

Judicial Expertise and its Evidentiary Weight in Jordanian Legislation

الخبرة القضائية وحجيتها في التشريع الأردني

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Abstract:

Objectives: The study aimed to clarify the concept of judicial expertise and to identify the legal nature of judicial expertise from both a jurisprudential perspective and the standpoint of Jordanian legislation.

Methods: The study adopted the descriptive and analytical approach by describing and analyzing the legal texts regulating judicial expertise in Jordanian legislation.

Results: The study arrived at a number of findings, most notably that the expert's role is limited to clarifying certain matters that fall outside the judge's area of specialization, such as issues related to technology. The judge retains the final authority in deciding whether to rely on the expert's report, as the ultimate responsibility for adjudicating the case rests with the judge.

Conclusions: The study recommended that the Jordanian Code of Civil Procedure include specific provisions governing the dismissal of experts, since current articles focus on judges and overlook the functional and legal distinctions between the two roles. Given the differing legal positions of judges and experts, the researcher emphasized the need for tailored legislation to regulate expert dismissal more accurately.

Keywords: Expert; Judicial Expertise; Challenging the Expert.

الملخص:

الأهداف: هدفت الدراسة إلى توضيح المقصود بالخبرة القضائية، وبيان الطبيعة القانونية للخبرة القضائية من وجهة النظر الفقهية والتشريع الأردني.

المنهجية: اعتمدت الدراسة المنهج الوصفي التحليلي من خلال وصف وتحليل النصوص القانونية التي تنظم الخبرة القضائية في التشريع الأردني.

النتائج: توصلت الدراسة لمجموعة من النتائج أهمها أن مهمة الخبير تقتصر على توضيح بعض الأمور الخارجة عن اختصاص القاضي، كالأمور المتعلقة بالتكنولوجيا، وللقاضي الكلمة الفصل في اعتماد رأي تقرير الخبير، إذ يقع عبء الفصل في الدعوى على عاتقه.

الخلاصة: أوصت الدراسة بضرورة تضمين قانون أصول المحاكمات المدنية الأردني نصوصاً خاصة تنظم رد الخبراء، وذلك لأن المواد الحالية تركز على رد القضاة وتتجاهل الفروق الوظيفية والقانونية بين الدورين. وبالنظر إلى اختلاف المراكز القانونية لكلٍّ من القاضي والخبير، شدد الباحث على أهمية سنّ تشريع خاص ودقيق ينظم رد الخبراء على نحو أكثر ملاءمة.

الكلمات المفتاحية: الخبير؛ الخبرة القضائية؛ رد الخبير.

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1 Introduction

The Jordanian legislator has settled on specific evidence to prove committed crimes, convict perpetrators, impose appropriate penalties, achieve general and specific deterrence, and realize justice. A review of the provisions of the Jordanian Code of Criminal Procedure and the Law of Evidence reveals that two types of evidence are adopted: direct evidence, represented by confession and testimony, and indirect evidence, represented by expertise, written documents, and presumptions. All these forms of evidence are subject to the principle of judicial conviction, granting the judge broad authority to assess the evidence presented and accept it if convinced, or disregard it if doubts arise concerning any evidence, and the judge is not fully convinced.

Judicial expertise possesses a technical quality that prevents the judge from deciding on the matter presented without assistance, as the judge relies on expertise to understand the nature of the technical operation. This expertise serves as a basis for the judge in obtaining information. Furthermore, expertise enjoys a judicial quality, as it empowers the judge to issue an order to refer a matter to an expert, whether at the request of one of the parties or by a decision of the court itself. Expertise is only initiated by a preliminary judicial order from the court hearing the dispute, dictating referral to an expert. It is important to note that the court has the right to accept or reject the expert's report, or to return the expertise file to the expert for completion. The court alone has the right to appoint the expert, determine the legal period, and decide whether the dispute before it requires one expert or more, as stipulated in Article (83) of the Jordanian Law of Civil Procedure.

It's worth noting that the court has the authority to either accept or reject an expert's report. The court can also send the report back to the expert to complete their work. The court can appoint an expert on its own initiative or at the request of one of the parties. The court also has the right to set the legal deadline and determine whether the case requires one expert or more. These provisions are outlined in Article 83 of the Jordanian Code of Civil Procedure

1.1 Research Problem

When a dispute arises between two parties before the court, either party has the right to submit a request for technical expertise, and the court has the right to initiate judicial expertise on its own initiative. Hence, the research problem is articulated in the main question: What are the foundations upon which the court relies to conduct judicial expertise?

1.2 Research Significance

The significance of this research lies in the fact that judicial expertise is considered a prerequisite for justice, and hardly any judicial dispute is devoid of judicial expertise in reaching the truth through the judicial expert's opinion on technical and specialized matters. Moreover, judicial expertise is often decisive and influential in, and guiding for, the dispute presented before the court.

1.3 Research Methodology

To answer the main question posed in the research problem, the researcher adopted the descriptive and analytical approach by describing and analyzing the legal texts regulating judicial expertise in Jordanian legislation.

2 The Concept of Judicial Expertise and its Legal Nature

Expertise is considered one of the preparatory or preliminary procedures resorted to by the judge. The need for it has increased due to its importance in resolving cases of a special technical nature that the judge may not master, as these matters fall outside their general knowledge, such as engineering, medicine, and accounting. Therefore, the law permits the judge to seek the assistance of expertise, considering it a means of proof. Accordingly, this chapter will be divided into two sections as follows:

2.1 Defining Judicial Expertise

In legal terminology, expertise is defined as "a technical consultation undertaken by the court to obtain necessary information through specialists, in order to decide on all matters whose resolution requires scientific or technical knowledge that the court cannot encompass"(Al-Abboudi, 2005, P.231).

It has also been defined as "an investigative procedure intended to obtain necessary specialized information in any branch of knowledge through people of science and expertise in such matters, to enable the ruler to decide on technical issues that are the subject of dispute, and with the aim of reaching the truth that

enables them to decisively resolve the dispute in a way that satisfies their conscience and achieves justice. The judge only resorts to it if it is difficult for them to comprehend the technical matter themselves, and they resort to it particularly in cases where proof by witness testimony and presumptions is permissible" (Al-Shunaikat, 2008, P.393).

Furthermore, it has been defined as "an exceptional means of proof resorted to by the judge, either on their own initiative or at the request of one of the parties to the lawsuit, to seek the assistance of specialists in technical or scientific matters that necessarily fall outside the scope of their presumed understanding and knowledge, to comprehend and prove the details of the presented facts, while adhering to the conditions specified by law" It was also defined as: "the court appointing a person with specialized knowledge and expertise and tasking them with examining the subject of the dispute and providing their scientific and technical opinion on it" (Al-Saraira, 2021, P.36).

Looking at Jordanian legislation, we find that it has not defined judicial expertise but rather left the matter of its definition to jurisprudence. It referred to expertise within the texts of the Jordanian Law of Evidence No. (30) of 1952 and its amendments, specifically in Article (7) thereof, and the Jordanian legislator considered it a method of proof.

Given that judicial expertise is carried out by an expert in the technical matters presented before the judge, it is necessary to define the judicial expert, who is referred to as "a person not employed by the court who possesses special technical information, whose opinion the judiciary utilizes in matters requiring such information for their investigation, such as medicine, engineering, and others. Experts are assistants to the judge and come forward to resolve obscure points of investigation and to ascertain facts that only they can assess" (Haif, 2015, P.7).

He is also defined as "a person who has acquired scientific and technical knowledge through their specialization in a particular subject, whom the judicial authority assists in assessing technical matters to compensate for the judge's lack of information in these areas, thereby helping the judge discover the truth. To achieve this purpose, theoretical knowledge alone is not sufficient for the expert; they must also have the ability to apply theoretical rules to real-life cases, which is only achieved through practical experience" (Al-Budairi, Karim, 2016, P.37).

The Jordanian legislator has stipulated the conditions that must be met by a judicial expert in Article (8) of the Expert System before Regular Courts No. 35 of 2018, which states that "any person nominated for accreditation as an expert in accordance with the provisions of this system must meet the following conditions: a- Be qualified to practice the type of expertise for which they are nominated, scientifically, technically, professionally, or through actual practice of the art or craft according to the standards approved by the Council. b- Not have been convicted of a misdemeanor affecting honor or any felony. c- Not have previously been subjected to disciplinary action due to acts affecting honor, integrity, or trustworthiness by a competent authority. d- Not have had their name previously removed from the register permanently." (Expert System before Regular Courts No. 35 of 2018, issued in Official Gazette No. 5505 dated 2018/03/07 on page 1601)

Based on the text of Article (8) of the Expert System, we find that if the conditions stipulated by the Jordanian legislator for a judicial expert are not met, then they are not fit to take the oath to begin the expertise process. Neither the judge nor any of the litigants may seek their assistance to consider the dispute presented before the competent court for its resolution.

It should be noted that despite the legislator's permission for courts to utilize expertise in technical matters, this right should not be overused. It should be resorted to only when necessary, as excessive reliance on expertise can lead to negative consequences, such as burdening litigants with exorbitant costs and prolonging the resolution of the case. The court should not solely rely on this method, as experts may not always maintain neutrality.

However, the court is not bound by the expert's opinion because the judge is obligated to rule on the case presented before them. The court may either accept or reject the expert's opinion, as affirmed by Article (86/2) of the Jordanian Law of Civil Procedure, which states that "the expert's opinion does not bind the court." (Law of Civil Procedure No. 24 of 1988, issued in Official Gazette No. 3545 dated 1988/04/02 on page 735)

In application of this, a ruling from the Jordanian Court of Cassation stated: "Given that the expert report is a part of the evidence and is therefore subject to the discretion of the trial court—it may either accept or reject it—and what is stated in the report does not bind the court, in accordance with the provisions of Article 86 of the Code of Civil Procedure, the Court of Appeal should have taken this into account in its conclusion. Specifically, it should have excluded the part of the expert report related to estimating compensation for the decrease in value due to the difference in level. Since it failed to do so, its decision is premature and violates the

law, which necessitates its annulment." (Ruling No. 9601 of 2024 - Court of Cassation, Legal Division, qarark <https://qarark.com/home>).

Following the review of the previous definitions of an expert, we believe that all definitions consider the expert to be an assistant to the judges, whose mission is to examine technical matters outside the judge's jurisdiction. However, we disagree with the definitions that state an expert is a non-governmental employee. An expert can be a government employee or a man or a woman, as long as they possess the necessary expertise.

2.2 Distinction from other legal concepts

Testimony, like expertise, is considered a method of proof exclusively defined by the Jordanian legislator in the Evidence Law. Both testimony and expert opinion serve as tools that assist the judge in resolving a dispute. It is required that the witness not be a party to the conflict, since in such a case, their testimony would stem from a motive to gain personal benefit—something the Jordanian legislator prohibits if it results in benefit for the witness. (Article 80 of the Jordanian Civil Law No. 43 of 1976 states: "Any testimony that guarantees a personal benefit for the witness or wards off a penalty from them shall be rejected")

The purpose behind hearing testimony must be to affirm or deny a fact that is relevant and impactful in the case. However, as previously mentioned, confusion may sometimes arise between expertise and testimony, as some jurists consider the expert to be a kind of witness. This is due to certain similarities and differences between the two.

Expertise differs from testimony in that an expert must possess scientific and technical qualifications in a specific field. In contrast, the witness is not required to have such qualifications; it is sufficient for them to meet the basic requirements for giving testimony, such as legal competence. Expertise is sought when a technical matter lies outside the judge's specialization, whereas testimony is used to prove facts disputed between the parties. The law defines situations where testimony can be used. An expert may be substituted with another in the same field, if necessary, while a witness cannot be replaced—their testimony is only accepted from someone who has perceived the incident through their senses. (Al-Rihaili, 2015, P.33)

Regarding the distinction between expertise and inspection: The Jordanian legislator incorporated inspection alongside expertise and listed it among the means of proof in the Evidence Law. Inspection is also regulated in the Civil Procedures Law. It follows that the court is entitled to carry out an inspection of a matter it deems productive and necessary for resolving the dispute. The inspection is conducted directly by the court, through an on-site visit. Expertise, on the other hand, is performed by individuals who possess scientific and technical qualifications in a specific field and are appointed by the court. However, the court may consult experts during the course of the inspection.

The legislator, in regulating inspection under the Civil Procedures Law, did so alongside expertise without adequately distinguishing between the two, which has led to some confusion. Nevertheless, each has its own distinct nature: expertise does not require the presence of the court, whereas inspection mandates the presence of the judge, as it is carried out by the court itself. (Al-Saraira, 2021, P.51)

Expertise differs from inspection in that the expert conducts the judicial examination, while the inspection is performed by the trial court or a judge delegated for this purpose. The expert's observations and findings are recorded in a separate expert report, which is then deposited with the court registry and attached to the case file. In contrast, all procedures related to the inspection are documented in the session's official minutes and preserved in the case file.

2.3 The Legal Nature of Expert Evidence

Some legal commentators view judicial expertise as a type of testimony. This perspective was adopted by Roman law and Anglo-American legal systems. Proponents of this view argue that both the expert and the witness are individuals whom the judiciary asks to declare what they know to ascertain the truth of a matter. Both must be subject to a ruling, either through an investigation or an expert appointment, and their opinions are not binding on the judge; the expert's opinion depends on the judge's conviction. This led to a conflation between the two systems, considering expertise a form of testimony (Saleh, 2019, P.259).

Another segment of legal doctrine considers judicial expertise a means of evaluating evidence. They believe that expertise isn't a means of proof itself, but rather a tool for assessing existing evidence in a case before it's admitted, such as testimony. According to this view, expertise is used to evaluate other evidence present in the case. Here, expertise doesn't possess an independent identity and doesn't create new evidence; its function is solely to assess the presented evidence. The use of expertise for evaluating the soundness of evidence and other forms of proof has increased significantly in current times (Shunaikat, Op. Cit., p. 107).

Some jurists believe that expertise is merely an aid to the judge and not a means of proof. Instead, it's a procedure that assists the judge in scientific and technical matters. Proponents of this view base their reliance on the judge's discretion, who resorts to it either at the request of one of the parties or on their own initiative. Furthermore, the judge isn't obligated to accept the expert's report; rather, they use experts to clarify certain technical points, considering the expert an assistant. Expertise provides the judge with scientific and technical information that helps them issue a ruling on the case before them, thus confirming that the expert assists the judge in performing their duty (Saleh, 2019, p. 263).

Referring to Jordanian legislation, the Jordanian Court of Cassation has adopted the view that the judicial expert's role is not considered evidence in the case. Instead, the expert's task is confined to addressing a specific issue and serving as a means to search for conclusive evidence. One of its rulings stated: "The purpose of utilizing expertise is to reach the truth and to enable the court to be fully informed, resolute, and unwavering in its assessment of evidence" (Cassation Criminal Case 86/86, *Lawyers Syndicate Journal*, p. 769, 1989).

There's also a legal opinion that considers judicial expertise to be a form of technical inspection. Proponents of this view believe that expertise aims to uncover the truth based on physical evidence. Both expertise and inspection are conducted either at the request of one of the parties or by a judicial decision. If the court rejects a request for expertise or inspection, it must state the reasons for its decision (Najm, 2000, P.89).

In this regard, one of the Jordanian Court of Cassation's rulings stated: "The inspection of a crime scene is a type of expertise, and for it to be considered valid evidence for a judgment, in addition to being a statement and description of the crime scene's reality, it must also be a scientific and logical inference by the expert regarding how the theft occurred" (Cassation Criminal Case No. 99/326, *Lawyers Syndicate Journal*, p. 1090).

Most legislations consider expertise a means of proof, requiring technical and scientific knowledge that transcends the judge's jurisdiction. Expertise can be utilized to prove a case, evaluate evidence, or even express an opinion on scientific or technical matters.

It's important to note that means of proof encompass all activities that reveal a state, fact, person, or matter that helps establish the objective truth. Elements of proof, on the other hand, are the facts, objects, and other things that reveal what is useful in proving the truth. Most legal doctrine tends to consider expertise as one of the means of proof used by the judge to clarify certain technical or scientific matters. (Abu Ras, 2009, P.48)

Consequently, the researcher observes, through practical experience in Jordanian courts, that they daily rule on numerous cases after the expert submits their report. This number increases in cases of compensation for damages, construction contracts, real estate cases, and even urgent investigations to establish a condition, among others.

The Jordanian legislator has considered judicial expertise a type of evidence by including it within the provisions of the Jordanian Law of Evidence, specifically in Article (2) thereof, which states: "Evidence is divided into: 1- Written evidence, 2- Testimony, 3- Presumptions, 4- Confession, 5- Oath, 6- Inspection and Expertise." In application of this, one of the Jordanian Court of Cassation's rulings stated: "If expertise is conducted to estimate fair rental value, which can only be assessed by experts, then it is considered legally acceptable and productive evidence in proof according to the conditions of the article in the Law of Evidence." (Decision of the Jordanian Court of Cassation in its Civil Capacity No. 2018/52, published on Qararak website (<https://qararak.com>)).

One ruling by the Jordanian Court of Cassation states: "In this regard, we find that technical expertise and inspection are conducted in accordance with the provisions of the Code of Civil Procedure, and are considered—under Articles 2/6 and 71 of the Jordanian Evidence Law—as means of proof. The Court of Appeal, in its capacity as a trial court, holds full authority to weigh the evidence, evaluate it, and prefer one piece of evidence over another" (Judgment No. 10157 of 2024 – Court of Cassation in its civil capacity, Qarark platform: <https://qararak.com/home>)

It is worth noting that expert opinion differs from testimony in that the former requires a specialist with scientific and technical knowledge in a field relevant to the type of case. Testimony, on the other hand, does not require the witness to possess any particular knowledge or expertise. Additionally, an expert may not be a party to a criminal case, whereas a witness may be one of the litigants.

Regarding the method of summoning each: an expert is appointed according to specific legal provisions governing experts, while a witness appears of their own accord. The oath taken by a witness differs in formulation from that taken by an expert. Furthermore, an expert may be replaced by another if necessary—unlike a witness, whose testimony must be given by the person who directly perceived the event.

An expert may also be challenged or dismissed if valid grounds exist, and these grounds differ from those applicable when contesting the credibility or admissibility of witness testimony.

3 Authority to Appoint and Challenge the Judicial Expert

Reliance on judicial expertise and specialists in precise matters that influence dispute resolution constitutes legal evidence. Expertise is not considered judicial unless a judicial decision is issued appointing a specialized expert to undertake a specific task related to the dispute before the court. The person chosen for this task must meet certain conditions to ensure the achievement of justice. To clarify the procedures for appointing and challenging an expert, the researcher will divide this chapter into two sections as follows:

3.1 Authority to Appoint the Judicial Expert

A judicial expert is always appointed by a decision issued by the judge, which includes a precise definition of the purpose of the expertise, its justifications, and the task entrusted to the expert. This appointment can be made either at the request of the parties or at the court's own initiative if it deems it necessary. Article (9) of the Jordanian Expert System before Regular Courts and its amendments states: "a- A legal entity may be named in the expert roster if it meets the following conditions: 1- Its objectives include providing technical, scientific, or specialized opinion in the type of expertise for which it is to be named or accredited. 2- It provides documents proving the name of its representative, the names of its owners and shareholders, and its objectives to verify its neutrality and independence. 3- The legal entity has not been subjected to any criminal penalties related to the exercise of its assigned duties."

Within the framework of the provisions of the Judicial Expertise System before Regular Courts, the Jordanian legislator addressed the conditions that must be met by anyone entrusted with judicial expertise to be capable of performing it. These conditions include general legal requirements, in addition to specific technical requirements in precise sciences and matters upon which the resolution of the dispute depends. Among these conditions is the requirement of legal capacity, meaning the expert must have full legal capacity, not suffer from any symptoms of incapacity or deficiency, without requiring them to reach a specific age older than the age of majority stipulated in Article (43) of the Jordanian Civil Code, which states: "Full capacity to exercise civil rights: 1- Every person who reaches the age of majority enjoying their mental faculties and has not been interdicted shall have full capacity to exercise their civil rights. 2- The age of majority is eighteen full solar years." (Jordanian Civil Code No. (43) of 1976, issued in Official Gazette No. 2645 dated 1976/08/01 on page 2)

It is a prerequisite for a judicial expert that they have not been previously convicted of a felony or a misdemeanor affecting honor or public morals, and that no disciplinary judgment has been issued against them by a competent authority for acts affecting honor, integrity, or trustworthiness. Failure to meet these conditions results in the expert's disqualification from performing their duties, as such a record is presumed to indicate a lack of integrity, trustworthiness, and impartiality, regardless of their technical knowledge or specialization in the field relevant to the dispute. (See Article (8/b) of the Expert System before Regular Courts No. (46) of 2017)

To qualify, an expert must possess a sufficient level of technical and scientific knowledge in the areas related to the task entrusted to them, in addition to specialized skills, knowledge, and competencies in that field. This requires the expert to be technically qualified, enabling the judiciary to rely on them to resolve technical matters related to the dispute presented to it. This is stipulated by the Jordanian legislator in Article (83/3) of the Law of Civil Procedure, which states: "The expert must be qualified to carry out the assigned expertise scientifically, technically, professionally, or through actual practice, and must perform their duty with objectivity, honesty, and trustworthiness, and must disclose, either in the trial minutes or in a separate letter, the existence or non-existence of any circumstances or reasons that would raise doubts about their neutrality and independence from any of the parties to the lawsuit or their agents or the court panel. If this disclosure is proven to be incorrect or if it is not submitted, the expert's report shall be void, and the expert shall, in this case, be obligated to return any fees received" (Law of Civil Procedure No. (24) of 1988, issued in Official Gazette No. 3545 dated 1988/04/02 on page 735).

If the aforementioned conditions are not met, the expert is considered unfit to examine the matter presented to them. Either party may challenge the expert if the same grounds for challenging a judge exist in Jordanian legislation. The judge may also recuse themselves from hearing a specific matter within the rules governing the challenging of an expert in law (Al-Aqrabawi, 2019, P38-61).

The Jordanian legislator has granted the parties to a dispute the right to choose a judicial expert who meets the conditions of expertise, in accordance with the principle of party autonomy. If they agree to choose one or more experts from those registered in the expert roster, the court shall approve their choice of the expert agreed upon by the litigants, provided the expert is qualified to conduct the expertise. If the litigants do not agree on naming the expert or leave the matter to the court, the court shall choose one or more experts from the experts

registered in the roster approved by the Ministry of Justice according to rotation. If it is impossible to choose an expert for any reason, the court shall seek the assistance of an expert from outside the expert roster approved by the Ministry of Justice. A dispute may arise between the parties to the lawsuit during its consideration, and they may not agree on choosing an expert. In this case, the court intervenes to resolve the dispute, achieve justice, and prevent obstruction of the lawsuit's progress (Judicial Expertise, <https://services.moj.gov.jo/login>, Official website of the Jordanian Ministry of Justice).

The Jordanian legislator has granted the trial judge discretionary authority to decide whether or not to conduct expert proceedings, provided that the decision is justified either way. However, once the court approves the use of technical expertise, it must appoint an expert who meets the necessary qualifications.

An expert cannot act independently; their appointment must be issued by the court—whether upon request by the parties or initiated by the court itself. This matter is addressed in Article 83 of the Jordanian Code of Civil Procedure, which states: "At any stage of the trial, the court may decide to conduct an inspection or appoint one or more experts for any movable or immovable property or any matter it deems necessary for expert evaluation. The court must specify in its decision the reasons for conducting the inspection and expertise, the purpose thereof, and must precisely define the expert's assigned task." (Jordanian Court of Cassation, Criminal Division, Ruling No. 2008/3399, issued on June 15, 2009, from the Qarark website (<https://qarark.com>)).

The Court of Cassation has affirmed in one of its rulings that: "Expertise is a legally recognized means of proof that the court may rely upon in its judgment if it aligns with reality, legal principles, and procedural rules, and leads to the conclusion reached by the court."

The legislator also empowered the litigating parties to select a judicial expert who meets the required qualifications, reflecting the principle of freedom of will. If the parties agree on one or more experts from the official registry of experts, the court will approve their selection—provided the chosen expert is qualified to perform the task. If the parties fail to agree or leave the matter to the court, the court will appoint one or more experts from the registry maintained by the Ministry of Justice, following the designated order.

In cases where it is not possible to appoint an expert from the registry for valid reasons, the court may resort to selecting an expert from outside the official list. Disputes between the parties during trial may prevent consensus on expert selection, prompting the court to intervene to resolve the matter, ensure justice, and prevent delays in the proceedings.

It should be noted that the court or investigator must state the reason for conducting the expertise in its decision, as expertise is limited to technical matters outside the jurisdiction of the judiciary, to ensure oversight and prevent the court from failing in its duties. The court must also define the expert's task in this context, so that the expert does not exceed the task entrusted to them. The general rule is that the reason for the court's recourse to technical expertise when a dispute is presented to it is that its resolution depends on technical information requiring a specialist, so the court seeks the assistance of an expert who, in turn, provides their opinion by submitting an expertise report (Al-Alawin, 2019, P.301-317).

In application of this, one of the Jordanian Court of Cassation's decisions stated: "Article 83 of the Law of Civil Procedure authorized the court, at any stage of the trial, to decide on inspection and expertise of any movable or immovable property or any matter it deems necessary to conduct expertise on. If the parties agree on selecting the expert, the court shall approve their appointment; otherwise, it shall undertake the selection itself. The court must state in its decision the reasons for conducting the inspection and expertise and its purpose, along with defining the task entrusted to the expert. Therefore, the court's selection of an expert without presenting it to the parties to the lawsuit is contrary to law." (Jordanian Court of Cassation Decision in its Criminal Capacity No. 1996/183, issued on 1996/3/18, Qararak (<https://qarark.com>)).

In one of its rulings, the Jordanian Court of Cassation stated: "Article 83 of the Code of Civil Procedure permits the court, at any stage of the trial, to decide on conducting an inspection or appointing an expert for any movable or immovable property, or any matter it deems necessary for expert evaluation. If the parties agree on selecting an expert, the court shall approve the appointment; otherwise, it shall undertake the selection itself. The court must specify in its decision the reasons for conducting the inspection and expertise, the purpose thereof, and clearly define the expert's assigned task. Accordingly, the court's appointment of an expert without presenting the matter to the litigating parties is contrary to the law" (Court of Cassation in its criminal capacity, Judgment No. 1996/183, issued on 18 March 1996, Qarark platform).

3.2 Challenging the Judicial Expert

The challenge of an expert refers to the emergence of a reason for the parties to the lawsuit to doubt the impartiality and integrity of the judicial expert. (Al-Shammari, 2012, P125), Since the foundation of the expert's

work is integrity, honesty, and impartiality, nothing should give rise to doubts about the parties' trust and confidence in the judicial expert.

The Jordanian legislator stipulated in Article (90/2) of the Law of Civil Procedure: "The court shall ask the two parties to select one or more experts to undertake the task specified in the previous paragraph. If they do not agree, the court shall undertake the selection itself, and the experts selected by the court on its own initiative shall be subject to the provisions related to challenging judges."

From the previous article's text, it is clear that the legislator limited the possibility for rejecting an expert to those appointed by the court, excluding experts whom the parties agree to name. This is in accordance with the general rule in Article (100) of the *Mejelle al-Ahkam al-Adliya*, which states: "Whoever seeks to nullify what has been done on their part, their endeavor shall be rejected." However, as an exception and to achieve justice, an expert appointed by the parties may be challenged if a reason for rejection arises after their appointment.

It is worth noting that this article is included within the provisions related to handwriting and printing expertise, which raised questions about its applicability to experts in other fields. In application thereof, the Jordanian Court of Cassation ruled in one of its decisions that: "The challenging system applies to all experts appointed by the court, whether they are in handwriting expertise or any other type of expertise. The fact that this provision is included within investigating and handwriting experts does not prevent its application, because the underlying reason is the same in both cases, and the unity of the reason necessitates the unity of the ruling." (Decision of the Jordanian Court of Cassation in its Civil Capacity No. (422/1972) dated (21/12/1972), Qararak (<https://qarark.com>)).

Article (143) of the Jordanian Law of Civil Procedure specified the grounds for challenging a judicial expert. These grounds include: if the expert or their spouse has a similar case to the one being heard, or if either of them has a dispute with one of the litigants or their spouse after the lawsuit was filed before the judge, unless this lawsuit was filed with the intention of preventing the expert from considering the case before them. Also, if the expert's divorced spouse with whom they have a child, or one of their relatives or in-laws by blood, has an ongoing dispute before the court with one of the parties to the lawsuit or their spouse, unless this dispute was raised after the lawsuit was filed before the judge with the intention of disqualifying the expert. Furthermore, if one of the litigants works for the expert, or if there is enmity or friendship between the judicial expert and one of the litigants, or if the expert received financial compensation or a gift from one of the litigants before or after the lawsuit was filed.

The procedures for challenging an expert involve the litigant wishing to challenge the judicial expert submitting a request to the court that appointed the expert, stating the reasons for their request to challenge the judicial expert. The challenger must attach to their request evidence supporting the validity of the reasons they have presented, in addition to a receipt for fifty Jordanian Dinars proving payment of this amount to the court's treasury. (See Article (137) of the Law of Civil Procedure No. (24) of 1988 and its amendments).

The process of challenging a judicial expert under Jordanian law begins with the party seeking the challenge submitting a formal request to the court that appointed the expert. This request must clearly state the reasons for the challenge and be accompanied by supporting evidence that substantiates those reasons.

In addition, the applicant must attach a financial receipt confirming the payment of fifty Jordanian dinars to the court's treasury. This requirement is based on Article 137 of the Jordanian Code of Civil Procedure, which stipulates: "The petition for challenge must include its grounds and means of proof, and must be accompanied by supporting documents and a receipt confirming that the applicant has deposited fifty dinars with the court."

The purpose of this is to demonstrate the seriousness of the request and to prevent its use as a means to prolong litigation. After the request is submitted, the court notifies the expert with a copy of the summons, and the expert must submit their response within the period specified by the court, pursuant to Article (138) of the Law of Civil Procedure, which states: "The President shall notify the judge whose recusal is sought with a certified copy of the recusal request, and after receiving a response from the judge, the court shall decide on this response without the presence of the parties or the judge whose recusal is sought."

In application of this, one of the Jordanian Court of Cassation's decisions stated: "Regarding the second, ninth, and thirteenth grounds, all of which generally fault the Court of Appeal for violating Article (83/3) of the Law of Civil Procedure, which obliged the expert to disclose the absence of any reason or circumstances that would affect their neutrality and independence from the parties to the lawsuit, as it became clear that the expert had a relationship with the parties to the lawsuit due to preparing previous consultative expert reports for the defendant regarding checks between the parties themselves, which proves the inaccuracy of the disclosure. A copy of the consultative report was attached with the appeal brief, and the failure to conduct a new expertise and submit a subsequent expert report despite the expertise's violation of Article 83 of the Civil Procedures is

contrary to law, and the expert's violation of the declaration submitted by them necessitates conducting a new expertise with a greater number of more knowledgeable experts." (Decision of the Court of Cassation in its Civil Capacity No. 2023/1247 issued on 19/9/2023, Qararak (<https://qarark.com>)).

It should be noted that the right to challenge an expert is exclusively reserved for the parties, whether the expert was appointed by the court or by the parties themselves, provided that grounds for challenge arise later. When any party submits a request to challenge an expert, the court is obligated to consider it immediately and without delay. The authority to accept or reject the request rests with the court that appointed the expert. If the request meets the necessary legal conditions and grounds, the court decides to challenge the expert. However, if the request is not justified or does not meet the conditions, the court issues a ruling rejecting it. (Bani Hamad, 2024, P.55)

A ruling by the Jordanian Court of Cassation stated: "And since the arbitration panel decided in session No. (7) on 10/2/2021 not to conduct the technical expertise requested by the appellant's agent due to unproductivity and the sufficiency of the written evidence submitted by both parties, then it decided to retract its previous decision and conduct technical expertise based on the appellant's agent's request. Engineer M.Q. was chosen as an expert, but the arbitration panel decided to challenge this expert due to their failure to make the required legal disclosure of their neutrality and independence and for raising doubts about their mission, and consequently, the expert report submitted by them was not adopted. In session No. (18) on 21/9/2022, the arbitration panel decided to conduct new technical expertise by Engineer A.A., who estimated the total compensations, assuming validity, at (130) thousand Dinars." (Judgment No. 5996 of 2023 - Court of Cassation in its Civil Capacity, issued on 2023-11-15, Qararak (<https://qarark.com>)).

Regarding the deadline for submitting a request to challenge an expert, opinions have varied on applying the time limits specified for judges to respond to the issue of challenging experts. However, according to Article (136) of the Law of Civil Procedure, the Jordanian legislator stipulates that a request for challenge is not accepted if it is not submitted before entering the case if submitted by the plaintiff, and before entering the trial if submitted by the defendant, unless the reason for the challenge results from an event that occurred after entering the case or trial, in which case the request for challenge must be submitted at the first session following this event.

Undoubtedly, the foundation and essence of the expert's work are acceptance and consent. This means that the expert is not obligated to accept the expertise procedures after being appointed by the court or the litigants; rather, the expert has the freedom to accept or refuse the task, and it must be ensured that the reason for their appointment is convincing. The legislator has permitted the expert, like the judge, to request recusal from the task entrusted to them if it becomes clear for some reason that they will not be able to perform the task as required. Nevertheless, it must be distinguished that the expert is not obligated to recuse themselves, and the matter rests with their discretion, unlike the judge who must recuse themselves if a reason exists (Nimour, 2013, P.346).

As for the effect of the expert's report on the case, if this report is sound and consistent with the provisions of the law, and if it is accurate, clear, reasoned, and unambiguous, then in this case, the court will be convinced by the expert's report, and it becomes evidence in the case in which it was submitted. This is because when the expert's report complies with the legal conditions, it becomes a means of proof and influential evidence in the case (Bani Hamad, 2024, p. 61).

Parties have the right to invoke the nullity or illegality of a procedural act when the defect pertains to public order. The court itself may also raise the issue of nullity at any stage of the proceedings. If the defect does not concern public order, only the affected party may invoke the nullity or illegality.

It is worth noting that the Jordanian legislator did not explicitly address the nullity of expert reports in the Code of Civil Procedure. Therefore, general legal principles governing nullity are applied. The legislator has defined nullity as relating to public order, whether the defect is formal or substantive (Al-Aboudi, 2011, P.78).

Importantly, even if an expert report is unlawful or invalid—regardless of whether the defect involves public order—all actions taken by the expert remain valid and produce legal effects until the court issues a decision declaring the report wholly or partially null or unlawful.

For example, failure of the expert to take the legally required oath renders the report unlawful. The judicial expert must take the oath after being appointed and before commencing their duties; otherwise, the report lacks legal validity. Similarly, if the expertise is conducted by someone not appointed by the court, the report is invalid, as the expert derives their authority solely from the appointing court.

The appointed expert must possess knowledge and specialization relevant to the matter at hand and must personally carry out the assigned task. Delegating the work to another expert is prohibited and may result in nullity of the report.

4 Conclusion

Judicial expertise is a means of proof, characterized by its optional, not mandatory, nature. The judge chooses it as a means to resolve the dispute before them, as judicial expertise specializes in technical matters without which the judge cannot resolve the case. These matters are outside the judge's and the court's jurisdiction, so the judge resorts to expertise to clarify the truth of a matter presented by the expert.

4.1 Findings

- Expertise is considered one of the preparatory or preliminary procedures resorted to by the judge. The need for it has increased due to its importance in resolving cases of a special technical nature that the judge does not master, as these matters fall outside their general knowledge, such as engineering, medicine, and accounting.
- Under Jordanian law, the expert's role is limited to clarifying matters that fall outside the judge's jurisdiction—such as technical, medical, or technological issues. The judge retains full discretion in deciding whether to adopt the expert's report or disregard it.
- Judicial expertise may be conducted at the request of the parties, or by a decision of the judge if they deem it necessary to rule on the case. In such instances, the parties are instructed to name experts, or the matter is left to the court to appoint the expert.

4.2 Recommendations

- The researcher recommends incorporating specific provisions in the Jordanian Code of Civil Procedure addressing the dismissal of court-appointed experts. This stems from the fact that the current legal articles primarily regulate the dismissal of judges, despite the notable differences in the roles and responsibilities of judges and experts.
- Given the distinct legal standing of each—where the expert serves in a consultative capacity and the judge exercises adjudicative authority—it becomes problematic to apply the same rules to both. Therefore, it would be more appropriate to establish dedicated legal provisions governing the dismissal of experts, tailored to their unique function within judicial proceedings.

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