

CHAPTER 2

LEGAL RELATIONS: FROM THEORY TO PRACTICE

THE OBLIGATORY COMPLEMENTARY OATH IN JORDANIAN LAW AND COMPARATIVE LAW

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Abstract. *This study examines the subject of the obligatory complementary oath as a mean of proof in civil and commercial cases. The purpose of the article is to study the features of the obligatory complementary oath in Jordanian law and comparative law. The main research methods that were used in the article are general scientific methods of analysis and synthesis, as well as comparative analysis, which became the basis for obtaining research results. The first topic is about defining the complementary oath and distinguishing it from the decisive oath, and in the second topic about the forms of the obligatory complementary oath. As this study concluded that the Jordanian legislator did not put a detailed organization of the complementary oath, as is the case when he organized the decisive oath, and the study recommended that the legislator include other forms of the obligatory complementary oath and make detailed provisions for the obligatory complementary oath.*

Key words: *complementary oath, decisive oath, obligatory complementary oath, civil law, trial procedures.*

JEL Classification: *K10, K39, K40*

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Introduction. The Rules of Evidence are set out to protect the individuals' rights, so the right is an interest protected by the law, so that whoever claims a certain right resort to claim it before the judicial authorities, which are empowered by law to settle disputes between litigants, therefore the legislature seeks to provide the required guarantees, which would help the rights holders to prove their claims before the competent judicial authorities [1].

Literature review. The Jordanian legislator did not set a specific definition of the complementary oath, nor did he put special regulatory provisions for it, as he did when he organized the decisive oath provisions, therefore the legal scholars have tackled this task; as some jurists defined the complementary oath as: " *The complementary oath is an oath that the judge directs on his own to either of the two opponents when he deems that this opponent has provided insufficient evidence for his claim, so that the evidence is completed by the oath*" [2].

It is clear that the complementary oath is one of the methods of proof used by the judge to complete insufficient evidence to prove a legal fact that one of the litigants seeks to prove, so the complementary oath did not intend to resolve the dispute, but intend to forming convictions before the judge in the evidence presented to him, therefore it is a matter of subject for the judge who hears the dispute and is not subject to the oversight of the Court of Cassation [3].

The complementary oath enables the judge to complete the evidence and insufficient evidence and achieve a fair judgment between the litigants, hence the idea of this research is about organizing the Jordanian legislator for the obligatory complementary oath provisions, specifically what is stated in the Article (54) from amended Jordanian law of evidence No. (16) of (2005).

It is noted that Jordanian legislator has differentiate between two types of complementary oath, it is sometimes obligatory, that was clear from the Article (54) from law of evidence which provide: *"The court may, of its own accord, request the oath"* the phrase (*The court must*) means mandatory and obligatory, while in other Articles it came to change the permission as in the Article (70) from law of evidence which provide: *" The court may, of its own accord, request the complementary oath"*. So that he may use this means of proof and he may leave it if he wants.

The legislator gave the judge discretionary power to resort to the use the complementary oath, but it is better for the judge not to use this evidence except in the minimal, because it is contrary to the nature of the judge's work, it is not the judge's job to provide evidence for the litigants' evidence or to supplement their incomplete evidence, as the judge's work in this field is limited only to evaluate the evidence received from the litigants and giving preference to some over others, it is found to rid the judge of the obsessive conscience in the events in which he sees that the evidence is almost sufficient for a ruling, but it is not conclusive [4].

Some legal scholars have indicated that the complementary oath should be abolished, as the dignity available no need to take an oath to defense the opponent to claim undue right, if it abolished the opponent did not feel embarrassed in perjury, as the judge does not need an oath to enable reassurance, because he who fails to prove his claim is losing, and the judge does not feel embarrassed in the judiciary for his opponent against him, because in that he comes to the rule of law [5].

Although some legal scholars claim that the complementary oath is ineffectiveness, the researcher tends that is has a great benefit and it helps to justice, because it helps the judge in evaluating the evidence and reaching a fair judgment that is satisfying to the opponents.

The legal nature of the complementary oath. Some legal scholars argued that complementary oath is only a way to assist the judge when there is a lack of evidence, therefore it is not considered a legal act, nor to be evidence but it is just a procedure that the judge takes with the aim of reach a correct and complete judgment, rather, it is considered a deviate from the principle of the judge's impartiality, because the role of the judge is limited to assessment and evaluating the evidence and giving preference to some over others, then, the judge may have the absolute power in estimating the outcome after asking the complementary oath [6].

As a side of jurisprudence considers that the complementary oath is just a material fact that the judge resorts to complete the evidence of the lawsuit, thus, it is a method of proof and has a complementary role, and it is not a legal act [7].

Accordingly, we can say that the complementary oath is exercised unilaterally, and fall below minimum the level of legalaction, but it has a significant impact on the lawsuit, which is to resolve the dispute before the judge.

As the court of cassation in Jordan ruled that: *"it follows from Article No 70 from law of evidence that the complementary oath is not considered as a legal action, rather it is a mean of the means of investigation that would be asked by the judge by his estimate from any of defendant or plaintiff if he sees that one of the two litigants has presented evidence for his claim in the lawsuit or in the defense that is superior to the evidence of the other litigant, and besides that if he sees that this litigant with the most correct evidence is more trustworthy and reassuring, then he is asked him, without the other litigant, the complementary oath to complete his evidence [8].*

The researcher considers that the complementary oath is a procedure from investigation procedures that handle by the judge, so that it would be require from one of the litigants in the lawsuit before the judge, in order to establish his convictions in a particular topic and it is not binding on the judge, so he can take it or leave it.

Aims. The purpose of the article is to study the features of the obligatory complementary oath in Jordanian law and comparative law.

Methods. The main research methods that were used in the article are general scientific methods of analysis and synthesis, as well as comparative analysis, which became the basis for obtaining research results.

Results. The main results of the study were grouped in the following areas:

- Distinguishing between complementary oath and decisive oath;
- Kinds & nature of obligatory complementary oath;
- The nature of the obligatory complementary oath and its effects;
- Forms of the obligatory complementary oath in Jordanian and comparative law;
- Assessment (Adjustment) Oath;
- False Statements Oath.

Distinguishing between complementary oath and decisive oath.

Complementary oath differs from decisive oath in terms of the following:

1. The complementary oath is directed by the judge so that he directs it to one of the opponents, but the decisive oath is directed by one of the litigants of the case to his opponent, and the same applies to the formula of the oath, in the decisive oath, it is set by one of the litigants who requests it, but the complementary oath is the judge who determines its formula [9]. So do the Jordanian Court of Cassation states that: *"The court directs the complementary oath on its own to complete the evidence presented and to complete the deficiency in it [10].*
2. The decisive oath is a legal action issued by from a party of the lawsuit, and it is countered by another behavior by the other party, represented by swearing or not. As for the complementary oath, it is a method of judicial investigation in order for the judge to complete his convictions with the incomplete evidence [11].
3. The outlined options before who asked to take a decisive oath are either swearing, renunciation, or rejecting, as to whom the oath is directed may reject it from his opponent if the oath is focused on an incident in which the two opponents are involved, as the outlined options before who asked to take a

complementary oath are swearing or renunciation, and may not reject form his opponent because it directed by the judge [12].

4. The judge in the decisive oath does not have the discretion to direct the oath or not, but rather has the right to ensure that the conditions for giving the decisive oath are met, if the oath is made or renunciation is made, the dispute is settled and the judge is obliged to take the outcome of the oath, as for the complementary oath, the judge may have the discretion to direct it to any of the litigants in order to complete the incomplete evidence, if the oath is made or renunciation, so the judge is not binding to take the oath's outcome, he may rule – against who made the oath, and he may rule in favor of the party made the renunciation [13]. In that sense, the Kuwait's Court of Cassation has ruled that: "*It is established in the judiciary of this court that the judgment issued on the basis of the decisive oath has the force of a res judicata, and it is not acceptable to appeal against it in any way of appealing the judgments unless the appeal is based on invalidity in the procedures for taking the oath or made it*" [14].
5. It is not permissible for the one to whom the decisive oath has been *directed* to reject if the opponent accepts it. As for the complementary oath, it is permissible for the judge to withdraw from its directive before the person to whom it was directed takes an oath or renunciate it, and the judge may not rescind it after the person to whom it is directed has taken an oath [15].
6. Such take a decisive oath or renunciate it is completely settling the dispute that the subject of oath or renunciation. As for the complementary oath, its oath or renunciation does not settle the dispute and it is a means to supplement the incomplete evidence [16].

Kinds & nature of obligatory complementary oath. The Jordanian legislator dealt with this type of complementary oath in Article (54) of the Evidence Law, therefore, we will review in this topic two subjects, first subject is about the nature of obligatory complementary oath and its effects, and the second subject is about the kinds of obligatory complementary oath.

The nature of the obligatory complementary oath and its effects:

1) Nature of Obligatory Complementary Oath.

- Definition of Obligatory Complementary Oath. Article (54) of the Jordanian Evidence Law states: "*The court shall, on its own, ask to take an oath in any of the following cases:*

- a) *If someone proves his claim of his right to the inheritance, so the court ask him to take an oath from him that he did not fulfill this right by himself or through someone else with this right by the oath, did not waiver, did not transfer it to someone else, did not collect his debt from others, and the deceased did not have a mortgage in return for this right.*
- b) *If someone deserves money and his claim is proven, the court shall ask him to take an oath, that he did not sell this property, did not give it to anyone, and did not take it out of his possession in any way.*
- c) *If the buyer wants to return the thing sold because of a defect in it, the court ask him to take an oath that he did not return the defect explicitly or implicitly.*

d) *If the applicant of right of pre-emption proves his claim, the court may ask him to take an oath that he has not forfeited his preemption in any way".*

This corresponds to article No (83) from Jordan Civil Law which states: *"The oath is not made except at the request of the opponent, but the court ask him to take an oath for invocation, and when it is due and returns the sold item for a defect in it, and when rule for the preemption, even if the opponent did not request an oath".*

Articles (54) from Jordanian Evidence Law, and (83) from Jordan Civil Law, from Journal of Judicial Judgments, as it was obligated before enactment of the Civil Law No. (43) of 1976.

It is clear from the previous texts that the legislator did not define this oath, but it can be defined as: is an obligatory complementary oath that legislator imposes against the plaintiff, so if he takes it, he may success in his claim, by contrast, ruled against him, however, it has no effect on proof, proof of which is that it is directed after the plaintiff has proven his claim (Prove all the facts of the case) by legal evidences, so after the parties of the claim have finished their arguments, and the judge has convinced that the material fact before him determines the legal issue by which he will rule in settling the dispute, and end the litigation [17].

From this definition, we conclude that this oath is a kind of oath that the judge directs spontaneously to the plaintiff who proves his claim at maturity and returns the sold item to a defect in it and when ruling with preemption, if he take an oath, win his case.

- ***Who asks for the obligatory complementary oath.*** It turns out from Article (54) from Jordanian Evidence Law, that the one who asks this oath is the judge in the Governing Council, it is one of the duties of the court and it is obligatory for the judge to be obligated to ask it even if the opponent does not ask for it, so this oath would be asked from the plaintiff who has proven all the facts of his case with legal evidence in cases of merit, invocation, preemption and returning the sale for a defect in it, and that the law does not oblige the court to postpone the case when this oath is taken [18], if the judge did not direct this oath to the plaintiff after the latter proved his claim by establishing the legally required evidence, his judgment deemed defective and must be abolished or cassation, according to situations.

2) To whom is the obligatory complementary oath asked to take? The obligatory Complementary oath in accordance with Article (54) of the Jordanian Evidence Law is asked from the plaintiff who has established all the facts of his claim with legal evidence, and that the oath must be based on all the facts of the claim, and a court decision must be issued to ask to take an oath; Because taking this oath is one of the duties of the court, as I have referred, even if the opponents did not ask for it [19].

3) When to ask for the obligatory complementary oath? The obligatory complementary oath is asked after the plaintiff has proven the facts of his lawsuit with legal evidence, so after the two litigants have concluded their pleadings, after the judge has confirmed the proof of the case, and before issuing a ruling in it. If the judge neglects to ask it, his ruling is will be annulled by the court of the second instance, and the principle is that this oath is asked before the trial court, that is,

before the court of first instance, but there is nothing to prevent it from being asked before the court of appeal [20].

4) Subject of the obligatory complementary oath. As provided in Article (54) of the Jordanian Evidence Law, it becomes clear that the subject of this oath is the cases of invocation, entitlement, preemption, and the return of the sold item for a defect in it. Therefore, these claims were received exclusively, so, it is not permissible to compare it by asking this oath, bearing in mind that the oath must fall on deciding, and the judge does not have the power to change the wording of the oath stipulated by law to change its meaning and sense, accordingly, the Jordanian Court of Cassation with its decision No. (54) which states that: *"The wording of the oath that the court ask the plaintiff in accordance with Article (54) of the Evidence Law and not Article (1746) of the Code was for the validity of the oath being asked"* [21].

However, the fact on which the oath is made for must not be contrary to public order or morals or prohibited by law, as if the plaintiff had instituted his claim against the estate of the deceased claiming a poker debt, or as a result of an illicit relationship, in this case even if the plaintiff proves this debt, the judge may not ask him to take this oath [22].

5) Effects of the obligatory complementary oath. If the plaintiff proves the facts of his case with legal evidence and the judge decides to ask the plaintiff to take this oath, the plaintiff has no choice but to take an oath, if he take it, a judgment in his favor, or refuse it, in this case he loses his case and the plaintiff may not, in any way, reject it from defendant [23].

The plaintiff must also take this oath by himself, and he is not entitled to appoint another person to take it, because it is legally established for him alone, and this is explicitly stated in Article (54) of the Evidence Law.

Notably, the judgment issued with the obligatory complementary oath is subject to appeal, and the Court of Appeal may consider that the evidence of the plaintiff is incomplete and annuls the judgment and considers the oath as if it were not, and it may consider that the judgment is correct if the evidence of the plaintiff is sufficient to prove the facts of his case, and therefore this oath differs from the decisive oath, which resolves the dispute and ends the dispute after it is performed directly by the opponent [24].

This oath is an obligatory oath binding on the judge to ask to take the oath and take its result, and it is also obligatory for the plaintiff to take an oath, otherwise he will lose his case.

After taking an oath by the plaintiff according to the Article (54) of the Evidence Law, the judge does not have the right to rule in his favor, and this brings this oath closer to the decisive oath. Therefore, Dr. Al-Sanhouri considers this oath to be complementary with many permissiveness [25].

This oath is contrary the complementary permissive oath stipulated in Article (15) of the Jordanian Evidence Law, which the judge ask on his own to one of the two parties, whether the plaintiff or the defendant. In the interest of the oath, he also has the right to retract this oath after it was sworn by the litigant, if after that new evidence appears that completes or contradicts the missing evidence, he has the right

to withdraw from that because there is no longer a justification for directing this oath. Rather, he has the right to retract even if no new evidence appears in the case in which the judge re-examines the case file and before issuing his ruling in it. He looks at the evidence and finds it complete. He has the right to withdraw from asking this oath after he has asked it, and I have already explained that in detail.

Forms of the obligatory complementary oath in Jordanian and comparative law. In this topic, I will deal with the forms of the obligatory complementary oath stipulated in Article 54 of the Evidence Law, in five sections.

1) Invocation Oath. The oath of invocation can be defined as: the oath that the judge asks in accordance with the text of the law to the plaintiff who has proven his claim with legal evidence of his right to the deceased inheritance, provided that he did not fulfill this right himself or otherwise by take an oath in one way, nor acquit him, nor transfer it to others, nor fulfill it by anyone and not to the deceased in an interview this right is mortgaged [26].

This oath was stipulated in Article (54/2/A) of the Jordanian Evidence Law, and this oath was stipulated in Article (83) of the Jordanian Civil Code. As I indicated earlier that this oath was taken from the Journal of Judicial Judgments, which in Article (1746) of the Journal stipulated the following: *"The oath is not sworn except at the request of the opponent, but the oath is sworn by the judge in four places without request. The first: If someone from the estate claims a right and proves it, then the judge ask to take it that he did not fulfill this right himself or anyone else from the dead in a way and I will not heal him nor He transfers it to someone else, and it is not paid by anyone, and the deceased does not have to meet this right as a mortgage, and it is said that this is an oath of invocation .."*

This magazine has taken the oath from Islamic jurisprudence [27].

As revealed by from the Article (54) of the Evidence Law, Article (83) of the Civil Code, and Article (1746) of the Code of Judicial Judgments, that this oath is asked by the judge to the plaintiff in the Governing Council, and it is obligatory from the judge to the plaintiff, who is entitled to claim the inheritance of a deceased as an asset or a debt, and he proved it with legal evidence, then the judge ask him to take this oath that he did not fulfill this right or any amount of it, whether by himself or someone else, by way of authorization or by order of fulfill, and he will not release from all or part of the debt, nor accept an assignment to others in all or part of the debt, nor will he be paid all or part of it is from anyone, and the deceased does not have the mortgage to meet all or part of this right even if the deceased has acknowledged that right in his illness of his death. So, if the plaintiff takes the oath in the manner shown, then he is judged, and if he refrains from taking the oath, he loses his case [28].

This oath is one of the duties of the court, which it must direct to the plaintiff who has established the facts of his case with legal evidence even if the opponent did not request it. Accordingly, the Jordanian Court of Cassation ruled in its decision No. (97/56) as follows: *"The oath of invocation is directed by virtue of the law without the need for a request by one of the two parties, in order to reinforce the debt remaining in the hands of the debtor or not. Therefore, the interest of the debtor is affected by*

the failure to direct this oath to the creditor and directing it is considered productive" [29].

And this oath is a right of the inheritance and not a right of the heirs, as it is possible that there is a creditor of the estate or the appearance of a legatee, so the judge must be careful to protect the rights of these even if the deceased's heirs request not to take an oath from the plaintiff, he must take it, but more than that, the plaintiff must swear this oath even if the heirs acknowledge the right the defendant [30], and in application of this, the Jordanian Court of Cassation ruled in its decision No. (81/1976) as follows: *"The oath of invocation should be directed even if the opponent did not request that it be directed, because the oath is not for the heirs, but rather for the inheritance, because it is possible that there is another creditor of the estate or a legatee for him, so the judge must to protect the rights of these people"* [31].

Finally, the court does not have the power to change the wording of the oath of invocation. As for the passive oath, the court sets the formula it deems appropriate [32].

2) Oath of Entitlement. The oath of entitlement is the second of the four the complementary and obligatory oaths stipulated in Article (54) of the Jordanian Evidence Law, Article (83) of the Jordanian Civil Code, and Article (1746) of the Code of Judicial Judgments, which stipulates the following: *"The oath is only taken at the request of the opponent, but by swearing an oath by the judge in four places without demanding... The second: If someone deserves money and his claim is proven, the judge ask him to take an oath that he did not sell this money or donate it to anyone and did not take it out of his possession in any way..."*.

The oath of entitlement is an obligatory oath to asked by the court to the claimant of entitlement on a right or money after he establishes the evidence required by law to prove the entitlement of this money [33].

Asking the oath of entitlement is not considered a waiver of other evidence, because this oath is asked by the court on its own when proving the case, and is not made at the request of the opponent, accordingly, the Jordanian Court of Cassation ruled in its decision No. (148/72): *"The oath that is deemed a waiver of other evidence is the oath that may not be made except at the request of the litigant, and directing the oath of entitlement does not depend on the request of the litigant, but rather the court directs it on its own when proving the case. Therefore, directing this oath is not considered a waiver of other evidence"* [34].

As a side of the jurisprudence goes to the fact that the oath of merit is an oath of proof that the judge swears by a personal fact, and it reinforces the original evidence that he extracted, and took it from the evidence presented to him, therefore it is not considered evidence in the judgment and the judge does not ask it from the claimant of merit until after the merit is established [35].

Therefore, the judge resorts to ask this oath from the applicant of entitlements, in order to complete the missing evidence, because the Jordanian legislator considered the evidence presented by the applicant of entitlements as incomplete evidence because it is possible that the applicant of entitlements has taken this money

out of his possession or endowed it, which makes the claimant's evidence incomplete, therefore, to complete this incomplete evidence, and to reinforce the judge's certainty of it, the person claiming this entitlement takes this oath [36].

It should be noted that the oath of entitlement is one of the court's duties, which it asks to the applicant of entitlements after establishing his right to the money he is allegedly entitled to, and in the event that it is not asked, its ruling is subject to cassation.

Accordingly, the Jordanian Court of Cassation ruled in its decision No. (377/72) as follows: "Article (54) of the Evidence Law and Article (1746) of the Code, obligate the court in entitlement lawsuits to ask the plaintiff to take the oath of entitlement, and without the need for a request from the defendant nor it is said that this oath is not obligatory from the plaintiff on the grounds that the money claimed to be due is money seized from under the plaintiff's hand in particular, since the law requires asking the oath of entitlement in every lawsuit of this type [37].

3) Oath of the return the sale is defective. The oath to return the sold item for a defect in it [38], is the third obligatory oath stipulated in Article (54) of the Jordanian Evidence Law, Article (83) of the Civil Code, and Article (1746) of the Code of Judicial Judgments, which states as follows: *"The oath is only taken at the request of the opponent, but he swears an oath by the judge in four places without a request.. Third: If the buyer wants to return the thing sold for its defect, the judge asks him to take an oath, that after learning of the defect he did not accept it in word or sign like his behavior, the owner acted according to what was mentioned in Article (344)".*

It is clear from the text of the previous Articles, that this oath is an obligatory oath that the court asks the buyer to take it if he wants to return the thing sold for a defect in it, and the seller denied him this defect, but the buyer proved this defect, so the judge ask him to take the oath before the delivery that he did not accept this defect explicitly or implicitly, because it is from this is because it is possible that the buyer was satisfied with this defect after the seller had informed him of it, and the buyer disposed of the sale as the owner, in this case his option to return the sold has forfeited due to a defect in it, this is what was stated in the Article (54) of the Jordanian Evidence Law, and Article (344) of the Code of Judicial Provisions provides.

Ali Haider mentions that if he mentions that he knows that the buyer did not forfeit the option of his fault and that he does not wish to swear an oath on this side, then it appears that the buyer does not take the oath [39].

The Jordanian legislator considered that the evidence provided by the buyer to prove the defect constitutes incomplete evidence, therefore it must be completed by swearing by the buyer that he did not accept the defect verbally or implicitly as his disposition of the sale as the owner did [40].

It is noteworthy that this oath is one of the duties of the court, which it must ask after the buyer proves the defect, even if the seller did not ask the buyer to swear this oath, if the court neglects to ask it, its judgment is subject to cassation.

4) Preemption Oath. The oath of preemption: It is the fourth of the obligatory complementary oaths stipulated in Article (54) of the Evidence Law and Article (82) of the Civil Code. The Jordanian legislator took this oath from the Code of Judicial Judgments, which stipulated in Article (1746) the following: *"the oath is only taken except at the request of the opponent, but the oath is taken by the demand of the judge in four places without request.. Fourth: The judge's asking to take an oath when ruling from applicant of pre-emption is that he did not invalidate his preemption, meaning he did not lose the right of his intercession in any way"*.

From the previous texts, it is clear that the pre-emption oath is asked by the court to the pre-emption plaintiff after he establishes the evidence required by law to establish the right of pre-emption, because it is possible that the pre-emption plaintiff has forfeited his right to pre-emption, so he must reinforce his claim with an obligatory complementary oath that is The oath of preemption is that he did not forfeit the right of preemption in any way.

According to Ali Haider, if the buyer mentioned that the preemptor did not forfeit the right of his intercession in any way and asked not to take an oath, then it appears that the preemptor does not take the oath of preemption.

The court may not ask the oath of preemption to the minor, because he is not charged with it, accordingly, the Jordanian Court of Cassation ruled in its decision No. (276/80) as follows: *"The minor does not take the oath of preemption because he is not charged with it"*.

Also, swearing an oath of preemption is one of the duties of the court even if the opponent does not request it, and that the law does not obligate the court to postpone the case when the oath of preemption is directed, and in implementation of that, the Jordanian Court of Cassation ruled in its decision No. (85/100): *"The court asks the oath of preemption without a request from the litigants, and that the law does not obligate the court to postpone the case when making the oath of preemption"* [46].

Finally, the pre-emption oath has the same characteristics as the oath of entitlement, invocation, and return of the sale for a defect in it, and it is similar to the complementary oath stipulated in Article (15) of the Evidence Law, as both of them complete incomplete evidence and are directed by the judge, but the pre-emption oath differs from the complementary oath, stipulated in Article (15) of the Evidence Law has the same differences between the complementary oath and the oath to return the defective sold oath, which has been previously explained and there is no need to repeat it.

The Jordanian law has not been provided this oath, whether in the Evidence Law No. (30) for the year (1952), the Civil Law No. (43) for the year (1976) or the Commercial Law No. (12) for the year (1966), and the Egyptian legislator who A text on this oath did not define it, but it was defined doctrinally as: *"An oath that the judge asks to the opponent, to support or confirm evidence in the case that he is clear of his liability, which the legislator considers is not sufficient to rule in the interest of this opponent on the basis of it"*.

The Egyptian legislator stipulated this oath in three cases:

- First case: As stipulated in the second paragraph of Article (378) of the Egyptian Civil Code.
- Second Case: As stipulated in Article 194 of the Egyptian Commercial Code.
- Third Case: As stipulated in Article 14 of the Egyptian Law of Evidence.

The Establish oath stipulated in Article 194 of the Egyptian Commercial Code.

Article 194 of the Egyptian Commercial Law states: *“The papers issued for commercial businesses forfeit the right to file a lawsuit with them after five years, but the defendants must confirm their acquittal by taking an oath that they did not owe anything of the debt if they were called to swear. His position is for their heirs to take an oath that they believe that there is nothing left due from the debt.”*

Assessment (Adjustment) Oath. This oath is one of the complementary forms that the court spontaneously ask the plaintiff to take it when it is not possible to pass judgment on the defendant to recover in kind, and it is not possible to estimate its value in another way, such as inspection and experience. And that often happens when the things that are deposited by guests in hotels or the like are lost or destroyed during the period of their stay there (the emergency deposit), as well as the traveler’s deposit, also in the event of the termination of a sale or lease contract. In these and similar cases, the plaintiff has no choice but to demand the value of the thing, if there is no way to assess its value, then the judge resorts to the claimant’s obligation by asking this oath to base his ruling on the value of what he has ruled.

False Statements Oath. The oath of false statement is defined as: the oath that assumes an acknowledgment issued by the defendant with a paper present by the plaintiff, then the defendant’s dispute with the plaintiff in the truth of what content of this paper, i.e. it assumes that the defendant acknowledges that the paper was issued by him or the person attributed to him, but he denies that what the contents of the paper match the truth of reality.

This oath is also defined as: the oath that a person swears before the judiciary that his opponent, who admitted something to him on the basis of a deed, was not false by his acknowledgment. For example, if someone gave to another a statement in which he had borrowed a sum of money, then he said: Even if I gave this bond, but I did not receive this amount until now, the acquaintance swears to him that it is not a liar by admitting it but I did not receive this amount until ah, so he must swear that he is not a liar by his acknowledgment.

Conclusion. The researcher outlines the most important Findings of the study:

1. The Jordanian legislator did not define the complementary oath, nor did he organize its provisions as the decisive oath, but rather referred to it as a passing reference in some texts of the law regulating evidence.
2. The Jordanian legislator has given the judge a positive role in proof through the complementary oath, in the cases in which it is permissible to ask this oath.
3. The complementary oath is not a legal act, but rather it is one of the investigation procedures owned by the judge, so that he asks it on his own to one of the litigants in the Judicial Council when the litigant's evidence is incomplete or missing.
4. The complementary oath is distinguished from the decisive oath in that the former is not a legal act, and it is not required in the fact in the place of the complementary

oath with the conditions for the decisive oath, and that it is possible to withdraw from asking this oath, the opponent may not return the complementary oath, and that it may be proven false. Finally, the result of the complementary oath is not binding on the trial judge.

5. The Jordanian legislator's requirement to take the complementary oath that there be no complete evidence in the case, or the case will be devoid of any evidence.

6. The Jordanian legislator did not regulate other forms of the obligatory complementary oath, and that the Egyptian legislator dealt with in the organization, and lies in: Establish Oath, Adjustment Oath, and oath of false statement. As I mentioned earlier.

Recommendations:

1. The Jordanian legislator recommended that the provisions and procedures of the complementary oath be regulated in detail, as is the case with the decisive oath, and to expand the concept of the complementary oath, as it is not limited to civil and commercial disputes in which one of the parties to the litigation is required to be a merchant, and that the subject of the lawsuit or dispute is goods or supplies, in addition to the merchant returned it to a non-merchant, but in every civil and commercial dispute in which the evidence is incomplete, so that the judge can rule on the merits of the case, or to determine the value of what he decides.

2. The Jordanian legislator recommended that the establish oath and the assessment oath be organized as two forms of the obligatory complementary oath, as the Egyptian legislator did; Because of its importance in proof, as did the Kuwaiti legislator in Article (67) of the Evidence Law regarding the oath of assessment.

3. Although the Jordanian judiciary still takes the False Statements Oath in judgments issued in some cases, based on the Code of Judicial Judgments, since there is nothing in this oath that contradicts the provisions of the civil law, I still recommend that the Jordanian legislator to regulate this oath by the law of evidence.

References:

1. Abo Al Aeineen, Abdul Fattah Mohammed (1983), Judgment and Evidence in Islamic Jurisprudence, A comparative Study, I Amanh Press, Egypt.
2. Abo Allaeel, Ibrahim (2004), Explanation of the Kuwaiti civil law, the principles of the law, Ch.2, The theory of right with an in-depth study of copyright and proof of right, Dar Al Kotob Institution, Kuwait.
3. Abo Alwafa, Ahamd (1983), Evidence in civil and commercial Articles, Al Dar Aljameiyah, Alexandria.
4. Abo Alwafa, Ahamd (1983), Commenting on the texts of the law of evidence, Vol. II, Dar Alnahdah alarabiea, Cairo.
5. Antaki, Rizgallah, (1981-1982), Trial procedures in civil and commercial Articles, Dar Al feker Alarabi, Egypt.
6. Tahawi, Qadri Abdul Fattah (2006), Evidence theory in civil and commercial Articles, Vol. I, Dar Alnahdah alarabiea, Cairo.
7. Gourge, Tawfiq Hassan (1977), Evidence rules in civil and commercial Articles, Vol. I, Dar Alnahdah alarabiea, Beirut,
8. Haidar, Ali (No Publication date), Durar Al-Ahkam Explanation of the Journal of Provisions, Publications of Alnadah Library, Beirut.
9. Denasouri, Eizalddin & Akaz, Hamed (1989), Comment on the law of evidence, Vol. 4.
10. Roshdi, Mohammed Alsaheed (1999), Evidence in civil and commercial Articles according to Egyptian and Kuwaiti law, Vol. 1, Dar Alkotob Institution, Kuwait.
11. Zaki, Mohammed Jamal Alddin (1983), The General Theory of Proof, Dar Alfeker Alarabi, Cairo.
12. Srour, Mohammed Shokri (1994), Explanation of the Evidence Law in Kuwaiti Civil and Commercial Articles, A comparative Study, Line Press, Kuwait.

- 13.Sa'ad, Nabeel Ibrahim (1995),Evidence in Civil and Commercial Articles, Dar Alnahdah Alarabiea, Cairo.
- 14.Sanhouri, Abdulrazzaq (2000), The Mediator In Explaining The New Civil Law, Ch.2, proof theory, Vol. 3,Al-Halabi rights publications, Beirut.
- 15.Abdullatif, Mohammed (1972), Evidence Law In Civil And Commercial Articles, Ch.2.
- 16.Aboudi, Abbas (2005),Explanation of the Provisions of the Civil Evidence Law, Dar Al Thaqafa, Amman, Vol. 1.
- 17.Ashmawi, Abdulwahab (1985), Evidence Procedures in Civil and Commercial Articles, Vol. 1, Dar Aljeel Printing, Egypt.
- 18.Atyah, Azmi Abdulfattah (2010-2011), Mediator in the Kuwaiti Procedures Law - Kuwaiti Civil Judicial Law, Second Issue, Vol. 2, Dar Alkotob Institution, Kuwait.
- 19.Ali, Adel Hasan (2005), Evidence in Civil And Commercial Articles, Vol. 1, Dar Alnahdah Alarabia, Cairo.
- 20.Qasim, Mohammed Hasan (2005), Evidence Law In Civil And Commercial Articles, Vol. 1,Al-Halabi Rights Publications, Beirut.
- 21.Qdah, Mefleh Awwad (2007),Evidence Rules And Enforcement Provisions, Vol. 4, Edition 1, Dar Althaqafah, Amman.
- 22.Kelani, Mahmoud (2010), Evidence Rules and Execution Provisions, Vol. 4, Edition 1, Dar Althaqafah, Amman.
- 23.Markas, Suliman (Without Pub. Date), The Principles and Procedures of Proof in Civil Articles in Egyptian Law, Compared to the Techniques of Other Arab Countries, Ch.1, Alam Alkotob, Egypt.
- 24.Mari, Ayeed Rashed (2006), Kuwait Evidence Law, Edition 1, Dar Alkotob, Kuwait.
- 25.Matar, Mohammed Yahya (1989),Evidence issues in Civil and Commercial Lawsuits, Aldar Aljamieya, Beirut.
- 26.Almansour, Anees Mansour (2011), Explanation of the Provisions of the Jordanian Evidence Law According to the Latest Amendments, Ithra for publications & Printing, Jordan, University Library, Alshariqah, Edition 1.
- 27.Mansour, Mustafa Mansour (Without Pub. Date), Explanation of the Kuwaiti Law of Evidence in Civil and Commercial Articles No. (39) of (1980), Edition 11, Dar Alkotob Institution, Kuwait.
- 28.Mousa, Khalid (2004), Methods of Proof in Civil and Commercial Articles, Edition 1, Dar Alsmah, Cairo.
- 29.Mo'men, Hussein (Without Pub. Date), Proof Theory, Ch. 1, General Rules, Acknowledgment and Oath, Dar Alketab Alarabi, Egypt.
- 30.Nadawi, Adam Waheeb (2001), The Role of the Civil Ruler in proof, a Comparative Study, Edition 1, Dar Althaqafah, Amman.
- 31.Nasha'at, Ahmad (1973),A Proof Letter, Ch. 2, Dar Alfker Alarabi, Cairo.
- 32.Hojah, Mustafa Majdi (1987), Evidence Law in Civil and Commercial Articles, Dar Althaqafah, Cairo.
- 33.Yousef, Sahar Abdulsattar (2007),The Role of The Judge in Proof, A Comparative Study, Edition 1, Dar Alfekr Alarabi, Alexandria.
- 34.Abo Kharoup, Saeed (2009), The decisive oath according to the Jordanian Evidence Law No. (30) for the year (1952),A research submitted for the purposes of graduation from Al-Zaytoonah University of Jordan.
- 35.Atyah, Azmi Abdulfattah (2000),Updates of the New Kuwaiti Code of Pleadings and the Complementary laws to it (Evidence Law), 1st section, Law Journal, Kuwait University, Vol. 58, Issue 1.
- 36.Jordanian Civil Code No (43) of (1976)
- 37.Jordan Evidence Law No (30) of (1952) as amendments.
- 38.Kuwait Evidence Law No (39) of (1980).
- 39.Egyptian Commercial Code.
- 40.Egyptian Civil Code.

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