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Right Of Merit In Civil Evidence - Comparative Study

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Abstract

It goes without saying that the Right of Merit is a special right that is of great importance as it is a remedy that limits the disadvantages of the system of restricting the evidence, which can not be dispensed with for justice and stability of transactions, it is necessary that this right to give an opportunity to those who were safe from the Kid's opponent, The person who claims the right to a certain property, such as claiming ownership of things that are reserved, for example, must first prove ownership of the money. If the plaintiff proves his entitlement to these reserved objects, he should The Court's amendment of the Meeting itself and without the need to request from his opponent to the right of the Astthbat he did not sell this money and did not give him to one and did not get it out of his property in any way possible faces. The right does not arrive at the court unless it is fully proven to the full benefit of the money by means of legal evidence. This right is obligatory because it obligates the court to direct it despite the complete evidence before it, because the plaintiff has in fact proved his case and the court has no discretion in directing it or not. It is necessary to direct it on its own because the law is this evidence is incomplete in the case originally, and must be strengthened by a complementary right is right of merit that the plaintiff did not sell this money and did not give it to anyone and did not get out of his property.

Derecho al mérito en la evidencia civil - Estudio comparativo

Resumen

No hace falta decir que el Derecho al Mérito es un derecho especial de gran importancia, ya que es un remedio que limita las desventajas del sistema de restricción de la evidencia, que no puede prescindirse de la justicia y la estabilidad de las transacciones, es necesario que este derecho de dar una oportunidad a quienes estaban a salvo del oponente del niño. La persona que reclama el derecho a cierta propiedad, como reclamar la propiedad de cosas que están reservadas, por ejemplo, primero debe probar la propiedad del dinero. Si el demandante demuestra su derecho a estos objetos reservados, debe enmendar la Corte de la propia reunión y sin la necesidad de solicitar a su oponente el derecho del Astthbat, no vendió este dinero y no se lo dio a uno. No sacarlo de su propiedad de ninguna manera las caras posibles. El derecho no llega al tribunal a menos que se demuestre por completo que beneficiará al dinero por medio de evidencia legal. Este derecho es obligatorio porque obliga a la corte a dirigirlo a pesar de la evidencia completa que tiene ante sí, porque el demandante ha probado su caso y la corte no tiene discreción para dirigirlo o no. Es necesario dirigirlo por sí solo porque la ley es que esta evidencia está incompleta en el caso originalmente, y debe fortalecerse con un derecho complementario, es derecho al mérito de que el demandante no vendió este dinero y no se lo dio a nadie. no salió de su propiedad.

an introduction

The Right of Merit is one of the legal means of civil evidence known in Islamic jurisprudence, which is the historical source provided for in the law. In general, it is the right of evidence to be exchanged by the judge for a personal case and strengthens the original evidence obtained by the seller. The sale is committed to several obligations, including the obligation to guarantee exposure and entitlement, and the benefit is undoubtedly intended to claim the person that the owner of the sale or that he has another right to him, the judge will choose the right of his own legal right directed to the right claimant who has earned the money and proved his claim, that he did not sellThe money and did not give him to one and did not get it out

of his property in any way whatsoever.

This is the importance of this study by answering questions raised continuously, trying to answer the basic question concerning the philosophy of this right in the civil judiciary in particular? And of course, there are a number of questions under this question: what is meant by the right of merit, and why is it the right of proof, what are its characteristics, the position of the Islamic jurisprudence and the laws thereof, and what are the characteristics of others? Based on the analytical and comparative approach to Islamic jurisprudence, besides the Iraqi Law of Evidence, we find that there are laws such as the Syrian Evidence Act and the Jordanian Evidence, as well as our adoption of the applied approach that strengthens the legislative and jurisprudential positions in the relevant judicial judgments. Arabic.

This right is characterized by some ambiguity both in terms of scientific or practical, and this is one of the reasons for our choice of this subject, which was not touched by one before us, as he did not discuss this subject enough accurate research specialist collects the issues from the stomachs of mothers of books, Of the attention and study, the studies dealt with almost completely non-existent, which is one of the many difficulties that surrounds such a subject was chosen from within the doors of the judiciary, which is described as the abstainers and not abstainers, as well as the multiple dimensions of this philosophical subject and depth, it enters the field of legal evidence And The judicial process and the consequent, and this attempt may illuminate the way to other attempts come after it may be combined to achieve what they set up to the satisfaction of God to serve Islam and Muslims and justice, right and science.

Finally, the structure of the research is divided into two sections. In the first section, we discussed the concept of the right of entitlement in two cases. The first dealt with what is the right of entitlement, and the second included distinguishing it from what is suspected. The first was about: the legitimacy of the right of merit, and the second included the provisions of the right of merit, and there was a conclusion: included the conclusions and recommendations.

The first topic / concept of right of merit

The Right of Merit is the right of proof of the matter and a manifestation of the truth. It is important because its purpose is to protect rights. It has started to protect rights from loss by showing the truth if it is proved to be its right. The right here is a right that involves something hidden. And the judge then directs him to swear by this oath. The law in his view considers

this evidence to be incomplete. It is necessary to reinforce it with another evidence, which is the complementary right. To highlight this, the topic should be divided into the following two requirements:

First demand / what is the right of merit. The second requirement / right-of-right distinction is suspected.

First demand / What is the right of the calendar

The clarification of the linguistic concept of any concept certainly helps to define and understand its meaning without overlapping or interfering with other matters. This is what we will explain in the following two sections:

Section I / the meaning of the right of merit. Section II / Characteristics of the Right of Merit.

Section I / the meaning of the right of merit

To clarify the meanings of the right of merit was to clarify the meanings of language and terminology, within the following two destinations: - The first destination / the meaning of the right of merit in the terminology of language. The second destination / meaning of the right of merit in the legal term. The third destination / the meaning of the right of entitlement in the legal term.

The first purpose / meaning of the right of the calendar in the linguistic term

The right means the language of power, power and division, and the combination of Ayman and Faith. It has been said that they were called because they were ignorant if they allied each one of them with his right hand to the right of the owner. Hence one of the hands was called right because it is stronger than the other. كُتُّ رُتُّ (2).

The interpretation of the verse says that if the Prophet (peace and blessings of Allaah be upon him) said: “If the Prophet (peace and blessings of Allaah be upon him) They claim to be proud of us .. We retaliated against him by the right because they are more severe in oppression. Ibn Abbas said: “The heart is bent, and it is the race in which the heart is suspended” (4).

The maturity of the debt is as follows: “Maturity”: Collection of entitlements to non-source: 1 - Source of maturity. Merit: A fine awarded by the State, an entitlement fee: a fine to be paid against an investor when he sells or withdraws his share before the maturity date of any investment project.

And deserved deserved, deserved, and deserved, due, it is due, and the effect is due to the infringer, deserved the thing and deserved the right: required, deserved and was worthy of the injured deserved compassion

- deserved the reward of appreciation thanks reverence and dignity - an incident worth mentioning: is important in this place - : He is subject to his punishment, it is not worth the sweet one who did not taste the acid, Allaah says (interpretation of the meaning): A sin to lie in the testimony (7).

, And the due: the annexation of the Mim and the opening of H .. Those entitled to the eye is entitled: if proved to be his right (8), deserved the thing and ordered the wrong and the punishment of his punishment (9).

It is stated in the dictionary: deserved: required, and in the mediator: deserved the thing and ordered: required, so the creditor is entitled to the name of the actor, and religion is entitled to the name of the effect “(10).

What is due is that it is proven to someone other than the one who is in his hand that he has a right in which he has a debt that is due.

Thus, the meaning of the right of merit in the linguistic term is the section of the merit of the thing because the owner of the right to it, it is intended to merit the language of two meanings: 1 - proven right and his due is said to deserve so what is required.

Section II / meaning of the right of merit in the legal terminology

There is no doubt that the right of merit was known in Islamic jurisprudence, as stipulated in the Code of Judicial Judgments in Article 1746, secondly, that “... Second: if a person deserves money and his claim proves that his ruling party did not sell this money and did not give it to anyone, He takes him out of his property in a face ... “(12).

This text of the article is a fact is the historical source of the Iraqi legislator when he put the legal article that belongs to the right of entitlement, it is derived mainly from them (13).

It is stated in the explanation of the exclusions of this article that ... (2) When a person is entitled to money and on the basis of denial of the receivable, the plaintiff proved his claim by evidence. The plaintiff judges the plaintiff that he did not sell that money and did not give it to anyone and that he did not get him out of his property in a way. If the beneficiary acknowledges that the money due is owed to the plaintiff or the request of the debtor to not entitle the right holder, it is apparent that the right is not sworn in the said manner. According to this paragraph, In the Maturity Section, which invalidates the property, Require ...) (14).

As stated in the text that “the definition of the right of merit is defined, it is acceptable to express the right to ask third parties” (15).

It should be emphasized that the Muslim jurists originally did not take the oath in general in the case before the judge definition, they knew the right a comprehensive definition of all types, has known Imam Bagawi oath as “to

achieve the command or confirmation of the name of God or a description of his qualities”), As defined by Al-Haafiz Ibn Hajar as “the confirmation of the thing by mentioning the name or attribute of God” (17), and we emphasize here the universality of all these definitions and lack of competence in the right of Merit subject matter of research and study, and what is required in the definition to be inclusive, And prevents at the same time from entering the qualities of others in it with a brief in the game And it is the general oath that the jurists talk about in the sections of faith and vows in the books of Islamic jurisprudence. It is clear from the foregoing that the definition of the right of entitlement is Sharia. It should be noted that there are two definitions: First: A general definition which is (pan) Section to confirm the order), and second: - undo It is a special (which are right for discounts and lawsuits).

Finally, the chosen definition of the right to maturity is our modest estimate of “confirmation of the matter at the request of the judge to mention the name or character of God as special tapes directed to the plaintiff who has earned the money and proved his claim that he did not sell this money and did not give it to anyone and did not get out of his property in any way.

This definition includes the definition of public and private, and we find that the definition of the choice has addressed the statement of what is the right: it is a (confirmation of the thing) as its corner: to be mentioned (name or attribute of God) and referred to their own conditions:) And this alliance is bound by the most important distinguishing features: it (to be at the request of the judge), and went to the plaintiff who earned the money and proved his claim, that he did not sell this money and did not give it to anyone and did not get him out of his property in any way.

The third purpose / meaning of the right of entitlement in the legal term

It should be noted that this article / 1746 - II of the Journal of Judicial Judgments was quoted literally to Article / 124 - Second of the Iraqi Evidence Act, which “If a person is entitled to the money and has proved his case, the court will agree that he did not sell this money and did not give it to anyone and did not remove it from his property in any way ...” Article 123 / B of the Syrian Evidence Law, Article (54) of the Jordanian Evidence Law came in the same sense, but it is different in wording only The provisions of Article 83 of the Jordanian Civil Code and Article 120-2B of the UAE Civil Transactions Law, and no similar provision is provided in other comparative laws.

In the above, we refer to the Jordanian Civil Code, the Jordanian Evidence

Law and the UAE Civil Transactions Law. It was taken into account by the court, and it was sworn by the court, even if the opponent did not request and did not mention its wording or when it was sworn or sworn.

This oath was defined as “the right that the court directs on its own in judgment of what the opponent claims or compels the claimant of merit if the defendant dies during the pleading prior to passing judgment on the heirs.”

And we appreciate that the conventional meaning of the benefit is undoubtedly close to the linguistic meaning that we mentioned earlier, which is intended to claim the person that he owns the sale or that he has another right on him and be able to prove his claim and obtain a judicial ruling, And that he swear by God that what he sold and did not give him and did not get out of his property, it is the right of the evidence, the judge will swear by a personal incident, and strengthens the original evidence that he drew and taken from the evidence provided to him, who claims ownership of things reserved, for example, must first prove his ownership of this If the claimant has proved his entitlement, Court of FH on its own this right, he did not sell this money and did not give him to one and did not get it out of his property in any way, this right is no evidence in the judgment, and up to Thalivha only after testing maturity.

Thus, in a decision of the Court of Cassation of Iraq, it was stated that “... the court shall have the right of entitlement and the right of invocation to the court if the defendant dies during the pleadings before issuing the judgment on the paper ...”.

The Jordanian Court of Cassation also ruled that “Article 54 of the Jordanian Evidence Act and Article 1746 of the Journal require the court in the cases of merit to direct the right of entitlement to the plaintiff without the need for a request from the defendant”.

Finally, we can define the meaning of this oath as a legal right and a right directed by the judge on his own to the plaintiff who has earned the money and proved his claim, that he did not sell this money and did not give it to anyone and did not remove it from his property in any way.

Section II / Characteristics of the Right of Merit

The right of merit is characterized by several characteristics which can be summarized as follows:

- 1- It is a legitimate right, ie its source is Islamic law, which is legitimate in Islamic jurisprudence.
- 2 - It is a legal right as it is a basis of legal means known evidence, quoted by the laws of Islamic jurisprudence, and is usually within the civil suit

performed in the Council of the judiciary exclusively, it is also a judicial right, and this is certainly a fundamental characteristic of the oath of this oath other than the non - judicial faith Which are not usually brought before the courts and which are usually agreed upon by the parties outside the Judicial Council. The legislator has not generally regulated its provisions, and the agreement is subject to general rules, which are often very common.

3. It is usually performed by one of the litigants in the case, namely the plaintiff, the right-to-claim claimant.

4 - It is directed by the court and on its own. The judge asks the plaintiff to swear oath that he did not sell this money and did not give it to anyone and did not get rid of his property in any way, after he proved his claim for the money.

5 - it is an integral right and right, this right with our modest estimate is a special image of the right wing complementary usually in certain circumstances, we have attached to the right complementary to come to complete the evidence seen by the law is incomplete to be completed, as well as it is directed by the judge, The law is the one that imposed it and therefore it is obligatory. In other words, the judge is obliged to direct it in certain circumstances to one of the particular adversaries appointed by the law and has no discretion in directing it not to direct it. The judge is required to direct it on his own initiative. It should be strengthened by Pem Yen is complementary and sweet.

6 - The purpose is to show the right is the right to protect the rights from loss, and is one of the most important legal and legal means that were found in order to protect the right of the dispute or abuse, so the right to protect the rights of loss and non - aggression.

The second requirement / right-of-right distinction is suspected

It is natural that there are sometimes similarities and conditions between the right of entitlement and other legal conditions such as the complementary faiths of the bourgeois as well as the right of memorization, they are similar in places and differ in other places, so our study requires clarification of these matters successively through the following two sections:

Section I / The distinction between the right and the right of the complementary faith of the bourgeoisie.

Section II / distinction right of right from the right of memorization.

Section I / The distinction between the right and the right of

the complementary faith of the bourgeoisie

We can explain the most important differences between the right of merit and the faith complementary bourgeois as follows:

I. The similarities between the right of merit and the complementary faith of the bourgeoisie:

1. Each of them has been attached to the complementary right as it comes to complete a incomplete guide, either to be deemed incomplete by the law, to be completed and supplemented by the right of entitlement imposed by the law, or may be deemed incomplete by the judge and need to be completed by the juridical complementary right, In order to complete his conviction and complete the lack of evidence to move in an effort to reach a fair government and to ensure the proper application of the provisions of the law.

2 - that each of them agree among the aspects of merit - which is one of the images of complementary faith obligatory - consistent with the faith complementary bourgeois in the most important aspects, it can not be sworn to the other opponent because it is a form of the right complementary and thus apply to the provisions of Article / 123 of the Iraqi Law of Evidence, which states that “the opponent to whom the court has directed the complementary right is not entitled to respond to the other adversary”, which is identical to Article 124 of the Syrian Evidence Act, Article 70 of the Jordanian Evidence Law and Article 120 of the Egyptian Evidence Law , Article 252 of the Lebanese Code of Procedure and article 349 Of the Algerian Civil Code and Article 62 of the UAE Evidence Law. 22 Thus, it is not part of the decisive oath that allows the right of the other opponent to be sworn in. It is directed by the judge rather than the adversary, because it is a means to complement the conviction of the judge, , So that this may be returned to the judge to the conscience of his opponent, who is directed to the right, as in the case of the decisive right (23).

Second: The differences between the right of merit and the complementary faith of the bourgeoisie:

1. The right-of-merit is different from the bourgeois complementary belief that the judge is obliged to direct it in the case specified by the law, and does not have the discretion to direct it, as is the case in the complementary faiths of the bourgeoisie.

2. The judge on the right of entitlement shall not elect any of the adversaries to take the oath, but the law shall set forth this deduction in advance, whereas in the complementary right of the court the judge shall have the option to refer it to one of the adversaries, The right of an offender to one

of the litigants in the case - the plaintiff or the plaintiff - is based on the presumption of ratification in favor of one of them - except for the oath of the calendar. Determine the discount to which he will be directed Right beforehand in the law - and the result of the right-of-obligation alliance or the renunciation of it is binding on the judge, contrary to the complementary faith of the bourgeoisie.

The right of entitlement is not directed unless there is complete evidence and the case has been proved, but the law considers it incomplete and must be completed by it. The complementary right, which is part of the complementary faith of the bourgeoisie, is not directed unless there is incomplete evidence that includes the principle of legal certainty, Any incomplete legal evidence which would make the existence of the alleged right probable, the judge may complete his partial conviction, and complete it with the right to complete it as a complete guide and then build his judgment on the merits of the case. 24 The evidence is essentially the entire right-However, the law requires the judge to enforce this His right to prove the truth and show it.

Second Destination / Right-Right distinction from the right of memorization

We can explain the most important differences between the right of maturity and the right of memorization, as follows:

First: The similarities between the right of merit and the right of memorization:

1 - Each of them can be categorized by our humble assessment within the obligatory complementary faiths because they are really legal beliefs imposed by law, and they are right and obligatory because they oblige the judge to direct them and have no discretion in directing them or not. The judge needs to direct them on his own. Is not complete in the case of the law and must be strengthened by an integral right.

2 - Both are judicial, ie they are in a civil suit in the Judicial Council exclusively, they are confirmation of the thing at the request of the judge to mention the name or character of God as a specific tape, and this is certainly a fundamental characteristic of these beliefs from the rest of the faith is not judicial, It is either the right of invocation that the plaintiff did not meet his right in any way. The person entitled to the money provides a relative proof of the king, so that this evidence shall be supplemented by a complementary right and a complementary legal sentence Is the right of invocation that the money did not come out of his property in the face of Or that the right is the right of merit, where the original evidence obtained

and the evidence presented to it is reinforced, the person who claims ownership of reserved objects, for example, must first prove ownership of the money. If the plaintiff proves his entitlement, The right of merit is that he did not sell this money and did not give it to anyone, and he did not remove it from his property in any way. This right is not a guide in the ruling, and it does not reach its conclusion until the benefit has been proven.

3 - Both are a legal right and a right directed by the judge on his own to the plaintiff - at the right of invocation to the plaintiff of the right to the estate, which proved his right that he did not meet the right himself or other than the deceased and his father and not transferred to others or fulfilled his religion from others and not the deceased in exchange for This right is guaranteed - on the right of maturity, he is entitled to the money and proved his claim, that he did not sell this money and did not give it to anyone and did not get rid of his property in any way known, and both were known in Islamic jurisprudence (25).

Second: The differences between the right of merit and the right to memorize:

1. The judge in the cases of merit should direct the right of entitlement to the plaintiff without the need for a request from the defendant, and the judge will voluntarily swear by himself that the plaintiff who has earned the money and proved his claim that he did not sell this money and did not give it to anyone and did not remove it from his property in any way, And the original evidence obtained by the court shall be strengthened until it is validated only after the entitlement has been established. The right of entitlement is the right of the judge's oath of allegiance to a personal case, and the original evidence obtained by him shall be strengthened and taken from the evidence provided to him. Funds, if the plaintiff proves worthy The court, by its own accord, swears this oath, while the right of invocation as we have shown in the oath of allegiance has not been fulfilled in any way.

2. The right-of-merit effects also have the effect that if the plaintiff who has earned the money and proves his claim has won, he will earn his right and judge him with the money he is entitled to, because this oath is in fact a conciliatory oath by the judge on a personal case to reinforce the original evidence The evidence presented to him, this oath is not a guide in the ruling, and does not reach the alliance only after the confirmation of merit, but if we complain about the oath and did not swear the plaintiff lost his case, because this oath is legal imposed by the law, and the evidence here is fundamentally deficient in the eyes of the law And it came to complete

a guide that the law sees The judge is obliged to direct them in certain circumstances to one of the particular adversaries appointed by the law, while the right-of-memorization alliance proves his right to the estate as an effect, but if the left wing and did not swear the plaintiff also lost his claim. The second topic / The legitimacy of the right of maturity and its provisions

The right to action should be inferred from the evidence of the original agreed transport provisions. In the cases of merit, the right should be directed to the plaintiff without the need for a request from the defendant. The plaintiff is entitled to the money and proved his claim. And usually in the civil suit and lead in the Council of the judiciary exclusively and to know the provisions and the statement of conditions and effects, and for the purpose of comprehensive briefing of the subject must be divided into two requirements are as follows:

First demand / legitimacy of the right of merit. Second Requirement / Right of Merit Provisions.

First demand / legitimacy of the right of merit

In the beginning, the legitimacy of this oath must be drawn from the evidence of the Shari'a rulings that indicate its legitimacy in Sharia. We therefore indicate the legality of this oath by law. This will be explained in detail in the following two sections:

Section I / Jurisdiction of the Right of Merit Sharia. Section II / legitimacy of the right of entitlement law.

Section I / legitimacy of the right of merit Sharia

The evidence contained in the Islamic jurisprudence on the legitimacy of work on the Right of Merit can be deduced from the evidences of the original Shari'a rulings agreed upon, namely the Book and Sunnah. This will be explained in detail within the following two categories:

The first purpose / to infer the legitimacy of the right from the Book of Allaah.

The second purpose / to infer the legitimacy of the right of the year and the sayings of scholars.

The first purpose / to infer the legitimacy of the right of merit from the Book of Allaah

In the Book of Allaah, there is evidence indicating the reference to this oath in the story of the commandment in traveling (26), in the verse: "And then there is a pilgrimage to Mecca, a pilgrimage to Mecca." A hole in the trap (27).

In the interpretation of the verse, what is written is: (Omar said this is what

is in the sura of the rulings, if you know that the two witnesses required a betrayal and take them what they do not have false right or false testimony are based on their position in the faith or in the certificate of those who deserved to preach in Halvan The other two, which serve as witnesses - that the owner said in his will right and that the money that he has made to you was more than you trust him and that this gift to the owner of the owner who came out with him and wrote in his will and you are betrayed - Viminna right of their right Vashah that the certificate may be meaning Right and beyond the right in our section That we have sworn to falsehood and taken what is not ours "(28).

The wise came to make the faith to the plaintiffs when the appearance of the louse, ie the mark or the evidence of the truth of betrayal of the testers, so he proceeded to them to turn right and complementary, And this is pure justice, and according to the fundamentals of sharee'ah, and it is necessary for the correct measure to complete this weak evidence from the incomplete evidence and to reinforce it with this oath to become a complete proof.

The second purpose / to infer the legitimacy of the right of maturity of the year and the sayings of jurists

He said: If some of the heirs of the slain who is killed are wrong, he wants to take the fatwa as much as he deserves from it, and his companions do not take it, and he is not entitled to anything, If he swears fifty oaths, he is entitled to his right from the fatwa, so that the fatwa is not proven until fifty right, and the fatwa is not proven until the blood is established. If one brother comes to the mother, he has a sixth, and therefore from the sixth faith, it is the oath of his right, and the right of the champion of the right thereof, if some of the heirs absent or a boy Did not reach the dream, the alliance of those who attended to the extent of his heirs of blood, and if the absent is then a pact, and if the boy dream dream, they swear on the fate of And anorexia of blood money, as far as Muarithm Mnha.qal: This is the best of what I heard, "(30).

There is no doubt that the right-of-merit right was known in Islamic jurisprudence, as stipulated in the Code of Judicial Judgments in Article / 1746 - second, as mentioned earlier, and it was based on the legitimacy of this oath in what Imam Abu Yusuf of the Hanafis, Malikis and Shaafa'is had said, The court can swear by the plaintiff that if he claims ownership of the money that is not in his hand after proving his ownership of what he claimed to be evidence, the right of the right may be explained to the

plaintiff. Giveaway or other ways (31).

As stated in the text of “is the words of Ibn Rushd Albaji claimed that the depositor damaged the deposit and claimed the applicant infringed upon the sincerity of the depositor, but to accuse the owners of the owner of the owner, said Ibn Abdel Hakam: Nkl contained within the right is not here: Ibn Zarkun: “The son of Kenana and some of the sheikhs of Ibn Abi Zam-anin have finished” (32).

It is also said that “he said after the alliance of the mention of entitlement obtained that this oath called the right of merit has been said some of it to make it clear that it is ahead of the establishment of evidence.”

Thus, it is clear to us from the above that this right is legitimate in Islamic jurisprudence and it has been inferred from this legitimacy through the Book of Allaah and Sunnah and the sayings of the fuqaha ‘of the righteous salaf.

Second Requirement / Right of Merit Provisions

There is no doubt that the right of entitlement is a legal rule that distinguishes it from other types. It should normally have legal conditions. Therefore, it is necessary to examine these conditions and to identify them first, and then to radicalize the effects of this oath in accordance with the following two sections:

Section I / Conditions of Right of Merit.

Section II / Effects of the Right of Merit.

Section I / Conditions of Right of Merit

A right-of-maturity directive is usually required for the availability of several conditions that can be clarified as follows:

- 1- The plaintiff of the money has earned the money and has proved his claim.
2. The judge may, on his own initiative, be sworn in as a right-hand person.
- 3- The right of entitlement shall be performed by one of the two adversaries exclusively, the plaintiff entitled to money by mentioning the name or attribute of Allaah. The wording of the right is to swear that he did not sell this money and did not give it to anyone and did not remove it from his property in any way.

Section II / Effects of the Right of Merit

On the right of maturity, a number of effects are as follows:

First: - Effects of the right-hand alliance:

The right of entitlement, as we have mentioned, is a legal right and a right directed by the judge on his own behalf to the plaintiff who has earned the money and proved his claim, that he did not sell this money and did not give it to anyone and did not get rid of his property in any of the known faces. If the conditions that we mentioned to guide This right should be interpreted by the judge as a right that he did not sell this money and did not give it to anyone and did not get rid of his property in any way possible. If the plaintiff swears he earns his right and the money he deserves, because this oath is actually a proof A personal fact to reinforce the original evidence he drew and took from The evidence submitted to it, this right is no evidence in the judgment, and not up to Thalivha only after testing maturity.

The evidence here is fundamentally deficient in the eyes of the law. Therefore, the law was legally sworn in, and it was called a legal right. It came to complete a guide that the law deems incomplete and intended to be completed, and that it is directed by the judge exclusively without the need of a request from his opponent. In certain circumstances, to one of the particular adversaries designated by law.

Second: Effects of the right-of-

However, if the claimant of the money who proved his right to swear by the oath explicitly or implicitly loses his claim and rejects it, because this implies that he is not entitled to the money, the evidence remains incomplete in the eyes of the law. The judge is obliged to direct them in certain circumstances to one of the particular adversaries appointed by the law and is the plaintiff of the right. In this regard, the third person may not be sentenced to a part of the money that is the subject of the case without the oath of this right which shows his entitlement, Accordingly, a decision of the Court of Cassation states that “The plaintiff claimed by her agent before the personal status court in Hilla that the defendant is her husband who is legally and legally involved and her marriage furniture was attached to her particulars in the petition so she asked to attend the pleading and the decision to extradite her in kind and that she was unable to pay her fees, 12/2007 and No. 4632/2007 / a judgment in the presence of the first / obligate the defendant to hand over the plaintiff’s marital furniture in kind and could not be assessed against each paragraph. Second, the following furniture shall be entrusted to the third person as mentioned in the ruling.

Third: Responding to the claim of the plaintiff. The parties shall bear the fees and the relative expenses and the defendant shall bear the fees of the lawyer of the plaintiff and the plaintiff shall bear the fees of the lawyer and his defendant agent. The plaintiff's agent appealed the above-mentioned ruling to his decision of 10/1/2008 requesting a revocation for the reasons stated therein. Decision: - At the scrutiny and deliberation found that the challenge of discrimination filed within the legal period decided to accept form. The court ruled that the court ruled for the distinguished person / third person in the section of the furniture subject to the suit without having to swear the right of entitlement provided for in article 124 / second of the law of evidence. Therefore, he decided to overturn the privileged judgment and reinstate the case To its court to follow the above provided that the discrimination fee remains the result of the result and the decision was issued by agreement on 26/14 / 1419H corresponding to 1/4/2008 “.

Conclusion

Through the study we have reached several results, which we have installed in the places of study, and I will suffice here to refer to the most important of these findings and recommendations that we reached, as follows:

First: Results:

1. We have concluded that the complementary right has images and sections in terms of the judge's discretion in directing them. We divided them into two parts: 1) includes the complementary judicial, judicial, and judicial principles, which the judge may direct from not being directed according to his discretion and conviction with the evidence before him; Where the judge is obliged to direct them as long as the situation established by the law has been achieved, that is, he does not have the discretionary power to direct them.

2 - We have shown that the obligatory complementary faith includes several different images of several legal legislation collected in this type, including the right of entitlement These images were attached to the right complementary to come to complete evidence that the law considers incomplete and wants to complete it, and therefore the judge obliged to direct to one The two adversaries appointed by the law, and therefore is bound by the outcome of the alliance or renounce it, and that we called it the rightful complementary rightful right.

3. We have concluded the most important differences between the right of entitlement and the complementary faith of the bourgeoisie, and found that the judge on the right of merit, as well as that he is obliged to direct

the right to one of the litigants himself, the claimant of the entitlement of money and proved his right and therefore the judge is obliged to take the result, We have observed the extent of the discrepancy between the laws of comparison in the introduction of some of these images of the complementary faith, among the sections of the right complementary task is the right of merit, has been attached to the right complementary because it comes to complete the evidence seen by the law is incomplete, wants to complement and supplement these special images from the right Complemented Alojobeh imposed by law, or the judge may deem incomplete to complete oath setting calls for complementary judicial Jawazah.

Second: Recommendations:

1. We recommend that the text of Article 121 of the Iraqi Evidence Law be amended to read as follows: "It is required to direct the complementary right that the case shall not be a complete evidence and the case shall not be void of any evidence so that the principle of legal certainty is available."
2. We propose adding paragraphs IV and V to Article 124 of the Iraqi Evidence Law by transferring Article 308 first and second of the Iraqi Code of Procedure No. 83 of 1969 as amended and making it as Articles IV and V of Article 124. In the text of one article and in the appropriate law for it is the law of proof, and this is the correct and appropriate place with the rest of its other images instead of dispersion thereof, and that its existence within the law of pleadings is not appropriate and free of interest, as it is known that the right in general is a method of proof Where their applications are f The law of proof, especially since it deals with the images of the complementary faiths of the bourgeois and the positive, so that Article / 124 of the Iraqi Law of Evidence has become according to the following formula: "The court shall swear on its own in the following cases: First - If anyone claimed in the estate and proved right, That he has not fulfilled this right himself or in any other person who died in the face of his father or his family and did not transfer it to others and did not fulfill his debt from third parties and not to the deceased in exchange for this right. Remove him from his property in a face. Third - If the buyer wants to return the sale for the defect of his alliance court that he did not satisfy the defect explicitly or signifying. 4 - If the wife asked for alimony in the money of her absent husband and set the evidence on her claim, swear oath in the following formula - and God that my husband did not leave me a maintenance and nothing of the kind of alimony and I was not an absolute or divorced divorced my aunt. Fifth - if a husband other than the father and small grandfather of the efficient And by virtue of ideals and reached

Vakhtart herself to maturity and requested the dissolution of the marriage and the separation between them and between her husband and established the evidence on the oath of the right wing in the following formula: - God I chose myself time Bluge -.

In this way, article 124 of the Iraqi Evidence Law has become in its five paragraphs combining the special provisions of the obligatory legal right in one article instead of the existing dispersion of the legal texts in several laws and also combining them into one law and the appropriate law for it, the law of proof, And its existence within the law of pleadings is not appropriate and free of interest. Filmin generally is one of the methods of judicial evidence known and its applications are located in the law of evidence, especially since the law of evidence deals with judgments etc. The right to recite the right of recitation, secondly the right of merit, third of the right of the sale reparation for a defect in it, the fourth of the right of alimony on the absentee, and the fifth of the right of the group. We propose adding the right of the band and make it also within the nine cases of judicial differentiation provided for in Article 43 of the Iraqi Personal Status Law No. 188 of 1959 as amended and to be a tenth paragraph.

2 - We recommend intensifying comparative legal studies by laws and returning legal legislation in the Islamic world to the Islamic jurisprudence to guide them from its methodology and rulings.

3 - We recommend to return legal legislation in the Islamic world to the principles of Islamic jurisprudence blessed to take them from his approach and take the provisions and assets that are fair and equitable.

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12. In this regard, it is worth mentioning that article 1747 of the Code of Judicial Judgments stipulates that “if the defendant commits the request of the opponent before the Governor assigns it, he shall not be considered his right and he shall be sworn in by the Governor again,” meaning that “The ruler, as well as if the governor’s alliance without the request of the opponent is not considered his right and swear repeatedly at the request of the opponent, except in the places excluded in the previous article and explained in Hindi and the intruding takes place in the right actions without corrupt ... “For more detail, see: Salim Rustom Paz, Arab heritage, Beirut, without a year printed, p. 1021; Ali Haider, Dharr referees explain the magazine “See also: Selim Rostam Baz, op. Cit., Pp. 1021-1028; and Ali Haider, Reference, p. Ibid., P.

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25. Article 1746: First and secondly, the Code of Judicial Judgments, which states: "It shall not be sworn to except at the request of the opponent, but it shall be sworn by the Governor in four places without the first request: if one of the estate claims a right and proves it in his ruling, This right is the right of himself and no other than the dead face and no father and no referral to others and full of one side and not the dead in exchange for this right is pledged and said to this right of memorization ... II: If one of the money deserved and proved his claim to his ruling that he did not sell this money and did not give him To one and did not get rid of his property in a face ... ".

26 - It should be noted that the summary of the story of the commandment in travel was reported by Ibn Abbas said: "A man from the sons of a share with Tamim al-Dari and Uday bin Dara died in the arrow with a land not a Muslim, when he left with his left lost a silver bar gold gold, The

two witnesses said that there was a Jam, then the Prophet of Allah found them. Then he found the Jam in Makkah, and the buyer mentioned that he bought it from the guardians of Tamim and Uday. So two of the Sadiq's two brothers stood up to our testimony, Abi Dawood Sulaiman Al - Ashath Al - Sijistani Azadi, Sunan Abi Dawad, I Sons, Egypt, 1952 C 2, p. 276 "door certificate dhimmis in the commandment to travel."

27 - Surat Al-Maida / verse 107.

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