

THE DISCRETIONARY POWERS OF THE CIVIL JUDGE IN DETERMINING TO APPROVE THE USE OF PERSONAL EVIDENCE AS A MEAN OF PROOF OR NOT

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ABSTRACT

Making a testimony is considered one of the most prevalent methods for proving things before the courts. There are several conditions that must be met in the witness and testimony. If such conditions aren't met, the effectiveness of testimony in proving things shall become weaker. Assessing the effectiveness of testimony for providing things in commercial and civil transactions is determined by the judge under discretion. In case the judge didn't accept the testimony, he shall reject it.

So, the current study investigates the discretionary power of the judge in approving or rejecting the testimony in the cases involving civil and commercial transactions. It is conducted through investigating the control enforced by the court of cassation on the judge when deciding to approve or reject the testimony as a mean of proof. The researchers adopted a descriptive analytical approach through analyzing the Jordanian law of evidence, and the decisions made by the Jordanian court of cassation.

Keywords: Evidence, Testimony, Supreme Court, Discretionary Power, Jordan.

INTRODUCTION

Making a testimony is considered one of the most prevalent methods for proving things before the courts. The law limited the effectiveness of testimony in proving. It considers testimony less effective than written evidence in proving things. There are various restrictions enforced on testimony. There are several conditions that must be met in the witness and testimony. If such conditions aren't met, the effectiveness of testimony (personal evidence) in proving things shall become weaker. Thus, the testimony in this case shall not be considered accepted. The Jordanian law of evidence identifies the cases in which proving things through personal evidence is accepted in first place. It identifies the cases in which proving things through personal evidence is accepted as an exception. It identifies the cases in which proving things through testimony isn't accepted.

Assessing the effectiveness of testimony for providing things in commercial and civil transactions is determined by the judge under discretion. In case the judge didn't accept the

testimony, the judge shall reject it. Accepting the testimony isn't affected by the number of witnesses nor their social status. That is because the testimonies that are accepted are the ones that fit with the details of the case. The trial judge is the only one who has the power to determine - under discretion - whether to accept the testimony as a mean of proof. He/She enjoys this power without enforcing control over him/her in this regard by the court of cassation.

Proving is a mean for convincing people with the occurrence of something. The rules of proof in the law are very significant in all types of laws and transactions, including civil and business transactions. Testimony is considered as a significant and prevalent mean for proof. It is affected by the fairness and integrity. Thus, the parties of the dispute seek providing testimonies of witnesses in order to prove their claims. Such witnesses inform the judicial council about things they have heard and seen.

However, there are defects that may exist in the testimony. For instance, there may be lies in the testimony, the witness may forget something in his testimony, and he may use the testimony for meeting malicious goals. Such defects shall weaken the effectiveness of testimonies in proving. Thus, the law considers testimony less effective than written evidence in proving things. It considers testimony as having limited power in proving. It suggests that means of proof in business and civil transactions should be written evidence in first place. However, it allows giving testimony as an exception. It grants the judge discretionary powers to approve or reject the testimony.

The Study's Significance and Goals

The subject of the study is significant because it sheds a light on the role of testimony in proving things in civil/business transactions in pursuant to the law. It sheds a light on the role of testimony in proving things in all stages of the case. It sheds a light on the power of testimony as a mean of proof. It sheds a light on the role of the court in approving or rejecting the testimony under discretion. There are few studies that shed a light on testimonies and the discretionary power of the judge in approving or rejecting the testimony. Thus, the present study aims to shed a light on such issues in pursuant to the Jordanian law of evidence.

Statement of the Problem

The problematic of the study is represented in investigating the discretionary power of the judge in approving or rejecting the testimony in the cases involving civil and commercial transactions. It is represented in investigating the control enforced by the court of cassation on the judge when deciding to approve or reject the testimony as a mean of proof. It is represented in investigating the power of testimony as a mean of proof. This power is affected by the fairness and integrity of the witnesses. It is affected by how fixed it is. The testimony must be free from lies. It must meet certain conditions to be accepted as a mean of proof.

The Study's Approach

The researchers adopted a descriptive analytical approach. The researchers analyzed the Jordanian law of evidence No. 15 of 1952 and its amendments. In addition, they analyzed the decisions made by the Jordanian court of cassation. To meet the goals of the present study, the researchers shed a light on the meaning of testimony (first part). To be specific, it identifies the meaning and conditions of testimony through the (first section). It sheds a light on the cases on which the testimony is accepted as a mean of proof through the (second section). Thus, it sheds a light on the effectiveness of testimony as a mean of proof and the discretionary power of judge in approving or rejecting the testimony (second part). To be specific, it sheds a light on the characteristics that must exist in the testimony through the (first section). The current research sheds a light on the discretionary power of judge in approving or rejecting the testimony through the (second section).

First Part: The Meaning of Testimony (Personal Evidence)

Evidence has two meanings. The general meaning is represented in written evidence, testimony and other types of evidence. The specific meaning is represented in the testimonies of witnesses. Thus, through this part, the researchers shed a light on the meaning of testimony, and the conditions that must be met in the testimony. It sheds a light on the cases in which the testimony is accepted.

The First Section: The First the Meaning and Conditions of Testimony

The Jordanian law of evidence doesn't provide a definition for the term (testimony). It includes provisions and rules for regulating the process of making testimonies. It calls (testimony) personal evidence. Article No. 1684 of Mecelle (Ottman Legal Code) defines (testimony) as a *"verbal statement that aims at proving that a certain person enjoys a certain right before the judge in a case involving a dispute. The one making the testimony is called witness. The one that the testimony is for his favour is called (the right holder)"*.

The ones specialized in jurisprudence provided several definitions for the term (testimony). For instance, one jurist confirmed that testimony may be defined as *"a statement made by one about the things he seen, heard or acknowledged through his senses"*. It may be defined as *"realizing a certain thing and informing the court and the disputed parties about this thing in order to settle a case involving a dispute. It may involve a lie. However, the judge presumes that the witness is honest because he takes the oath before making the testimony"* (Mahmoud, 2013). Thus, it may be defined as *"the process of informing the judiciary council with information about others after taking the oath. Upon giving the testimony, a person shall be a right"* (Sultan, 1984). Based on the aforementioned definitions for the term (testimony), it should be noted that testimony as a mean of proof must meet the conditions below:

The witness must enjoy the required legal capacity: Article No. 32 of the Jordanian Law of Evidence includes the following statement: *"Everyone can make a testimony before the court."*

That applies unless this person is insane, a child or doesn't understand the meaning of the term (Oath). The court is entitled to listen to the testimony of the child in order to deduct the way in which the events occurred".

The Jordanian legislator doesn't set a specific age for the witness. It doesn't suggest that the witness' age must be greater than 18 years. He just suggests that the witness must have a sound mind and enjoy cognition. He should be capable of understanding the meaning of the term (Oath). However, if the child doesn't understand the meaning of the term (Oath), his/her testimony shall not be considered accepted to deduct the way in which the events occurred.

The witness mustn't be prevented from making a testimony. The Jordanian law prevented certain people from making a testimony in order to meet public interests and preserve the social bonds between people. The ones who are prevented from making a testimony include: public employees who have information about the state affairs. Those employees may be given the right to make a testimony about state affairs-related information, if such information was published in a legal manner or the concerned authorities allowed publishing such information. The legislator required that because such information may be state secrets that must be kept secret even after leaving work. Article No. 35 of the Jordanian law of evidence suggests that everyone isn't entitled to make a testimony about state affairs-related information, unless there is a justification as it is suggested in article (No.35) and article (No.36) of the latter law (Mahmoud, 2013).

The law prevented the ones practicing certain professions (e.g. lawyers, doctors and agents) from disclosing information they have acquired through their agents. That applies, unless those practitioners were allowed to disclose such information after retirement, losing the title, or finishing the tasks that are assigned for them.

Article (No.37) suggests that none of the spouses can disclose information about his/her spouse without getting his/her approval. That is applicable during the existence of the marital relationship and after this relationship ends. It is applicable unless one of the spouses filed a case against his/her source or against someone else due to a crime committed by his / her source.

The testimony must be made before the judge in pursuant to the existent laws. It must be made by the judiciary council in accordance with the laws. The testimony made outside the court can't be considered accepted.

The witness must not have any interest in making the testimony. According of Article (No.80) of the Jordanian civil law includes the following statement: *"Every testimony that is associated with meeting specific interests or avoiding damage by the witness shall be rejected"*. The court has the power to decide whether there is interest to be met or damage to be avoided through the testimony made by the witness. It has the power to decide that without having control enforced on it by the court of cassation. At this side; the decision number (2010/1405) of the Jordanian Supreme Court ruled that *"The court has the discretionary power to decide whether there is interest to be met or damage to be avoided through the testimony made by the witness. In this present case, it didn't find any of that"*.

The testimony must be related to the concerned case. It must meet the conditions listed in article (No.4) of the Jordanian law of evidence. It must be capable of proving what's being claimed (Anees, 2011).

Based on the aforementioned information, if the testimony meets the required legal conditions, it shall be considered as a valid mean of proof. The testimony may be made directly by the witness. In this latter case, the witness shall inform the court about the things he/she saw or heard by himself/herself. However, the testimony may be made indirectly by the witness. In this latter case, the witness shall inform the court about the things he/she was told by others. The latter testimony isn't considered a testimony from a legal perspective. It enjoys limited power of proving things.

According to (Article No.39) of the Jordanian law of evidence suggests that indirect testimony is accepted for proving cases of death, right of descent, and the ownership of "*Waqf*". The same is suggested by the Jordanian court of cassation through decision number 2002/163. This decision states that the testimony that is based on others' narratives isn't accepted, except in certain cases that are identified through article (No.39) of the Jordanian law of evidence. Thus, it is not accepted in any case other than the three cases in the latter article. Thus, the testimony that is based on others' narratives (i.e. indirect testimony) isn't accepted as a mean of proof in first place in courts. Thus, the court can listen to the indirect testimony to assess the validity of the claim with enforcing the exception in article (No.39) in the law of evidence.

There is a third type of testimony. The latter testimony is represented in informing the court about the information that public have about the incident. It is not accepted under the law, except in the things identified in the law. The fourth type of testimony is represented in testifying about the things that are widely known among people. The latter testimony is written before an official authority. It is not accepted from a legal perspective.

Regardless of the type of testimony, the witness must take the oath before making the testimony. Through taking the oath, he/she shall realize the significance of the process of making a testimony. Thus, that shall motivate the witness to make his testimony with following the dictates of conscience. The form of the oath is listed in article (No.81/1) of the Jordanian Civil Procedure Law of 1988 and its amendments. Based on the latter article, the oath form states the following "*I swear by Allah, the great, that I am saying the truth, all the truth and nothing but the truth*". Article (No.66) of the Jordanian law of evidence (No.66) of 1966 and its amendments suggests that the oath must be taken through mentioning the name of (Allah). It suggests that the oath must be taken through saying the form acknowledged by the court.

Second Section: The Cases on Which the Testimony is accepted as a Mean of Proof

Testimony is a significant mean of proof under the law. However, there are specific cases in which the testimony is accepted as a mean of proof. In such cases, the written evidence can't be used as a mean of proof. The legislator identifies the cases in which proving things through testimony is accepted as an exception. It identifies the cases in which proving things through testimony isn't accepted at all. Further information is shown below:

First: The cases in which the testimony is accepted in first place as a mean of proof: Those cases are represented in the cases involving non-contractual obligations and the cases involving civil transactions which value doesn't exceed 100 JDs. They include the cases involving commercial transactions regardless of their value.

Tangible events: They refer to the criminal acts themselves; that include natural and optional events (Hijazi, 1957). They refer to acts that can be perceived by all people. There aren't debates over the way in which such events occurred, because they aren't complicated. Tangible events can be proved through testimony whether they occurred due to environmental factors or by human. They can be proved through testimony whether regardless of the legal consequences derived from them. Testimony has ultimate power in proving tangible events.

In this regard, decision No. 1978/ 362 that were issued by the Jordanian court of cassation state that *"If the damages claimed by the claimant are arising from a tangible event (i.e. crash), such an event can't be proved through making a testimony in pursuant to article no. 27 of the law of evidence. The report of the car crash can't be used alone to determine the value of the damages. In fact, the value of the damages must be also proved through providing evidence in pursuant to the provisions of the law of evidence. The personal evidence can be used for proving the value of the car. That is because the event in this case is a tangible event that can be proved through personal evidence"*.

Commercial transactions: In such transactions, the legislator suggests that all types of proofs can be used for proving claims regardless the value of the commercial transactions. That is because the cases involving commercial transactions must be settled fast without waiting for providing written evidence. It is because concluding such transactions is based on trust. It should be noted that businessmen should be having commercial registers. The transactions and operations carried out by businessmen are registered in commercial registers in pursuant to the provisions of the Jordanian commercial law (Ibrahim & Ahmad, 1996). Thus, the cases involving commercial transactions can be proved through making a testimony.

Although; the legislator is allowed the parties having a business relationship to prove their claim through providing a personal evidence. However, both parties are allowed to agree on something else (Khalid, 2012). In this regard; through the decision No. 2007/369 ruled in 29/5/2007, the Jordanian court of cassation stated that *"A business relationship is a tangible event that can be proven through providing personal evidence. The personal evidence that the court listened to indicated that the plaintiff carry out business operations in a market for selling used cars in Jordan. The attorney representing the two defendants suggested that the two defendants carry out their transactions well. Such proofs are adequate for providing that the plaintiff is a car trader"*.

The legal and civil transactions which value don't exceed 100 JDs: Article No.28 of the Jordanian law of evidence suggests that testimony is accepted in first place for proving the contractual obligations which value don't exceed 100 JDs. This rule doesn't fall under the public order. Thus, both parties can agree to something else. In this regard; through decision No. 2002/2308, the Jordanian court of cassation stated that The disputed parties have the right to submit evidence because the rules of proof don't fall under the public order. They have the right to submit an evidence to protect their rights. The personal evidence can be accepted, unless the other party objected to that).

Second: The cases in which proving through a testimony is accepted as an exception: Article No.30 of the Jordanian law of evidence suggests that testimony can be used to prove

things in the contractual obligations which value exceed 100 JDs. The latter article allows using testimony as an exception. However, that applies in any of the following cases:

The first case is represented in having written evidence. This evidence shall make the probability of considering the filed claim correct high.

The second case involves having a moral or tangible barrier hindering the process obtaining written evidence. It involves having customs that don't require concluding written evidence. In the latter case, a moral barrier shall be considered existent. It involves the absence of a person who can conclude the written evidence. It involves having a third party who isn't mentioned in the contract and seeking to prove something.

The tangible barrier is represented in a barrier that arises from external circumstances. It prevents one from obtaining written evidence. In other words, it refers to the barrier that prevents one from getting written evidence.

In many cases, people can't obtain written evidence proving their transactions due to having an in-depth relationship with the other party. How strong the relationship is between the parties is determined by the judge under discretion. Through determining the latter strength, the judge shall determine whether such strength is a barrier for making written evidence proving the transaction (Razzaq, 2010). The relationship between spouses and the relationship between ascendants and descendants serve as a barrier for making written evidence proving the transaction. The same applies to the relationship between one and the parent(s) of his / her spouse.

The third case is represented in the loss of the written bond by the creditor due to a reason that's out of his/her control. In this case, the creditor may provide testimonies. However, in case the debtor lost a written bond that involves a quittance, the debtor can't use testimonies. The latter case isn't addressed by the Jordanian legislator through laws.

The fourth case is represented in filing an appeal claiming that the contract violates the law or the public order. The legislator allows the one claiming that to prove his claim through providing personal evidence. He allowed that because such a violation is a tangible event that can be proved through all means of proof (Mahmoud, 2013).

The fifth case is represented in identifying the circumstances surrounding the process of concluding the bond: The legislator allowed using testimony to prove that the circumstances surrounding the process of concluding the bond. He allowed using testimony to prove that the presence of a relationship between the subject of the case and another bond. He allowed using testimony to prove that the bond was obtained through cheating or fraudulent means. That's because fraudulent acts must be proved through any mean in order to punish the one who committed such acts and reveal the truth (Razzaq, 2010).

Third: The cases in which the testimony can't be used as a mean of proof: The Jordanian legislator identifies cases involving contractual obligations in which the testimony can't be used as a mean of proof, even if the value of the contractual obligation doesn't exceed 100 JDs. He identifies that through article No.29 of the Jordanian law of evidence. Such cases are shown below:

The first case is represented in having written evidence that is in agreement or not in agreement with the testimony. In this case, the judge isn't allowed to listen to the testimonies of witnesses to prove a thing that contradicts the things mentioned in the written evidence. Testimony can't be used as a mean of proof to prove that one has paid off the value mentioned in the written bond. The ones in judiciary agree that the written evidence can be used as a mean of proof in the transactions which value exceeds 100 JDs.

The second case is represented in seeking to prove something that's part of a right or something remaining from a right. For instance, the legislator prevented using personal evidence to prove the amount remaining from debt which is less than 100 JDs. He prevented that to prevent creditors from committing manipulative acts (Mahmoud, 2013).

The third case is represented in having one of adversaries claiming for an amount that exceeds 100 JDs and having this value changed. The legislator prevented using testimony to prove the second value. That is because the first value is presumed to be the correct the value. However, the legislator didn't shed a light on the case involving a mistake committed by the claimant in estimating the value. He must enact legislations addressing the latter case. That shall protect the rights of creditors.

Second Part: The Effectiveness of Testimony as a Mean of Proof

The Jordanian legislator permitted using testimony in certain cases as a mean of proof without having written evidence. Assessing the effectiveness of testimony as a mean of proof is determined by the judge under discretion. The judge has the discretionary power to accept or reject the testimony as a mean of proof. The researchers mention below the characteristics of testimony (first section). They shed a light on the discretionary power of judge in approving or rejecting the testimony through the (second section).

First Section: Characteristics of Testimony as a Mean of Proof

Testimony as a mean of proof is characterized by the following characteristics: Testimony is non-binding evidence: The legislator granted the court discretionary power to accept or reject the testimony. The judge shall decide that based on the fairness, and behaviours of the witnesses and the way they act. In this regard, article No.33 of the Jordanian law of evidence states that "*1- The court has a discretionary power to assess the witnesses' testimonies based on the fairness, and behaviours of the witnesses and the way they act and the circumstances in the case without having to refer to a recommendation. 2- The court has a discretionary power to consider part of the testimonies valid in case the testimonies of witnesses don't fit with each other*".

Through decision No. 2009/604, the Jordanian court of cassation stated that "*The trial court has the discretionary power to decide to assess the validity of the testimony based on the fairness, and behaviours of the witnesses and the way they act and the circumstances in the case*". The Jordanian legislator didn't permit assessing the validity of the testimony based on the recommendations made by others. He relies on the fairness of the witness. He didn't address the

withdrawal of the testimony by the witness. In article No. 1728 of "*Mecelle*" states that "*If the witness withdrew his testimony before the judge after making it and before issuing the judgment, this testimony shall be considered null. The witness in this case shall be punished*". The legislator should have addressed this point. That is because witnesses may withdraw testimony; witnesses may forget things or commit a mistake while making the testimony.

Testimony isn't conclusive evidence: A witness can make a testimony for proving that another witness' testimony or evidence isn't valid. Article No.31 of the Jordanian law of evidence states that "All the adversaries are entitled to prove an event through a testimony. In this case, the other adversary has the right to prove the opposite through providing a testimony". Thus, any testimony can be proved to be invalid through proving another testimony or any other type of evidence. In other words, providing a testimony doesn't spare the adversary from providing other evidence supporting his claim. Thus, testimony isn't an conclusive evidence. That means that the things proven through a testimony can be disclaimed through providing evidence (Abbas, 2011).

There are several limitations enforced on testimony as a mean of proof: Based on general rules, proving through a testimony has limited power in proving. For instance, testimony can be used in proving tangible events and legal acts which value doesn't exceed a specific amount. It can be used for proving in commercial transactions. Thus, personal evidence can't be accepted in certain cases, unless there is an exception (Suleiman, 1998). The legislator granted (testimony) limited power in proving, because the witness may be lying.

Testimony can be used as a mean to prove others' acts. However, confession is a mean for proving the acts committed by the one making the confession. In this regard, under article No.79 of the Jordanian civil law; testimony, conclusive evidence, examination, and expert's opinions are used as mean to prove others' acts. Testimony can be used as a mean to prove others' acts due to three reasons. Such reasons are listed below:

It is presumed that the testimony is issued by a witness known for his integrity. This witness isn't one of the adversaries and doesn't have any interest to protect any of the adversaries.

The witness shall take the oath before making his testimony. The oath suggests that he shall say the truth and be honest. Thus, the witness' testimony shall be considered valid, until proving otherwise.

Approving or rejecting the testimony is determined by the judge under discretion. In addition, the judge relies on the testimonies of witnesses in determining the judgment after examining and analyzing such testimony and make sure that there isn't any evidence proving otherwise (Razzaq, 1998).

Second Section: The Discretionary Power of Judge in Approving or Rejecting the Testimony

When reviewing the texts of the Jordanian law of evidence, it can be noticed that there are texts shedding a light on the discretionary power of judge in approving or rejecting the testimony. For instance, article No.33 of the Jordanian law of evidence states that "*1- The court*

has a discretionary power to assess the witnesses' testimonies based on the fairness, and behaviours of the witnesses and the way they act and the circumstances in the case without having to refer to a recommendation. 2- The court has a discretionary power to consider part of the testimonies valid in case the testimonies of witnesses don't fit with each other".

Thus; article No.34 of the Jordanian law of evidence states that *"1- The court has the power to approve a testimony and reject another testimony based on the details of the case. 2- The court isn't entitled to issue a judgement based on the testimony of one witness. That applies, unless the adversary didn't object to this testimony. It applies unless tangible evidence emerged to prove the validity of the testimony".*

Based on the aforementioned legislative texts, it is necessary to analyse the role of the court and the power of the judge in approving or rejecting the testimony. It is necessary to analyse the discretionary power of the judge in this regard. There are two main issues in this regard:

The First Issue: The Discretionary Power of the Judge in Deciding to Use the Testimony as a Mean of Proof

Proving things through using testimony is permitted under the law. That's allowed in some cases in the first place and in other cases as an exception. For instance, there may be other evidence in the case that spare the judge from listening to testimonies. In addition, the events that the testimony aims to prove may be unlikely to occur. In the latter case, the testimony shall not be accepted because it will not convince the judge. In other words, the court enjoys discretionary power in determining to approve the testimony or reject it. It enjoys discretionary power in determining to consider the testimonies sufficient or insufficient for proving. The court of cassation doesn't have the authority to enforce control on the process of determining that by the judge.

Through decision No. 2007/318, the Jordanian court of cassation suggested that the refrainment of the trial court to accept the personal evidence falls under its own discretionary powers. It suggests that it doesn't have power to enforce control over the trial court in the way of exercising such a power. That is also stipulated through article no. 33 and article No. 34 of the Jordanian law of evidence.

Through decision No. 2003 / 3817, the Jordanian court of cassation suggested that the approval of the court to have evidence submitted to it is made by the trial court. It suggests that it doesn't have the power to enforce control over the trial court in this regard, since the trial court found that the relevant personal evidence isn't needed in the case.

Thus, the judge has discretionary power to approve or reject using testimonies as a mean of proof. He can decide that based on how convincing the testimonies are for proving. He can decide that based on how sufficient the testimonies are for proving the claims. He has full freedom to accept or reject the testimony he questions based on the details of the case. Despite that, the refrainment of the court to approve the testimony must be based on sound reasons. Otherwise, there shall be defects in the judgment issued by the court.

Second Issue: The Discretionary Power of the Judge to Determine How Sufficient the Testimony is as a Mean of Proof

In this regard, it should be noted that approving testimony in civil and commercial issues is determined by the judge under discretion. The judge has the power to examine the testimony to identify how honest the witness is and make sure that the testimony fits with reality. He has the power to check the degree to which the witness remembers the details accurately. He has the power to check the degree to which the witness comprehends the details he witnessed. He has the power to identify the witness' reputation in term of integrity and examine the witness' body language while making the testimony. He has the power to do that regardless of the number and social status of witnesses and their social. Thus, there aren't limitations enforced on the judge in terms of the witness's number, nationality or age when deciding to approve or reject testimonies. For instance, the judge may approve the testimonies of two witnesses only or more than that. He may approve the testimony of a woman or a young boy.

In this regard, through decision No. 2005 / 1738, the Jordanian court of cassation suggested that *"It is not prohibited to approve the testimonies of the witnesses who are involved in cases with the defendant. Determining to approve or reject the testimonies falls under the discretionary powers of the trial judge"*. The latter decision indicates that the judge has the power to accept a certain testimony and reject other testimonies in case the rejected testimonies contradict each other. He can decide that such contradiction exists based on the details and circumstances of the case (Esmat, 2007).

From another side, the court isn't entitled to form its conviction based on the testimony of one witness. That is because there is a rule suggesting that the testimony of one witness isn't accepted as a mean of proof. However, the court can make an exception when the adversary doesn't object to the testimony. In this regard, through decision No. 2002 / 2308, the Jordanian court of cassation suggested that *"the adversaries have the right to submit evidence in pursuant to the rules of proof. It is permitted to accept personal evidence in case the adversary didn't object to it"*. The court of trial is allowed to form its conviction based on the testimony of one witness, provided that there is tangible evidence supporting the validity of the testimony. Thus, the Jordanian legislator enforced limitations on the court in this regard and prevented it from issuing a judgment based on the testimony of one witness, unless the aforementioned exception is present.

However, the question that comes to mind is what shall happen in case the witness refrained from taking the oath? The texts of the Jordanian law of evidence don't address such a case. However, they should include a punishment on the witness who refrains from taking the oath. That is because refraining from taking the oath means that the witness shall refrain from making his testimony with following the dictates of conscience. In this regard, in pursuant to the Jordanian Law of Criminal Procedure, the court is entitled to refrain from using the testimony of such a witness as a mean or proof.

The court of cassation doesn't the authority to enforce control over the trial court in determining whether to approve or reject the testimonies. That applies, provided that the

testimonies are obtained in pursuant to the laws. However, the court of second instance has the power to make a new assessment for the validity of the evidence. That is because the court of second instance is a trial court. The same is suggested by the Jordanian court of cassation through decision No. 2004 / 2640. The latter decision states that *"the court of cassation - as being a trial court - has the power to practice the power of the the court of first instance in assessing the validity of the evidence under discretion in pursuant to article No.33 of the Law of evidence"*. The same is suggested by the Jordanian court of cassation through decision No. 2002 / 1075. The latter decision states that *"the court of cassation decided that the court of appeal - as being a trial court - has the power to assess the validity of personal evidence and accept personal evidence with rejecting another. However, that doesn't allow the court of cassation to enforce control over reaching a legal result based on the personal evidence nor determine the validity of the result in terms of legal aspects"*.

CONCLUSION

Through the present study, the researchers aimed to shed a light on testimony and its meaning and the cases in which testimony is rejected. They aimed to shed a light on the cases in which the testimony is accepted as an exception. They aimed to shed a light on the cases in which testimony is accepted in the first place. They aimed to shed a light on the types and characteristics of testimony. They aimed to shed a light on the discretionary powers of the judge in determining to accept or reject the testimony. Through conducting the present study, They reached the following results:

Testimony is non-binding and non-conclusive evidence. There are limitations enforced on the use of testimony as a mean of proof.

Testimony can be used as a direct or indirect mean of proof. It may be based on others' narratives. It must be preceded by the legal oath.

There are certain conditions that must be met in the testimony. For instance, the testimony must be relevant to the subject of the case. It must be capable of proving the claimed thing. There are certain conditions that must be met by the witness making the testimony. For instance, the witness must enjoy capacity, and cognition. He must be capable of distinguishing things and understanding of taking the oath. The Jordanian legislator didn't set a condition for the age of the witness.

The rules related to testimony don't fall under the public order-related rules. Thus, parties can agree to something else.

The third case is represented in the loss of the written bond by the creditor due to a reason that's out of his / her control. In this case, the creditor may provide testimonies. However, in case the debtor lost a written bond that involves a quittance, the debtor can't use testimonies. The latter case isn't addressed by the Jordanian legislator through laws.

The civil judge has a discretionary power to decide whether to approve or reject testimonies. He has a discretionary power to decide whether the testimonies are sufficient or not. He has a discretionary power to decide whether there is contradiction between witnesses'

testimonies or not. The court of cassation isn't allowed to enforce control over the trial court in this regard.

Based on the aforementioned information, the researchers recommend the following recommendations:

Amending article No. 32 of the Jordanian law of evidence and determining a specific age for witnesses. That is because testimonies are associated with granting people rights.

Amending article 30 / 3 of the Jordanian law of evidence. The latter article must shed a light on the creditor and debtor. It must allow the debtor to use testimonies for proving claims.

There is a need for enacting a legislative text by the Jordanian legislator for shedding a light on the case of having a witness refraining from taking the oath before making the testimony.

There is a need for enacting a legislative text by the Jordanian legislator for shedding a light on the cases in which the judge can reject the testimony as a mean of proof. That should be done instead of having that determined in a discretionary manner. Otherwise, the rights of many people may be unprotected.

REFERENCES

- Abbas, A.A. (2011). *Illustration for the provisions of the law of proof*. Dar Al-Thaqafah.
- Anees, M. (2011). *Illustration for the Jordanian law of evidence*. Dar Ethraq' for publication and distribution: Jordan.
- Esmat, A.M.B. (2007). *Illustration for the law of evidence*. Al-Maktabe Al-Qanooneye.
- Hijazi, A.A.H. (1957). *Proving in civil cases*. Cairo.
- Ibrahim, A.O., & Ahmad, A.Z.W. (1996). *Commercial legislations*. Dar Wa'el for publication.
- Khalid, I.A.T. (2012). *Commercial legislations*. Dar Wa'el for publication.
- Mahmoud, M.A.K. (2013). *Rules of proof and provisions of enforcement*. Dar Al-Thaqafah for publication and distribution.
- Razzaq, A.A.S. (2010). *Illustration for the civil law: The theory of commitment*. Edition No. 56.
- Razzaq, A.Y. (1998). *Illustration for the rules of proof*. Dubai Police Academy.
- Suleiman, M. (1998). *The fundamental and procedures of proof*. Restricted evidence. Law-related publications. Dar Sader, Lebanon.
- Sultan, A. (1984). *Rules of proof in commercial and civil cases*.