

Legal Regulation of Litigation in Jordanian law

Dr. Mohammed Muslim Al-Zawahreh

(Associate Professor of Administrative Law)

Faculty of Law/ Zarqa University

malzawahreh@zu.edu.jo

Abstract

Due to the complexity of the court structure and the potential interaction between the various courts in the proceedings of one case, a clear understanding of different courts and their jurisdiction is required in order to navigate the court system.

The court structure is divided into civil and religious courts. The civil courts have jurisdiction over all civil and criminal cases, while religious courts (Shari'a Courts) have jurisdiction over personal status matters except for Christian personal status matters. The civil courts are divided according to the subject matter and the extent of the claim, while the Shari'a Courts are divided into first instance courts and courts of appeal. There are also a number of special courts which have various jurisdictions. These courts are the Higher Court of Justice, Supreme Court, and the Constitutional Court. Finally, the administrative court has jurisdiction to adjudicate disputes between private citizens and the public authorities.

Legal systems of the world differ significantly in terms of their origins, processes, and the application of justice. The Jordanian legal system is based on the civil law tradition and Islamic law. This means that the primary source of law is statutes, while the secondary source is regulations and other forms of secondary legislation. Doctrines and principles have little or no source of law. Judges' decisions and case law are not applicable as in common law systems. Islamic law exerts significant influence on the statutory laws in a number of areas, for instance, family, inheritance, and some criminal law.

1.1. Overview of Jordanian legal system

The Jordanian legal system is based on European and American models and was greatly influenced by the legal systems of Islamic law and tradition over the years. Its legal code is a unique blend of civil law, Islamic law, and customary law. Jordan is a civil law jurisdiction; its legal system is based on the French model, in which the primary source of law is statutes. The legal system is divided into two classes of court: the regular courts and the special courts. The regular courts deal with civil and criminal disputes, while the special courts deal with specific matters governed by a particular law. The High Court of Justice is the highest body in the regular court system and has jurisdiction to interpret the Constitution and legislate on the operation of the judiciary. The special court, which has gained notoriety recently, is the State Security Court; it has jurisdiction over crimes against national security, and the function of this court has become a matter of international concern. In 2011, there were some significant changes to the legal system in response to widespread calls for reform, including increases in judicial independence and amendments to 63 laws. The Jordanian legal system

is also heavily influenced by tribal customs and traditions, particularly in relation to family law issues. Many transactions, particularly in rural communities, are still governed by tribal law. Often, tribal law will take precedence over state law, and dispute resolution is conducted through tribal elders and will stop short of involving the formal legal system. It should also be noted that the majority of Jordanian legal material is in Arabic, and not all Jordanian legislation has been translated into English. This creates difficulty accessing primary source material for practitioners and potential investors and is a barrier to understanding the complexities of Jordanian law for the international community.

1.2. Importance of litigation in Jordan

The legal process consists of the enforcement court authorities and settlement of disputes in both the private and public sectors. This is mainly conducted by laypersons as the parties concerned need to resolve their differences in a peaceful manner without the risk of it going public and facing the consequences of having a bad social status. This often occurs in the rural areas of Jordan where locals are far from the courthouse and have no idea about the complexities and what the law actually states, so around 80-90% of the dispute settlement is conducted using tribal rules and mediation. This is actually a hurdle for our legal system, as stated by Dr. Ahmad Abu Alhajja, "implementation depends on the judge's belief in its importance and the parties' adherence to it" (Alhajja, 2000). The modern law finds it hard to implement itself with the traditional customary law, and the judiciary's involvement is not always possible or effective. This, in turn, hinders the legal system in providing social justice to the people and creates a gap between modern and customary law.

The topic reflects the researcher's understanding of the importance of litigation in the Jordanian legal system and the reason why the researcher has chosen it for his dissertation. The various books, articles, theses, and other secondary material that has been referred to in this research paper have enabled the researcher to gain a clear understanding of the key role litigation plays in the Jordanian legal system and the effect it has on society as a whole.

2. Pre-litigation Procedures

2.2 If the aforementioned procedure fails, then the claimant must file a complaint to the relevant court. This must be done within the designated statutory limitation period (see s 16.2.2) and must be written in either Arabic or English. This complaint should be concise and state exactly what the dispute is and what result the claimant wants from the court. Although it must be concise, it must not omit any details as these could affect the final judgment. A judge will look at the complaint and make a decision based on it as to whether the case is worth trying. If so, he will order the defendant to present himself in court at a specified date.

2.1 A recent amendment to the Jordanian Civil Procedures Law 2001 means that parties involved in a personal status case, a financial case, or a settlement of a property dispute must first attempt to reconcile their differences using arbitration. If that is unsuccessful, they must go through the same process using mediation. This was not a result that could be avoided as arbitration and mediation are commonly believed to be the best way to solve an internal dispute amicably. Although the differences between arbitration and mediation are not clearly identified in the law and the success of these procedures has not yet been measured, it is a step in the right direction.

A number of procedures must be followed prior to initiating litigation if one of the parties wishes to take their case to court, and these are essential for the successful party. If they fail to complete these procedures, it can severely damage their case and affect the final judgment.

2.1. Mandatory mediation or arbitration

Litigation in the Jordanian Law Conference with concision and coherence. This essay focused on the Jordanian Arbitration Act, aiming at exploring the legal character for the domestic arbitral award and the impact of public policy. The legal character of the award falls within the scope of Article 33. The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In addition, it no longer contains a provision stating that the award shall be enforceable, having the effect of making the award a condition to the enforceability. This is no longer conditional due to the elimination of Article six, providing that a court may refuse to enforce an award if it appears that one of the parties to the award never appeared despite being given notice of the appointment of the arbitrator or was unable to present his case, thus subverting the impact of conditionality. An award having the effect of a judgment does not, in fact, change its legal character with the enforceability still being through execution proceedings under the Civil Procedure Code, Article 235. An arbitral award shall be enforceable by execution under the same procedure as if it were a judgment. This does not detract from the fact that an award is still a contract between the parties to submit disputes to arbitration and it is a final and binding determination of the rights and obligations between the parties. The legal character has no relation to the judicial nature of the award. An award from a domestic tribunal is generally considered a private legal document. The legal character, whether it is in fact a final and binding determination of rights and obligations to enforce the execution, still swings between a judicial decision and a contract due to the impact of the Code of Civil Procedures Articles 190 until 213 and the legal nature of execution under Article 235. This has caused confusion as to whether a public policy argument can annul a domestic award due to the broadness and changeable nature of public policy in Jordan.

2.2. Filing a complaint

Complaint is the issue of a lawsuit. It is submitted by the plaintiff against the defendant. This is first done orally at the office of the summary court or the mukhtar. A written complaint is submitted to the court with two copies. Each copy is stamped by the court. This is so that the defendant receives a legitimate copy. The date of the issue of the complaint is known as the execution date. The complaint must be submitted within the statutory limitation period. Actions shall be time barred after the expiration of a period equal to half the penalty prescribed by law (Article 374, Jordanian Civil Code) (Article 201 Jordanian Penal Code). However, a lawsuit for damages is time-barred by the expiration of a period of 10 years from the date on which the right of action accrues (Article 17 Jordanian Civil Code). The Limitations Act also provides for circumstances when an interrupting event takes place. In such circumstances, the period commences anew from the date of the event (Article 206 Jordanian Law of Limitation). Nowhere in the legislation is there any definition or indication as to what constitutes a war. This is significant as it has been held by the ICTY⁸ that armed conflicts bestow powers of belligerent occupation but the different treatment pre-1967 land and post-1967 territories is no more than a Palestinian interpretation.

2.3. Preparing evidence

Oral Evidence Preparation of oral evidence involves reviewing the evidence and establishing a plan with which to present it to the judge. This is usually done through conducting a moot, which is a practice session in front of an experienced litigation lawyer who criticizes and evaluates the performance. No evidence is actually recorded at this stage, however. Prepare a sequence for the presentation of the evidence and establish the questions that need to be asked. All oral evidence will then be presented in either the examination in chief or the cross-examination.

Written Evidence All evidence, except for matters involving personal status, is considered to be written evidence. The primary method of preparing written evidence is through the preparation of a witness statement. Contracting parties are also encouraged to prepare a document detailing the factual background of their case to provide a guide for the judge when he/she examines the evidence. All written evidence is attached to the party's substantive brief.

Preparing evidence is done in 2 stages. Firstly, a party identifies and gathers all relevant evidence, and secondly, he/she analyses the evidence to identify its weaknesses and strengths. In the Jordanian legal system, evidence is divided into 2 categories: written and oral.

3. Court Structure and Jurisdiction

Under Jordanian law, the court system is primarily divided into two types of courts: the civil and the special. The civil courts handle cases related to personal status, civil and commercial matters, and other general violations. The civil courts are mainly composed of Courts of First Instance, which consist of one or more judges usually depending on the population of the city where the court is located, Courts of Appeal, which are located in the 12 chief towns of the kingdom, and the Court of Cassation, which is the final court of appeal. The special courts were established by virtue of their enabling legislation and have jurisdiction over specific types of cases. There are basically four types of special courts: the religious courts, military courts, administrative courts, and public security courts. The religious courts primarily handle matters of personal status of Muslim individuals and are composed of Religious Courts of First Instance, Religious Court of Appeal, and High Religious Court. The military courts are established by the Armed Forces Law, which are primarily governed by the constitutional laws, and handle cases involving members of the armed forces and public security forces. The administrative courts have special jurisdiction to ensure the legality of administrative action, safeguarding the rights of individuals, and protecting public freedoms and rights as provided by Article 100 of the Constitution and the State Council Organization Law. The public security courts try to maintain internal security of the state and have jurisdiction over cases involving crimes against the internal and external security of the state, crimes that harm the ruling regime, and various narcotics and narcotics-related crimes. Like the religious and military courts, the special courts have their own courts of appeal and a final court of appeal through the Court of State.

3.1. Hierarchy of courts in Jordan

Our court system carries out judicial functions and is ostensibly independent of the legislative and executive branches of government. The judiciary is responsible for interpreting laws and regulations and applying them in disputed situations. It is also expected to ensure adherence to the rule of law, safeguard the rights and liberties of citizens, and protect public interests. The judicial function is carried out by the various courts and tribunals, which have been established by law to deal with different types of disputes. All the courts in the country form a single, integrated judicial system, which is headed by the Court of Cassation. This underscores the fact that the court system embodies a single, unitary approach to judicial function and is designed to administer justice according to a single coherent body of law. The role and significance of the courts vary, however, depending on the nature of the dispute involved and the gravity of the issues at stake. This is due to the fact that court jurisdiction is differentiated, both territorially and in terms of subject-matter, and is allocated among the different courts pursuant to the provisions of the law. The hierarchy of the courts then reflects the differentiation in court jurisdiction and indicates the relative significance and competence of the different courts in the judicial system. Finally, it is worth noting that all judges hold their office with guarantees designed to ensure their independence, and court decisions are generally not subject to review or annulment by an authority other than a higher court. This effectively means that the judicial decisions will form a stable element in the rights and obligations of the litigants concerned.

3.2. Jurisdiction of different courts

The decision to divide the courts will prevent such incidents from occurring in the near future, and it is expected that the religious courts will slowly transfer the cases to other special courts. The subject matter jurisdiction of the religious courts will be limited only to cases explicitly stated by the law.

The religious courts have the power to hear and determine cases of personal status of a religious community and its members, as well as to exercise alimony and maintenance claims. The subject matter jurisdiction of the religious courts is very wide, especially the Islamic law courts or shari'a courts, which have almost jurisdiction to hear all cases in Jordan. However, lately, there have been some cases where the religious courts misinterpreted the law and tried cases that should not fall within their jurisdiction. One significant case is the Jeddah Bank case, where the Court of Cassation nullified the decision of the shari'a court to try the case and held that the nature of the case should be tried in the civil courts.

However, the courts in Jordan are divided into religious courts and other special courts. This has been a controversial issue regarding the division of the courts, but there was an amendment to the constitution and law in 2010 to divide the courts. This is an important issue to consider when disputing between parties and filing a case in the right court because the courts in Jordan have exclusive jurisdiction, and they will not allow a case to be filed if it does not fall under their jurisdiction.

The subject matter jurisdiction refers to the nature of the case itself and the subject matter in dispute. The personal jurisdiction refers to the court's jurisdiction over the parties involved in the suit. Usually, subject matter jurisdiction gives the court the power to hear and determine certain types of cases and disputes. This is provided in Article 19 of the Jordanian Code of Civil Procedure, which states that the civil courts have jurisdiction to hear and determine all civil cases except those assigned to the jurisdiction of the religious courts or other special tribunals in accordance with the provisions of any law. This means that the subject matter jurisdiction of the Jordanian courts is very wide.

Court in general can be described as a place where justice is sought. The jurisdiction of the court is to settle disputes between parties. However, the Jordanian court tends to give a broader sense to the word jurisdiction, involving the power of the courts to hear and settle disputes between parties. The power and jurisdiction of the Jordanian courts are based on two grounds: subject matter jurisdiction and personal jurisdiction.

4. Parties to Litigation

Lawsuits in Jordan are generally initiated and defended by the party themselves, with legal representation playing a minor role in the proceedings. There is no formal category of people or groups who have the right to sue or defend actions; any person can initiate or defend an action providing they have the necessary interest (as previously discussed) and the legal capacity. The legal capacity of the mentally ill and minors might, however, be affected when it comes to hiring legal representation. The actual right to represent the client in court proceedings is restricted to members of the Jordanian Bar Association. This organization was created by virtue of the Law on Lawyers 1961 which has been subsequently amended and updated. Throughout the history of this organization, there have been many debates on the issue of exclusivity of legal representation, and whether such a provision is unconstitutional and goes against basic human rights. The supreme court recently put an end to these debates by reasserting the exclusivity of legal representation in court litigation. Fierce competition among lawyers has led to legal representation becoming expensive and for many, it is considered to be cost-prohibitive. This has led to an increasing number of unrepresented litigants, and lawyers offering services at reduced fees in an attempt to compete in the market.

4.1. Plaintiffs and defendants

4.2. Legal representation

Legal representation is an essential aspect of a fair trial. Anyone can be represented by a lawyer, whether it's the government (Minister of Justice), a public body, or a private individual. A power of attorney must be made if a representative is not a lawyer. This is a document that entitles a person to represent another in court. The lawyer must have an effective license to practice, and they must be a member of the Jordanian Bar

Association. This could be a major change in the legal system if lawyers are prohibited from bringing cases to court on behalf of their clients. For example, if the courts played a more investigative role. However, according to Article 40, there is a right for a plaintiff and a defendant to appoint a lawyer. This is slightly discriminatory against those who wish to go it alone, as it gives the impression that it is the norm to have representation and those who do not do not have equal protection under the law. However, it is also in line with general practice as the courts would generally expect to deal with a lawyer because of their understanding of the complex procedure, and cases involving legal professionals are less likely to incur disciplinary action.

5. Commencement of Litigation

There is no provision for class or representative actions, although a party with an interest in the suit may join as a co-plaintiff or intervene in the proceedings. There is no requirement for a defendant to file a defense to the statement of claim. This is reflected in the fact that only in 5% of cases is the disposition identified as judgment on the merits. Usually, the losing party has been absent at some stage while the case has been moving through court. Default judgments are common.

In Jordan, a lawsuit is initiated with the filing of a statement of claim. Once the statement of claim is filed, the court will fix a timetable for the conduct of the case and allocate it to a particular category of judges depending on the amount in dispute or its complexity. The case will be conducted by one of three levels of courts, depending on the amount in dispute.

5.1. Filing a lawsuit

The only lawful manner of filing a lawsuit is by submitting a written statement of claim. This must specify the names and addresses of both plaintiff and defendant, the court to which the claim is addressed, and a brief summary of the material facts and the remedy sought. The statement should be prepared in quadruplicate and the plaintiff should also prepare, for each defendant, a further copy of the statement together with a form that states that the defendant has received a copy. These must be submitted to the court with the requisite number of copies, together with an equal number of copies of the documents being relied upon and the original set plus one more, in a file usually provided by the court. Upon lodgment of the file, the court will set a date for the first hearing which must be notified to all defendants by the plaintiff. There are, however, many statutory provisions and rules of court that require special procedures in particular types of action. Notable examples are family law and criminal matters. In general, the statement of claim in these actions should be submitted on the forms specifically provided for the purpose and it is common for the court to require a statement to be filed in addition to the writ. It is therefore essential, before commencing proceedings, for the plaintiff to research the particular requirements that may apply to his own type of action.

5.2. Service of process

Service of process is a way to notify the defense to respond to a claim. It must be served to the defendant before the proceeding of the case because without it, the court has no authority to move the case forward. In Jordan, the document is entitled as summons. It is the most important method to acquire personal jurisdiction over the defendant. It should contain the date on which he appeared in court. Failure to serve the process will delay the case and the proceeding often takes place in the absence of the party when it fails to appear, resulting in an ex-parte proceeding. This is contrary to what has been stated in articles 55 and 56 of Jordan Civil Procedure Code, which state that a case without proper notification to the defendant will paralyze the case and if no proper cause is shown, the case will be dismissed. This is a clear indication that notification to the defendant is so important in Jordan's litigation. If the defendant refuses to accept the process, the refusal, giving time and place of refusal, and relevant statement must be mentioned on the back of the process paper.

The defendant will then be treated as having accepted the service of process, and it is valid as if the process has been personally given to him. This is in accordance with article 149 of Jordan Civil Procedure Code.

5.3. Time limits for filing

A lawsuit is initiated in Jordan when the plaintiff files a petition with the court. The petition must set out the facts giving rise to the claim and the relief sought. A defendant is entitled to receive a copy of the petition and may demand further particulars. The plaintiff is required to submit with the petition the documents upon which he intends to rely, and he is not entitled to rely on additional documents or amend the pleadings without the leave of the court. There is no specific statute of limitations for filing an action in Jordanian law, however, the court has discretion to dismiss an action for want of prosecution. Time limits for filing actions may be found in particular laws, in the absence of which the court will imply time limits depending on the nature of the action. For example, in a recent case the Court of First Instance held that an action brought pursuant to a specific provision of the Companies Law in order to challenge the invalid appointment of a Director was barred because it was not brought within the 30-day time limit imposed by Article 181. However, this decision was set aside by the Court of Appeal and the action was allowed to proceed. Finally, a defendant may file a counterclaim at any time before the commencement of the hearing of the action as per Article 160.

6. Trial Proceedings

Testimony is given orally and not on oath, except where the witness is a party or is giving expert evidence. The oral testimony of a witness can be very time-consuming particularly when the witness' version of the facts is different to that set out in his witness statement. In practice, it is not uncommon for the judge to ask the witness questions based on the statement rather than listen to the witness repeating the contents of the statement. Consideration should be given to the possibility of dispensing with the oral testimony of a particular witness and admitting his witness statement as evidence in chief. This would be a function of saving time and costs in the conduct of litigation. An application can be made for the witness to be treated as an adverse witness. In this event, the party calling the witness may ask leading questions to his own witness, the same as if he were cross-examining the witness. This is not a common practice in Jordanian litigation.

6.3. Witness testimony

At the trial, evidence is put before the court in the form of the witnesses' testimony, expert evidence and the production of documentation. It may be that the evidence presented at an earlier stage of the litigation is insufficient in which case it may be presented at the trial. In respect of the order in which parties adduce their evidence, by default, the claimant adduces his evidence first followed by the defendant. The judgment will be based solely on the evidence which is presented at the trial. Any new evidence which is not found in the case file, even if it is contained in a document which has been repeatedly referred to in the litigation, must be proved by the testimony of a witness with personal knowledge of the facts.

6.2. Presentation of evidence

There is no doubt that case management is the most effective way of ensuring that the trial proceeds on the date fixed and reaches a just decision. It is important to distinguish between the case management process in the Court of First Instance and the Court of Appeal. Time limits are set up for the duration of each stage of the litigation before the court is ready for hearing enabling the correct assessment of the length of trial. Proceedings will commence once the parties are notified that the case is ready for hearing. The conduct of the trial itself follows the general common law rules of evidence and the examination of witnesses. However, there may be deviation in respect of the civil procedures described in the earlier chapters of this text, due to

the fact that there are special courts for particular types of litigation e.g. the labour court, or the court of the encouragement of foreign investment.

6.1. Case management conferences

In civil matters, the real import of the trial lies in the conduct of the case before the judge who will ultimately be responsible for determining the outcome of the litigation. There are numerous delays in so many cases that the litigation becomes an end in itself rather than a means to an end. The court has a duty to the litigants and to the general public to ensure that it disposes of cases as expeditiously as possible. Fast justice does not necessarily mean that the case has been dealt with in a proper and just manner. Delays in disposal are to be discouraged but not at the expense of justice.

6.1. Case management conferences

Pre-trial reviews immediately follow case management conferences and are a means to automatically enquire as to the existence of any matters which may be suitable for resolution without a trial. The parties are required to attend and give representations, and the judge may give any directions to further the conference. He may direct that the case will be adjourned into a further PTR, or he may give judgment on the case. If the case is to be tried, the judge may give any other direction to ensure the case proceeds quickly at trial.

The establishment of case management conferences and pre-trial reviews are both recent procedural reforms in Jordan, which were initiatives by the judiciary. Case management conferences are initiated in all cases where the court considers the hearing is likely to last more than one day. The judge directs the holding of the case management conference, which should as a general rule take place not more than 28 days before the first fixed date for the trial. At the case management conference, the judge may give any direction he considers will further the overriding objective. This can include fixing timetables, controlling the progress of the case and the evidence, and limiting the issues. His most important consideration, however, is encouraging the parties to use an alternative dispute resolution procedure if the judge thinks that it is likely to be successful and is suitable.

The provisions of case and trial management are spread throughout the Jordanian Civil Procedure Code. In principle, judges are under a duty to manage cases actively. This involves identifying the issues at an early stage and deciding promptly which issues need full investigation and trial. This practice will be new to some judges in Jordan, and indeed in other legal systems where a more reactive role in case management is adopted.

Case management is the pivotal concept in reforms of civil procedure all over the world. In Jordan, its significance has recently been recognized in some statute provisions.

6.2. Presentation of evidence

This is often followed by witness testimony and examination. All evidence and testimony presented will be examined by the judge as to its relevance to the case. In many cases where clear and convincing evidence is found, judgment will be made at this point in the proceedings. This is a decided difference from the common law system. In Jordan, if the evidence is not clear and convincing, oral argument of the parties is heard to attempt to clarify issues in the case.

In the Jordanian system, there are often two case management conferences held before the actual trial begins. These are an examination of discovery and an attempt to have the parties come to an agreement before trial. The first stages of the presentation of evidence are, in fact, presentation of evidence by both parties to the judge in the absence of the jury. This is concluded at the judgment by documentary evidence submitted by the parties. This is a deviation from the common law system where often evidence is presented only at trial.

The objective of a trial in the Jordanian court system is to find both fact and law in an attempt to fairly resolve a dispute. The presentation of evidence is crucial to the skeptical traditions of Jordanian society and law. The court will take a very active role in examining witnesses and sifting through evidence. The 180-day rule to complete a trial is meant to increase the pace of trials and hopefully decrease cost to litigants.

6.3. Witness testimony

Under Article 242, the testimony of witnesses is only permitted as to facts. Witnesses should not be heard to give mere expressions of opinion, but should confine their testimony to statements of facts within their own knowledge. A witness may not give evidence in proceedings in which he is held to be incapable unless the court who has held him to be incapable or another court has given him permission to do so. A witness who knowingly gives false testimony in a material issue, and who intends thereby to cause the court to convict an innocent person or to acquit a guilty person, is liable to be sentenced to imprisonment for a term which would not be less than the term of the penalty attached to the offence in respect of which the false testimony was given. He shall also be liable to the alternative penalty attached to that offence.

6.4. Expert witnesses

Experts are thus appointed by the court, as opposed to being chosen by one of the parties to the litigation. This is fundamentally different from the position in adversarial systems, but still allows the experts to owe a duty to the party who is responsible for the payment of their fees, thus not entirely neutral. The issue of expert independence is a problematic one, as often an expert's future work in court cases is dependent on his reputation for producing favorable reports. This leads to increased professional relationships with instructing solicitors, and thus some experts will tend to favor the party who regularly instructs them. This is especially difficult to detect in Jordan as there are no formal codes of practice or expert registers, and it is usually an issue left for the cross-examiner.

The use of expert witnesses in litigation is a relatively new phenomenon in Jordanian law, and their use has thus far been limited to medical reports in personal injury claims and to a certain extent in complicated medical cases. The position of experts is provided for in Law No. 31 of the year 1952, where it states in article 180: "If the court is presented with a technical matter that requires investigation and research, the court may appoint one expert or more, from those possessing the necessary knowledge, to report to the court on the technical points presented by the case."

7. Judgment and Appeals

The judgment is issued by the trial court judge within a period of time that may exceed a year. In accordance with Article 235 of the Civil Procedure Code, the judge must write the reasons for the judgment and ensure the judgment is pronounced within the specified time and place. However, this article does not specify the consequences of not writing the judgment reasons. Negligent action may result in disciplinary action against the judge and the right of the parties to ask a higher court to order the judge to write the underlying reasons for the judgment. There is no specific time allotted for the judge to issue the judgment and there exists no default position on the consequences of failing to issue a judgment within a reasonable period of time. This in itself may be a substantial issue which can form the basis of an appeal to a higher court. This may arise under Article 241(30) which states that an act or omission by a judge may be appealed to an appellate court. While it is difficult to demonstrate maladministration, prejudice, or malpractice by the judge, an act may be quashed on the grounds that it was given in excess of jurisdiction or fails to state the correct legal or factual reasons for arriving at the judgment. This could be defined as a judgment that does not meet the minimum requirements for procedural fairness, which will allow the judgment to be set aside in the interests of justice under Article 280 of the Civil Procedure Code. This is a high threshold and will require the appellant to have to prove that a substantial miscarriage of justice occurred at the trial court.

7.1. Issuance of judgment

One major problem in judgment issuance in Jordan is inconsistency of format and quality. There are judges who dictate reasoning and opinion; others write in dense legalese, others issue oral decisions, and some few do not give any reasoning at all. The Civil Procedure Code requires judgments to be reasoned and courts and judges are bound by decisions in accordance with the law. Unfortunately, however, due to the lack of legal training, experience, and competence of some judges in certain courts, this is not always the case. Some reports argue that judgments rarely meet face up to this commitment. They have identified a number of shortcomings such as their poor articulation and lack of reasoned decisions grounded in fact and law. A source at the Court of Cassation stated that the ruling out of unreasoned judgments is one of the essential means to overcome backwardness in Court of Cassation practice during the recent past. Also, the prevention of judgment execution before the elapse of an appropriate period for challenging the decision is an important mechanism to protecting the rights of litigants during litigation appeal. This is often the situation where the losing party feels that he has not received a fair trial and the judgment has been decided on an incorrect application of the law due to incompetent presentation by lawyers.

In addition to the delays already mentioned, problems with the issuance of judgment discourage many both domestic and foreign litigants. The proper issuance of judgment in civil law systems is often considered a principal measure of the efficiency of the judicial system as a whole. Judgment drafting is a significant and important phase in the court process because it is the final product of the judge's work and the manifestation of the State's authority.

7.2. Grounds for appeal

Permission to appeal: Save for the above circumstances, an appeal to the Court of Appeal against a judgment given by the High Court or a judge in his capacity as a judge may only be brought with permission from either the High Court or the Court of Appeal (Article 63). This is also the case when appealing to the Supreme Court from a judgment given in the Court of Appeal (Article 64). Permission must be sought from the court whose decision is being appealed. This also applies to appeals on questions of fact and law made under Part II of the Judicature and Administration Act 1968 (Article 65). The requirement for permission will also, as a rule, apply to any case stated on a civil cause or matter where the appeal is by way of case stated to the Court of Appeal or the Supreme Court (Article 3 of the Administration of Justice Act 1969).

Right of law: An appeal by right is an appeal which the appellant is entitled to have heard, without the need to obtain permission from the court to which he is appealing. A party may appeal to the Court of Appeal on a question of law arising from any judgment or decision given by the High Court or a judge in his capacity as a judge (Article 61) or any judgment or decision given by a tribunal (Article 62). However, it is not technically an appeal of the judgment itself, rather it is an appeal to overturn the decision of the judge in the underlying case and can only be brought if the judge's decision was the result of an application.

A Jordanian judgment is subject to appeal on numerous grounds, and the appellate court has authority to consider both questions of fact and questions of law. An appeal of a judgment by a right of law is permitted (Article 43), as is an appeal on questions of fact and law. Arguably, simple repetition of the phrase "questions of fact and law" by the appellate stage in Article 60 may be suggestive of failure to separate the two tests.

7.3. Appellate court procedures

The appellate court is not restricted to the memorandum of appeal and may consider any matter of which it considers necessary to determine the real question in controversy, whether it be law or facts. The appellate court may then call for the records from the lower court and hear the advocate. This is different from the US appellate system where appeals are usually relied on points of law and the attorney's argument. Appellate review is not restricted to judgments but includes all decisions of the court unless the court appealed to has restricted such a right. The reviewing court may affirm, set aside, vary or remand the matter back to the lower

court. If a judgment is set aside, the appellate court may give such judgment or make such order as ought to have been made in the original matter. This has caused confusion as it is unclear whether a judgment made in an appellate court is a judgment that is subject to appeal. Simulation of judgment may be avoided by writing out in full the terms and orders of the judgment. The enforcement of judgments involves consideration of whether a judgment given in the original action may be enforced pending appeal or whether a judgment given in appeal may be subject to further appeal. Steps are taken to secure the fruits of litigation which involves an action being brought for the enforcement of judgment given in a case. The successful party is entitled to the fruits of litigation which converts his success in litigation into something tangible. This may be done by execution proceedings or by attachment of debts or charging orders over property. Any act done to give the successful party the actual benefit of the judgment is referred to as execution. The rules on execution will depend on whether the judgment is a money judgment or judgment for recovery of possession but the most important question is whether a judgment may be enforced pending any appeal.

8. Enforcement of Judgments

Following the entry into force of the Law of Civil Procedure 24/2001, the enforcement system in Jordan operates under the authority of enforcement judges who work independently from the judiciary and have specialized training in enforcement proceedings. An action for enforcement is commenced by filing a lawsuit against the judgment debtor, which is normally heard in a separate enforcement court. The judge may request the debtor to take certain measures to satisfy the judgment, and in failure to do this, may enforce a range of penalties including imprisonment. The system of execution under the CPC is very similar to the English model; the court will issue a decree for payment of the judgment which is enforced by a range of methods including forced sale of property, and in the case of debts, a writ ordering the seizure of certain goods. A judgment in a foreign currency is enforceable by execution judges only in the currency of Jordan on the date of enforcement. Seizure of assets is possible for judgments of all types and is subject to the same rules as execution proceedings. The judgment debt must not be below JD100, and the nature of goods seized must be essential to meet the needs of the debtor and his family. The final means of enforcement under the CPC is collection of a monetary award, which may be enforced using execution proceedings or seizure of assets.

8.1. Execution proceedings

In execution proceedings, the party applying for enforcement of a judgment is required to deposit with the Enforcement judge JD100 (art 228 CPC) which is to cover the costs of the Enforcement judge examining the application. JD10 will be transferred to the Treasury to cover the costs of any execution of the judgment by the State. This money will be returned to the judgment creditor once execution of the judgment is completed (art 229 CPC). The judgment debtor must then be served the execution order and be given opportunity to contest it before the judge (art 230 CPC). If the judgment debtor cannot be found or if there is reason to believe that he is delaying and obstructing the execution of the judgment, the judgment debtor may be ordered to pay a higher security for costs (art 234 CPC). In cases of immediate execution, the judgment debtor may request to delay the execution of the judgment stating that he would be caused severe hardship (art 231 (2) CPC). The judge can rule on this matter almost immediately and in cases of delay of execution of a warrant for delivery of immovable property or the executor of a judgment, the judge may cancel the delay if the judgment creditor can show that he will suffer hardship (art 233 and 233 (2) CPC). Finally, the judgment creditor is required once the judgment has been executed, to inform the judge. Should the judgment not be executed within two years, it is considered null and void unless the judge for reasonable cause orders an extension (art 236(1) and (2) CPC).

8.2. Seizure of assets

- Seizure of assets can be defined as a set of rules and procedures that allows the judgment creditor to take possession of assets in which the judgment debtor has an interest, for the purpose of satisfying a money

judgment. - The judgment creditor may apply to the court for an order permitting the judgment creditor to seize the judgment debtor's specific assets, or for approval of what has already been done informally without following the prescribed procedures. An order may be made only in execution against assets of the judgment debtor and following a prior notice to the concerned party. An asset is defined as any present or future property of the judgment debtor. This includes all types of tangible or intangible property, and also property held by the judgment debtor in trust when only the debtor has an interest in the property. The judgment creditor does not have any right to any assets of third party which are in the possession of the judgment debtor unless the assets belong to a relative or dependent living with the judgment debtor. - The judgment debtor has the possession of his assets until the execution is sued upon them and accordingly the court's role is to order the judgment debtor to deliver up his assets. This involves the court making a debtor's order which the judgment debtor is then required to bring into effect. If the judgment debtor does not deliver up the assets, the court may use its powers of contempt of court to enforce compliance or may take steps to enforce the order itself.

8.3. Collection of monetary awards

If the debtor fails to pay as a result of enforcement proceedings, then the judgment creditor may resort to additional proceedings in order to identify their assets and execute against them. These additional proceedings may be through the court or through a bailiff, but in practice, it is common for the judgment creditor to take out an execution order and for the bailiff to act under this order. In either case, the bailiff identifies assets belonging to the debtor and their spouse, and assesses whether they are satisfactory to satisfy the monetary award. If there is no agreement by the debtor to pay by installments, the bailiff will normally attempt to seize assets to the full value of the award. The bailiff is required to give notice to the debtor before acting against assets belonging to them, and this may allow the debtor the opportunity to pay the monetary award and avoid seizure of assets. For this reason, the judgment creditor may sometimes be willing to informally agree with the debtor concerning payment by installments in order to avoid immediate action to seize assets. This may be subsequently implemented through an order to pay by installments. Step aside remedies to prevent interruption to seizure of assets are available to the judgment creditor.

9. Alternative Dispute Resolution

In Jordan, court-annexed mediation was introduced into the legal system in 2006. This was as a result of the implementation of the Law on the Settlement of Civil Disputes No. 20. Being a relatively new addition, mediation has had a limited influence on the litigation process in the Jordanian legal system. In the past, mediation has been viewed as having no lasting impact upon a dispute due to its classification as a method of alternative dispute resolution. This means that any mediated agreement would not be legally binding without further action. However, with the introduction of Article 211 in the Law on the Settlement of Civil Disputes, any agreement made between parties in a mediation session supervised by a judge, lawyers or other legal counsel will be considered as a reconciliation contract and enforceable as such. This serves to bring about a lasting change to the nature of disputes mediated in the court system. With the no show cause examined being the first of its kind in Jordan, information of its results would be purely speculative. However, there is potential for a significant increase in mediation sessions occurring prior to court hearings and thus a decrease in the number of minor disputes that progress to litigation. However, this does not appear to hold much significance in terms of major disputes between parties and due to the pegged nature of the courts fee schedule, a shift from litigation to alternative methods of dispute resolution would not be in the best interest of the financially prevalent party.

9.1. Mediation in Jordanian law

The use of mediation is not high on the list of alternative dispute resolution. The Jordanian civil code has no specifics on mediation, so it is not widely used in civil disputes. The area where it is more widely used is in

the settling of tribal disputes. The justice system is alien to tribal societies, and the judicial process is an unfavorable route for dispute resolution. Consequently, a conventional legal system is not as effective in resolving disputes, and mediation is often resorted to as a way of resolving disputes without compromising tribal values. One of the biggest barriers to mediation is the dominance of the legal world, where lawyers are unwilling to give up a case in court. This, combined with the fact that the mediator might be deemed to have too much influence and therefore be at risk of corruption, has hindered the effectiveness of mediation in the past. The mediated settlement, however, is still enforceable by law, and there have been some signs of improvement in the last few years.

9.2. Arbitration as an alternative to litigation

In comparison with mediation, arbitration in Jordan has a long history, which has been expressed in a large number of treaties both with foreign states and with Jordanian traders (Art. 33 Arbitration Law). Parties begin with an agreement to arbitrate which may come in the form of a simple verbal agreement, or more often, it will be contained in the contract between the parties ("arbitration agreement") to submit their present or future disputes to arbitration. If a dispute subsequently arises, they have the option to either take the matter directly to the arbitration tribunal (should one be agreed in the contract, or provided for by the rules of a relevant institution), or by application to the court in accordance with Article 9 Arbitration Law. This wording has made it clear that taking a dispute to the court is to be regarded as an alternative method of getting the dispute before the arbitration tribunal, and not an attempt to litigate the substance of the dispute before a court, and then have the arbitral award confirm the court's findings. The court shall, at the request of one of the parties, refer the parties to arbitration, notwithstanding any agreement between them to arbitrate or any arbitration clause express or implied in any written law or in any contract, where it finds that an action brought before it is a matter which the parties may lawfully refer to arbitration. This article was interpreted in a positive way in a decision by the Chief Justice in 2005; he held that by virtue of Articles 9 and 31, it is clear that the policy of the law is to ensure that, where a valid arbitration agreement is found to exist, disputes between the parties are determined by arbitration and not by the courts; thus this must be the Supreme Court's starting point when considering any issue arising out of an arbitration agreement.

10. International Litigation

A Jordanian court will assume jurisdiction over a matter if it is satisfied that it has jurisdiction under the Jordanian rules of conflict of laws. The primary source of law is the Jordanian Civil Code 1976. However, there are significant treaties with many Arab states that may take precedence and in theory there may be customary international law which is applicable. Article 270 of the Civil Code states "In matters relating to rights and obligations, the provisions of this law shall apply. Matters pertaining to foreign rights shall be regulated by the law of the domicile of the right at the time of transition, unless otherwise agreed or provided by the law." This section has been interpreted to mean that Jordanian conflicts of laws rules direct a Jordanian court to apply Jordanian law. The court must then take an expansive view of the potential scope of Jordanian law and determine whether or not the matter is actually a foreign matter, or whether it is a matter with distant and tangential connection to another country. If it is the latter, then it is probable that the Jordanian court will retain jurisdiction. If the matter is truly a foreign matter, the Jordanian court must determine whether the matter is more closely connected to the instant Jordanian law or to the foreign law. This analysis requires the court to determine whether to apply the principle of expatriation or the principle of attachment. If the balance of connection favors Jordanian law then it is probable that the court will conclude that it has jurisdiction to apply Jordanian law. The principle test of jurisdiction is ascertained under article 298 of the Law of Civil Procedure (1937) which provides that the court shall have jurisdiction over all disputes related to rights. In a practical sense, it is possible for the issue of jurisdiction to be bypassed by agreement between the parties to

submit the dispute to an arbitral tribunal which is a prevalent method of dispute resolution in many Arab states due to the similarities between civil law and Sharia law.

10.1. Jurisdictional issues in cross-border disputes

Under the Jordanian Civil Procedure Code, issues of personal and subject matter jurisdiction in relation to foreign defendants are determined in accordance with the bilateral or multilateral treaties that Jordan has ratified, followed by the Jordanian rules on conflicts of law. Where a treaty exists, the treaty provisions apply. In the absence of relevant treaty provisions, a foreign defendant will be subject to the jurisdiction of the Jordanian courts pursuant to the rules on conflict of laws provided that the dispute in question has sufficient connection with Jordan. The general rule under Jordanian conflicts of law is that the Jordanian court has jurisdiction in disputes that concern rights in rem in respect of immovable property in Jordan, rights in personam where the defendant is habitually resident or present in Jordan, and rights in respect of succession to the deceased or to the estate of the deceased where the deceased was habitually resident or domiciled in Jordan. However, the existence of an exclusive jurisdiction clause in favor of the courts of another country or the discretionary stay of proceedings is also possible.

10.2. Recognition and enforcement of foreign judgments

Enforcement of foreign judgments in Jordan can be subject to specific performance, attachment of movable property or an equivalent sum, or declaration of enforceable right on immovable property. However, the Jordanian court has discretion in the method of enforcement. In case of a judgment in rem, enforcement can take place regardless of the defendant's prior opportunity to show that the conditions for recognition have not been met. Finally, it is important to note that the court has the power to refuse or stay enforcement against the interests of the defendant if the conditions for enforcement are prejudicial to him. This principle was demonstrated in a recent decision of the Jordanian Court of Cassation, refusing to enforce a US judgment based on an injunction, for being prejudicial to the defendant's interests. As such, the claimant must consider the potential impact of enforcement before taking action to recognize his judgment.

The parties seeking to enforce a foreign judgment will file a suit with the court of first instance. It is possible to rely on the act or judgment, and a trial on merits will generally not take place. In spite of this, evidence must be provided to show the foreign court's jurisdiction and that its judgment is enforceable under the laws of that court. Steps must also be taken to ensure the judgment has not already been satisfied. Once the judgment has been recognized, Art. 31 of the Civil Code requires that the claim giving rise to the judgment is not prescribed and that enforcement is not precluded by reasons contained in the Code.

Foreign judgments are recognized and enforced under Jordanian law provided they comply with one of the conditions outlined in Article 33 of the Jordanian Civil Code. This article is somewhat ambiguous; however, the prevailing view is that a judgment will be recognized where there is parity between the cause of action and the defenses in the foreign court and the Jordanian court, and where the foreign judgment has been based on a conclusive decision, delivered by a competent court and not obtained fraudulently. It must also be possible to demonstrate that there is reciprocity between the foreign state and Jordan for judgments to be enforced. The requirement of reciprocity is largely satisfied through bilateral agreements with foreign states.

Under Jordanian law, recognition and enforcement of foreign judgments takes place through the principle of comity. Jordan is a signatory to a number of agreements for the reciprocal recognition and enforcement of judgments, which operate alongside the common law in Jordan. The principle of comity is defined by Oppenheim as "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws". This principle has been adopted into Jordanian law through the decision of the Jordanian Court of Cassation.

11. Legal Costs and Fees

Court costs in Jordan are relatively low, particularly if compared with the prices in many western countries. In fact, the costs are so low that a UK legal practitioner finds it difficult to believe that in Jordan a claimant has to pay only a few pounds to issue and serve a writ. But the reason for this is simply that the Jordan judiciary is not looked upon as a high earning profession and the government is committed to justice being readily available. Understandably, court costs are generally reviewed by the government and the most recent decree to do so, Law 34 of 2014, increased costs of the first instance by 3 dinars and 150 fils. This is an indication of the increasing pressure on the public purse and the degree to which the government must subsidize costs. Note also that the court may award costs against a party (to be paid to the other side) as part of the judgment. Though a complete costs order is rare, typically fixed fees will be awarded, giving a party some contribution to the costs incurred. A little more unconventional is that it is not uncommon for the court to consider a party's conduct and means before making an order. If an order will be that a party must pay an amount that is considered a significant sum to them, the court will ensure that the amount is paid in reasonable instalments.

11.1. Court fees and expenses

Supervision of the law and regulations relating to court fees is under the Department of Administrative and Financial Affairs, which is a recent name change for the Department of Qada'a Affairs in the Ministry of Justice. Court fees will be paid directly to the court and are an important state revenue. They are fixed in amount and are non-refundable. In certain cases, there are fees for both the claimant and the defendant. Fees are payable for bringing a case (initiation of proceedings), for certain steps in the procedure, and for the execution of judgment. (The term execution has three meanings in this context and is known in Arabic respectively as takhfeef, tanfith, and tatheer. This multi-faceted function of execution will be discussed in a later article under the heading Execution of Judgment. This part of court fees, which most directly affects the litigant, will be restructured by new legislation intended to enforce payment of higher fees for more affluent litigants and additional fees for plaintiffs.)

Court fees are governed by the Jordanian Court Fees Law 1953 and the amending legislation of 1953. The law was enacted as part of the legislative process which led to the unification of the court system. It is an extremely detailed law containing 34 articles. Unfortunately, it is not well organized and the translation into English is inaccurate. However, reference to the original is necessary as the fees are frequently amended and updated by order of the Minister of Justice.

11.2. Attorney's fees

An advocate will be entitled to charge a fee per item as per the Lawyers Remuneration Order (1977). The Remuneration Order prescribes the maximum remuneration payable to a lawyer based on the type of work undertaken. The fees charged using this system are ridiculously low compared to the sum which may actually be due to the lawyer, so a system of compensation was introduced under Act No. 9 of 1987. It was realized that lawyers were not claiming what they were entitled to at the onset of the Remuneration Order. The sum claimed is dependent on the work undertaken, to be ascertained by the difference between the fees he would have been entitled to under the order and the sum of reasonable fees for his representation. Compensation will therefore be the difference in these two sums. The enforcement of judgment debt is considered as separate work. The amount recovered by the successful party is fixed at 10% of the amount recovered by judgment or settlement. The Bar Association sets the minimum fees lawyers can charge using this system, although this has led to criticism of lawyers as it is felt that its main reason for existence is to protect lawyers of a lower caliber being forced to work for inadequate fees. This may or may not be true. However, lawyers in Jordan are viewed as the aristocracy of the professional classes and have a significant influence in the government and public decisions. This system still stands today, and although the Bar Association has tried to increase

the minimum to alleviate the sharply divided lawyers since the Iraq war, there has been much resistance from the public and it seems to be very inefficient.

12. Recent Developments in Jordanian Litigation

There have been a series of legislative and court reforms which have added new procedures to the way litigation is conducted in Jordan. Code of Civil Procedure, discussed earlier, is one of the most ambitious legislative reforms to be undertaken. It aims to increase the efficiency of the Jordanian courts, by reducing time and costs involved in litigation. It also introduces some innovative procedures such as case management, and gives the judiciary considerable discretion to regulate the conduct of cases. Another important reform is the introduction of the Constitutional Court. This will allow litigants in Jordan to challenge the constitutionality of existing laws, on which the compatibility with treaty obligations (and therefore international law) may depend. The Binary Investment law, and the Arbitration Act also represent significant changes to the Jordanian legal environment, by reducing restrictions on foreign investors, and offering effective and international alternatives to litigation. All of these changes represent an emerging trend of Jordan to create a legal system which is compatible with the needs of both domestic and international clients, and to create valuable methods of dispute resolution in a world of increasing globalization.

12.1. Legislative reforms

Recent developments in Jordanian litigation Section 12 of Jordanian Law Number 24 of 1968 concerning the Code of Civil Procedure (the "Code") provides the foundation for the country's legal system. A qualified lawyer can advance to a stage with a Jordanian equivalent in a relatively short time. The fact that there are too few practitioners tends to oversophisticate legal procedures and encourage an inordinate amount of lawyer-oriented, as opposed to client-oriented, litigation. However, Jordanian lower courts are heavily overloaded, and substantive and procedural errors are frequent. It shall allow for easy subdivision of the case into its various aspects and stages. It shall permit the Tribunal, and especially the lower courts, to control, and if necessary, to stay stages of litigation not meriting the expenditure of time or costs. This is a significant improvement over the present situation where litigants are often required to exhaust all possible arguments to preclude an accusation of abandoning a particular aspect of their case. This new phase of litigation will have its own preliminary procedure for conciliation and/or settlement. A Council will be formed to oversee the execution and enforcement of its judgment. This Council will have authority over existing execution tribunals, both judicial and administrative. The most recent development in legislation relevant to the enforcement and award is the passing of Law No. 44 of 2001 to ratify the civil accession to the Hague Convention of 30 June 2005 on the International Recovery of Child Support and Other Forms of Family Maintenance. This Convention contains general and procedural provisions for both the claims covered by them and represents a radical development for the Jordanian legal system in terms of its juridical interaction with the world community.

12.2. Landmark court decisions

The Jordanian judiciary has played an increasingly significant role in elucidating and defining the rights of individuals vis-à-vis the government, a hallmark of a society governed by the rule of law. There have been a number of court decisions that provide a wide-ranging elucidation of the rights of citizens, and the limits to state power as provided by the Constitution and the law. The decision of the Higher Administrative Court in the well-known "Cassation Tobacco and Cigarette Company Case" emphasized the principle that the actions of public administration must be within the confines of statute and the law. In this case, the government had raised the sales tax on locally manufactured cigarettes alleging that the increase was within the general powers of the Ministry of Finance granted by Article 34 of the General Sales Tax Law and Article 10 of the 1954 Council Law. The Court held that the Minister of Finance had misinterpreted the provisions of the GST Law and has confused his discretionary power with legislative power. Another significant judgment of the

Higher Administrative Court was in the "Teach Jordan Case" in which the Court annulled the decision of the Ministry of Education to impose the teaching of the English subject in all public schools using the bilingual system. This case is a unique example of judicial protection and the enforcement of human rights as embodied by the Constitution, where the Court went to great lengths in emphasizing the importance of upholding the rights of citizens guaranteed by the Constitution, and ensuring that such rights are not violated under any circumstances.

13. Challenges and Limitations

Language barriers: The official language of Jordan is standard Arabic, while English is taught and widely understood along with French. However, it is rather convenient for the law to remain solely in Arabic. There is no doubt that this can cause difficulties for clients and lawyers to interpret the law and its procedural requirements. International clients are most likely to rely on English translations, and there is a risk of inaccuracy. This would require a legal provision to allow for translations to be admissible in court. In rural areas, it is not uncommon to find those that do not fully understand Arabic, and it would be a basic human right for them to have access to the law. Given that the private sector offers services in a variety of languages, it would be appropriate for the Justices Centre to use this talent in improving the justice system for those in need.

It is noted by many that litigation, although essential in a society where the rule of law is upheld, can be highly time-consuming and bureaucratic. It is unavoidable to suggest that court proceedings as a whole in Jordan are highly inefficient and time-consuming. The main reason for this is that there is no fixed time frame for cases to be resolved, and hence cases can be prolonged indefinitely. Furthermore, there is a delay in the notification of hearing dates to clients and lawyers, and in the event a lawyer is unable to be present, the case will be postponed to a later date. Oral evidence is taken at a slow pace, and there are excessive adjournments. More specifically, in civil cases, there is an average time gap of five weeks primarily caused by adjournment, and the only enforcement mechanism available is imprisonment.

13.1. Delays in court proceedings

The 13th statistical report of the Judicial Council for 2005 stated that there are 787,237 cases pending in the Jordanian courts, of those 368,643 are cases in the first instance, 150,073 are appeals, and 268,559 are enforcement cases. A 2006 study by the Amman Center for Human Rights Studies (ACHRS), focused on the effectiveness of the Judiciary in Jordan, using public opinion surveys, case observations and interviews, concluded that there are many administrative and legislative problems that plague the judiciary, and are the cause of a substantial portion of delay in courts. The ACHRS study found that one of the most frequent complaints, in respect to the judiciary, is the excessive amount of time that cases take to conclude, 42.2% of those interviewed said that it was the most pressing problem to be addressed by the judiciary. This was underpinned by the statistical data from the survey, which showed that 83% of the cases observed had run over the statutory time limits for case disposition. In response to a question as to the main two reasons that prolong cases, 72% blamed it on judges and 62% blamed it on lawyers. The report stated that legislative reform is needed to clarify certain laws, in order to reduce misinterpretation and subsequent delay. The data gleaned from the public opinion surveys, identified many other problems that cause delay in courts, to name a few; frequent absence of judges and lawyers, lack of court records and slow processing of papers. To a large extent these problems restrict access to some forms of justice and have a disparate impact on certain sections of society.

After the initial case assignment, the hearing date is set by a judge in accordance with the statutory time limits for case disposition. Often delay is a matter of strategy by one of the parties, but some causes of delay are beyond the control of the litigants.

13.2. Language barriers

Language barriers: Limits for litigants in Jordan resulting from language barriers are often self-imposed by the litigants themselves. For example, by choosing lawyers or judges who are not fluent in Arabic. When a litigant is involved in proceedings in Jordan, it should be assumed that the case will be conducted in Arabic. The appointment of non-Arabic translators in the courts may lead to discrepancies in translation and, in some cases, doubts as to the accuracy of the translation. Parties with lawyers of origin in foreign jurisdictions may find it difficult to obtain written translations of Jordanian judgments that are enforceable, and the enforcement of foreign judgments in Jordan may require translations into Arabic. At the international level, Jordan may be economically disadvantaged. The status of Arabic as an official language of the UN may not assist Jordan in any significant way in the context of international disputes.

13.3. Access to justice for marginalized groups

One of the challenges is the difficulty faced by vulnerable or marginalized groups in accessing the formal justice system. The system of law in Jordan is active in preventing discrimination, and there are no formal barriers preventing any group from access to the justice system. The problem is a de facto one, usually stemming from a lack of awareness about their legal rights and the methods of protecting them. Usually marginalized groups such as women or rural communities are unaware of the rights given to them under the law and can be exploited because of this. This ignorance makes them less likely to turn to the formal system in the event of a legal dispute. The same is true of some Bedouin communities who are not aware of the distinction between customary law and the formal justice system. This lack of awareness about rights and the law is a key reason why marginalized groups in Jordan. The first step in addressing this problem of access is to conduct legal literacy programmes aimed at educating people about their legal rights and the methods for protecting them. Empowering marginalized groups with knowledge is a key method of increasing their access to the justice system.

14. Conclusion

The research has shown that litigation is an important process for resolving disputes in Jordan. It is a significant method for resolving a variety of disputes reportedly used by a wide section of Jordanians regardless of the availability of alternative dispute resolution mechanisms. The rule of law is an integral part of what makes up a democracy and in turn of what Jordan is striving to become. Without litigation, the enforcement of rights and the redress of wrongs that affect the rights of an individual or a group are unattainable. As previously stated, this research has shown that there are problems with the court system in Jordan and thus the time and money-consuming process of litigation. However, the abolishment of litigation to make way for other dispute resolution mechanisms is not a feasible option given that rule according to law is an essential prerequisite for the creation of a just society and for the protection of individual human rights. A significant and functional litigation process is therefore essential in Jordan to enforce the law and to provide right and justice for affected individuals. There are many areas for possible improvement in the litigation process in Jordan that have been indicated in this research and the current condition of litigation in Jordan is far from perfect. However, the fact that there have been attempts and discussion of reform to improve the system since the writing of LAJ and that the Jordanian government has accepted a joint rule of law reform strategy which aims to enhance government effectiveness, public accountability, access to justice and human rights suggests that the future prospects for litigation in Jordan are positive.

14.1. Importance of litigation in upholding the rule of law

The primary modern alternatives to litigation are regulation and redistribution by the state on the one hand, and various forms of self-help and self-defense on the other. Regulation is likely to be effective when it is backed by the comprehensive enforcement machinery and effective sanctions. When it comes to malicious prosecution, a party would want to raise a counterclaim, but the fear of further litigation would deter him

from this. This problem can best be resolved by a fast, cheap and fair method of determining whether or not the malicious prosecution took place, and by the award of damages for findings in the affirmative. The preferable alternative to litigation in modern-day consumer disputes is the effective regulation of goods and services. Only where regulation is ineffective and self-help unwise, litigation is the preferred method.

Litigation is often seen as a mechanism for determining the rights of individuals through the process of courts. The justification for litigation is, nevertheless, much wider. In terms familiar to socio-legal researchers, it is one mechanism for the control of the behaviour of both individuals and public and private organizations - often termed social control. In modern societies, social control should operate in ways which are both effective and fair, and which involve the minimum restriction of individual autonomy. If these are indeed the criteria by which the quality of social control should be judged, it is suggested that in the modern world there are certain types of social control which are preferable to litigation, and others which can best be achieved by an effective system of litigation.

14.2. Future prospects for litigation in Jordan

As mentioned earlier, in recent years Jordan has made much progress in strengthening its ultimately fragile judicial system and procedure. This is primarily due to increasing western influence and aid, globalization and an inherent realization by the monarchy and ruling authorities that the judiciary can no longer be ineffectual or weak lest the state collapse under the many political, social and economic pressures it currently faces. These range from issues concerning domestic policy such as widespread privatization of formerly state-owned entities, implementation of various free trade agreements with other nations, accession to the World Trade Organization and most importantly its relationship with the Israeli state and the rebuilding or destruction of areas such as Baqaa refugee camp. All these issues present potential areas of litigation should the judiciary be willing to involve itself in constraint or interpretation of executive power and oversight. However, whilst the judiciary has been gaining increased independence and has proven in some areas to be a check on the government, it still remains far from the objective observer and come what may the government can always rely on Article 100 in its recourse to the JAAC. Any prospects of change must surely involve amendment of this article and other laws which grant the government effective immunity from litigation without its own consent. The passing of various pieces of legislation to illustrate the government's commitment to law was viewed earlier. All these laws are aimed at tribunal to court transformation and ADR. Their success may possibly see the judiciary restricted in many areas and the legal profession itself facing further unemployment. This would only increase an already prevalent opinion among lawyers that they are being systematically harassed as being a constant obstruction to government aims. Finally, globalization in its current form places huge constraints on developing nations wishing to change and implement new policies. These constraints primarily come from IMF and World Bank requisites for loans. In the current political climate, it is unlikely that Jordan will escape involvement in such loans or the constraints they bring and despite these areas providing abundant work for lawyers, it is an indictment of society where change must be at the behest of provisions which carry penalties if breached. On a global note, whilst it is desirable that common legal issues as discussed are dealt with in an efficient manner that saves time and money, this should not be to the extent that justice is compromised or that there exists an effective immunity of certain entities from litigation. In summation, whilst the author acknowledges that the views expressed are not the view of all legal professionals and that government perception may be quite different, it is manifest that the state of litigation has come some way but has a long and uncertain road ahead.

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