rights are determined for the citizen and the foreigner alike, such as the right to work and public jobs, as well as the right to movement and others. As for special rights, they are determined by branches of private law, for example, family rights that are recognized by the Personal Status Law, and these rights are established for the benefit of the persons subject to them and the interest of the family in general, as well as financial rights that authorize their owners to carry out certain actions to achieve an interest that can be evaluated with an amount of money.

Rights are also divided into personal rights, in-kind rights, and mental rights. As for personal rights, they are the rights that are closely related to a person’s personality, and are closely related to him, as they are proven to him by mere existence as personal components, and these rights represent manifestations of personality, for example, freedom of work, freedom of retirement, freedom of belief.

As for the rights in kind, they are divided into genuine in-kind rights, which give the owner the authority to use and exploit the thing and the authority to dispose of the property and the rights that derive from it.

Accessory Rights and Rights in Rem: do not authorize the owner of the thing to use, exploit or dispose of the thing, but only authorize the owner to fulfill his original right and are divided into insurance mortgage, possession mortgage, and lien.

As for intellectual rights: they are rights that result from human thought with a degree of innovation so that the personality of the owner appears and this right finds its source in the law, or they are rights that focus on immaterial things and are divided into two parts, the first is literary property as the copyright over his ideas, and the second is industrial property as a right Inventor for his invention

## 2- Divisions of Rights in Islamic Jurisprudence

Islamic Sharia jurists differed in the division of rights according to the difference in the meaning on which the division revolves. The rights were divided in view of the right holder (the right of God Almighty, the right of the servant), as they are divided in view of the place of the right (a material right, an abstract moral right), and what the two rights met. Looking at the rights in terms of their owner, they are divided as follows:

- A- Exclusive Rights of God Almighty: These rights lie in pure acts of worship, such as belief in God Almighty, prayer, zakat, fasting, Hajj and jihad.
- B- The rights of the Believer: which is related to a special interest for the slave, such as the sanctity of others' money, the exchange for spoiled goods, and the prices of sales, such as public utilities, and as for the private right, it is what entails a special interest for an individual or individuals, such as the right of every human being in his work or home
- C- The right of God and the right of the Believer Combined: In a manner similar to what is known as mixed rights, this right may be the right of God in it is the dominant, and the right of the servant may be the dominant, for example the limit of slander, so God's right in it on the one hand is that it legislated to rebuke and clear the world from corruption And the right of the servant in it is that it is legislated to protect the honor of the slandered person, and to ward off shame on him, but despite that, God's right in him is predominant because that limit is caused by slander fornication, and the prohibition of adultery alone appears in it the right of God Almighty is clearer

### Second: Forms of Rights

The use of the right takes several forms, and we will suffice with a statement of the right according to the material criterion. The material criterion means the necessity of conducting transactions on the basis of equality in the exchange of economic values, regardless of the personal and psychological considerations of each contracting party. We distinguish between the total and partial use of the right and the legitimate and illegitimate use of the right, according to the following:

#### 1- Total and Partial Use of the Right:

If the right holder enjoys all the powers that are legally entrusted to him to bring in his hand all the components of the element of disposal, use and exploitation, we are in the process of total use of the right. Article (1048) of the Iraqi Civil Code referred to these three authorities (1) by saying, "The full ownership is the absolute ownership of the owner's disposal of what he owns as a price, benefit and exploitation, so he benefits from the owned price, yield and production and disposes of them in all permissible actions". In the Egyptian Civil Code No. (131) of 1948, we find Article (802) defining the right of ownership: "The owner of a thing alone, within the limits of the law, has the right to use, exploit and dispose of it". As for the amended UAE Civil Transactions Law No. (5) of 1985, Article (1133)/1 of it states: "The right of ownership is the owner's authority to dispose of his property in an absolute manner for price, benefit and exploitation".

#### 2- Lawful use and Wrongful Use of Rights:

That is, the right holder uses his right to the fullest extent that the legislator has authorized and wanted when legislating the rights, and granting them to their owners, which is the use of these rights in a legitimate manner, and in the manner acceptable to the legislator, but some of the rights holders may deviate from the right path and the goal that the legislator desired. So he uses his right illegally, transcends the limits set by the legislator, and commands rights holders to exercise their rights within their scope, without offending anyone, or harming him, that man is the Khalifa of God - the Almighty - on earth, and that interests are considered when legislating provisions, and these three foundations require that A person's use of his right is in accordance with it, and is compatible with it, so the use of the right is legitimate if it is practiced within the scope of what is permitted by law and its owner has acquired it legally and its place is permissible to deal in and not in violation of public order and public morals, and in the case if the right is used in violation of what was mentioned Previously, it is considered an unlawful use of the right to use the right in violation of public order and public morals or to use it in a way prohibited by law, and

then it is the responsibility of the injured to prove by all the specified methods of proof of the abuse of rights by right holder.

### **Second Requirement Use of Rights Conditions**

It contains: The conditions for using the right that differ according to the characteristics of the people who use it, because its use is not limited to those who decide to protect their personal interests, so it is not limited to the litigants only, but includes its use by the judge, his assistants and others. Before clarifying these conditions, the concept of the use of the right in Legal Proceedings must be clarified. Therefore, this requirement must be divided into two branches, the first of which is devoted to defining the right in Legal Proceedings, while the second is devoted to clarifying the conditions for its use.

#### **First: Procedural Right Definition**

The procedural right is an expression given to denote the rights related to litigation and execution procedures, such as the right to resort to the judiciary, the right to sue, the right to defense, the right to execution, and other related procedural rights. The jurists look at the procedural right from multiple angles. Once they consider that everything related to litigation procedures is a procedural right, and again they see that it is an authority granted to the litigants, and a third time they see that it is a license established for them, according to the following:

##### **1- Procedural Right is all about Legal Proceedings**

The term procedural right, according to this view, is a new and unknown expression in procedural jurisprudence, which resulted in it being content with merely referring to the existence of the right to carry out a judicial procedure without paying attention to formulating a specific definition for it. The year that includes a set of rules related to legal proceedings in civil, commercial and criminal matters that are carried out by judges, their assistants, litigants, and anyone associated with an interest in the case, starting from the progress of the case to the stage of its termination.

Although this trend has taken the broad meaning of the term (procedural right), it is criticized for being a definition that lacks accuracy and is ambiguous because it does not include all the elements or characteristics contained in the idea of a procedural right in general, in addition to the fact that the procedural right is not the judicial procedure itself, but it is What is stated on the judicial procedure, in other words that the judicial procedure is the subject of the procedural right

##### **2- Procedural Right is Procedural Power**

This trend defines the procedural right as “a procedural authority that the opponent derives from his presence in a specific legal position, to achieve his personal and personal interest within or because of an litigation submitted to the judiciary,” that is, the lawsuit is an authority that proves to the opponent under which he can present his allegations to the judiciary because he has an interest in establishing those The case, and it is noted from this definition that the expression of procedural rights is limited to those rights established by law for the litigants only, without other persons in the civil lawsuit.

What is also being noted from this definition is that: whoever said it suspended the person's enjoyment of procedural rights on acquiring the description of the opponent, as a reason for his presence in a procedural legal position that earns him rights, and imposes obligations on him, and all of this is contingent on the existence of a litigation before the judiciary or because of it, as it is dependent on the judicial claim, whether he is a plaintiff In addition to the fact that the demise or forfeiture of the litigation does not result in the demise or forfeiture of the right to the lawsuit, as the holder of the right to the lawsuit has the right to file a new lawsuit.

##### **3- Procedural Right is a Procedural License**

The procedural right, according to this view, is defined as “a license or procedural facility established for the parties to the litigation or for a person other than the parties to it to perform a procedural act within or because of the judicial litigation,” and the license is a middle position between freedom and right. For example, there is the right of ownership and the freedom to own property, between them there is an intermediate center represented in a person's license to own property. A person has the freedom to own anything of the things, and if he buys it, he becomes



the owner of a right of ownership, and there is an intermediate stage that is the one that is offered to buy the thing. In this case, the buyer, before accepting the transaction, is in a special center, i.e., the owner of a license to take ownership, as the license represents a person's transgression of the stage of freedom and his progress towards access to the right. An example is also the license granted to the intercessor to ask for intercession or not to request it. The intercessor owns the thing sold if he takes preemption, and before the partner sells his share, the intercessor has nothing but freedom of ownership. But if the partner sells his share, here the intercessor has the license to own property, where he can ask for preemption or not.

We notice that this definition did not make the procedural right an expression limited to what the law decides for the parties to the lawsuit only, but rather refers to their persons and to the rights that the person has because of the lawsuit, as is the case in the right to intervene, so the procedural right is just a license or a procedural device determined by the law. The procedural for the opponent or for others and he is completely free to use it or not, so those who said this definition prefer to use the expression "license" instead of authority, because authority is king, ability and power, and that the license is mitigation, facilitation and permission.

In spite of that, this definition has received many criticisms, because the use of the expression "status" makes it difficult to limit the scope of procedural rights, in addition to the fact that the existence of the procedural right in the idea of judicial litigation is criticized as it may raise the question of the nature of a person's right to resort to the judiciary as a right Prior to the lawsuit. Is it procedural or objective right? Even if it is said that it is a right of a special nature, it is not considered close to the correct description of the truth of the procedural right that derives its existence, nature and purpose from the legislator's regulation of it.

Taking advantage of the previous definitions, we can define the right in Legal Proceedings as "the means granted by the legislator in the Code of Procedure to anyone who meets the conditions for directing that means specified in the law to obtain judicial protection or to provide it within or because of civil litigation".

## Second Provision

### Use of Rights Conditions in Legal Proceedings

The use of the right in Legal Proceedings is bound by a set of important conditions whose approval is intended to control the litigation process in a proper manner that leads to the end for which the right has enacted these procedures. It is divided into conditions related to the litigants in the civil lawsuit, and other conditions related to the judges and their assistants in this lawsuit, according to the following:

#### First: Conditions that must be Met by the Liabilities

The abuse and exaggeration of people's procedural rights is a possibility, and therefore it is necessary to restrict the exercise of these rights with certain conditions, so as not to overburden the judiciary with huge numbers of cases and so that those rights do not take as a means of maliciousness and harm, and so that the parties to the case can exercise their rights before the judiciary, following conditions must be met:

- 1- **Litigation Capacity:** In order to exercise the right to litigation, it is required that each of the two litigants enjoy the legally necessary capacity, otherwise they must be represented by someone who takes their place legally in the use of these rights, and it does not go beyond the capacity to perform and since the capacity to perform is the person's capacity to issue the legal action in a reliable manner. According to Sharia and law, the litigation or procedural capacity is the capacity of the litigant to initiate the case, or to carry out legal proceedings in a credible manner.

The ruling resulting from the lack of the eligibility condition when using the right to litigation varies according to the following assumptions:

**The First Assumption:** If the court finds that the case is instituted by a person or against a person who does not have the necessary capacity, it must rule not to accept the case because one of the conditions for its acceptance has not been fulfilled. Article (3) of the Iraqi Code of Pleadings stipulates the condition of completing the eligibility to accept the case, and without it, the court

must not accept it, as it stipulates (It is stipulated that each of the parties to the case should have the necessary capacity to use the rights to which the case relates, and no one who takes his place must act on his behalf. legally in the use of these rights).

**The Second Assumption:** If the eligibility was lost or lacked during the consideration of the case and before the issuance of the judgment in it, we differentiate whether the case was prepared for judgment on its merits or not, and this is what is stipulated in Article of the Iraqi Civil Procedure Code (84): (The case is interrupted by virtue of the law by the death of one of the litigants or by the loss of the capacity to litigation or the demise of the capacity of the person who was conducting the litigation on his behalf, unless the case has been prepared for a ruling on its merits. Proceedings of the case and the issuance of the judgment in it. However, in this case, the judgment must be notified to the person who takes the place of the opponent who has lost his capacity, in order to calculate the period of appeal in a confrontation. But if the lawsuit, upon incapacity, was not prepared for a ruling on its merits, the court must decide to stop proceeding with it. At that time, the court resumes proceeding with the case by informing the person who takes the place of the litigant who has lost the capacity to litigate by the court, or at the request of the other litigant, or at the request of someone who takes the place of the litigant who has lost the capacity to litigate and proceeded with it).

## **2- Availability of Litigation:**

The availability of litigation means the availability of capacity in the use of the right to litigation, meaning that the claimant is the owner of the right or the legal position to be protected, which means the existence of a personal and direct interest in the use of the right. Whether or not the case was filed, this is what Article (4) of the Iraqi Civil Procedure Code stipulates, where it stipulates that (it is required that the defendant be a litigant whose approval will result in a judgment estimating the issuance of a statement from him, and that he be sentenced or obligated to something based on the assessment of the proof of the case, and with that, it is valid The litigation of the guardian, the trustee and the trustee with respect to the money of the minor, the confiscated and the absent, the litigation of the trustee with respect to the endowment money, and the litigation of whom the law considers a litigation even in the cases in which his acknowledgment is not enforced. The holder of the right or the legal position to be protected if he has the power of legal representation before the judiciary.

Therefore, the court must verify the characteristics of the litigants, otherwise its judgment may be subject to a response if it is appealed. In application of this, the Baghdad Court of Appeal, Rusafa Federal in its discriminatory capacity, ruled that “the court must verify the characteristics of the litigants, and since the court had gone otherwise, which violated the validity of its distinguished judgment, so it decided to rescind it and return the case to the Court of First Instance to verify the characteristics of the litigants”.

As for the Egyptian and Emirati Pleadings Law, they did not stipulate a ruling that obliges the court to verify the characteristics of the litigants in the case, but this does not mean that the court does not verify the characteristics of the litigants. This is evidenced by the fact that the law permits the court to grant the litigants a deadline to correct the litigation. Among the applications of the Egyptian judiciary in this regard is the decision of the Court of Cassation, in which it was stated: “Although the defendant may plead not to accept the case if the plaintiff is not qualified to file it. However, when the plaintiff acquires this capacity during the consideration of the case, taking into account the dates and procedures stipulated in the law, the defect that marred his character when filing it will be removed and the litigation after the removal of the defect becomes productive from its inception, and the defendant has no interest in adhering to this defense”.

## **3- Legal Interest:**

With regard to the term “interest” and the term “validity”, the first is related to the litigants in the case, the second is specific to the judges and their assistants. With regard to the legal interest, the right to litigation requires that its holder be based on a legal interest, and it means the practical benefit that is recognized and protected by law and which is intended Its realization is as a result of resorting to the judiciary, and the case - as a procedural right - must be characterized

by practical and legal interest, because theoretical interests are not suitable by themselves to be the subject of a lawsuit, as the court is not a house for fatwas, as well as purely economic interests - such as legitimate competition - they are also not suitable because It is a basis for accepting the case, and unless there is an interest, the case is not accepted, and therefore it is said that the interest is the basis of the case, and there is no case where there is no interest.

### **Second: Conditions that must be met by Judges and their Assistants**

As is the case with the parties to the civil lawsuit, the judges and their assistants in the civil lawsuit are required to meet certain conditions in order to exercise the right to Legal Proceedings, according to the following detail:

#### **Conditions of the Judges**

Perhaps one of the most important conditions that must be met by a judge in a civil lawsuit in order to initiate this lawsuit and then proceed with it and issue a judgment is the condition of validity, which is generally meant that the judge is not prohibited from hearing a particular lawsuit even, and that he does not reject one of the litigants, and the validity of judges of two types:

- 1- **Public Authority:** meaning that a person enjoys functional competence and is legally entitled to the jurisdiction of the judiciary in the state. The Constitution of the Republic of Iraq for the year 2005 recognized the judiciary as an authority independent of the legislative and executive authorities, and not just a public function assumed by the government through the mediation of the courts, as Article (87) stipulates From the Constitution that “the judicial authority is independent. It is assumed by the courts of all kinds and degrees, and they issue their judgments in accordance with the law”.
- 2- **Private Authority:** It means that judges are fit to perform their duties to perform a specific task in person, and it has two parts. The first lies in jurisdiction, meaning that the judge is competent in accordance with the rules of jurisdiction stipulated by law. As for the second, it is personal, that is, if the judge is retired, transferred to another job, or dismissed from the job for some reason, or does not have the authority that entitles him to use the right, or if he violates the rules of jurisdiction related to public order, he is not fit to use the right to litigation as having the authority, and if this was met, the right to litigation, as a means of judicial protection, is non-existent and does not have any legal effect.

#### **Judges' Assistants Conditions**

As is the case with judges, their assistants are required to have the general authority and the special authority, both objective and personal, to initiate any procedure in the civil lawsuit. The judges' assistants are all those whom the judge needs a lot of people of experience for help in accessing truth and justice in times of need, whether they are doctors, engineers, accountants, public prosecutors, session officer and others. As we have already mentioned about his qualities, but he does not encompass everything with knowledge. Rather, he may miss many things in which he needs experts specialized in their field, the most important of which is “forensic medicine”, so we will limit ourselves to some of the judge’s assistants.

With regard to the public prosecution, the public prosecutor is obliged to have public authority, that is, to have the functional competence that entitles him to use that right by being at the rank of a public prosecutor.

As for the judicial assistant, he must have the job and the competence, that is, he should have the functional competence that gives him the authority to do this procedure.

As for the session clerk, he is required to receive the amounts presented to the court during the pleading and to organize a record of the deposit, i.e., he must fulfill the position and jurisdiction.

The same applies to the judicial sum. It is necessary to notify the case, its attachments and advertisements, and it must fulfill the position and jurisdiction.

As for the agent in the litigation, it is necessary for him to file the case, plead in it, and review the methods of appeal, that the agent be competent. Or who has the authority to practice law in the case, this is what was stipulated in 51/1 of the Civil Procedure Code, where it states: (The court has the right to accept their spouses, in-laws, and relatives up to the fourth degree on their behalf, in conciliatory and legal cases and personal status cases. They may review the ways of appealing



the judgments issued in these cases. He deputizes for others on account of guardianship, trusteeship, custodianship, or guardianship of this right as well).

Finally, the expert must be sufficiently technical, professional, and cognitive to guide in the issues before him that the judge cannot be familiar with, as they are outside the scope of his knowledge of the law. While this assistance is not absolute but rather restricted, i.e., the expert must have authority to carry out the expertise, and this authority is twofold. The first is a general authority, meaning that the expert is qualified to carry out the task entrusted to him, and the second is a special authority, meaning that there is no reason preventing the expert from performing with experience.

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- [41] Muhammad Hussein Mansour, *Introduction to Law, Legal Rule, Theory of Truth, Ramadan and Brothers for Printing and Binding*, without a year of printing, pg. 40
- [42] See: Al-Munajjid Al-Abjadi, without an author, 1st ed., *Dar Al-Mashreq*, Beirut, without a year of publication, p. 559 and p. 480
- [43] It is known that the machine does not have a single nature, but rather it may be an authority, it may be a right or it may be a license, quoting from: Dr. Fathi Ismail Wali, *The Theory of Invalidity in the Procedure Code, Origin of Knowledge*, Alexandria, 1959, p. 87
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- [45] Article (3-4-6) of the Iraqi Pleadings Law, Article 3 of the Egyptian Pleadings Law No. (13) of 1968, as amended, and Article 17 of the UAE Procedures Law
- [46] Ayyad Thamer Al-Dulaimi, *Provisions of suspension of traffic in the civil lawsuit and its legal effects - a comparative study*, Dar Al-Jeel Al-Arabi, Mosul, 2005, p. 15.
- [47] Corresponding to Article 130 (1) of the Egyptian Code of Pleadings, which states: "The litigation process is interrupted by virtue of the law by the death of one of the litigants, or by his loss of litigation capacity, or by the lapse of the capacity of the representative who was engaged in the litigation, unless the case has been prepared for judgment on its merits and Article" 103/1 of the UAE Civil Procedures Law, which says: "The litigation process is interrupted by virtue of the law by the death of one of the litigants, his loss of capacity to litigation, or the lapse of the capacity of the representative who was engaging in the litigation on his behalf, unless something of that happened after the pleading in the case was closed."
- [48] Ayyad Thamer Al-Dulaimi, *Provisions for cutting traffic in the civil lawsuit*, previous source, p. 28.
- [49] Ali Obaid Owaid, previous source, pg.
- [50] Same source, pg.
- [51] Decision of the Baghdad Court of Appeal / Rusafa in its discriminatory capacity No. 158 / discriminatory, on 4/13/2009 unpublished
- [52] Article (115) of the Egyptian Code of Pleadings states: "If the court considers that the plea for non-acceptance of a defect in the defendant's capacity is based on a sound basis, the case shall be adjourned to notify the person with the capacity." Corresponding to Article (91/2) of the UAE Civil Procedures Law
- [53] Civil Cassation No. 524 of 37 BC - Session 25/1/1973, Technical Office 24, p. 108, Ahmed Muhammad Abdul-Sadiq, *Judicial Reference in the Procedure Code, Part 1, Edition*, without publisher and place of publication, 2008 p. 51
- [54] Among the applications of the Egyptian Court of Cassation is that "no lawsuit shall be accepted, nor shall any request in which the owner does not have a personal, direct and existing interest recognized by

- law shall be accepted.” Civil Cassation No. 495, for the year 13 BC - session 4/13/2004, Ahmed Muhammad Abd al-Sadiq, *Judicial Reference in the Pleadings Law, Part 1, Edition 1*, without publisher and place of publication, 2008, p. 37.
- [55] Dr. Al-Sharqawi defines the interest as (the need for the law to protect the right that has been attacked or threatened with assault and the benefit obtained by the claimant by achieving protection. Abdel Moneim Al-Sharqawi, *Theory of Interest in the Case*, Ph.D. thesis, Cairo, 1947, p. 56
- [56] The decision of the third expanded panel in the Court of Cassation stated: The brother of the deceased may file a lawsuit against her husband to support his divorce from her and to pay his dispute to him in her inheritance because the plaintiff’s litigation is based on a direct legal interest and is based on Articles Six and Seven of the Civil Procedure Code.
- [57] Resolution No. 421 Second Extended Body -1980 Date of Resolution 25/7/1981, *Journal of Judicial Judgments, Third Issue*, 1981, p. (41).
- [58] Muhammad Azmi Al-Bakri, *Defenses in the Law of Pleadings*, Mahmoud House for Publishing and Distribution, Amman, i, 2002, p. 947.
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