

JOURNAL OF LAW AND POLITICAL SCIENCES

**INTERVENTION IN LITIGATION
IN THE CIVIL PROCEEDINGS
(A comparative study)**

DR. ATEF SALEM AL-AWAMLEH

Al Balqa Applied University -Jordan

Dr.atefalawamleh@bau.edu.jo

Abstract

The Jordanian, Iraqi, and French legislators have allowed a nonparty to intervene in ongoing litigation as a matter of right before the courts, even if he is not a party in litigation nor a representative by joining one of the parties to support their point of view in the case. This is called the joint intervention. The Jordanian legislator did not allow this intervention for the first time before a court in accordance with the principle of litigation in two degrees. While the Iraqi and French legislators who expressly stated that it is permissible, and allowed the others to intervene and demand an independent right from the litigating parties and against them. This is called the original intervention, under the conditions, procedures and controls

stipulated by the law. At the same time, the original litigants are allowed to introduce a third party under an executive ruling or a decision by the court. This is called a third party litigation. The Jordanian legislator defined the cases permitting the introduction of an intervener under a court order exclusively. It was more reasonable for the Jordanian legislator to the give the court the powers to assess these cases and not limit them to specific ones as conducted by the Iraqi and the French legislators.

Keywords: Intervention, introduction, third party, litigation.

INTRODUCTION

The scope of the dispute is determined in terms of persons, the parties specified in the lawsuit, namely the plaintiff and the defendant. However, sometimes the scope of the litigation may extend to new persons who were not parties to it. The interest requires their participation or introduction under the principle of saving in judicial proceedings or in anticipation of issuance of contradictory judgments that are difficult to reconcile or because the case in question affects the interests of certain persons who were not parties, therefore , the law allows them to enter the case to protect their interests. Accordingly the intervention in a case means either entry of a nonparty person in order to protect his rights by helping one litigant party in the defense of their rights, or in order to claim the right alleged for himself. Either his right or another right related

JOURNAL OF LAW AND POLITICAL SCIENCES

to him. This is called Optional intervention ¹ or is intended to assign a nonparty person a third party from outside the dispute to enter the litigation and then become a litigant or representative at least, at the request of one of the litigants or on the order of the Court. This is called the compulsory intervention or litigating a third party² the intervention in the case is either optional or compulsory. When a person voluntarily submits a request to a court that hears a case brought before it by two other persons in order to sentence him to a certain right, we will be subject to voluntary intervention of the original and the original. A party to the proceedings, whether the plaintiff or the defendant or in accordance with a decision of the court, we shall be subject to compulsory intervention. In both cases, they constitute an exception to the basic rule that the original case or request determines the effect of the litigation in terms of subject, cause and parties and the features of flexibility of the cause. This intervention as interlocutory request is subject to the same rules relating to the jurisdiction of the original request court as to the interlocutory applications and the same procedures required to be submitted. The interlocutory application is made during the course

¹ Abu Al-Wafa, Ahmed, Commentary on the Text of the Code of Pleadings, Fourth Edition, Knowledge Establishment, Alexandria, 1984, p. 333.

² Nassar, Yasser, Intervention and Introduction Comparative Analytical Study of Palestinian and Egyptian Civil and Commercial Procedures, Master Thesis, Al-Azhar University, Gaza, 2014, p. 16

of the original litigation distinct from it but connected to it at the same time. It is submitted either from its parties, from a third party, or from the judge. this may affect the scope of the litigation in terms of subject, reason and parties³ The allowance to submit new applications leads to the facilitation of litigants and save the time of proceedings and may lead to settlement of disputes related to both the original and the concurrent conflict, rather than the multiplicity of litigations which constitute a heavy burden on parties and the judiciary.⁴ To reconcile these considerations the legislator changes the scope of the litigation by allowance of interlocutory requests, which may impede the course of the litigation and delays it by submitting new applications. It may also lead to the violation of the principle of concentration of the litigation, where it leads to change in the scope of the litigation, which affects the ease of conflict resolution. Additionally, litigating a third party may affect his freedom to adopt judicial action. The basic principle is that every person is free to choose the right time to file his claim.

³ Abu Al-Wafa, Ahmad, Commentary on the Texts of the Law of Pleadings, op. Cit., P. 333.

⁴ Ragheb, Wagdy, Principles of Civil Judiciary, Proceedings Law, Third Edition, Dar al-Nahda al-Arabiya, Cairo, 2003, p. 478.

JOURNAL OF LAW AND POLITICAL SCIENCES

The importance of the study:

The study highlights one of the important subjects in the Jordanian Civil Procedure Law, as it is considered to be one of the interlocutory applications that change the course of the litigation. This study deals with the viewpoint of the law in respect of the applications of intervention and the legal effects thereof, and the Court's response to those requests by joining the diverse , multiple litigations in one case in order to facilitate settling them and to avoid contradiction and conflict between the provisions.

Methodology of the study:

In this study, the researcher relied on comparative descriptive analytical methodology based on the analysis and comparison between the texts contained in the Jordanian Civil Procedure Law and the Iraqi and French Code of Pleadings, indicating the similarities and differences between them.

The study Problem:

The problem of the study is to answer the following questions: The extent to which applications for intervention for the first time before the Court of Appeal, the possibility of modifying the scope of the litigation in terms of the parties and its impact on the legal system of the litigation and what are the legal consequences of increasing the number of litigants in each dispute. Where the intervention in the original case after being brought before the court would not change

its scope, and therefore the study will be divided into two sections and as follows:

The first topic: Optional intervention

The second topic: Compulsory intervention

THE FIRST TOPIC: OPTIONAL INTERVENTION

An optional intervention is considered a type of interlocutory application by which a nonparty person intervenes voluntarily in an ongoing litigation to defend his or her interests, by joining one party of the litigation or demands a right for himself to confront them in connection with the ongoing litigation , where the litigation becomes one case instead of filing a separate case⁵, or to appeal by objection of the third party of the judgment issued if he did not intervene in the ongoing dispute .the third party may intervene in an ongoing litigation by himself , and shall be called the intervener litigant , provided that he shall not be represented in that dispute by a person acting on his behalf as a legal person or as a general successor to one of the original parties to the case. He is defined as a third party and has filed an application in connection with the original case before the court of subject which consider the dispute for the purpose of joining one of its parties or becoming an

⁵ Non-joinder of parties in civil suits-legal service India
www.legalserviceindia.com/articles/cpc.htm

JOURNAL OF LAW AND POLITICAL SCIENCES

independent party in order to obtain a judgment in its favor⁶. Accordingly the request for intervention is considered an interlocutory request from the point of view of the original litigants And a main request from the point of view of the intervener who is considered as a foreigner. The third party intervention acquires a procedural position and becomes a litigant in the case in which he intervenes.⁷ Where the scope of the case is amended not only from the point of view of the litigants, but also in terms of requests. Therefore this section is divided into two parts:

First part: Optional intervention types.

The second part: the effects of voluntary intervention.

FIRST PART

OPTIONAL INTERVENTION TYPES

This type of intervention is divided into two types of intervention: the joint intervention or the precautionary and the original or

⁶ Ammari, Habib, the Opponent in the Civil Case, First Edition, Halabi Rights Publications, 2012, p. 71. See also: Khimri, Mustafa, Encyclopedia of Civil, Administrative and Criminal Proceedings, Theoretical and Applied Study, Third Edition, Modern University Office, Alexandria, 2005, p. 692

⁷ Ibraheem, Mohamed Mahmoud, The General Theory of Applications, Arab Thought House, Cairo, 1984, p. 392.

offensive intervention or the so-called litigation intervention. Accordingly, this part will be divided into two branches, as follows:

Section I – joint Intervention

Section II - Original Intervention

FIRST BRANCH

JOINT INTERVENTION

In this type of intervention, the intervener intends to preserve his rights by helping one of the parties to the dispute to defend his rights, also called preventive intervention, such as a creditor intervening in a civil suit against a third party in order to defend his rights and to control his defense so that the debtor does not lose the claim, where the general guarantee prescribed for the creditor on all his assets may be affected⁸. Another example is the intervention of the guarantor to assist the debtor in the action brought against him by the creditor so as to avoid the creditor's subsequent recourse to it⁹ and the seller's intervention in the third party's claim against the

⁸ Abu Al-Wafa, Ahmed, Civil and Commercial Pleadings, 14th ed., Knowledge Establishment, Alexandria, 1986, p. 203

⁹ Omar, Fares Ali, Intervention in the Civil Case, published research, Rafidain Journal of Rights, vol. (111), 2009, p.13

JOURNAL OF LAW AND POLITICAL SCIENCES

buyer¹⁰. The extent of joint intervention is limited to the defense of the intervener to support the request of the litigant without demanding a self-right from the judiciary or the creation of a new legal status. This type of intervention does not include or create new demands, but it expands the scope of the litigation in terms of people not in terms of subject matter. The significance is the type of intervention in the legal adjustment not the description made by the litigants because in the event the intervener requests a self-right alleged against the two parties of litigation, hence his intervention in this course is considered as an original intervention subject to the regulations of the proceedings.

Some scholars consider that joint intervention is divided into two types. a simple intervention to support one of the parties to the case, and the independent intervention claiming the right for himself, which is the same right claimed by one of the parties to the case¹¹ and we do not support this view, because this type of intervention is a model of litigation intervention, since the intervener demands a self-right for himself, regardless of the party litigated by the intervener.

¹⁰ Shoshari, Salahuddin, Explanation of Civil Procedure Law, Dar Al Thaqafa for Publishing and Distribution, Amman, First Printing, 2010,

¹¹ Omar, Fares, Intervention in the Civil Case, op. Cit., P.14

Article 114, Para (1) of the Code of Civil Procedure of Jordan corresponds to this type of intervention. Corresponding to the Article 330 of the French Code of Civil Procedure¹², Article 69 of the Iraqi Code of Procedure states: "Any person having an interest may intervene in the case by joining one of the litigants and shall be exempted from payment of the prescribed fees). Article 114 was an amendment to the previous text under the amended law no (14) for the year 2001, which states that (a person involved in an ongoing lawsuit between the parties, and may be affected by its final judgment, is entitled to request to enter into that case. If the court is satisfied of such effect it may decide to accept his request)

Acceptance of this type of intervention requires the following:

1. The intervener shall be a third party who has an interest in the final judicial decision of the dispute. The litigation parties, or a private or public successor to one of the original parties to the case are not entitled to intervene. The person who was represented in the dispute may not intervene in it, since he is

¹² www.leiglfrance.gouv.fr

330- L'intervention est accessoire lorsqu'elle appuie les prétentions d'une partie.

Elle est recevable si son auteur a intérêt, pour la conservation de ses droits, à soutenir cette partie.

L'intervenant à titre accessoire peut se désister unilatéralement de son intervention.

JOURNAL OF LAW AND POLITICAL SCIENCES

not considered a third party¹³. The fact that the third party is not a party of the case and the final judgment shall not affect him. The Jordanian Court of Cassation says :(where the subject of the case is the liquidation of the company to be liquidated then the intervention of the partners in the company to be liquidated is not accepted and are not considered third parties in accordance with the concept of Article 114 where the company they own is represented through the liquidator appointed by the Court.¹⁴

2. If the dispute is still pending, and if the dispute is not brought before the court, the third person who is afraid of loss of his rights may make file an original claim to secure these rights. He may not do so if the dispute ends before intervening for any reason. He files the motion of intervention before the first instance court in any degree of proceedings, provided that he shall file his motion before the conclusion of the trial so that its intervention does not result in a delay in the judgment of the original case. Under the concept of objection, if the case is reinstated, the right of intervention is given again, this is what was stated in the Iraqi Code of Procedure in the first paragraph of Article 70 (the case may be filed until before the

¹³ Wali, Fathi, Mediator in Civil Law, Cairo University, 2009, p. 376.

¹⁴ Discrimination of Rights No. 719 \ 98, Journal of the Bar Association, Ninth and Tenth Issue, Forty-sixth Year, 1999, p. 3108.

conclusion of the pleading). As for the Jordanian Code of Procedure, the first paragraph of Article 121 states that: the requests mentioned in the previous articles 113 to article 120 after the conclusion of the trial). However, in Law No. 16 of 2006, the legislator canceled it, leaving the matter to the court. Accordingly, we believe that it may be presented throughout the period of the case starting from the time of filing the lawsuit until concluding the final step of trial¹⁵. According to article 158, paragraph 3, of the Jordanian Code of Procedure the Court may reopen the trial again to ascertain any matter it deems necessary to adjudicate the case. Thus, after the opening of the trial, the Court may allow the submission of interlocutory applications, including requests for intervention by third parties, if justified. Therefore, the matter is subject to its discretionary power, and this condition is justified by law. The request for intervention may not be a means of delaying the proceedings, which is contrary to the purpose of the intervention as a measure aimed at achieving the principle of saving time and expenditure to be a tool to delay the adjudication of the case. Regarding the permission of joint intervention , for the first time before the Court of Appeal, the French legislator allowed the submission of applications in

¹⁵ Judges, Muflih, Civil Procedure and Judicial Organization, First Edition, Dar Al Thaqafa Publishing House, Amman, 2013, p. 263.

JOURNAL OF LAW AND POLITICAL SCIENCES

general, as long as they were sufficiently linked to the original allegations and would affect the scope of the judicial application in accordance with the requirements of the development of the dispute under article 331 of the Code of Pleadings¹⁶ The Iraqi legislator, in contrast to the Jordanian legislator, did not stipulate certain provisions in this issue. However, due to the absence of texts allowing this and applying the principle of litigation to two degrees, it is prohibited to accept intervention applications, at the appeal stage. In addition, the Jordanian legislator in Article 185 para (A) does not allow to submit additional evidences except in certain conditions, therefore it is not expected to allow more risky issues, which is adopted by the Court of Cassation (the application for intervention and the introduction of a third person in the proceedings is to be made before the Court of First Instance and not before the Court of Appeal since he

¹⁶ www.leiglfrance.gouv.fr

331- Un tiers peut être mis en cause aux fins de condamnation par toute partie qui est en droit d'agir contre lui à titre principal.

Il peut également être mis en cause par la partie qui y a intérêt afin de lui rendre commun le jugement.

Le tiers doit être appelé en temps utile pour faire valoir sa défense.

becomes a party to the litigation , having rights and obligations and must have these rights at all stages of the trial, including the initial phase.¹⁷

3. The intervening person shall have an interest in his intervention. In such a case, the intervention shall constitute a suit in the sense of the word, in which it requires the condition and description of the interest shall be satisfied. The court shall accept the intervention, and the applicant shall submit a list of proceedings in accordance with the usual procedures for filing the case and shall pay the prescribed fees.¹⁸ The point of view of the Iraqi legislator differs from the Jordanian in that the former did not only ask for the requirement of the interest, but also stipulated that the applicant of the intervention may be affected by damage due to non-intervention¹⁹ the Iraqi legislator would have to be satisfied

¹⁷ Discrimination of Rights No. 2386/98, General Assembly, Journal of the Bar Association, Issue No. 3.4, 2000, p. 106. See also Decision No. 725/96 Journal of the Bar Association 1996, p. 2476

¹⁸ Kilani, Mahmoud, Explanation of Civil Procedure Law, First Edition, Dar Wael Publishing and Distribution, Amman, 2002, p. 284. See also Discrimination Rights No. 486 \ 98, Journal of the Bar Association, 1999, p. 1243.

¹⁹ Article 69 (1) of the Iraqi Code of Procedure states that "Any interested person may request to enter the proceedings a third person who is bound to one of the

JOURNAL OF LAW AND POLITICAL SCIENCES

with the condition of interest as a justification for accepting the intervention because, by requiring damage, he impose restrictions in field requiring more flexibility , and in order not to limit the usefulness of the intervention and narrow its scope unjustifiably. The requirement of the interest is more extensive, and absorbs the damage because the interest in achieve by avoiding the damage. The Jordanian legislator requires only the condition of interest, since it is more extensive the condition of the existence of the damage unnecessarily narrows the freedom of the person who intervenes to join the case. The interest is a prerequisite for the acceptance of all defenses and requests, whether original or accidental, to ensure the proper use of civil proceedings as a means of protecting the rights, interests and avoid malicious lawsuits and prolong the conflict without justification ²⁰In its judgment, the Jordanian Court of Cassation ruled that "the right to intervene in the case of a nonparty of litigation does not arise unless the intervener has an interest affected by the

parties or to seek his own judgment if he has a connection with the case or binds one of the litigants with a solidarity or obligation that does not accept Retail or otherwise prejudicial)

²⁰ Non-joinder of parties in civil suits (www.legalseviceindia.com)

result of the judgment in the case²¹ In another ruling it ruled that the request for intervention should be rejected if the applicant interest In intervention is not justified.²²

4. The existence of a link between the original case and the request of the intervener. It is sufficient to accept these requests that there is a connection between them and the original request. The judge has the discretion to assess the existence of the connection. If the link is not required to reach the point of non-fragmentation. Amman Court of Appeal ruled in one of its judgments (the person required to intervene , and the defendant are connected by relations for the purposes of the use and exploitation of real estate and buildings, whereas the claim of the plaintiff is based on contractual relations between the plaintiff and the defendant, which means the absence of a link between the original claim and the request resulting in the non-fulfillment of the conditions provided for in article 113 \ 1 of the Civil Procedure Code , and makes the request of the plaintiff lacks a legal basis, which should not be accepted).²³ This is what was

²¹ Discrimination of Rights, No. 34/1988, dated 11/2/1988, Journal of the Bar Association, 1990, p. 1046.

²² Discrimination of Rights, No. 1763/2004, 6 January 2005, Adalah Publications

²³ Resolution No. 26199/2015 of 1/99/2015 published by Qustas website

JOURNAL OF LAW AND POLITICAL SCIENCES

adopted by the Jordanian and French legislators, and it is actually better in anticipation of the loss of rights in contrast to the Iraqi legislator, which stipulated that the link should reach the point of non-fragmentation, and that the intervener should not create, by his intervention a new lawsuit that is not presented before the court. In this case, an independent claim shall be filed for the right alleged for himself. In the intervention, the intervener asks to get a judgment for his interest in a request linked to the original case and we are here before an interlocutory application, and therefore subject to the rule of association to which the interlocutory applications are subject.

SECTION II

ORIGINAL INTERVENTION

The original intervention is a form of intervention whereby the third party demands that a request be made in connection with the case. The intervener requests a self - right or legal position against the original litigants or one of them²⁴ (such as a person intervening in a dispute over the ownership of a premises requesting a decision for his interest against the litigation original

²⁴ Omar, Faris Ali, Intervention in the Civil Case, op. Cit., P. 15

parties²⁵ , Or as if the partner in the common intervenes in the case in the proceedings brought by the other partners against the third party,²⁶ or as the creditor intervenes in the case between the debtor and the third party to enforce a certain act, intervening to request that this action not be effected against him until he fulfills his right,²⁷ or before the contractor has earned the interest resulted from executing that conduct , And in this type of intervention, the intervening party does not join one of the parties to the dispute to defend it, but rather intervenes in order to achieve the demands of its own, so that it requests something for itself based on its own right. ²⁸This type of intervention is called the litigation or offensive intervention, where the intervener attacks the two parties of litigation “Therefore, the applicant has the status of the plaintiff while the original parties of the case are in the defendant's position in relation to the

²⁵ Al-Nadawi, Adam Wahib, Extent of the Civil Court's Power to Amend the Scope of the Case, Dar Al-Thaqafa Publishing House, Amman, 2001, p. 276.

²⁶ Shoshari, Salah al-Din, Explanation of the Asset Law, op. Cit., P. 119.

²⁷ Al-Hazmi, Ali Bin Hassan, Intervention in the Saudi Procedural System, Comparative Foundational Study, Master Thesis, Prince Nayef Arab University for Security Sciences, Riyadh, 2010, p.50

²⁸ Abu Al-Wafa, Ahmad, Civil and Commercial Pleasures, op. Cit., P. 204. See also: Khimri, Mustafa, Encyclopedia of Civil, Administrative and Criminal Proceedings, op. Cit., P. 694

JOURNAL OF LAW AND POLITICAL SCIENCES

request for conclusive intervention. In our opinion, the claim is not required to be solely the right of the parties to the case, but may be implied, where the intervener applies for a joint intervention includes his own requests.

In accordance with Article 114, paragraph 2, of the Code of Civil Procedure, the Jordanian legislature authorizes a person involved in an ongoing case between two parties and is affected by the outcome of the judgment to request to intervene in the case. If the court is satisfied that he is affected, it decides to accept his request. The Iraqi legislator in the Para (1) of Article 69 of the Pleading Code, stipulated that any interested person may request his entry into the case joining one of its parties or to seek his own judgment. The French legislator also took the same position in the law of pleadings. It allows the litigating intervention before the courts of first instance in article 329, but it differs from Jordanian and Iraqi laws by allowing the intervention before the Court of Appeal, as stated in the text of which allowed the submission of new applications for the first time before the Court of Appeal as stipulated in Article 564.²⁹

²⁹ www.leiglfrance.gouv.fr

329- . L'intervention est principale lorsqu'elle élève une prétention au profit de celui qui la forme.

The original request for intervention is subject to the principle of initial admissibility i.e. the court has the power to search for the availability of the conditions for acceptance of this request, starting that the intervener is a third party, the dispute shall be ongoing before the court, and submitting the application before the hearing is closed before the court of first instance the applicant has an interest in the intervention against the case parties, and interconnection of the intervention request with the original case. If these conditions are met, the court decides to accept it in principle, and then the applicant is required to submit a list in accordance with the usual procedures for filing the suit and shall pay the fee prescribed for this application,³⁰ The law requires that conditions and controls be put in place to ensure

Elle n'est recevable que si son auteur a le droit d'agir relativement à cette prétention.

564- A peine d'irrecevabilité relevée d'office, les parties ne peuvent soumettre à la cour de nouvelles prétentions si ce n'est pour opposer compensation, faire écarter les prétentions adverses ou faire juger les questions nées de l'intervention d'un tiers, ou de la survenance ou de la révélation d'un fait

³⁰ Ismail Omar, Nabil, mediator in the law of civil and commercial proceedings, New University House, Alexandria, 1999, p. 272, 273. See also: Al-Shawarabi, Abdul Hamid, The Subject Commentary on the Law of Pleadings, Knowledge Establishment, Alexandria, 2004, p. 305.

JOURNAL OF LAW AND POLITICAL SCIENCES

that the scope of the case is amended in a manner that prevents it from being delayed and delay its settlement .to ensure the principle of stability of the litigation as an original fact while acceptance of accidental requests and amend the scope of the litigation is exceptional.

The intervention request is not subject to fees when submitted, but relies on its initial acceptance. The original intervention request is not subject to the fees in the event of rejection, but if accepted by the court it becomes required to pay the fees. However, the original intervention may not be allowed for the first time before the Court of Appeal in Jordanian and Iraqi law the fact that his acceptance leads to the denial of the right of litigants to submit the dispute before the Court of First Instance, which violates the principle of litigation in two degrees.

THE SECOND PART

EFFECTS OF OPTIONAL INTERVENTION

In the two types of intervention whether joint intervention or an original intervention, the intervener becomes a party in the case, and the judgment becomes binding to him. He may challenge it by the appropriate methods of appeal, otherwise this effect of each of the intervention of the original interference differs.

First: Effects of Joining Intervention:

1. The joint intervener shall not take a position contrary to the position of the party to whom he has joined. He may not make requests different from the requests of the litigant to whom he has intervened, but he may show defenses to support the requests of the party to which he has joined. Hence the function of the court in this type is to take a judgment in the original cause subject matter.³¹
2. The joint intervener may adhere to any substantive or formal defense if the right to such defense has not been dropped³², but he may not defend alleging the non-jurisdiction of place if he joined the plaintiff because he has not to depend on this defense unless he joined the defendant, and unless the right of the defendant has dropped. It is noted that if the joint intervention is accepted, the intervener is considered a litigant in the case and has, and he may adopt or reject whatever he considers in his favor. If a decision is taken to reject the case due to non-jurisdiction of the court to hear the original case or

³¹ Abu Al-Wafa, Ahmad, Civil and Commercial Pleadings, op. Cit., P. 206. See also: Khimri, Mustafa, op. Cit. P. 695.

³² Hazmi, Ali bin Hassan, Intervention in the Seizure, op. Cit., P. 52

JOURNAL OF LAW AND POLITICAL SCIENCES

not to accept it or Invalidation of the list leads to the fall of the intervention.

3. The joint intervention shall not be subject to the fees, but the original intervener shall bear his expenses, even if the judgment was in favor of the party he supports him. These expenses shall not be added to the expenses of the original case so that not to be borne by the convicted person, because the other party has not requested anything against him to bear the expenses if he loses³³ but in order to meet the requirements of justice, expenses must be borne by the convicted.
4. The consequences of the plaintiff 's request to drop the case or reconciliation with his opponent or waiver of the right that he claims shall automatically affects the intervention which is dependent on the original request³⁴, but that the intervener is not allowed to do what is not done by the owner of the right as waiver on behalf of the right to be protected, to make peace, to swear by oath or to refuse, whether it is in his favor or against him that he challenges the judgment by means of the objection of others. Rather, he is an argument against him.

³³ Saif, Ramzi, Al-Waseet in explaining the Civil and Commercial Procedures Law, Dar al-Nahda al-Arabiya, Cairo, 1970, p. 353.

³⁴ Al-Shawaribi, Abd al-Hamid, Substantive Comment on the Code of Pleadings, op. Cit., P. 311.

After joining the litigant is not considered as a third party. To challenge the judgment by means of appeal, which is legally granted to a party to the case, such as an appeal³⁵ the fact that the issued judgment is an argument against him particularly that the intervener is a party to a case governed by its judgment.

5. That the joint intervener is an opponent connected to the party to which he has joined and cannot take a different position. He may not submit a request of his own that contradicts the requests of the person who joined him until the court decides the problem since he is connected to the party to which he joined,³⁶ but he may submit any means of defense and evidence in support of the requests of that party, even if the latter did not submit them, in order to avoid any consequences on the joined litigant so as to avoid him the effects of the judgment³⁷, and not to dispose of the dispute entirely by leaving it.

SECOND: THE EFFECTS OF THE ORIGINAL INTERVENTION:

35 Omar, Faris Ali, Intervention in the Civil Case, op. Cit., P. 29.

36 Amari, Habib, The Opponent in the Civil Case, op. Cit., P. 74.

37 Nassar, Yasser, Intervention and Introduction, op. Cit., P. 98.

JOURNAL OF LAW AND POLITICAL SCIENCES

- 1- The intervener shall be deemed to be a party to the dispute, such as the original parties, and shall take the position of the plaintiff with the consequent powers and burdens. He may present the requests and defenses entitled to each plaintiff. He is not bound of anything made by the original parties or their right to make it.³⁸ He is the same as any litigant whose intervention is accepted. He may appeal, but he is not bound by the provisions issued before his intervention, which contradict his right, so that the intervener is not prejudiced by his intervention, since the intervention is stipulated in his favor.³⁹
- 2- The case of the intervener shall not be waived if the parties drop the original case, as well as the case of conciliation or waiver of one of the rights of the subject matter of the case, nor shall it fall if the court rules that it does not have jurisdiction over the original case.⁴⁰ In this case, the intervener here is not an connected to them, but is in an independent position of the original parties of the case. However, the intervener , whether convicted or in favor of him, does not have the right to challenge the judgment by objecting to others

³⁸ Nassar, Yasser, Intervention and Introduction, op. Cit., P. 92.

³⁹ Judges, Muflih, Civil Proceedings, op. Cit., P. 265.

⁴⁰ Kilani, Mahmoud, Explanation of the Law of Trials, op. Cit., P. 286.

as a right granted by law to persons who were not party to the case .

- 3- The case of the intervener shall not be considered as if the court had ruled that the original case law was invalid or that the case was filed by a person who did not have the right to submit it as if it had been filed by a lawyer with an invalid power of attorney.⁴¹ However, the litigation intervention does not drop , if applies under the ordinary procedures f filing a case but remains before the court, and the court has to adjudicate it despite the invalidity of the original case, as long as the interlocutor has made his requests in the normal conditions and procedures for filing the case. The court was competent in all these cases.⁴²
- 4- The application of the intervention is subject to the general rules in respect of the expenses of the case. If the intervener loses his claim, he shall bear the costs and expenses of the

41 Al-Sharqawi, Abdul Moneim, Explanation of Civil and Commercial Procedures Law, Interest in the Case, Dar al-Nahda al-Arabiya, Cairo, 1950, p. 383

See also Wali, Fathi, Mediator in the Law of Civil Justice, op. Cit., P. 380.

42 Nassar, Yasser, Intervention and Introduction, op. Cit., P.62

JOURNAL OF LAW AND POLITICAL SCIENCES

opponent, and if he wins the case, the litigants shall pay such expenses⁴³.

- 5- The intervener shall be considered a full opponent in the case in the position of a plaintiff who has the original rights of the plaintiff in terms of modification and waiver of his claims and may exercise all rights of defense as demanding the swear of oath and implement it and reject it . He may leave the litigation⁴⁴.
- 6- The court shall rule on the application for intervention with the original case whenever possible, if it is not possible, the court postpones the application after issuing the judgment to take a separate decision on it.⁴⁵ However, it is reasonable for the court to decide on the application for litigation intervention before the judgment in the original application, in order to determine the scope of litigation in respect of persons and the third party decides his position and the litigants determines their position in respect of him. therefore we propose amending the text of Article 121 to be (The court shall rule on the applications referred to in articles 113 to 120

⁴³ Al-Hazmi, Ali bin Hassan, The Intervention of Prejudice, op. Cit., P. 53.

⁴⁴ Omar, Faris Ali, Intervention in the Case, op. Cit., P. 30.

⁴⁵ Article 121 stipulates Jordanian assets as follows: (The court shall rule on the applications referred to in articles 113 to 120 of this law with the original case whenever possible, unless it deems it necessary to differentiate between them)

of this law with the original case whenever possible, unless it sees the need to differentiate between them except for applications of intervention which are decided when presented).

Article 70 (1) of the Iraqi Code of Procedure states that the case must be submitted before the conclusion of the appeal by a petition served to the opponent or by a verbal declaration of the hearing in his presence. The third person's entry or introducing him is considered an incidental case. the person after being accepted in the case, judging in favor of him or against him, as stipulated in the second paragraph of the same article) (if the case involves the request for judgment in favor of one of the parties against the other or in favor of one of them against the third person or in favor of the third person against one or both of them, the charges will be brought against it, and the judgment becomes appealable in respect of the loser).

It is through this text that the effects in Iraqi legislation are the same as those in Jordanian legislation, in that third parties, before their intervention, become parties to the case and enjoy the same legal status as the litigant and his application is subject to fees and in respect of his right of appeal.

THE SECOND TOPIC

**COMPULSORY INTERVENTION (THIRD PARTY
LITIGATION)**

The litigation of a third party to the case means that a person outside the dispute is required to enter it, either at the request of one of the original parties to the case and in conjunction with the consent of the court or on the order of the court.⁴⁶ According to this definition, the third party litigation means enter the third party, against his will, to in order to achieve one of the following purposes:

First: - to be judged by the same claims filed in the original case, by an application addressed to him specifically⁴⁷ or by requiring the intervener to submit productive papers or documents in the proceedings.

Second: - Make the judgment issued in the lawsuit effective and valid against him so that he cannot object to it later by the objection of others on the pretext that he was a nonparty in the litigation⁴⁸.

⁴⁶ civil procedure (www.encyclopedia.com)

⁴⁷ Saoui, Ahmed El Sayed, 2004, the mediator in explaining the law of civil and commercial proceedings, Dar al-Nahda al-Arabiya, Cairo, 2004, p. 276.

⁴⁸ See: - Mr. Abdel-Fattah, Al-Wajiz in the Egyptian Code of Procedures, Cairo, (d, n) p. 529. -

- Ragheb, Wagdy, Principles of Civil Justice, op. Cit., P. 579.

The principle is that every person is free to choose the time he deems fit to file his case, and it may be considered against the rules of local jurisdiction because he may bring others before a court other than his competent court.⁴⁹ However, many legislations have allowed the third party litigation within certain limits based on the theory of association between cases, and to the benefit of preventing the intervener from renewing the judged dispute on the grounds that he is not subject to the issued judgment because it was not issued against him. The Jordanian legislator regulated the provisions of the third party's litigation in articles 113 and 114 of the Code of Civil Procedure, as it states that the third party litigation is of two types: the third party litigation at the request of one of the litigants or on the order of the court, as regulated by the Iraqi legislator in Article 69, paragraph 2, 4 of the Code of Civil Procedure of Iraq, and the French legislator in articles 331 and 332 French arguments.

Accordingly, this subject will be divided into two parts:

The first part: the third party litigation at the request of one of the litigants.

⁴⁹ Abu al-Wafa, Ahmad, Civil and Commercial Pleasures, op. Cit., P. 211.

See also: Amari, Habib, The Opponent in the Civil Case, op. Cit., P. 77.

JOURNAL OF LAW AND POLITICAL SCIENCES

The second part: the third party litigation based on a decision of the court.

FIRST PART

THE THIRD PARTY LITIGATION AT THE REQUEST OF ONE OF THE LITIGANTS

Article 113 paragraph 1 of the Jordanian Code of Civil Procedure stipulates that "the litigant may introduce in the case , the person who was right to be litigated when it was lifted." , the same as Article 331 of the French Pleading Code and article 69 of the Iraqi pleadings⁵⁰. These texts are provided as final texts, not defined. The legislator do the appropriate action when neglecting certain applications, so that the Court itself would not find itself bound by a particular situation.

The legislator has created a brief way for the original litigant, whether a plaintiff or a defendant to sue a person who was to be litigated or to file the case against him in order to avoid a multiplicity

⁵⁰ www.leiglfrance.gouv.fr

331. Un tiers peut être mis en cause aux fins de condamnation par toute partie qui est en droit d'agir contre lui à titre principal.

Il peut également être mis en cause par la partie qui y a intérêt afin de lui rendre commun le jugement.

Le tiers doit être appelé en temps utile pour faire valoir sa défense.

and contradiction of the provisions.⁵¹ The case scope may involve during its course to introduce new opponents, in accordance to the request of the plaintiff or defendant. The parties may have an interest in such application being made by them, it may become clear to the plaintiff or defendant or both during the proceedings that the dispute requires the introduction of one or more new litigants in the case.⁵²

It should be noted that the term who was eligible to be litigated at the time of filing the lawsuit is intended to be the person allowed for litigation in addition to the parties and not the litigated person in replacement of one of the parties. That is, the introduction in the case of optional multiplicity without compulsory multiplicity because the lawsuit would be unacceptable if filed without the litigation of those who should be litigated⁵³. in our opinion, we see that the third party here enters in addition to the two parties of the case and not in replacement of one of them, and that the word (allowed) means that if the litigated person at the time of the proceedings commencement has to remain in it and did not leave it

⁵¹ Ashmawi, Mohamed Abdel Wahab, Rules of Pleadings in Egyptian and Comparative Legislation, Library of Literature, Cairo, 1957, p. 823.

⁵² Al-Nadawi, Adam Wahib, Extent of the Court's Power to Amend the Scope of the Case, op. Cit., P. 333 et seq.

⁵³ Omar, Faris Ali, Intervention and Introduction, op. Cit., P. 19.

JOURNAL OF LAW AND POLITICAL SCIENCES

due to his connection to the subject matter of the lawsuit. we believe that differentiation must be made between the lawsuit filed against persons who should not be litigated, where the lawsuit is considered not acceptable for lack of capacity, but if it is filed against persons who have an attribute in it, but must be filed against others with them the suit is acceptable and third parties may be litigated either at the request of the litigant or by order of the court.

A part of the jurisprudence considers that the; litigant introduced in the case is only in the position of the defendant and may not be requested to be brought to the status of the plaintiff because the prosecution is the use of a person's right when he voluntarily decides to adopt court actions and may not be used by others on his behalf⁵⁴ we do not accept this opinion, because the third party may be litigated as a plaintiff or a defendant.

An example of a third party litigation or forced intervention in a case is that when a creditor sues one of the joint debtors and then introduce other debtor from the joint debtors or the rest of the joint parties.⁵⁵

In its resolution 712/93 of 10 August 1993, the Iraqi Court of Cassation stated that: joint liability does not preclude the joint partner to introduce a third party in the case when the circumstances

⁵⁴ Wali, Fathi, Mediator in Civil Law, op. Cit., P. 311.

⁵⁵ Nassar, Yasser Ali, Intervention and Introduction, op. Cit., P. 33.

and facts of the case require it. The joint partner may have a reason to defend the claim, all this shall be decided by the court and the partner shall have the right to request that third parties introduce partners into the case for the maintenance of his rights. This direction is set forth in article 69/1 of the Code of Pleadings⁵⁶ or in case the creditor files a claim in the name of the debtor on a the debtor of his debtor and then the latter introduces the debtor to issue a judgment to reject the claim against him .

The person who is required to be introduced should be a third party, i.e., who is not a party to the original case. This is a requirement to accept the application. The applicant must have an interest in the application for the introduction of third parties and the application for admission before the Court of First Instance⁵⁷. The request for third parties introduction may not be submitted for the first time before the Court of Appeal. The Jordanian Court of Cassation has ruled in its ruling that: Applications for entry for the first time may never be submitted to the Court of Appeal so that the applicant is not deprived of a degree of litigation. The Royal palaces shall not be

⁵⁶Decision No. 712/93, issued on 10 \ 8 \ 1993, referred to this ruling by Omar, Fares Ali, op. Cit., P. 11

⁵⁷ See Rights Discrimination No. 1241/2004, 24/10/2004, Adalah's Publications. See also Discrimination No. 2065/98, 46th year 1999, p. 3174, also article 113 of the Jordanian Code of Civil Procedure.

JOURNAL OF LAW AND POLITICAL SCIENCES

introduced as a defendant at Court of Appeal and where the Court of Appeal has reached this finding and the rule of law, which should be reversed.⁵⁸

It is stipulated that the person to be introduced in the case shall not be a represented in it because, by representing him, the judgment is an argument against him and therefore there is no justification for its introduction, such as the creditors of the bankrupt are not accepted to be admitted in the case against the bankruptcy agent because he represents them.

Article 113 of the Law of Procedures contains two provisions: First, it is permissible for the litigant to introduce into the case a person who may be litigated when it was filed. This allowed the parties to exercise this right as long as the text is in the form of the litigant, which means that this right is permissible for the plaintiff or defendant. For example, if the plaintiff submits his case against the guarantor, he may submit an application to introduce the person who is included in the case on the grounds that he is entitled to be litigated at the time the suit filing, or if the plaintiff fails to exercise his right to introduce the guaranteed person the defendant (the guarantor) may request introduction of the guaranteed into the case.

The second paragraph of the text provides a special provision of the defendant. The legislator gave him the right to introduce a person

⁵⁸ Rights Discrimination No. 3665 \ 2013, Decision of 16 \ 2 \ 2014

into the case when he claims to have a right to refer of the alleged right to that person, but the defendant must first submit the application to the court stating the nature of the claim And the reasons on which the request is made to enter the third party in the case, so that if the court responds to his request, he is requested to submit a list of his claim according to the usual procedure for filing the claim and pays the court fees arising from this application.⁵⁹ It is not required that the defendant who requested introduction of a third party to show that he has the right to recourse of judgment on a person not a party in the case as when the defendant in the claim of compensation sought to enter the insurance company covering the car causing the accident.

In addition, as a general rule, the application of the third party introduction was a prescribed right for the litigants without discrimination, while the third person request for introduction is decided in accordance with the provisions of the second paragraph is a right for the defendant without the plaintiff, which would affect the legal positions of the litigants and the imbalance between them. But when decided to introduce a third person, at the request of the defendant, he shall be a litigant against him only, and not against the plaintiff of the original case, since there is no connection between the original action that brings together the plaintiff and the

⁵⁹ See article 113, paragraph (2), of the Jordanian Code of Civil Procedure.

JOURNAL OF LAW AND POLITICAL SCIENCES

defendant and the third person's action combining the defendant and the third person. On implementing this the Jordanian Court of Cassation decides in a judgment issued by it (If the court decides to exclude the consideration of a third party's introduction in a case at the request of the respondent in order to refer to what the defendant may be sentenced to, the third person does not have the right to file a request for a rejection of the claim before starting the proceedings under article 16 of the Code of Procedure as long as the plaintiff did not litigate the third person in the case, but the third person is entitled to defend himself in the trial to avoid the liability against him to the defendant who was asked to introduce him as a third party⁶⁰ Irbid Court of Appeal in its judgment stated it is not allowed to take a decision in favor of the plaintiff's against a third party , because their claim is not filed against a third party. The provisions of article 113 of the Code of Civil Procedure and of the rules relating to a third person claim that it is not allowed to take a judgment for the interest of the original plaintiff against the third party, because the real litigant against the third party is the defendant and not the plaintiff.⁶¹ The Iraqi Court of Cassation states that the contract made between the plaintiff and the defendant is the one that governs the relationship between them in respect of the said transaction and if

⁶⁰ Discrimination of Rights No. 236/72, Journal of the Bar Association, p. 1523, in 1972.

⁶¹ Resolution No. 14920 \ 2015 issued on 1 \ 9 \ 2015 The site of Qustas

the plaintiff is required to exercise his rights in this contract, it shall be limited to the defendant since the third person has bought the quantity from the defendant and paid for it and has nothing to do with the plaintiff⁶² this case is unlike the case of a third party litigation decided for both parties and provided under the first paragraph. The legislature did not require any restriction or condition for it.

In the case of a response to the request of the litigant to introduce a third party here, the person who is decided to enter the case after the notification of the prosecution shall provide his answer and evidence and defenses, and he is subject to the same legal provisions for the defendant failure to provide his response and evidence provided for in Article 59 of the Jordanian Code of Civil Procedure⁶³ The judgment in the case is considered an argument against him and he has the right to challenge all the remedies provided by the law to the original parties of the case.⁶⁴

As for the time in which the intervention applications are submitted, they shall not be submitted after the conclusion of the trial. The case is considered to be limited only to requests already made to this time

62 Decision No. 335 \ 999 issued on 28 \ 4 \ 1999, The Legal Encyclopedia, No. 65, p4

63 See article 113 paragraph (3) of the Jordanian Code of Civil Procedure.

64 Omar, Faris Ali, Intervention in the Civil Case, op. Cit., P. 31.

JOURNAL OF LAW AND POLITICAL SCIENCES

of litigation. The court may not consider any application submitted to it after the conclusion of the trial, However, according to Article 158, paragraph 3, of the Jordanian Civil Procedure Law, the Court may reopen the trial and allow the litigants to submit provisional applications if justified, due to the court's discretion in responding to or failing to respond to the request. However, if the litigant is allowed to provide In accordance with Article 121 of the Jordanian Code of Criminal Procedure, the Court shall rule on applications with the original case unless it considers the need to differentiate between them. This is also provided for in article 70 paragraph 1 of the Iraqi Code of Procedure. The lawsuit is also called by the Iraqi legislator before the conclusion of the pleading.

In fact, the court first settles any dispute arising over the acceptance of the application. The subject matter of the application is to be settled with the original case unless it considers the need to differentiate between them and to separate each of them. When the subject of the request is in need of scrutiny, then the court will decide on the original case and keep the preliminary request for dismissal after investigation, which means the continuation of the dispute until after the resolving the original case, but there is nothing to prevent the ruling on the application first, especially if a precautionary or

expeditious procedure is put in place, such as the appointment of a court administrator on the disputed premises.⁶⁵

Article 72 of the Iraqi Code of Procedure states in the first and second paragraph that the court shall decide on the case against the original case whenever possible, provided that it does not contradict its jurisdiction. If the court is unable to adjudicate the two claims together, the first case shall be settled first in the case and then consider the original case.

THE SECOND PART

THE THIRD PARTY LITIGATION BASED ON THE COURT DECISION

The Jordanian legislator adopts the system of third party litigation based on the court decision. The Iraqi legislator also adopts the same position in Article 69/3. The same applies to the French legislator in Article 332 of the Code of Procedure⁶⁶ it is intended that the court

⁶⁵ Zu'bi, Awad, Al-Wajiz in the Code of Civil Procedure, Dar Wael Publishing, First Edition, 2007, p. 339.

⁶⁶ www.Legifrance.gouv.fr

332- Le juge peut inviter les parties à mettre en cause tous les intéressés dont la présence lui paraît nécessaire à la solution du litige.

En matière gracieuse, il peut ordonner la mise en cause des personnes dont les droits ou les charges risquent d'être affectés par la décision à prendre.

JOURNAL OF LAW AND POLITICAL SCIENCES

introduce a third party in the case in order to clarify the truth.⁶⁷ The third party is introduced here regardless of his will or the will of the parties, whether in the interest of justice or to clarify the truth. The judge has a role in the dispute by giving him the authority to direct and manage the case to clarify the truth and achieve justice, in addition that third party litigation may avoid multiplicity of litigations and contradiction between the provisions issue in it. the Jordan legislator considers introduction by the Court Order is an optional issue and not mandatory , in the third paragraph of Article 114, which stipulates: "The Court shall, on its own initiative, decide to include as in its ruling, the Jordanian Court of Cassation went on to argue that the invocation of article 114 of civil assets in terms of the power of the Court to bring a person who had an obligation of solidarity or indivisibility to the adversary with the discretion of the Court⁶⁸ , the same applies to French law, and we hope that the Jordanian legislator will replace the word with a word that the court should adopt . The text must read as follows (the court must decide on its own initiative to introduce). Also in the same article, the Jordanian legislator specified the cases in which the court may include third parties:

⁶⁷ Nassar, Yasser Ali, Intervention and Introduction, op. Cit., P. 39.

⁶⁸ Rights discrimination 630 \ 2012 issued on 18 \ 4 \ 2012, the site of Qustas

1. If he is a litigant in the case at a previous stage⁶⁹, as if he were a litigant in the same subject of the case and in the same degree of litigation, the case shall be for any reason. If the plaintiff resumes it again, the court shall have the power to introduce the litigant in the case in the first time⁷⁰, as the case shall be dismissed for lack of jurisdiction. The plaintiff shall then renew the case, without prejudice to some of the parties to the case, before the judgment of its fall or the decision of its response or the court's jurisdiction to adjudicate the case. The judgment of this case is limited to the case before the Court of First Instance⁷¹.
2. A person who is bound by one of the litigants with a joint relation or an indivisible obligation. This is stated in paragraph B3 of Article 114 of the Jordanian Code of Procedure, for example, the court decides that the rest of the joint or indivisible creditors will be bound by an indivisible obligation.
3. If he is a heir to the plaintiff, the defendant or the partner in common, if the case is related to money owned by the

⁶⁹ Article 114 provides for Jordanian assets (the court may decide to include: a) a person who was an expert at a previous stage.

⁷⁰ Shoshari, Salah al-Din Muhammad, op. Cit., P. 125.

⁷¹ Al-Sharabi, Abdul Hamid, op. Cit., P. 145.

JOURNAL OF LAW AND POLITICAL SCIENCES

common or money from the estate, and the lawsuit was raised by or on one of the partners or heirs without the rest of the partners or heirs here the court has the right to order their entry In the case and this is stated in paragraph c/3 of Article 114 of the Code of Civil Procedure.

4. If the court has serious evidence of complicity, fraud, or negligence by the litigants, it may be harmed by the case or by its judgment. This is stipulated in article 114, paragraph 3, of the Jordanian Code of Civil Procedure. For example, In the case of the plaintiff, the seller is brought in without the seller after the delivery of the sale. According to the second paragraph of Article 504, the dispute is directed after the sale is delivered to the buyer. The first of this article, however If the buyer does not request the seller to enter the court to decide to enter it on its own⁷², if the court feels that there is collusion or fraud between the buyer and the seller, The buyer and the claimant of damages for the rights of the seller, such as the buyer makes concessions that would make the plaintiff claim his claim and enable the buyer to refer the seller to the benefit of the intention to damage it⁷³, the court decides to enter the seller opponent in the lawsuit on the grounds that it

⁷² Al-Zubay, Muhammad Yusuf, Explanation of the Contract of Sale, p. 376

⁷³ Al-Obeidi, Ali Hadi, contracts called sale and rent, House of Culture for publication and distribution, 2006 p.117

will be affected by the collusion of the claimant of entitlement and the buyer While And it is not entered in the case.

5. The introduction of third parties to the obligation to submit a paper or a document under his hand, and this case was not provided by the Jordanian legislator in the Code of Civil Procedure under Article 114 and that was stipulated in the Jordanian Evidence Act, and the introduction of others here is a matter of his option to the court and not mandatory, Article (25) of the Jordanian Evidence Law (During the course of the case, the court may invite third parties to oblige him to submit a paper or a document under his hand in the circumstances and conditions stipulated in the preceding articles, subject to its provisions). The closest the witness is to light N discount the fact that his role here is limited only to provide evidence in accordance with the procedure outlined by the law without being directed to or from requests in the lawsuit.

All of these cases are provided as examples. The court may not order the introduce third parties in these cases. The Jordanian legislator was the first to give the court a positive role in directing the case and handling the dispute by giving the judge the authority to determine other cases that may require the entry of third parties. It is estimated whether the interests of justice require the dissolution of others.

In case the court decides, on itself or at the request of one of the parties to the case, to appoint the third party, it shall determine an

JOURNAL OF LAW AND POLITICAL SCIENCES

appointment and a date not exceeding fourteen days for the attendance of those who order it to be entered into the case or the whom requested to enter the case by the litigants⁷⁴.

Article 69 (3) of the Iraqi Civil Procedure Law stipulates that the court shall call the depositary, the depositor, the litigant, the leaser , the tenant, the lessor, the mortgagee, the mortgaging party , the lessor, and the usurper, as stated Article 4 of the same article provides that (the court may invite any person to inquire as to what is required to settle the case), the Iraqi Court of Cassation decided in its ruling to introduce the real estate registration department as a third person in the case. Has the right of a prescribed course on the plaintiff's piece and the verdict as it appears from those investigations.⁷⁵

It is clear from this text that, if any of the cases provided for in paragraph III are available, the Court is obliged to invite the persons mentioned and to bring them into the proceedings, but in the fourth paragraph it also gives the right to invite any other person not mentioned in the preceding paragraph His presence is necessary to

⁷⁴ Paragraph 4 of Article 114 provides Jordanian assets as (the court shall appoint a date not exceeding fourteen days for the presence of a person who orders that it be entered into the case or who the opponent requests to enter in accordance with the provisions of the law)

⁷⁵ Decision No. 1987/98 issued on 27/7/1998, Encyclopedia of Justice, No. 58, p.6

clarify from him about any matter necessary to resolve the case and issue a ruling which is a matter of the court.

Although the Jordanian, French and Iraqi legislators have allowed the introduction of third parties on the basis of a decision of the court, some jurisprudence does not permit this idea by order of the court. Their argument is that a person is suing in the case as an allegation and the judge may not be a plaintiff (al-Sawy, 2004)⁷⁶ The law grants the judge the right to introduce a third party on his own without the request of any one of the litigating parties, but it is imperative for the court before ordering to litigate a third party to ask the litigants in the case for the reason that the third party non litigation because the legal bond between them may have expired, such as if the right has become statute of limitations or his owner has assigned it. The Court of Justice may change its decision if the third party litigation proved to be in vain.

CONCLUSION

This study deals with the issue of intervention and the introduction in the civil action as a kind of cross-application filed during the course of the original dispute which is independent of it but at the same time linked to it and affect the scope of the litigation in terms of subject matter or cause or parties, and at the end of this study we have reached the following results and recommendations.

⁷⁶ Al-Sawy, Ahmed al-Sayyed, op. Cit., P. 276.

Results:

- 1- The Jordanian, Iraqi and French legislators agreed that each stakeholder has the right to intervene in the case, either by joining a party to the case, and is called the joint intervention. It is intended to preserve his rights by assisting one of the parties to defend his rights or through the original intervention, intended to claiming a right alleged for himself whether the same right is claimed or had another right related thereto.
- 2- The third party is entitled to apply for introduction in the case if certain conditions are met. The important of which is the interest, association with the original application. If such requirements are not satisfied the application is rejected and he is not allowed to intervene in the case. The Iraqi legislator, contrary to the Jordanian and French legislators, has not only satisfied the requirement of interest, but also stipulated a condition damage.
- 3- In the event of acceptance of the request for intervention of its two types, the intervener becomes a party to the case and shall be subject to the issued judgment. He shall have the same legal status as the original litigants in the case and adherence to the defenses it deems appropriate.
- 4- The Jordanian, Iraqi and French legislators agreed that both the plaintiff and the defendant have the right to apply to the

court to introduce a third party into the case, but subject to the conditions and procedures stipulated in the law. However, the question of whether the required conditions are satisfied is due to the discretion of the judge.

- 5- The court may, on its own discretion, decide to introduce third parties in the claim filed. This matter is subject to the discretion of the court to exercise or abstain. However, if the court decides to introduce others, it must rely on one of the cases stipulated in article 114 of the assets law Jordanian civil trials on the grounds that these cases are limited to representation, while the Iraqi legislator in Article 69 of the Code of Civil Procedure in the third paragraph in the event that if any of the cases provided for in this paragraph must introduce third parties and other cases subject to the Authority and the French legislator allowed the introduce third parties under order of the Court in Article 232 of the Code of Pleadings , but without obligation, left it to the discretionary power of the judge.
- 6- The Jordanian and Iraqi legislators agreed, contrary to the French legislator would not allow the original intervention for the first time before the Court of Appeal, in respect of the principle of litigation on two levels.

Recommendations:

JOURNAL OF LAW AND POLITICAL SCIENCES

- 1- The researcher hopes that the Jordanian legislator will give the court the power to assess cases in which it may introduce third parties in the case and not limit them to specific cases by substituting these cases with a general rule that grants the court the power to introduce those who see it fit in the case. To achieve the principle of justice and clarify the truth and pursuant to positive role of the Judge in the proceedings, because although the cases stipulated by the Jordanian legislator are the most prominent cases in which the court sees the introduction of new opponents in the case, there may be other cases where the court considers it necessary.
- 2- The researcher hopes that the Jordanian legislator will differentiate between the joint intervention and the original intervention, and explicitly stipulate that the joint intervention may be allowed for the first time before the Court of Appeal, similar to the position taken by the Iraqi and French legislators, as the intervention does not add anything new to the case. A new application is added to the subject matter of the case, which prevents his acceptance for the first time before the Court of Appeal in respect of the principle of litigation in two degrees.
- 3- The researcher wishes the Jordanian legislator to amend the third paragraph of Article 114 to become the following (the court and itself may decide to introduction), similar to the

Iraqi legislator when it stipulated certain cases in which the court should introduce the third party in the case, The authority to add new cases for which no provision has been made, as is the case in Iraqi and French law.

- 4- The researcher wishes the Jordanian legislator to amend article 121 of the Civil Assets Law as follows: (The court shall rule on the applications referred to in articles 113 to 120 of this law with the original case whenever possible unless it sees the need to differentiate them except for requests for intervention and introduction).

I. General References

1. Abu Al-Wafa, Ahmad (1986), Civil and Commercial Proceedings, 14th ed., Alexandria: The Knowledge Establishment.
- Abu Al-Wafa. Ahmed (1984) Commentary on the Texts of the Law of Pleadings, Fourth Edition, Alexandria: Knowledge Establishment.
3. Ismail, Nabil (1999), Mediator in the Code of Civil and Commercial Procedures, Alexandria: New University House.
- 4- Khamri, Mustafa (2005), Encyclopedia of Civil, Administrative and Criminal Proceedings, Theoretical and Applied Study, Third Edition, Alexandria: The Modern University Office.
5. Ragheb, Wagdy (2003), Principles of Civil Judiciary, Proceedings Law, Third Edition, Cairo: The Arab Renaissance House.
- 6- Al-Zu'bi, Awad (2007), Al-Wajiz in the Jordanian Civil Procedure Law First Edition, Amman: Wael Publishing House.

JOURNAL OF LAW AND POLITICAL SCIENCES

- 7 - Zu'bi, Muhammad (2006), Explanation of the sale contract, first edition, Amman: House of Culture for publication and distribution.
- 8- Mr. Abdel Fattah (D, N), brief in the Egyptian Code of Procedure, Cairo.
- 9- Saif, Ramzi (1970), the mediator in explaining the law of civil and commercial proceedings, Cairo: House of Arab Renaissance.
- 10- Sharkawy, Abdel-Moneim (1990), Explanation of Civil and Commercial Procedures Law, Cairo: The Arab Renaissance House.
11. Al-Shawaribi, Abdul-Hamid (2004), Thematic Commentary on the Law of Pleadings, Alexandria: Knowledge Establishment.
12. Shoshari, Salahuddin (2010), Explanation of Civil Procedure Law, First Edition, Amman: House of Culture for publication and distribution.
- 13 - Sawi, Ahmed Al Sayed (2004), mediator to explain the law of civil and commercial proceedings, Cairo: House of Arab Renaissance.
- 14- Al-Obaidi. Ali Hadi (2006), Named Contracts, Sale and Rent, Amman: Dar Al Thaqafa for Publishing and Distribution.
15. Judges, Mufleh (2013), Civil Procedure and Judicial Organization, First Edition, Amman: Dar Al Thaqafa for Publishing and Distribution.
16. Al-Kilani, Mahmoud (2002), Explanation of Civil Procedure Law, First Edition, Amman: Dar Wael Publishing and Distribution.
17. Wali, Fathi (1980) Mediator in Civil Law, Cairo.

II. Specialized references:

- 1- Ibrahim, Mohamed Mahmoud (1998), General Theory of Applications, Cairo: Arab Thought House.
2. Al-Hazmi, Ali bin Hassan (2010), intervention in the Saudi system of procedures, a comparative study, Master, Prince Nayef Arab University for Security Sciences, Riyadh.
- 3 - Ammari. Habib. (2012) Discount in civil suit, comparative study, Halabi rights publications.
- 4- Omar, Fares Ali (2009), Intervention in the Civil Case, published research, Rafidain Journal of Rights, vol. 111
5. Nassar, Yaser Ali (2014), Intervention and Introduction Comparative Analytical Study of Palestinian and Egyptian Civil and Commercial Procedures, Master Thesis, Al-Azhar University, Gaza

III. Laws

- 1- Jordanian Civil Procedure Law No. 16 of 2006 and its amendments.
- 2- The Jordanian Civil Law No. 43 of 1976.
3. Iraqi Civil Procedure Law No. 83 of 1969 and its amendments.

IV. Foreign References

- 1-Civil Procedure www.encyclopedia.com
- 2-Non-joinder of parties in civil suits
www.legalserviceindia.com/articles/cpc.htm
- 3-www.leglfrance.gouv.fr

Copyright of Journal of Law & Political Sciences is the property of Journal of Law & Political Sciences and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.