

Presumptions and their Civil and Commercial Evidence in Jordanian Law

Daniela Adnan Quran

Jadara University

Part Time Doctor

Daniella.qu@jadara.edu.jo

Abstract

Evidence by judicial evidence is the necessary tool that the judge relies on in verifying legal facts and his authority to assess evidence, and the practical means that individuals rely on in formulating their rights arising from those facts, so that it is correct to say that every legal system and every judicial organization inevitably requires the existence of a presumption proof system Judicial evidence, which is the prevailing system in civil, commercial and even penal cases. This study aimed to clarify the role of judicial evidence in commercial evidence in the Jordanian Evidence Law, where the problem of the study appears in explaining the relationship between evidence and judicial evidence, and the extent to which it can be used as evidence in commercial evidence in particular. In view of the fact that the Jordanian legislator has combined the authenticity of the adjudicated order with the judicial evidence in one chapter in the law on evidence, which raises a problem related to the principle of authenticity of the adjudicated order, which lies in the extent to which it is considered an objective rule and not a legal

presumption, which requires separation between them; This study reached several conclusions, the most important of which are: Judicial evidence is one of the indirect means of proof. This is because direct evidence that focuses on the same incident to be proven is not easy in most cases, and therefore the evidence focuses on facts adjacent and inherent in the incident in question, and it is deduced from it that the latter is proven and that the judicial presumption is the work of the judge. On its application in another case even if the circumstances in the two lawsuits are similar, and it is unlike the legal presumption, which is the manufacture of the legislator and the litigants have no involvement in it, who evaluates it on the idea of probability and weight and makes its result general and abstract according to a legal text obligating the judge to apply the legal presumption if its conditions are fulfilled regardless Due to the specificity of the dispute and its circumstances, and in light of this, the study recommended the necessity for the Jordanian legislator to organize the procedural provisions that must be followed when establishing judicial evidence and addressing the basis on which the judicial evidence is based.

Keywords: Civil ,Commercial , Law , Evidence.

Introduction:

The Jordanian legislator has adopted a mixed proof system (the conciliatory system) that combines absolute proof with restricted evidence, so it takes from the absolute proof system a measure of authority that gives the judge a space of freedom in directing litigants, in completing missing evidence, and in clarifying what the most obscure facts are without having It is inconsistent with restricting the judge by specific legal evidence, stating the value of each of them, and extracting evidence that prove the right to be fulfilled through the proceedings of the case, and thus he has broad powers in that and according to the discretionary power granted to him (Al-Aboudi, 2005, p. 26; Sorour, 1994, p. 34; Al-Qudah, 2007, p. 15) and what is most prominent is the role of the judge when deducing evidence in the case presented to him from legal or judicial evidence and evidence is the implementation of all possible mental facilities to reach an unknown matter from a current occurrence for the sake of assertion and certainty.

It is based on logic and the evidence occupies a prominent place among the evidences of evidence, especially in light of the principle of the freedom of the criminal judge in conviction, and in light of the emergence of the scientific evidence system, where the clues have become of a degree There is one with the rest of the means of proof (Al-Kilani, 2005, p. 111). Testimony and confession are no longer the only evidence that the criminal judge relies on in forming his belief, and the context is a language that indicates something without using it, or it is a matter indicating the intended, and the consort is The comparator, the companion and the husband, and the spouse is a female relative, and it is a matter of hitting and winning, and the contextualization is called this name because it is

related to what is inferred by it (Bin Yaqoub, 1952, p. 256). What knowledge is required to think of the existence of the signified as clouds in relation to rain, it is necessary to know about it to think the existence of rain (Al-Arabi, 1996, p. 196)

The Jordanian legislator defined in Article (43) of the Law of Judicial Evidence as: "The evidence that is not stipulated by the law and the judge extracts it from the circumstances of the case and is convinced that it has a specific significance and leaves it to the judge's discretion to derive these presumptions. Evidence with them is not permissible except in cases where proof is permissible. Testimony, "and judicial evidence occupies an important place in proof, and it constitutes one of the basic pillars for the judiciary to reach a fair judgment, as obtaining evidence that is directly focused on the incident in question may be impossible if not impossible in most cases, as the judge is not always able to He reaches the facts directly, so he resorts to the arbitration of his mind by using the controls of inference and the principles of logic to identify as much of those facts as they are identical to the truth and reality (Al-Samrout, 2007, p.15).

The importance of judicial evidence in proof has increased at the present time due to scientific and technological progress, as the means of progress contributed to the disclosure of many clues, especially the scientific ones, which have become the most reliable method in the judiciary in our time (Al-Adaileh, 2002, p. 23).

Judicial evidence is one of the means that are prepared to prove the incident in question. Because it is one of the unprepared means that are not prepared in advance. Rather, it must be prepared at the time of the dispute over the right to be proven (Al-Sanhouri, 1988, p. 99). Or with a non-conclusive authority that can be proven reversible, and to clarify the concept of judicial evidence in the field of

commercial evidence, this requires us to examine what it is and the evidence controls therein, as well as its characteristics, and finally, to explain the judge's authority to prove it (Al-Aboudi, 2005, p. 26).

The first topic

The concept of judicial evidence in the field of civil evidence

The clues are among the means of proof that support the judiciary in reaching a fair judgment because it may sometimes be impossible to reach direct evidence of the incident in question, since the judge is sometimes unable to directly access the facts, so he resorts to his mind using the controls of inference, the principles of logic and linking the facts to reach As many logical and productive facts as possible in the case, in order for a fair judgment to be issued (Al-Orabi, 1996, p. 196).

.The Jordanian legislator has explicitly stipulated judicial evidence as a method of proof in Article (43) of the Jordanian Evidence Law. And that is within Chapter Four of the Law on Evidence. Therefore, there is no definition of judicial evidence and a statement of the logical approach used in extracting it, and it must be distinguished in civil evidence from it in criminal evidence (Abu Ghaya, p. 197).

The first requirement

Defining the judicial evidence and explaining the logical approach used in extracting it

The Jordanian legislator has defined judicial evidence in Article 43 of the Evidence Law as “the evidence that is not stipulated by the law.

Through this definition, we note that the Jordanian legislator has indicated the source of the judicial evidence, as it is the work of the judge, as he is the one who performs the deduction process as well as showing that the judge extracts it from the

circumstances of the case and its circumstances with his discretionary power, and he also showed the evidence of these evidence, that it is not permissible to prove. However, the Jordanian legislator neglected to explain the basis on which the judicial evidence is based and did not explain its pillars (Matar, p. 261).

A part of legal jurisprudence (Al-Qudah, p. 274) defines judicial evidence as “the judge’s deduction of an unproven incident from a proven fact based on what is more likely to fall within the limits of his discretionary authority, in cases where proof is permissible with the testimony of witnesses”.

The Jordanian Court of Cassation defined it as “the judicial evidence is considered indirect evidence that the judge extracts from a known incident to prove the incident to be proven, and the conclusion must be consistent with the logic and facts of the case. Otherwise, they are considered evidence and Emirates that do not rise to the level of the evidence intended in Article (43) of the Law. Evidence (Discrimination Rights No. 143/1999 dated 7/8/2000 Adalah Center Publications).

Judicial evidence was named by this name in relation to the judge who inferred it. It was also called objective evidence because it is based on one of the facts of the subject matter of the case before the judge.

It was also called personal evidence because it is sometimes focused on an incident consisting of an attribute in a person, and it is also called simple evidence because it accepts proof of its opposite in all cases (Sorour, 1994, p. 105).

It is also called actual or persuasive clues, and it is called verbal or persuasive because the judge extracts it from the established facts with a logical conclusion consistent with reason and logic (Qasim, p.204). The subject matter of the case and its various circumstances (Nabil, 1995, p. 185).

The jurisprudence and judiciary have settled on the fact that the judge of the matter is free to appreciate the evidence presented to him by taking it if he is convinced of it and raising it if suspicion touches his conscience, as the Court of Cassation decided in this regard (Saad, p. 190) 1. One of the legal principles on which the consensus of jurisprudence and the judiciary is based is that the judge The subject is free to assess the evidence presented to him by taking it if he is convinced of it and raising it if the doubt touches his conscience, and the Court of Cassation may not resume the consideration of the budget, weighting and amendment of the evidence and data that the litigants have submitted to prove or deny the facts of the case. The lawsuit is within the jurisdiction of the trial court pursuant to Articles 33 and 34 of the Evidence Law. Since the evidence that the Court of Appeal relied upon in proving the occurrence of harm to the plaintiff and the reason for its occurrence are legal evidence that leads to its conclusions, it is not punishable by the Court of Cassation.

Since judicial evidence is considered a means of indirect proof, and the judge deduces it from the circumstances and circumstances of the case, this requires the judge to be accurate, deliberate and implement the thought, and stress the opinion, as the evidence of judicial evidence is based on logical evidence and straightforward introductions, and this requires that the assumptions are correct and based on facts and not in conflict with them Any of the facts, and in order for the judicial evidence inference to be correct, the judge must not go in his conclusion far from what the evidence indicates, nor from the result that results in achieving its purpose (Discrimination Rights No. 389/1984, dated 7/31/1984, Adalah Center Publications.)

An example of this type of evidence is that the employer's responsibility is not preoccupied with the previous monthly installments of the work cards, which refer to

the amount that the worker receives per month in terms of salary, overtime wages and vacations, as well as the bills that the worker signs after his dismissal and indicates that his responsibility towards the employer is occupied, on the basis that If the worker was a creditor with the employer, he would set off a set-off between his wanted person and the employer's wanted without committing himself to the value of the bill, and the burden of proving the opposite of this presumption falls on the worker, and the lessor's receipt of the wages for the period following the month subject of the case is considered a judicial presumption on the payment of the wages of the previous month or months (Al-Sanhouri, p. 624). Another example of the judicial evidence is the existence of the debt bond in the debtor's possession, an evidence of the debtor's discharge, as well as the presence of the recipient's signature on the receipt as evidence of his receipt of the money.

Based on the foregoing, the judicial presumption is a matter that the judge deduces from other matters proven to him in a particular case, and this matter is considered fixed through deduction, not through direct evidence, as it is indirect evidence, which requires first proof of some facts by judgment, then by the judge's actions His reasoning and the rules of logic in order to deduce from these proven facts his evidence for other facts that have not been presented by any other evidence.

Therefore, the judicial presumption has two pillars (Nabil, p. 270): a physical element, which is the fixed incident, and this is the judge's starting point, whereby it is known to him that a specific incident is fixed in front of him. It may be fixed by witness testimony, in writing, or by affirmation, or oath, whether it is proven. Before the judge or it took place outside the case, what is important is that this incident is proven.

Hence, if the incident that the judge chose to deduce from it was merely a possible and unproven one, then it does not lend itself to being a source to draw an evidence from it. The other pillar is the moral element, which is the deduction of the unknown fact from the known established fact, and this is the task of the judge of the matter, and it is a mental process that the judge carries out with his discretionary power but within the limits of logic and reason, which is expressed as a reasonable conclusion leading to the conclusion that It ends with him in his ruling (Khalifa, p. 281).

Based on the foregoing, judicial evidence is one of the means of reality that the trial judge is independent to assess, and there is no control over him in this from the Court of Cassation (Mansour, 1995, p. 333).

The second requirement

Distinguishing judicial evidence in civil evidence from criminal evidence

Judicial evidence is of great importance in practical life, as every claim before the court is obligatory for proof, and the claimed right has no value unless evidence is established for the cases legally produced for it, whether accident or material (Al-Sanhouri, p. 624).

Therefore, the legislations paid attention to proof, organized it, and defined the means on which evidence is based before the courts, which are usually made by the litigants themselves that they prepare in advance. And they resort to it to prove the behaviors that are the source of their direct right if a dispute arises around it, and this is known as direct evidence that is made in writing and the testimony of witnesses (Sawy, p. 7). However, in practice, these means alone are not sufficient to cover all cases of proof, especially when it is impossible to present them, either because they were not originally prepared by the litigants, or because the dispute is related to a material fact

that cannot be proven in advance. Therefore, in order for litigants to avoid the hardship of direct proof when its means are not available, the project resorted to refining the process of proof, so it transferred the proof from direct to indirect proof that is based on transferring the place of proof to another near fact that is not the subject of a dispute, in order to extract from it the proof of the original fact in dispute. In this, the element of deduction and the element of weighting, and because the legal presumption is the most important means of indirect proof, because the legislator relies on it to achieve two interests, a judicial interest as it allows evidence to be established before the courts, and a social interest is to preserve the rights of individuals from being lost. The commentator of the civil law (Al-Sanhouri, p. 620) suffices for the establishment of the judicial presumption that the extrapolation of the unknown event from the well-known proven fact is based on the idea of the most probable majority. The latter is a well-known fact that may be deduced from it that he has paid the wages of all the previous months, and this inference is based on the idea of the most likely, because the wages usually follow this idea, so the lessor does not deliver to the tenant the receipt of the next month's wages unless he has actually received the previous month's wages . But the idea of the preponderant majority is not sufficient in the field of criminal evidence (Abd al-Sattar, 2007, p. 55). If the crime of theft of known things occurred, and these stolen items were caught in the possession of a specific person, this is not sufficient to establish the presumption that he is the thief, because what happens is often not It always occurs, for the idea of the most probable prevalent does not negate the existence of the rare few, and therefore it is necessary that the presumption in criminal proof is based on deducing the unknown fact from the known fact by virtue of actual and logical necessity.



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The truth required in the field of penal proof is the definitive truth, not the presumptive or probabilistic, particularly in the field of conviction (Muhanna, 1988, p. 196).

The second topic

Evidence controls by judicial evidence and stating its features

The judicial evidence was and still occupies a wide place in proof, and it constitutes one of the basic pillars for the judiciary to reach a fair judgment, as obtaining evidence that is directly focused on the incident in question may be difficult if not impossible in many cases, as the judge cannot always He reaches the facts directly, so he resorts to the arbitration of his mind, using the controls of inference and the principles of logic to identify as much of those facts as they are identical to the truth and reality (Sri, 2006, p. 43).

Judicial evidence is considered one of the means of proof, indirect, because it does not focus directly on its evidence on the incident to be proven. Rather, it is extracted from methods of deduction, and if the judicial evidence as a means of proof does not focus on the incident to be proven, then it is focused on another incident closely related to it.

This is what was confirmed by the Jordanian Court of Cassation in its decision (Discrimination Rights No. 4047/2003 dated 3/28/2004): “Jurisprudence and judicial jurisprudence have established that the claim of the intercessor that the real price has been exaggerated in the official sales contract for his inability to take By pre-emption, it may be proven by personal evidence if there is evidence that this claim is correct. This means that the plaintiff’s claim in the aforementioned manner must be proven by two means of proof:

The first is the type of evidence that the price in the contract is unreal and exaggerated, and the second is personal evidence of the real price that the

contracting parties have hidden, and this is what the plaintiff was unable to prove through the evidence provided by him (Kilani, 2005, p.111).

The first requirement

Evidence controls by judicial evidence

Judicial evidence is the evidence that is not stipulated by the law, and the judge is able to extract it from the circumstances of the case and to be convinced that it has a specific significance, and it is left to the judge's discretion to draw these clues. Evidence by judicial evidence is not permissible except in cases in which evidence is permissible by testimony. The law is left to the evaluation and conviction of the trial judge that he can deduce from matters fixed to him in a particular case and is convinced that this matter is a specific indication of a certain fact. All that is convinced by the judge shall rule according to it, and of course he takes only strong evidence related to the incident to be proven closely so that his conclusion leads to what Will kill it directly.

While the judge of the matter is independent in extracting the judicial evidence and assessing its value in evidence without oversight from the Court of Cassation over him in this regard, some controls must be taken into account in this regard, the most important of which is (Khalifa, 1987, p. 210) that the known incident from which the unknown incident is extracted Stable and correct, so as not to tolerate controversy; Because if the incident chosen by the judge for deduction is not proven, then it is not suitable as a source for extracting a judicial evidence from it. Accordingly, it is not permissible to rely on an incident made by a witness in the case and to take it as a conclusive evidence of the occurrence of the incident subject to the presumption.



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**That the context is a sound conclusion, the product of an accurate logical process;
And that the conclusion should be direct, that is, of the first degree, so that the
presumption may not be inferred from another evidence other than, and the clues
must be under the judge's consideration, and the judge should have seen it, and if
it appears from the judgment that the judge did not discuss it, then his judgment
based on it He shall be a minor deficiency that is nullified, and that the conclusion
of the unknown event to be proven from the known and established incident shall
be consistent with the rest of the circumstances and circumstances of the incident
and other evidence**

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The second requirement

The feature on which the judicial evidence is based

Judicial evidence is characterized by a set of characteristics, as it is a presumption that accepts proof of the opposite, as the adversary who was affected by it may always pay what is deduced from it, by all methods of proof, the judicial presumption is based on the preponderant majority and this means the existence of rare cases, and then the other opponent had to prove that he He was within the rare situation and refuting the presumption against him (Wahdan, 1997, p. 242), and the ability of the judicial presumption to prove the opposite is the same rule that applies to all evidence of evidence, so each evidence accepts the contradiction and proves the opposite unless the law stipulates otherwise, as is the case in legal evidence Categorical, which cannot be proven reversible It is also based on rational evidence, as access to it requires a mental effort to deduce the fact to be proven from the proven fact through investigation and extrapolation, for this reason the judicial presumption is considered one of the most dangerous evidence, because it is deduced from human beings, regardless of their positions and whatever knowledge and experience they know about them. Know-how, they are error prone; Because it is possible that the incident on which the judge based his conclusion was artificial (Al-Shahawi, 2006, 486).

It is also indirect evidence, just like legal evidence, as it is considered indirect evidence for proof, because the evidence in it does not respond to the fact to be proven, but rather to the other incident related to the first incident with a causal link that can be deduced by virtue of the actual necessity to prove the first fact. Judicial evidence is evidence that is either objective or personal, as objective judicial evidence is the evidence based on proven facts from which the occurrence of an unproven incident is

deduced. As for personal judicial evidence, it is the evidence based on a characteristic of the person, the example of which is the plaintiff's interest in the case. They are subject to restriction, as these clues are from the judge's work which he deduces from the established facts before him, and they differ from one case to another. They do not fall under restriction, unlike the case in legal evidence, so there is no legal presumption without a legal text, and the judge has no right to measure or expand upon them In its interpretation, since the legal presumptions are exclusively specific; Because it was made by the legislator himself.

It is also considered a transitive argument, so long as the basis of the judicial evidence is material facts that the judge chooses, after confirming its proof, and then building upon it his rational and logical deduction, then what is proven in it is considered a transitive argument, i.e. its effect is not limited to the parties to the case, but rather it goes beyond that. And it is considered fixed for everyone. The same is true for the testimony, and it is also authentic and not binding on the judge, and it is not conclusive, as it is always capable of proving the opposite in all ways, by writing, testimony, or similar evidence, and it does not have the capacity of binding. There is no control over him in that from the Court of Cassation, so he may decide the presumption in a lawsuit and then change its application in another case even if the circumstances in the two lawsuits are similar, unlike the legal presumption, as it has a mandatory character for the judge, and it is one of the evidence restricted in evidence, as it is not permissible. Evidence therein except in certain cases, which are the cases in which proof of testimony is permissible. Because it is conceivable that the judge makes a mistake in deduction, so the legislator's work to reduce his risk makes proof by judicial evidence permissible only in cases in which proof of testimony is

permissible (Abd al-Ridha and al-Nakas, 2010, p. 450). Accordingly, all the rules relating to the permissibility of evidence of testimony apply to judicial evidence.

The Jordanian legislator has adopted a system of freedom of the civil judge in conviction, and has given the judge a wide authority in assessing evidence, so that he has the opportunity to access the truth from any evidence, with some exceptions to that which are considered a reference to the legal evidence system (Othman, 1975 44), and the rule is that what may be proven with the testimony of witnesses may also be proven by judicial evidence. This was explicitly stipulated in Article (43/2) of the Jordanian Evidence Law, saying: "It is not permissible to prove by judicial evidence except in cases in which it is permissible to prove by testimony." It follows that all the rules related to the permissibility of evidence by testimony apply to judicial evidence without any exception.

In this regard, the Jordanian Court of Cassation ruled that: "It is not permissible to prove judicial evidence except in cases where it is permissible to prove by testimony (Discrimination Rights No. 1228/2000, dated 9/24/2000, Adalah Center Publications.)", And there are cases in which evidence may be proved by testimony. An exception, including if there is a proven principle in writing, or if the creditor loses his written document for a reason that he must have, or if there is a material or moral impediment that prevents obtaining written evidence, as long as the deduction from the presumption that the judge makes for evidence is based on conjecture, weighting and It is possible that the error may occur from this deduction, because the judge in this regard is not infallible, so the legislator looked carefully at the reasoning of the judicial evidence and made it a weak evidence in proof, and he relegated it to the evidence of testimony (Al-Qudah, 2007, p. 275), i.e. in a lower position than The rank of writing,



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acknowledgment and oath, and based on the above, we will show the judge's authority in deduction, as well as his authority in assessing evidence with judicial evidence.

The third requirement

The authority of the judge to choose the facts from which the judicial evidence is derived

The judge has a wide discretionary power to derive judicial evidence, so the judge has absolute power to choose any proven fact in the case in order to deduce the judicial evidence from it. He also has a broad power to deduce what it may have of the significance, and he is free to be convinced, so he may be convinced in one strong, indicative way. And he may not be convinced of multiple real indications, and Article (43) of the Jordanian Evidence Law has confirmed this authority by saying: "... it is left to the judge's discretion to draw these clues." The judge is not subject, in his assessment, to the supervision of the Court of Cassation, as long as its conclusion is plausible, which leads reasonably to the conclusion reached in his judgment.

When the trial judge reaches to prove the incident by judicial evidence, he is not obligated to explain in the judgment the reasons for his conviction, nor the reasons that led him to consider some evidence as having strong evidence or that led him to favor one presumption over another (Khalifa, 2004, p.204). This is what the Jordanian Court of Cassation has settled on in many of its decisions. It ruled: "Conviction with evidence, including evidence, is valid for the trial court and is not punished for that by the Court of Cassation." (Discrimination Rights No. 809/2007, dated 4/7/2007, Adalah Center Publications, No. 78/1999, Date 6/4/1999, Adalah Center Publications).

In another decision, it ruled that: "One of the legal principles upon which consensus has been established in the jurisprudence and judiciary is that the judge in the matter is free to assess the evidence presented to him by taking it if he is convinced of it and submitting it if the doubt in it touches his conscience. The litigants presented it from

the evidence to prove the facts of the case or to deny it, as the assessment of evidence, its weighting and extracting clues from the case's circumstances are within the jurisdiction of the trial court, and since the evidence that the Court of Appeal relied on in proving the occurrence of damage to the plaintiff and the reason for its occurrence are legal evidence and lead to the conclusion it reached It is not punished by the Court of Cassation "(Rights Discrimination No. 3236/2006, dated 3/14/2007, Adalah Center Publications).

The judge may deduce the judicial presumption from facts outside the case, such as the statements of witnesses who heard in another case as long as it was presented in the case before him (Nabil, 1995, p. 185).

And in another decision of the Jordanian Court of Cassation that: "1- The magistrate judge may deduce from the circumstances of the case a judicial presumption and is convinced that it has a specific significance as stated in Article 43 (1) of the Evidence Law. 2- It is not permissible to invoke a document against a person who is not a party to it. 3- The bond is not evidence of the behavior of the appellant against him or the denial of the appellant's behavior because it refers to a contract and not to an act of conduct that is a physical act. 4- Contradictory evidence is not accepted for a declaration issued by the appellant against him.5- The Court of Appeal may not rely on its judgment on A result not supported by the facts of the case "(Rights Discrimination Decision No. 331/1958.)

In another decision of the Court of Cassation, it stated: "1- Article 43 of the Evidence Law permits evidence of judicial evidence in cases in which evidence by testimony is permissible.

-2Judicial evidence is that which was not stipulated by the law, and the judge extracts it from the circumstances of the case and is convinced that it has a specific significance”(Decision of Rights Discrimination No. 88/1955).

Fourth requirement

The authority of the judge to assess proof of judicial evidence

Evidence by judicial evidence is risky; Because the judge, with his broad authority to choose the proven fact, then deduces the evidence of the disputed incident, which may differ from what another judge has reached, because what a judge sees as a productive presumption in the proof does not see another judge in it as important, yet the matter judge enjoys Also, he has wide authority in assessing the significance of this incident (Al-Kilani, 2005, p. 113), and these clues must be under the judge's eyes, and the judge has read them and subjected them to his discretion, and if it becomes clear from the judgment that the judge did not discuss them, then his judgment based on them He shall be a minor and invalidate him (Nabil, 1995, p. 186).

It follows from the aforementioned that the judge must take from the multiple evidence one evidence if he is convinced of it because of its strength and its connection with what will cover it close and direct contact, and he may also take all the evidence if there are several compatible and coherent evidence in the case (Al-Kilani, 2005, p. 114).

Although the judge has broad authority in his discretion to prove the judicial evidence in the case before him, every judicial presumption is amenable to prove what contradicts it by all methods of proof. That is because the judicial evidence is weak compared to other evidence, and what contradicts it can be proven in what is weaker than it and what is stronger than it, and thus there is no room for proof by judicial

evidence except where it is not necessary to prove in writing, which means that evidence with it is permissible where proof is by all other methods, including the testimony of witnesses.

Conclusion

The rules of proof are of great importance in all branches of law, because what is no evidence for and nothing is the same, as it is equal to a null right and a right for which there is no evidence, because evidence alone is what revives the truth and makes it useful. This study aimed to clarify the role of judicial evidence in commercial evidence By stating the position of the Jordanian legislator on that; In order to reach a clear understanding of the extent to which judicial evidence is considered an evidence for proof. This study reached the following results:

.1Judicial evidence is one of the indirect means of proof, and it has its importance in commercial evidence, and this importance appears in the practical reality; This is because direct evidence that focuses on the same incident to be proven is not easy in most cases, and that is why the evidence focuses on facts that are adjacent and related to the incident in question, and it is deduced from them that the latter is proven, that is, it is then proven by evidence.

.2The judicial presumption is the work of the judge, so he may decide the presumption in a lawsuit and then change its application in another case, even if the circumstances in the two cases are similar. As for the legal presumption, it is made by the legislator and the litigants have no involvement in it, who assesses it on the idea of probability and weight and makes its result general and abstract according to a legal text that

obliges the judge to apply the legal presumption while its conditions are fulfilled regardless of the specificity of the dispute and its circumstances.

.3The Jordanian legislator has not regulated the procedural provisions that must be followed when evidencing the judicial evidence, contenting itself with stating its objective provisions and the strength of their authority in commercial evidence.

.4The Jordanian legislator did not clarify the basis on which the judicial evidence is based, nor did he clarify its foundations.

.5That legal jurisprudence believes that the matter in the rulings that have the authority of the thing given is related to the application of a judicial principle based on the necessity of respecting what the judicial ruling has concluded with a chapter in the dispute and with its presentation again. He sees that it is an objective rule based on presumption, and this is the most correct opinion on the basis that the legal presumption of proof aims to find evidence that will help in resolving a dispute in which it is still not settled yet, while the judgment that acquired the strength of the given thing is the decisive result of a dispute that has settled and ended. .

.6Judicial evidence constitutes indirect evidence that the judge extracts from a known incident to prove the incident to be proven. This conclusion must be consistent with the logic and facts of the case, and that the judge has the discretionary power and capacity to derive these clues, and he is not subject in this assessment to the supervision of the Court of Cassation, because it is from Reality matters.

.7That what may be proven by the testimony of witnesses may also be proven by the judicial evidence, and in terms of the authenticity of the judicial evidence, it is transitive in that, like the authenticity of the testimony, and it is also authentic and not

binding on the judge, and it is not conclusive as it is always capable of proving the opposite in all ways by writing or testifying Or presumption like it.

Accordingly, the study recommended the following:

.1Amending Article 28 of the Jordanian Evidence Law by replacing the expression (contractual commitment) contained therein with the term (legal disposition). This is because the first expression incorrectly implies that the rule of the necessity of written evidence applies to obligations that originate from a single will, while this rule also applies to Obligations that originate from the individual will, and thus we can remove the confusion and ambiguity that the term contractual commitment may raise.

.2Organizing the procedural provisions that must be followed when evidencing the judicial evidence and addressing the legal basis upon which it is based.

.3Setting a standard for decisive legal evidence; So that their determination of this type of evidence, which does not accept proof of the contrary, is a matter that needs to be reviewed by expressly stipulating every conclusive legal presumption that it is not capable of proving the contrary.

-4Conducting more legal studies on the clues in order to benefit from the results.

-5Defining the role of the judge in a clearer manner regarding the role of judicial evidence in evidence .

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