

Right of appreciation in civil evidence comparative study

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Abstract

The right of the calendar is one of the legal means that have been found to protect rights from conflict or abuse. They are closely related to the right and are accompanied by existence and infallibility. The purpose of their legislation is to seek justice and to protect the rights of individuals from loss. It is impossible for the judge to determine the true value of the thing, and then he can direct the oath, But it has to determine its true value, And not the value of the plaintiff, the judge determines in this case the maximum value of the right of the plaintiff's right, and this value of the plaintiff does not abide by the judge never, because it is a complementary right, he can rule less than that value or more according to his authority and Maitra him, It provides a real evidence relative to the value of the thing, it remains to strengthen this evidence with a legal right complementary to the right of the calendar addressed to the plaintiff, which calls for the recovery of the object and the impossibility of the response, its goal to assess the value of the thing and show the right to protect rights from loss and non-aggression.

Keywords: legal means, legal means, plaintiff

I. Introduction

The right of the calendar is of great importance because it has begun to evaluate the value of something that is the duty of reply and impossible to reply at all or to recover something that has become an in-kind response. It has begun to protect the rights from loss and non-aggression. It is one of the most important legal means found to protect the right Or assault.

The right of this civil action involves something hidden and with it the evidence that proves this right, and because it is not possible to return the object Or impossible to answer in kind of the plaintiff and even impossible to estimate the value of the claimed thing in any way, it is imperative that the judge determine the true value of the thing and then can be directed to the right.

Therefore, the judge provides evidence relative to the value of the thing, it remains to strengthen this guide with a legal right complementary to the right of the calendar addressed to the plaintiff, who calls for the recovery of the thing and the impossibility of the reply alone and not his opponent, so the study aims to remove the problems and answer questions, What is the right of the calendar, what is its philosophy and what is its purpose, what is distinguished from others, what is its legal nature, and what are its conditions, procedures

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and implications? Based on the analytical and comparative approach, besides the Iraqi Law of Evidence, there were laws in the field of investigation such as the Egyptian Law of Evidence, the Lebanese Code of Procedure, the Syrian Evidence Act, the Jordanian Evidence Law, the Algerian Civil Code, the Saudi Shari'a Procedure Law and the UAE Evidence Law. Adopting the applied approach that enhances the legislative and jurisprudential positions in the relevant judicial rulings related to the Arab courts.

This right is characterized by some ambiguity both in terms of scientific or practical, and this is one of the reasons for our choice of this subject, which was not touched by one before us, as he did not discuss this subject enough accurate research specialist collects the issues from the stomachs of mothers of books, Of the attention and study, the studies dealt with almost completely non-existent, which is one of the many difficulties that surrounds such a subject was chosen from within the doors of the judiciary, which is described as the abstainers and not abstainers, as well as the multiple dimensions of this philosophical subject and depth, it enters the field of legal evidence And The judicial process and the consequent, and this attempt may illuminate the way to other attempts come after it may be combined to achieve what they set up to the satisfaction of God to serve Islam and Muslims and justice, right and science.

Finally, the structure of the research was divided into three sections. In the first topic, we discussed the concept of the right of the calendar, in two cases. The first dealt with the meaning of the right of the calendar, and the second included distinguishing it from the suspect. The first was about: the legal nature of the right of the calendar, and the second included: the provisions of the right of the calendar, and there was a conclusion: it included the conclusions and recommendations.

The first topic

The concept of the right calendar

It goes without saying that the right of the calendar is important because its purpose is to protect the rights. It has started to protect the rights from loss, and because the right of the debtor here is a hidden right. The judge can determine the value of the matter and the oath is given to the plaintiff to swear. The law is incomplete and must be supplemented by another evidence that is an integral complementary right. In order to highlight this, the topic should be divided into the following two requirements:

First demand / What is the right of the calendar.

Request 2 / Highlight the right of the calendar suspected.

First requirement

What is the right of the calendar

It is necessary to speak about what this right is to be searched first in its meaning and then to explain its characteristics. Also, clarifying the linguistic concept of any concept will certainly help to define and understand its meaning without interfering or interfering with other matters. This is what we will explain in the following two sections:

Section I / the meaning of the right of the calendar.

And value: what comes under a revaluation of the dirham or dinars, "value, broken: one values and what is the value: if nothing lasts, and the value of the commodity and Astqthm: value, and straight: moderate, and nation: adjusted, it is right and straight" (14).

And values: value, price (15), and evaluated the value of the value of (16), (quantitated) the sheep hit the textured and distorted and corrected and removed the face and commodity price and price, (do) the thing is modified and adjusted and identified value (17).

Finally, in summary, the amendment is meant to modify or correct the thing, if the value of the value, as well as the meaning of the assessment, any knowledge of the value and values of the commodity any price, and determine its value.

Thus, the meaning of the right of the calendar in the linguistic term is the section in God Almighty to determine the value of the thing and know its price.

The second destination

The meaning of the right of the calendar in the legal terminology

It should be noted that this right has been known since ancient times, it is not the result of the current era, it is mentioned in the law of Hammurabi similar in Article 120 of which states that "if one of his pills deposited in the warehouse of another person and a dispute between them on The amount deposited, the plaintiff, the owner of the grain, shall swear before God and believe in his right, in which case the defendant's depository shall pay him double ".

Thus we can define a definition of this right as: a judicial judicial right directed by the judge to the plaintiff to estimate the value of something that is the duty of reply and can not be returned, and the value can not be assessed in any other way.

Section II

Right Calendar Properties

The right of the calendar has several characteristics that can be summarized by the following points:

1. The right of the calendar is a legal right, ie it has been legislated by the laws and within the provisions of the legal articles. It is a judicial right, ie, it is a case in the Judicial Council and at the request of the judge exclusively, it is a judicial right because it is a confirmation of the thing at the request of the judge to mention the name or character of God in the form of special tapes and this is certainly a fundamental characteristic of this oath from the rest of the faith Non-judicial - which are not brought before the courts and which are usually agreed upon by the parties outside the Judicial Council. The legislator generally does not regulate its provisions. The agreement is subject to the general rules, which are often very common and the result is agreed upon by the parties. Of the plaintiff to estimate the value of something wag B - reply and can not or impossible to reply in any way, and that after proved his right.

3 - It is a special picture of the images of the right-wing is usually directed in certain circumstances, we have attached to the right complementary to come to complete evidence that the law is incomplete and intended to be completed, as well as that it is directed by the judge exclusively, and called the legal oath because the law is imposed by In other words, the judge is obliged to direct them in certain circumstances to one of the particular adversaries appointed by law, and has no discretion in directing them not to direct them. The judge must direct them on his own initiative.

4 - The goal of the right of the calendar is to evaluate the value of the thing and show the right: - that the judge provides evidence relative to the value of the thing, it remains to strengthen this evidence with a complementary legal right is the right of the calendar addressed to the plaintiff, who calls for the recovery of the thing and impossible to reply alone, In order to protect the rights from loss, and it is one of the most important legal and legal means that were found in order to protect the right from the dispute or abuse it, so this oath began to protect the rights of loss and non-aggression.

The second requirement

Highlight the right side of the calendar

It is natural that there is sometimes a similarity between the right of the calendar and other legal conditions such as the complementary right and the right of memorization. They are similar in different places and differ in other places. Therefore, our study requires clarifying these matters consecutively through the following two sections:

Section 1 / Highlight the right of the calendar from the right side.

Section 2 / Highlight the right of the calendar from the right of memorization.

First branch

Highlight the right of the calendar from the left side

The right of the calendar from the right side is characterized by different faces and faces, as follows:

Similarities:-

1 - The right of the calendar and the right complementary is a right of judicial performance in the Council of the judiciary exclusively, and are a means of legal evidence, as Article 109 of the Egyptian Evidence Act that "the oath before the Court ...", as stipulated in Article / 148 of The Yemeni law of proof that "the oath shall be taken before the court or the judge appointed in the Judicial Council and may not be sworn outside."
(19)

2. Both the right of the calendar and the complementary right, which are one of the images of the complementary faiths of the bourgeoisie, agree that they can not be sworn in on the other opponent. Article 123 of the Iraqi Evidence Law provides that " "Article 120 of the Egyptian Evidence Law, Article 124 of the Syrian Evidence Act, Article 252 of the Lebanese Law of Trials, Article 349 of the Algerian Civil Code, Article 62 of the UAE Evidence Law, and no text Is similar in Jordanian law, 20 and thus agree that it is not permissible to

restate the oath The other adversary is not considered to be a judge of the adversary's conscience, so this may be returned to the conscience of his adversary to whom the judge is sworn in, as in the crucial right

The right to complete the oath does not oblige the judge, whether he has sworn oath or not, because it does not oblige the judge after the opponent swears the right to complete the prayer for his own benefit, because the right of completion does not end the dispute, It is a method of verification that may reach the judge to the conviction of the rule of the benefit of its allies independent of the will of the parties, the complementary right is a procedure and evidence of supplementary evidence of limited strength in the evidence, it is a means used by the judge to complete the principle of legal provenance, while the right of the calendar also Does not require a judge, he may rule b Less than the amount paid by the opponent or more (21), especially if one of the adversaries after the alliance introduced new elements that the judge can guide in assessing the value of the thing.

4. Each of the two rights can be classified as a juridical right, ie, the judge alone has discretion in directing or not directing it.

5 - The right of the calendar or appreciation also agrees with the complementary right that it was also known in Islamic jurisprudence as the complementary right, as provided for in Article 1780 and 1782 of the Code of Justice, 23 and the Iraqi Evidence Act was also taken in Article 122 thereof, Which are identical to Article 121 of the Egyptian Evidence Law, Article 253 of the Lebanese Code of Procedure, Article 122 of the Syrian Evidence Act, Article 350 of the Algerian Civil Code and Article 1369 of the French Civil Code.

The differences:-

1. The complementary right is not directed unless the claimed right is not fully substantiated, whereas the right of discretion is directed when the subject matter of the case is fixed, and the dispute is limited only to its value and the impossibility of proving that value.

2. The right of the complement may be directed to one of the litigants in the case - the plaintiff or the plaintiff - depending on the degree of ratification of the interest of one of them, while the right of appreciation is directed to the plaintiff only requesting the recovery of the thing, The opponent will be sworn in by the law.

(3) The right of completion shall not be directed unless the subject of the case is less than the evidence and the conditions of the principle of legal certainty are met. 25 In the right of discretion it is assumed that the subject matter of the case is invalid, but the dispute is based solely on the estimation of the amount of value. That "the complementary right, which is required to be directed, shall not be in the case a full evidence as provided for in article 121 of the Evidence Act".

Section II

Highlight the left of the calendar to the right of the rollover

We can explain the most important differences between the right of the calendar and the right of memorization, as follows:

I. Similarities:

1 - right of the calendar can be classified as part of the faith complementary bourgeois while the right of memorization is among the complementary faith mandatory because they are really the legal faith imposed by

the law, and they are right and mandatory because they require the judge to guide them and has no discretion in directing them or not, On its own initiative, as the evidence is essentially incomplete in the case of the law and must be strengthened by the right complementary and mandatory.

2 - Both are judicial, ie they are in civil proceedings in the Judicial Council exclusively, they are confirmation of the thing at the request of the judge to mention the name or character of God as a specific tape, and this is certainly a fundamental characteristic of these beliefs from the rest of the faith is not judicial, Either from the right of the opponent to the right of the opponent's request by the judge exclusively, either to be the right of the calendar directed by the judge to the plaintiff to assess the value of something is the duty to reply and can not be returned, and impossible to estimate its value in any other way, or that this oath is the right of invocation that the plaintiff He did not meet his right in any way Not relatively on the king remains to strengthen this evidence with an additional right and complement legal Jupiter is the right of invocation that the money did not come out of his property in any way.

3 - Both of them determine the law to judge the person who was directed to the oath does not have the judge discretion in directing them or not, on the right of the calendar directed by the judge to the plaintiff to assess the value of something is the duty of reply and can not be returned, and impossible to estimate its value in any other way, while the right of memorization, The claimant of the right to the estate, who has proved his right that he did not meet his own right or the other person of the deceased and does not transfer it to any other or fulfilled his religion from others and not the deceased in return for this right mortgage.

Second: Differences:

1 - The subject of the right on the right of the calendar is to evaluate something, the judge must direct the plaintiff to estimate the value of the duty of reply and can not be returned, and impossible to estimate its value in any other way, while the judge on the right of memorization to address to the right of the estate, He has not fulfilled his right alone or in any other way of the deceased, nor does he transfer it to any other person, or he has fulfilled his debt from third parties, and not to the deceased in exchange for this right.

2 - The effects of the right of the calendar that the judge does not abide by the result under this oath does not oblige the judge, whether the oath of the plaintiff or Nkl it does not bind the judge result, while on the right of memorization that the plaintiff's alliance proves him the right to the legacy as an impact Therefore, if we complain about the right and did not swear the plaintiff lost his case.

The second topic

The legal nature of the liminal calendar and its provisions

We will try to determine the legal nature of the calendar, although we now appreciate that it is not easy, given the difficulty of the subject and that no one has dealt with us, but in any case this attempt as well as previous attempts may illuminate the way for other attempts come after, Nature in contrast, this right can be seen as part of the complementary faith of the bourgeoisie, and we will focus here on its nature from our humble point of view as an integral right to a passport, in order to know its provisions and to specify its conditions and effects. For the purpose of comprehensive coverage of the subject,

The first requirement / legal nature of the right of the calendar.

The second requirement / the right of the calendar.

First requirement

The legal nature of liminal calendar

It goes without saying that the legal nature of this right - and our humble estimate - is that it is a right of the complementary faith of the bourgeoisie and is in fact a judicial right.

As it is a legal right because it is imposed by the law, according to article / 122 of the Iraqi Law of Evidence stating that: "First: The court may not direct the plaintiff the right of completion to determine the value of the defendant unless it is impossible to determine this value in another way Second: In this case, the court shall determine a maximum value for which the plaintiff believes in his right "and its conformity in this area is Article 121 of the Egyptian Evidence Law and Article 253 of the Lebanese Code of Procedure, Article 122 of the Syrian Evidence Act, Article 350 of the Algerian Civil Code and Article 1369 of French Civil Code (28).

It is also a judicial right because it is a confirmation of the thing at the request of the judge to mention the name or character of God in the form of special tapes, it is undoubtedly a judicial right because it is performed in the Council of the judiciary exclusively, and this is definitely a fundamental characteristic of this oath is characterized by the rest of the non - Which are usually not agreed upon by the parties and which are generally agreed upon by the parties outside the Judicial Council. The legislator generally does not regulate its provisions. The agreement is subject to the general rules and its outcome is agreed upon by the parties - usually in the civil case. , Such as value estimation If the person who has been entrusted with it is liable for it, or for example in a case for the recovery of something that is rendered impossible in the form of an irrevocable return, then the value thereof is lost. If there is a deposit, for example, or a nudity, As well as the loss of a traveler's bag by shortening the carrier or losing the wallet of a guest in the hotel, or similar sale or rent which has been canceled and the sale or the leased eye can not be returned by default to the buyer or lessee, Estimate this value in any way, albeit in an expert manner , It is no longer necessary to return the value of the plaintiff to the judge to the judge of this kind of complementary right, but the judge first to determine the real value, and not the value of the plaintiff himself, 29 In this case the judge determines the maximum value that the plaintiff believes In his right, and this value of the plaintiff is not complied with by the judge, because it is a complementary right, it can be judged less than that value or more according to the authority of the judge and according to what seems to him.

Thus, we see that the opponent to whom this right is directed is always the plaintiff who demands that the thing be returned without the respondent being asked to respond. The issue of the right is always the amount that the plaintiff appreciates the value of the object to be refunded, provided that this amount does not exceed a maximum that the judge exempts according to his discretion according to the circumstances of the case. The court shall not judge the value of the wrongdoing at the discretion of the plaintiff, but shall estimate the value by an expert or by the direction of the complementary right ... "(31).

This right is also a special image of the right-wing complementary images, which we have attached to the right-hand side, as it comes to complete evidence that the judge sees as incomplete and is intended to be completed, and thus we can classify this right among the right-wing bourgeois parties. The most important characteristic of this type of faith in general is that it is a metaphor that the judge may direct or not to guide,

where he has a broad discretion here, according to his conviction evidence presented in the lawsuit, as well as that the oath is the property of the judge alone Directed by him , Which is why it is called the judicial right, and we classify it in the right of the judicial complement and it is not obliged to adopt its result. The judge does not adhere to it at all because it is a right of judicial complement, which belongs to the judge alone, he can rule less than that value.

The evidence in this case is incomplete and must be reinforced by a right-hand passport, which is the right of the calendar because the judge verifies the right to the value of the object from the right. Therefore, the judge provides a relative proof of the value of the thing. This evidence should be reinforced by a complementary juridical right. The plaintiff, who demands the recovery of the thing and the impossibility of his reply, and proved his case alone, to judge the value of the thing demanding his recovery, this right is limited to the plaintiff only when it is the subject of the case is fixed, and the dispute is limited to its value only and impossible to prove that value, To a directory T is complemented by a complementary oath, the judge of his offering an upstream right of the same calendar to the plaintiff.

The second requirement

The right of the calendar

We can define the provisions of this oath by addressing the conditions of this oath first, as well as the most important effects of the second, so we should divide this requirement on the following sections:

Section I / Conditions of the right of the calendar.

Section II / Effects on the right of the calendar.

First branch

Calendar right conditions

Through the definition we can determine the most important conditions that must be met in order to be directed to this right in detail as follows:

1. The plaintiff shall demand recovery and prove his claim.
2. The matter can not be returned or is impossible to be returned in kind by the defendant.
3. It is impossible to estimate the value of the claimed item in any way.
4. The judge shall determine the true value of the thing and then he may direct the oath.

In this regard, we suggest that the text of Article 122 of the Iraqi Evidence Law be amended to read as follows: "The court may direct the plaintiff to the right of the assessment to determine the value of the defendant if this value can not be determined otherwise."

The legal text proposed by us is thus more clear and specific than the text of the preceding article.

Section II

Effects of the right calendar

The right of the calendar as it is known is a judicial right directed by the judge to the plaintiff to assess the value of the duty of reply and can not be refunded, and impossible to estimate its value in any other way, and that the right is limited to the plaintiff only demanding the recovery of the thing, The case is fixed, and the dispute is limited to its value only and it is impossible to prove that value.

As we have noted through our review of the provisions of this oath that the judge must determine the real value of the plaintiff, not the value of the plaintiff, the judge determines in this case a maximum value of the right of the plaintiff in his right, and this value of the plaintiff does not comply with the judge at all because it is a complementary right , He can rule less than that value. If the plaintiff swears to him to recover the thing in the value estimated as we have stated, but the judge here does not abide by it, it may govern less than the amount paid by the opponent or more, especially if one of the two rivals after the alliance New elements can be breathed In the estimation of the value of the thing, as well as among other effects that the alliance of this oath that the plaintiff may not respond to the plaintiff.

However, if the plaintiff who demands the return of the oath is explicitly or implicitly defeated, he loses his claim and rejects it, because this implies that he is not entitled to the money, and thus the evidence is incomplete. Therefore, this oath was imposed to complete incomplete evidence.

II. Conclusion

Through the study we have reached several results, which we have installed in the places of study, and I will suffice here to refer to the most important of these findings and recommendations that we reached, as follows:

First: Results:

1 - It turned out that the subject of the right of the calendar is an important subject that was not given the right of research and study did not discuss the subject in sufficient and precise research specialized in depth.

2 - It turns out that the right of the calendar is a means to estimate the value of something that is the duty of response and can not be returned, and the impossibility of estimating its value in any other way, and characterized by several characteristics distinguish them from the rest of faith, as we concluded to recognize the terms and effects.

3 - we have reached two parts of the first right: includes the complementary faith of the juridical judicial, where the judge may direct or not, according to his discretion and conviction evidence presented before him, the second: the complementary faith obligatory legal, where the judge is obliged to direct them as long as the situation has been identified Law, that is to say, it has no discretionary power to direct it.

4 - we have concluded the most important differences between the right of the calendar and the right of memorization, we found that the judge on the right of the calendar does not abide by the result under this oath does not oblige the judge whether he swore the oath or complain about, while on the right of memorization that

the plaintiff's alliance proves him right as an effect, However, if the right is wrong and the plaintiff does not swear, he loses his case.

Second: Recommendations:

1. We propose that the text of Article 120 of the Iraqi Law of Evidence be amended to read as follows: "The Court may direct the complementary right on its own behalf to the opponent who does not have full evidence and complete the principle of legal determination if its conditions are available to adopt its ruling on the merits of the case. The text of the article is more accurate than the previous, as not all incomplete evidence directed to the right complementary, but limited to the existence of the principle of legal provenance, and we devoted this article to the complementary right that complement the principle of legal certainty only, we deleted the words "or value Control "at the end of the text of the previous article for several reasons, But the dispute is based on an estimate of the amount of value only, and this has nothing to do with the complementary right that complements the principle of legal provenance. Moreover, Article 122 of the Iraqi Evidence Law is limited and especially The right to calendar only, which we believe alone enough to explain and explain its concept.

2. We recommend that the text of article 121 of the Iraqi Evidence Law be amended to read as follows: "The right to complete the oath shall not require a complete evidence, and the case shall not be void of any evidence so that the principle of legal certainty is available. In writing and without writing or any other picture of him and as the case may be so that it would make the presence of the right claimed by the probability ", thus limiting the conditions of the direction of the right complementary only when the availability of the principle of legal certainty, as we explained the concept of this principle to accommodate all cases and image, We have created the appropriate organization to formulate an independent theory instead of This dispersion is not difficult to return to take its important role and distinct in the legal system of judicial evidence.

3. We recommend that the text of Article / 122- First of the Iraqi Evidence Law be amended to read as follows: "The Court may direct the plaintiff to the right of the assessment to determine the value of the defendant if such value can not be determined otherwise." Thus, the text of the article is more clear, specific and easier to formulate than before.

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25. For further elaboration, see: Awan Abdullah Al-Faidi, The Principle of Legal Evidence Comparative Study in Civil Evidence, Dar al-Kitab al-Din, Dar Shatat Publishing and Software, Egypt, UAE, 2012, p. 21.

26- The decision of the Court of Cassation of the Kurdistan Region of Iraq No. 64 / right / complementary / 2001 on January 25, 2001 (unpublished decision).

27. Article 1746 of the Ottoman Judiciary Judgments, which states: "It shall not be sworn to except at the request of the adversary, but it shall be sworn by the Governor in four places without the first request: if one of the estate claims a right and proves it in his ruling, This right is in itself and not by any other person who dies in the face or in his father's body, nor is he referred to any other person, nor is he satisfied with anyone else, nor is he permitted to die in exchange for this right. He is also subject to this right of memorization "See also article 124 of the Iraqi Evidence Law; That this article / 124 of the Iraqi Law of Evidence has been amended by the fourth amendment No. 36 of 2000, established "The court shall swear by itself in the following cases: First, if a person in the estate claims a right and is proved by the court's right to invoke the right of invocation as not, This right shall be fulfilled by himself or by any other person who dies in the face of his father or his brother, and shall not be referred to another person, and his religion shall not be fulfilled by others, and the deceased shall not be entitled to this right. "This is identical to article 123 / A of the Syrian Evidence Law. Article 54 of the Jordanian Evidence Law stipulates However, "the person who was sworn in shall not swear by the request of his opponent, and after the decision of the court, "Article 107 of the Saudi Shari'a Procedure Law No. 21 of 1421H stipulates that" the judge may direct the right of memorization and the like to one of the two adversaries when necessary, even if it is not permissible to do so. "And no similar provision was made in other comparative laws.

Article 283 of the Lebanese Code of Procedure; Article 122 of the Syrian Evidence Act; Article 350 of the Algerian Civil Code; and Article 1369 of the French Civil Code.

29. Consider: Abdul Razzaq al-Sanhuri, op. Cit., C. 2, p. 595.
30. Consider: Ahmed Abu Al-Wafa, Evidence in Civil and Commercial Law, University House for Printing and Publishing, Beirut, 1985, p. 238.
- 31- The decision of the Court of Appeal of Baghdad in its discriminatory capacity No. 124 / Human Rights / 78 on 21/1/1978, Journal of Justice Judgments, Iraqi Ministry of Justice, p. 1, p. 9, 1978, p.