

# The Testimony as Evidence in the Light of Islamic Sharia Provisions (Applied Study of the Decisions of the Shari'a Court of Appeal and the Decisions of the Supreme Shari'a Court in Jordan)

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**Abstract:** This research aims to show the impact of proving divorce lawsuits and money lawsuits by personal evidence (testimonial proof) on the decisions of the Shari'a Supreme Court and the decisions of the Shari'a Court of Appeal. The importance of the research lies in that it sheds light on the decisions of the Jordanian Sharia Supreme Court, which was recently established for the first time in the history of the Sharia judiciary in (2016) as the supreme reference for litigation in the Jordanian Sharia courts. The research reached several results, the most important of which is that the consequences of proving the lawsuits of divorce and money lawsuits by personal evidence are many and varied according to the diversity of the claimed right, including the continuation of the case, the confirmation of the claimed right, the judgment of the case as well as the dismissal of the case. Testimony (personal evidence) is also affected by the defenses raised against it when it is proven, and that is from two aspects, the first: this results in disqualification of this evidence and not being taken into account if the case is under consideration, and the second: in the event of the issuance of a verdict in the case, the witnesses shall be obliged to have a guarantee. The researcher recommended that the Sharia evidence be detailed in a special law independent from the Code of Sharia Court Procedure and called: "The Jordanian Sharia Evidence Law", as is the case in the Civil Evidence Law.

**Keywords:** Testimony, Proof, Evidence, Authenticity of Testimony, Supreme Court.

## 1 Introduction

Islamic Shari'a was introduced to achieve justice and spread the truth, Allah almighty says: "*Indeed, Allah commands you to return trusts to their rightful owners; and when you judge between people, judge with fairness...*" (Surah An-Nisa' 58). Allah Almighty made it clear that man has rights and duties, and that they should not transgress their rights, nor fall short in their duties, and set limits and restrictions for them to abide by their duties, and not to infringe on the rights of others.

The facilities of the judiciary were established and their fixed principles were established, which do not change with the change of time and place. The courts became open to every right holder, whose right was usurped or infringed upon, and the Shari'a made it clear to them that they had to prove their claim by evidence if their opponent denied their claim, as stated in the prophet Mohammad's saying, peace be upon him "*the proof (Bayyinah) lies on the one who is making the claim, and the other (Yamin) must be taken by the one who rejects the claim.*" [10]. Evidence is required from someone who claims a right over others and demands it when the opponent denies his claim and does not acknowledge the case. If he presents the evidence for his claim and proves its truthfulness, the judge must pass judgment on his claim.

Personal evidence is considered a legitimate argument that requires the judge to rule accordingly if it fulfills the necessary conditions for it. It is one of the most important means by which the plaintiff proves his claim and proves its sincerity, which leads to justice and accuracy in judgment, to preserve the rights of others, thus, preserving the security of the individual, society, and the state. And as Ibn al-Qayyim says, *Allah allows the just state to remain even if it is led by unbelievers, but Allah will not allow the oppressive state to remain even if it is led by Muslims.* And as it was said: "*And it is said that the world will endure with justice and unbelief, but it will not endure with oppression and Islam.*" [58]. Achieving justice in the judiciary is based on one of the legal means of proof, the most important of which is personal evidence.

To achieve the desired goal of the research has been divided into four sections: The first of them was to clarify the concept of testimony and its authenticity, the second came to clarify the procedures of proof by testimony in the cases and appeals

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received against it, and the third to clarify the evidence by testimony in the cases and the defenses received on them and their impact, and the research was concluded with the fourth section by including real applied models for the decisions of the rulings of the Sharia Supreme Court and the Court of Appeal related to it.

### **1.1 Research Plan**

The research was divided into four sections, and each section was divided into several subsections, as follows:

The first section: dealt with the "concept of personal evidence, its legitimacy, its validity, and its types". The section was divided into four subsections. The first subsection clarified the concept of personal evidence in language and terminology. The second subsection dealt with the legality of personal evidence, the third subsection dealt with the authenticity of personal evidence and the fourth subsection was about the types of personal evidence.

The second section clarified "proof procedures for personal evidence in the lawsuits and the defenses introduced". The second section was divided into three subsections, the first of which dealt with the procedures for proof by personal evidence in Islamic law. The second subsection introduced the procedures for proof by personal evidence in the law. The third subsection introduced defenses enlisted on personal evidence.

the third section, discussed "Proof by personal evidence in the lawsuits and defenses enlisted against them and their impact". It was divided into two subsections. The first of which dealt with "Proof by personal evidence in the lawsuits of divorce and the defenses enlisted and their impact". The second subsection dealt with the performance of personal evidence in divorce and money claims and the defenses enlisted against them and their impact.

The research was concluded with the fourth section, in which examples of the decisions of the Sharia Supreme Court and the Court of Appeals related to personal evidence and its impact on the case were presented.

### **1.2 Research Importance**

The importance of the research lies in the following:

1. It sheds light on the decisions of the Jordanian Supreme Sharia Court, which was created for the first time in the history of the Sharia judiciary by a Royal Decree (2016) as the supreme reference for litigation in the Jordanian Sharia courts.
2. This research also focused on the decisions of the Jordanian Sharia Court of Appeal, in addition to the Sharia Procedure Law, and the Personal Status Law (2019), related to the topic of research.
3. Also, this research contained the practical application aspect, by presenting the cases of divorce, the claims of money, and their proof by testimony and the appeals received against them, and the decisions of the Sharia Supreme Court, and the decisions of the Sharia Court of Appeal related to these cases.

### **1.3 Study Problem**

This research is devoted to answering the following question: "What is the impact of proof of divorce and money lawsuits by personal evidence on the decisions of the Sharia Supreme Court and the decisions of the Sharia Court of Appeal", as well as to answer the following sub-questions:

1. What are the procedures for establishing lawsuits by personal evidence in jurisprudence and law?
2. What is the effect of proving lawsuits by personal evidence, and the appeals against them?
3. What are the judicial applications on the decisions of the verdicts of the Sharia Supreme Court and the Court of Appeal related to personal evidence and its impact on the case?

### **1.4 Study Objectives**

This research aims to demonstrate the impact of divorce proving and money lawsuits by personal evidence on the decisions of the Sharia Supreme Court and the decisions of the Sharia Court of Appeal, in addition to the following sub-objectives:

1. Clarifying the procedures for proving lawsuits by personal evidence in jurisprudence and law.
2. Clarifying the effect of proving lawsuits by personal evidence and the appeals received against them.
3. Introducing the judicial applications to the decisions of the verdicts of the Sharia Supreme Court and the Court of Appeal related to personal evidence and its impact on the case.

### **1.5 Study Methodology**

This research adopts the inductive and descriptive approaches, as they are the most suitable approaches to the nature of

this research and to achieve its goals.

## 1.6 Literature Review

1. "Testimony as A method of Proof in Islamic Procedures Law Applicable in the West Bank" Nasra, Reem, research published in An-Najah University Journal for Research, Humanities, 2018, vol. 32, p. 11, pp. 2188-214.

This study contained three sections: it dealt with the nature of the testimony, its legitimacy, and types, as well as clarifying the strength of testimony in proof in Islamic Sharia and civil law, as well as the authority of the court in the procedures of proof by testimony.

2. "The Judgment of Proving the Dissention and Dispute Lawsuit with the Hearsay Testimony in Light of the Late Amendment of the Jordanian Personal Status Law of 2010: A Comparative Juridical Study," Al-Kurdi, Raed Ali Muhammad, Al-Naddaf, Maher Maarouf, research published in the Journal of Sharia and Law Studies, University of Applied Sciences, Vol. 43 Supplement 4, 2016 .

This study included two sections, the first section was devoted to clarifying the concept of testimony, its legitimacy, and its types, and the second topic came to clarify the testimony by listening to the case of discord.

3. "Defamation in Judicial Evidence in Islamic Jurisprudence and Law: A Comparative Study", Sati, Abu Bakr Ziada Ibrahim, Ph.D. thesis, College of Sharia, Omdurman Islamic University, 2008.

This study was divided into three chapters: the first chapter was devoted to clarifying the concept of defamation in the evidence and its judgment, and the second chapter clarified the types of judicial evidence in Islamic jurisprudence and law and their relationship to the judiciary, while the third chapter was devoted to clarifying the reasons for defamation in the judicial evidence.

4. "Provisions for Rebuttal Testimony: A practical Fiqh Study", Al-Qudah, Hazem Yahya Musleh, Master's Thesis, Al al-Bayt University, 2007 AD.

This study included two chapters and an introduction. The introduction included the definition of the testimony, and the difference between it and the narration and reporting, while the second chapter was devoted to clarifying the reasons for repealing the personal testimony, and the second chapter was devoted to clarifying the reasons for repealing the objective testimony.

5. "Challenging personal and written evidence during the case: a comparative study between Islamic jurisprudence and the law of Shari'a procedures", Al-Rahaman, Jamal Kasib Salah, Ph.D. thesis, College of Sharia, University of Jordan, 2007.

This study contained three chapters: the first chapter was devoted to clarifying the concept of evidence, its importance, and its types. The second chapter clarified the types, divisions, and forms of challenging witnesses, and the third chapter was devoted to clarifying the types of challenges to written evidence, its divisions, and forms.

6. "The testimony is a proof of law and Sharia," Al-Ashhab, Ahmed Abdel Salam, research published in the Journal of Humanities and Applied Sciences, Asmara Islamic University of Zliten, 2004 AD, v. 5, pp. 238-298.

This study had three chapters: the first chapter included the definition of the testimony and its authenticity, the crimes that are proven by the testimony, and the levels of testimony. The second chapter was devoted to clarifying the conditions of the witness and the testimony, and the third chapter was devoted to clarifying the authenticity of the testimony and the criticism directed to it.

## 2 Section One: The Concept of Personal Evidence, its Legitimacy, its Validity, and its Types:

### 2.1 The Concept of Personal Evidence

**Personal Evidence in Language:** The testimony in language has several meanings, including the definitive information, the evidence because it differentiates the truth from the falsehood, and a sense of swearing, we say I testify with such, which is to swear, Allah almighty said " *For her to be spared the punishment, she must swear four times by Allah that he is telling a lie*" Surah An-Nur 8. Among its meanings: attendance, it is said that he witnessed it, i.e. he was present, so he is a witness and people are witnesses, i.e. present, Allah almighty said " *Observe the prayer from the decline of the sun until the darkness of the night and the dawn prayer, for certainly the dawn prayer is witnessed 'by angels'*" Surah Al-Isra 78.

**Personal Evidence in Terminology:** The jurists defined personal evidence in several definitions, including:

The Hanafi School defined it as: "A statement of truth to establish the right by giving the testimony in the Judicial

Council.”[19,20].

And the Malikis defined it as: “A trusted person tells a judge what he knows, even if he is not willing to so that the judge can give a verdict accordingly.”[11]

As for the Shafi’is, they defined it as: “telling the truth about someone in specific,” [44] and they defined it as: “informing about a person with a special wording.” [45].

The Hanbalis defined it as: “a person telling what he knows with a special wording.” [7].

When one examines these definitions will find that the jurists restricted the testimony with special wording, except for the Malikis; this is by their requirement to testify with the wording of "I hereby witness". Perhaps the best definition is: “telling the truth about someone in specific,” as it differentiates between acknowledgment, testimony, and narration.

As for the Jordanian legislator, the testimony was not defined in the section of evidence in the special law. It was defined in several definitions in legal jurisprudence:

1. Jamil Al-Sharqawi defined it as: “The statements he tells before the court after taking the oath ”[52].
2. As for Dr. Abdel Moneim Faraj, he defined it as: “Informing the Judicial Council of an incident that was done by someone else, which resulted in the violation of the rights of others” [48].
3. Mahmoud Hosni defined it as: “A declaration issued by a person regarding an incident that he witnessed through one of his senses” [24].

It is noted from the above that the law is consistent with the Sharia in defining testimony in some aspects and differs from it in other aspects. One of the most important aspects of the consistency is that the testimony must be oral in the Judicial Council, and the difference is that the Sharia does not require the oath of the witness when the testimony is performed, while civil law requires that.

## 2.2 The Legitimacy of Personal Evidence

The principle in the testimony is that it is a collective obligation if many people witnessed an issue, and it is an individual obligation if that issue was witnessed by a specific person and there is no one else to testify [29], and it must be performed upon demand unless the bearer is harmed or unable to testify it, then it is not obligatory. Allah Almighty said " *Let no harm come to the scribe or witnesses*" Surah Al-Baqarah 282, and " *And do not conceal the testimony, for whoever conceals it, their hearts are indeed sinful. And Allah fully knows what you do*" Surah Al-Baqarah 283.

The legitimacy of testimony as evidence has been proven by the Noble Qur’an, the Sunnah of the Prophet, and consensus:

### First: in Qur’an:

Allah Almighty said " *but call upon witnesses when a deal is finalized. Let no harm come to the scribe or witnesses. If you do, then you have gravely exceeded your limits. Be mindful of Allah, for Allah is the One Who teaches you. And Allah has perfect knowledge of all things*" Surah (Al-Baqarah:282) and " *And call two of your reliable men to witness either way—and let the witnesses bear true testimony for the sake of Allah*" Surah (At-Talaq:2).

Significance: getting closer to Allah Almighty in performing the testimony, if the need arises, without alteration or change.

Allah Almighty said " *Those who accuse chaste women of adultery and fail to produce four witnesses, give them eighty lashes each*" Surah (An-Nur:4). Allah almighty also said " *Call upon two of your men to witness. If two men cannot be found, then one man and two women of your choice will witness—so if one of the women forgets the other may remind her. The witnesses must not refuse when they are summoned*" " Surah (Al-Baqarah:282).

Significance: The previous Qur’anic verses indicate the legitimacy of the testimony to return rights to their owners and to control financial transactions. They also indicate the legality of performing the testimony. It was narrated that Ibn Abbas said in the interpretation of the Almighty’s saying: *The witnesses must not refuse when they are summoned*, it is not permissible for him to refuse if summoned [55].

**Second: From the honorable Sunnah of the Prophet:** it was narrated on the authority of Al-Ash’ath bin Qais: “*I had some dispute with another man regarding a well and we took the case before Allah’s Messenger. Allah’s Messenger said (to me), ‘Produce two witnesses (to support your claim); otherwise, the defendant has the right to take an oath (to refute your claim).’ I said, ‘The defendant would not mind taking a false oath.’ Allah’s Messenger then said, ‘Whoever took a false oath to grab someone else’s property will meet Allah, and Allah will be angry with him.’*” [8].

Significance: The request of the Prophet, peace, and blessings of God be upon him, to testify to prove the sincerity of his claim indicates that testimony is the evidence for establishing rights, and an argument for settling disputes and severing

disputes.

Third: consensus: The scholars of the Islamic nation have unanimously agreed since the time of the Messenger, may God's prayers and peace be upon him, on the legitimacy of testimony as a means of establishing and documenting rights, and no one denied it [34,35].

### 2.3 The Authenticity of Personal Evidence

Islamic Sharia jurists considered that testimony is an argument that manifests the right if the necessary conditions are met and that it is a transgressive argument to other than the litigating opponents. It is also considered an absolute argument in establishing all rights, regardless of the value of the things claimed, whether they are civil, criminal, or personal status. Imam Al-Qarafi says: "The first thing that is useful as an argument for proof is the testimony." [16], Al-Hasakfi says: "The basic principle is that the evidence is a transitive argument, and the acknowledgment is an argument that is limited to the one who affirms it because it does not have jurisdiction over others." [20]. The testimony is a strong argument, as it shows the firm thing in the same matter, and works to end the dispute between the litigants, and the jurists have relied on it to establish rights, whether they are financial rights, retribution, limits, contracts, or physical rights.

The jurists inferred the authenticity of the testimony to the sayings of Allah: "but call upon witnesses when a deal is finalized" Surah (Al-Baqarah:282). And "Call upon two of your men to witness. If two men cannot be found, then one man and two women" Surah (Al-Baqarah:282). And "and let the witnesses bear true testimony for the sake of Allah" Surah (At-Talaq:2).

And the Prophet, may God's prayers and peace be upon him, said: "Your witnesses or his oath." The Messenger of God, may God's prayers and peace be upon him, warned against lying in the testimony and made it clear that it is a major sin. Because of its great danger, blood is preserved and wasted, and money is preserved and wasted. The Messenger of God, may God's prayers and peace be upon him, said: "Should I not inform you about the gravest of the major sins, and (in this connection) observed: False utterance or false testimony. Shu'ba said. It was most probably false testimony" [8].

Significance: These Shari'a texts indicate the authenticity of the testimony as proof and returning rights to their owners.

As for the law's position on the authority of the testimony, it was considered a non-conclusive and non-binding argument. The court has the authority to assess the testimony of witnesses in terms of their integrity, honesty, behavior, and other circumstances of the case, without the need for a recommendation, just as the legislator considered it a non-absolute argument; Since the law differentiated between the authority of the testimony as evidence in criminal and civil matters, the Jordanian Evidence Law has identified the cases in which testimony can be used as evidence:

Jordanian evidence law, Article 27 and 28, says: For civil actions that do not exceed the quorum, commercial actions, and material facts [37], the authority of the testimony in these cases is absolute. The law also specified certain cases in civil matters that may be proven by testimony as an exception, and Article (30) of the Jordanian Evidence Law stipulates these cases: "It is permissible to prove by testimony in Contractual obligations even if the amount claimed exceeds one hundred dinars."

1. If a proof is found to be proven in writing...
2. If there is a physical or moral impediment that prevents obtaining written evidence....
3. If the creditor loses his written bond for a reason beyond his control....
4. If the contract is challenged as being prohibited by law or contrary to public order or morals..." [37].

These exceptions have been reported by the legislator based on the necessity of the written evidence for civil actions which exceed one hundred dinars, other than the cases in which the legislator requests the written evidence and which are defined by Article (29) of the Jordanian Evidence Law.

Hence, the Jordanian legislator prevented proving claims by testimony in contractual obligations, even if the claim did not exceed a hundred dinars, in four cases stipulated by Articles (28) and (29) of the Jordanian Evidence Law [37].

The legislator has granted the judge of the court a broad authority to estimate the testimony of witnesses and consider it sufficient to prove or not according to his conviction concerning accepting or refusing the testimony, and the outweighing of one of them over the other, as the contentment to certain testimony, is due to the conscience and conviction of the judge with the sincerity of the witness or not, provided that he mentions the reasons for not taking the testimony in the decision of the ruling.

### 2.4 Types of Personal Evidence

The witness testifies based on what he saw with his eyes or heard with his ears regarding the incident on trial. Testimony



has two types:

### **The first type: Direct Testimony:**

The witness testifies to what he saw or heard directly. This type of witness is called an eyewitness, which is the origin of testimony; because the witness tells what happened based on his hearing and seeing directly, not what he was told by others Allah Almighty said, "*except those who testify to the truth knowingly.*" Surah (Az-Zukhruf:86). This has been defined by some jurists of law as "the testimony of the witness before the Judicial Council of what happened based on his hearing and his eyesight directly without relying on reporting these facts from others, such as the occurrence of an incident of beating in front of a person, so he testifies what he saw and heard." [1].

### **The second type: Hearsay evidence about an incidence:**

Hearsay evidence, as the name implies, is evidence that a witness has heard as a communication from another party, so it is called indirect testimony; because he is not one of the witnesses who saw it or heard it himself, but rather communicated by those who saw or heard. The witness testifies to the incident based on hearing from other people who witnessed the incident, and this testimony is known by many names; sometimes it is called indirect testimony, and sometimes the hearing testimony. It is permissible by Muslim jurists to the money and what is related to money. They have set conditions for accepting it and the most important of the conditions: is when the testimony of the eyewitness is not possible for illness, death, absence, imprisonment, unknown residence, or fear of authorities [56,42].

The Jordanian legislator has accepted the indirect testimony in exceptional conditions. Article (39) of Jordanian Evidence Law indicated the evidence: "the indirect testimony is not acceptable in the following cases:

1. Death.
2. The lineage.
3. The correct endowment endowed for a charity for a long time.

## **3 Section Two: Evidence Procedures for Personal Evidence in the Lawsuits and the Defenses Contained Therein.**

### **3.1 Procedures for Proof of Personal Evidence in Islamic Sharia:**

The procedures of proof by testimony in Islamic Sharia are simple and easy in proportion to the circumstances and environment of the era, and far from the formal procedures followed at present. The judge asks the plaintiff if he has evidence after the denial of the opponent. If he answers that he has evidence, the judge requests that witnesses be brought to the Judicial Council after naming them as follows:

1. If the witnesses are present, the judge hears their testimony and exhorts them, he might say to them: "I will judge based on your testimony, and upon which I will be judged on the Day of Resurrection." [42].
2. The witness takes the oath before he begins giving his testimony on the opinion of the later Hanafis [2], the Malikis [9], Ibn al-Qayyim[41], and Ibn Hazm al-Zahiri [23]. As for the opinion of the majority of Hanafi [50], Shafi'I [17], and Hanbali [41] jurists, the witness does not take an oath when giving his testimony.
3. Then the judge hears the witness's testimony about what he saw or heard, without cuing from the judge. If his testimony was in agreement with the case, the judge accepts it, and if it was not in agreement with the case, the judge rejects it.
4. When the witnesses have finished giving their testimonies and were in agreement with the case and the judge is convinced of their validity, the judge shall ask the defendant if he has anything to say after the evidence is established against him [29].
5. If the defendant does not contest the testimony of the witnesses, the judge shall rule and decide the case and issue a judgment by it [29].

### **3.2 Procedures of Proof for Personal Evidence in the Law:**

The Jordanian Code of Shari'a Procedures in article 56 did not lay down the legal articles related to the testimony, and it referred in some of its articles to this with its focus on how to bring a witness [40]. On the other hand, the Jordanian legislator has drawn up the legal articles regulating the procedures for hearing testimony in the Civil Procedure Code No. 24 of 1988 and its amendments in Articles 81 and 82 [38]. These legal articles included the procedures for requesting testimony for each of the litigating parties, if the claims they wish to prove may be proven by testimony and related to the case, and the matters that must be clarified in the request if the court decides to hear witnesses. In these legal articles, the

legislator also clarified the procedures followed for summoning witnesses and requesting their attendance, and giving their testimony after taking the oath in the form specified by the Jordanian legislator in article 81/1 [38], without the presence of witnesses whose testimony was not heard, and that testimony is given orally and written notes may not be used except what is difficult to memorize, and for those who are unable to speak, they shall testify, if possible, by stating their testimony in writing or by sign.

Looking at the legal articles from Article 56 to Article 74 of the Jordanian Sharia Courts Law, it becomes clear that the procedures for hearing the testimony are summarized in the following:

1. If the plaintiff relies on testimony to prove his case, he shall name and list the witnesses. He may not request to summon more witnesses he has not named after limiting the evidence if the subject matter of the case is not one of which the testimony is acceptable (article 56 of Jordanian Procedure Law) [40].
2. If the litigant was unable to bring the witnesses at the time specified for the trial, he may ask the court to summon them, and the court will write a warrant to bring them. If they were informed by the memorandum and they did not attend and their attendance had a substantial effect on the case, the court may bring them through the police, and impose a fine if there is no excuse for their tardiness in article 57 of [40] and in article 82/1 of [38].
3. The Law of Shari'a Procedure requires the witness to give an oath before giving testimony. The court hears the witness's testimony and asks questions that it deems appropriate. Each of the litigating parties will interrogate the witnesses, and after hearing the testimony, there is no need to recommend witnesses. Otherwise, the court drops the testimonies attached with the reasons for the decision in article 56 of [40] and in article 81 of [38].

The observer of the procedures for giving testimony in Islamic jurisprudence and law notes that the judge in Islamic jurisprudence does not force witnesses to attend to testify before the judiciary, and did not arrange a fine for not attending. This is contrary to the legal legislation, in addition to the fact that Islamic jurisprudence gives priority and attention to the issue of the integrity of witnesses before and after giving testimony, which is contrary to what is required by law.

### ***3.3 The Defenses Raised Against the Personal Evidence:***

The defenses that may be raised against the testimony vary according to the diversity of the reasons for the plea. Among the reasons for the rebuttal of the testimony are personal reasons related to the witness's condition, and objective reasons related to the witness's condition and the testimony he gave. The personal reasons may be the witnesses' retraction or an accusation in the witness. As for objective reasons, they may be due to the violation of the lawsuit's testimony, or to the invalidity of the testimony. If the challenge to the testimony or the witness is proven, this will result in its invalidation of it. In this subsection, I will briefly mention the challenges to the testimony for personal reasons. As for the objective challenges to the testimony and their impact on the case, they differ and vary according to the diversity of the lawsuits filed. Therefore, I will explain them in the following section independently when coming to proof by testimony in the cases of divorce and the claims for money, and the explanation of the objective appeals against each of the cases because it is related to the subject of the research.

### ***3.4 Personal defenses on the personal evidence:***

1. Rebuttal of the testimony for the retraction of the witnesses:

If the witness denies what he has proven by saying: I retracted what I testified or testified falsely, or that the witness said or hinted that he was a liar in his testimony [43], or told in any word that his testimony was not authentic from its origin if this retraction was in the court of the judge [47], and the witness's retraction of his testimony results in revocation of the testimony and no judgment will be taken based on it, and this is what the majority of jurists held [30,27,18].

It was stated in Appeal Decision No. (27919) dated 21/08/1987: "The appellant's attorney said in the session following the testimony that the two witnesses wanted to retract their testimony, and that they were present for that, so the Court of First Instance did not accept the aforementioned agent to bring them into court, and to investigate them about what was mentioned. It refused this request, although it had to verify and implement what the appellant's attorney mentioned regarding these two witnesses" [13], under what was stipulated in Article (17289) of the magazine.

2. Challenging the testimony for the presence of a charge in the witness:

The defendant may challenge the testimony of witnesses because there is a connection between the witnesses and the plaintiff, such as challenging the testimony for the existence of the marital link between the witness and the plaintiff, according to the opinion of the majority of jurists who prevented the testimony of one spouse to the other and not accepting it [42,30,28], or the existence of a kinship between the witness and the plaintiff, such as being a brother to the witness [46,54], or to be a parent or a son/daughter of the witness [32,16], or to challenge the testimony for the existence of worldly enmity or religious enmity between the witness and the plaintiff [27,32].

Resolution (12754) dated June 15, 1963, said: Article (1702) in the magazine stipulated that there should be no worldly enmity between the witnesses and the defendant and it said in its explanation: If the defendant said: There is worldly enmity between me and these witnesses and he did not clarify the cause of the enmity, there is no defect in their testimony, and that worldly enmity is that which arises from matters such as money and prestige, and worldly enmity does not occur by simply asking one of them for his right from the other, or one of them hitting the other [13].

And the appeal decision No. (8708) dated March 15, 1955, stated: "A father's testimony to his son is not acceptable," under Article (1700) of the magazine [13].

### 3. Rebuttal of the testimony for the witness's immorality:

The majority of the jurists did not accept the testimony of the evildoer because the Almighty said: "*And call two of your reliable men to witness*" At-Talaq 2. So, it is required for the witness to be a reliable one and not do major sins other than minor ones, and the defendant can challenge the testimony of the witness based on the unreliability of the witness, e.g. if the witness doesn't pray or gambles.

It was stated in Appeal Decision No. (021512) dated 9/7/1980: "If the crime of adultery is proven to the witness, his testimony is not accepted for his immorality [12]. And the appeal decision No. (24813) dated 10/7/1984 stated: "The appeal of the witnesses' testimony that they do not fast Ramadan and do not pray and that one of them drinks alcohol is an acceptable appeal and the court has to examine that and then judge according to Shari'a." [13].

### 4. Rebuttal of the testimony for saying words like "I know or I am sure":

The majority of jurists stipulated a sentence for testimony, which is the "I testify" as states in article 1689 [6,4,22], so it is not permissible to express knowledge or certainty as the witness says: I know, verify or assert, as it is not permissible in the sense, and it is not enough for the witness to say: "I acknowledge the testimony of witness X" or by saying: "I assert my written testimony" nor by the words like: "Yes" if he is asked, do you testify about such and he answered yes, so his testimony is not accepted.

## 4 Section Three: Proof of Personal Evidence in the Cases and the Defenses Received and their Impacts.

### 4.1 Proof of Personal Evidence in the Cases of Divorce and the Defenses and their Impact:

#### 4.1.1 Proof with Personal Evidence in the Cases of Divorce for Discord, Conflict, and the Defenses Received and their Impact:

God created man, created his wife from himself, made affection and mercy among them, and made each of them comfortable for the other. Allah Almighty said " *And one of His signs is that He created for you spouses from among yourselves so that you may find comfort in them. And He has placed between your compassion and mercy. Surely these are signs for people who reflect* " Surah Ar-Rum 21.

Despite the strong bond that God has deposited in the relationship between the spouses, marital life may encounter family differences and problems, which requires finding solutions for them, and Islamic law has given the right to the husband to discipline his wife if he notices ill conducts from her and arrogance that violate marital life. Allah Almighty said " *And if you sense ill-conduct from your women, advise them 'first', 'if they persist, 'do not share their beds, 'but if they persist, 'then discipline them 'gently'. But if they change their ways, do not be unjust to them.* "Surah An-Nisa,34.

This right granted to the husband is restricted by the Shari'a controls stipulated by the jurists in their works when talking about this issue. The husband begins to preach kindly using soft words. If that makes no use, he moves to abandonment in the bed, if the wife does not return to her sense and insists on the disobedience, then the husband moves to the third stage, which is the mild beating, and if the wife responds and obeys her husband, it is not permissible for the husband to move to the other means [2,29,15]. The Sharia also gave the wife the right to preach to her husband with kindness and gentleness and a kind word if she saw his disobedience and reluctance. But she does not have the mandate to discipline. Islamic Sharia gave the right to each of the spouses if these means did not succeed and marital life was not possible, they can resort to the court to request a divorce, and the husband has the right to divorce his wife.

The Jordanian Personal Status Law has given the right to both spouses or one of them to request divorce due to discord and conflict, according to what was stated in Article (126) of the law, which states: "Any of the spouses may request divorce due to discord and conflict, if he/she claims harm inflicted on him by the other party that makes marital life intolerable, whether the harm is physical, such as physical, verbal, or moral harm, and moral harm is any dishonorable behavior that causes any offense to the other party, as well as the other party's insistence on violating marital duties and rights [36].



Looking at the aforementioned article, it turns out that the law permitted both spouses to request divorce for discord and conflict, the article permitted the husband to request a divorce in return for money paid by the wife if the abuse was on her part and allows the wife to request divorce for discord and dispute in return for money paid by the husband if he is the abuser if the following elements are available in the lawsuit filed: A statement that the defendant married the plaintiff with a valid legal contract, and that the plaintiff mentions in his lawsuit that discord and strife exist between the spouses (qarar raqm 7432) [3], that the plaintiff states that discord and strife have reached the point of harming the other party in such a way that she cannot continue the marital life with him (article 126) [36].

Being physically (having intercourse) married is not required to request divorce due to discord and dispute, so it is permissible to request divorce before that stage and after it, but it is required that the harm be proven by the plaintiff [13].

If one of the spouses files a lawsuit requesting divorce due to discord and dispute, the court informs the defendant to attend the litigation sessions or is considered absent and the trial against him is in absentia. On the day set for the trial, the court calls the lawsuit parties and asks the plaintiff to identify herself through the Identification Card, and asks the defendant about the claims of the plaintiff. There are several possibilities for the defendant to respond to the lawsuit, which are [51]:

**The first possibility:** acknowledgment of what was stated in it and that there is discord and dispute between the litigants; in this case, the judge makes his effort to reconcile the litigants (husband and wife). If he was able to reconcile with them, he dismisses the case, and if he was not he postpones the case for no less than one month, to give him a chance for reconciliation. On the day specified after the expiry of the time, the judge asks the litigants if reconciliation has been made between them. If reconciliation is accomplished, the case is dismissed, and if, and the plaintiff insists on the request for divorce, the judge must refer the case to two mediators, and the two mediators are from the husband and wife's family, as they are the best able to search for the causes of discord and conflict and reconciliation between them. The court would not end if the spouses do not have two mediators on their part, but rather they must search for two arbiters from their families, and if the court is sure that there are no mediators from the families, it will assign two mediators other than the families (from their neighbors, friends, or any person who is suitable for the sake of reconciliation between the spouses). Their task is to search for the causes of discord and conflict with the spouses and to estimate the percentage of harm when it is not possible to reconcile between them (article 126/a, b, c, d) [36].

**The second possibility:** is the defendant's denial of what was stated in the lawsuit, and introducing one of the acceptable defenses contained in the lawsuit for divorce for discord and dispute such as defense for the actual reconciliation between them, or the defense through incompetence [13] Or precedence of establishing a lawsuit (qarar raqm 22293) [3] Or the defense of divorce, or the defense of marital cohabitation after the filing of the case, or the readiness to follow the husband in his home and other defenses acceptable to this case. For example, if the husband defends the plaintiff's lawsuit for the actual reconciliation between them, in this case, the court asks the plaintiff about this the defense raised by the defendant. His response has two possibilities: [51] The first possibility: acknowledging the defense raised by the defendant and thus the court decides to dismiss the case.

As for the second possibility of the plaintiff's answer to the plea raised by the plaintiff, it is the plaintiff's denial of this plea, and therefore the court asks the plaintiff to prove his claim, and he may prove it with the official wrote evidence and personal evidence that proves the actual reconciliation between the litigating spouses. I want to prove his claim with personal evidence, the court asks the defense to name and list the witnesses, as stated in Article (56) of the Code of Shari'a Procedures [39], and he must bring his witnesses, and in the event of the inability of witnesses or refusal to attend to give testimony, he may ask the court to bring them by Procedures stipulated in the Jordanian Shari'a Procedure Law article 58-64 [39].

The court as stated by article 65 of the same law must oblige the witness to swear an oath before giving the testimony, and there is no need to start with "I testify" [39], and the judge listens to the testimony of witnesses in the defendant's defense case. If the testimony competes with the case, the testimony is accepted and the case is dismissed, otherwise, it is not. In the event of approval, the judge asks about the plaintiff his recent statements, and the court decides to accept the testimony of the witnesses, and the if plaintiff's lawsuit was not proven and his claim was established, and its decision is issued based on the lawsuit, demand, personal evidence, testimony, and approval.

**The third possibility:** The claimant's inability to prove his defense. The judge makes his effort to reconcile the litigants (husband and wife). If he was able to reconcile with them, he dismisses the case, and if he was not he postpones the case for no less than one month, to give him a chance for reconciliation. On the day specified after the expiry of the time, the judge asks the litigants if reconciliation has been made between them. If reconciliation is accomplished, the case is dismissed, and if the plaintiff insists on the request for divorce, the judge must refer the case to two mediators. Their task is to search for the causes of discord and conflict with the spouses and to estimate the percentage of harm when it is not possible to reconcile between them (article 126/a, b, c, d) [36].

### ***The Impact of Substantiation of a Divorce Lawsuit for Discord and Dispute:***

The impact of the plaintiff's substantiation of his lawsuit in the request for divorce of discord and dispute is the following:

1. Acceptance of the plaintiff's lawsuit, and proof of discord and conflict between the aggrieved spouses [13].
2. The court makes an effort to reconcile the litigants (husband and wife). If reconciliation is accomplished, the case is dismissed.
3. Postponing the case for a specified period of no less than one month. If reconciliation is accomplished at the end of the period, the case is dismissed.
4. If the plaintiff is absent, the defendant must take an oath that reconciliation did not take place between them.

I mentioned in the previous section that testimony is divided into two types: direct testimony through seeing or hearing what is happening in front of the witness, and hear-saying testimony by witnessing what he heard without seeing what happened. Article 127 of the amended Jordanian Personal Status Law of 2010 states: "Discord, conflict, and harm is proven by the testimony of two men or a man and two women, and it is sufficient to testify by hearing based on fame within the life of the spouses." [36].

The examiner in this article finds that the Jordanian law has taken the permissibility of proving the case of discord and conflict by direct or indirect testimony, and the law relied on the explicit opinion of the Maliki who authorized the proof of harm between the spouses with the testimony of hearing as if the witnesses said: We heard that so-and-so harms his wife without a fault necessitates that, or she mistreats him." [11,59].

Everything that reveals and clarifies the truth can be accepted and relied upon in the judiciary, due to the necessity of manifesting the truth, preserving the rights of people, and not impairing their interests.

The law stipulated that the required number of witnesses be available to prove the case of discord and conflict: two if they were men, or a man and two women. The law also requires the witness, when giving testimony, to swear an oath of the truthfulness of his testimony, and to declare the source of his testimony, indicating whether he witnessed the incident by himself, or heard that from others.

It is also noted that the Jordanian Personal Status Law, in Article (126/a-126/b) [36], gave the wife the right to challenge witnesses who testify for the husband, and the husband does not have the right to challenge witnesses who testify for the wife.

The judge must verify only the wife's claim with personal or written evidence, a medical report, a court judgment, or a record of a case proving the husband's harm to the wife, and the testimony of her kinship and the hearing testimony are accepted if the wife is the plaintiff, and the wife is not required to list witnesses if she is the plaintiff, then the testimony here as a matter of verification, not proof. This is in contrast to if the husband is the plaintiff, then he is obliged to prove the claim of discord and dispute.

The Appeal Decision No. 91867-377-2014 stated the following:

After reviewing the case report and all the documents related to it, the appellant submitted his appeal against the judgment of the Court of First Instance that included the divorce of his wife based on a verbal divorce utterance by the husband for discord and dispute. Upon examination and after deliberation, it was found:

The reasons for the appeal to which the appellant relied were summed up as that the other party did not submit evidence to prove their claim, that the testimony of witnesses is limited to hearing, and that the percentage that the two mediators were unjust to the appellant.

The answer to that is the lawsuit is submitted by the wife, that the court has proven with personal evidence the existence of discord and conflict between the two parties, and Article 127 of the Personal Status Law has authorized the testimony of hearing based on fame to prove the case of divorce for discord and conflict, and therefore it was decided to drop the reasons for the appeal for its lack of inclusion. Therefore, the Court of First Instance approves based on a verbal divorce utterance by the husband for discord and dispute.

#### ***4.1.2 Proof by Personal Evidence in the Cases of Divorce for Absence, Abandonment, and the Defenses Contained in it and its Impact:***

The absence of the husband from his wife and his abandonment of her has an effect of harm and estrangement between the spouses, and the occurrence of family differences as a result of the difficulties of life, so it cannot live in dignity and reassurance. This is inconsistent with the purposes of the Islamic law that the purposes of marriage are the chastity of each of the spouses and the affection and tranquility between them. To stop this harm to the wife, the legislator gave her

the right to request a divorce for absence and abandonment, and the Maliki [21], and Hanbali [42], jurists have authorized the wife the right to request a divorce because of the harm from her husband's lack of cohabitation with her, and there is no difference in that in the presence of the husband or his absence, even if he left her money to spend for, provided that this absence is long and harmed her [11], and that the absence is without an acceptable excuse. This condition is unique to the Hanbalis, and if the absence was for an acceptable excuse or for an inevitable matter, such as seeking knowledge or trade and the like, the wife does not have the right to ask for a divorce [42].

The Jordanian legislator has given the woman the right to request a divorce due to absence and abandonment, as stated in Article (119): "If the wife proves the absence of her husband for a year or more, and his residence is known, his wife may ask the judge to annul their marriage contract if she is harmed by his absence, even if he has money that she can spend." [36].

As stated in Article 122 of the Personal Status Law: "If the wife proves that her husband has abandoned her and refrained from having a normal spouse's relationship for a year or more, and she requests annulment of her marriage contract with him, the judge shall give him no less than a month to reciprocate or divorce her. If he does not do so and does not show an acceptable excuse, the judge approves divorce by the annulment of their marriage contract." [36].

Looking at the two previous articles of the Jordanian Personal Status Law, it becomes clear to us that the law allows the wife to request divorce for absence and abandonment if the elements of the case stipulated in these two articles are available: a statement that the marriage exists between the plaintiff and the defendant with a valid legal contract, and that the claimant wife states that the defendant husband is the one who has been absent from his wife or has abandoned her for a year or more, and that this absence is without excuse, and that the plaintiff states in her claim that she was harmed by her husband's absence and his abandonment [13].

After the plaintiff files the lawsuit against the husband, fulfilling the conditions for its validity, the court addresses the defendant and asks him about the plaintiff's lawsuit and the defendant's answer is within one of three possibilities:

**The first possibility:** the defendant denies the plaintiff's claim: in this case, the court obliges the plaintiff to prove her claim, and the plaintiff (wife) can prove the case by the personal evidence that is the subject of this research, and therefore she must list the witnesses, as stated in Article (56) of the Code of Procedure Legality: "If the plaintiff relies in his/her case on personal evidence, he/she must list witnesses when asked to. This listing includes evidence of mutilator (reported by many people), and it is not permissible to name other witnesses unless the subject matter of the case is one in which voluntary testimony is acceptable." [39]. Since the lawsuit for divorce due to absence and abandonment is a personal right, it is not permissible for her to list new witnesses if their testimony is not accepted [5]. The plaintiff's wife must call her witnesses. In the event of her inability or reluctance of witnesses to attend to give testimony, she may ask the court to bring them following the procedures stipulated in the Jordanian Code of Sharia Procedure article 58-64 [39].

The court must oblige the witness to swear an oath before giving the testimony, and there is no need to start with "I testify", and the judge listens to the testimony of witnesses on the defendant's defense. If the testimony is competent with the case, the testimony is accepted and the case is dismissed, otherwise, it is not. In the event of approval of the plaintiff, the judge asks about her recent statements, and the court decides to accept the testimony of the witnesses and obliges him to accept his approval. If the witnesses are not contested, the court shall decide its acceptance and conviction of the testimony of the witnesses and shall pass judgment on the defendant accordingly as per article 1706 [22].

**The second possibility:** is the acknowledgment of the plaintiff's claim and ratification of what was stated in it, and then the court judges for the annulment of the marriage contract if the lawsuit filed is a request for divorce due to absence. But if the lawsuit was the request to divorce for abandonment, and the husband approved his abandonment of his wife for a year or more without an excuse, then the judge will give him no less than a month to nurture or divorce her, and if he does not do and give an acceptable excuse, the judge annuls the contract of their marriage.

**The third possibility:** and has two probabilities:

**The first:** When the court asks the defendant about the plaintiff's lawsuit, to defend against her lawsuit with one of the accepted defenses on this lawsuit: such as taking her permission to travel, or her refusal to move with the husband, or her wife's exit from the marital residence without legal justification, or to a defense that his absence did not exceed the legal period, or that the absence was for a legitimate excuse. For example, if the husband's defense was based on the plaintiff's permission to authorize him to travel, the court asks the plaintiff about the defendant's defense, and if she approved it and ratified what was stated in it, and that she authorized her husband to travel, then the court dismisses the case.

**The second:** is that the plaintiff denies the defense claim and that she did not authorize him to travel. The court assigns the defendant to prove his claim, and the claimant's husband can prove his defense by personal evidence with the testimony of witnesses that the wife authorized him to travel outside the country, as well as prove his defense with official evidence proving that the wife authorized him to travel. If the husband proves the defense, the court shall judge to dismiss

the plaintiff's case [13].

In the event of the inability of the husband to prove his defense, he has the right to ask for the oath of the plaintiff. If she swears, the defense claim is dropped and the original case is proven. If she refused, the defense claim is proven, and the original case is dismissed.

#### **Impacts of proving the plaintiff's claim:**

If the plaintiff proves her claim and the testimony of witnesses is competent with the case, then the judge issues his judicial ruling, as a result of that:

1. Judgment to divorce the spouses for absence and harm, and annulment of the marriage contract [36], according to the Personal Status Law article 122. This ruling entails its acquisition of authority and protection and the obligation of implementation [61], and the end of dispute out of the jurisdiction of the court that issued the judgment. The court may not, after issuing the final decision in the case, return to consider it again, except by way of objection, rescinded by the Sharia Court of Appeal, or retrial.
2. The waiting period is obligatory if she had intercourse, as well as the living expenses of the waiting period as of article 145 and 59 [36], and the dowry is obligatory if the divorce is after entry or having intercourse, and legal Muta'a is obligatory for her if divorce occurs due to absence and abandonment before having intercourse or legal seclusion or before naming the dowry, and Muta'a is determined according to custom and norms and according to the financial ability of the husband, provided that it does not exceed half the nominal dowry [14].

#### *4.1.3 Proof by personal evidence in divorce lawsuits for imprisonment and the defenses received thereon and their impact:*

Imprisonment is the confinement of a person in a place and preventing him from disposing of himself for fear of his escape or to meet the penalty, to determine his financial condition, whether he can pay it or not, and to prevent his escape or loss of what he owes, or the possibility of fulfilling the penalty imposed on him [60]. The law defines imprisoned as A person sentenced to a freedom-restricting penalty for three years or more [49].

Some jurists have permitted the wife who has an imprisoned husband for some time to request a divorce, given the effect of the husband's imprisonment and his absence from his wife inflicting harm on her and the estrangement between the spouses, and the occurrence of family disputes as a result of the difficulties she suffers from life. So she is unable to live with dignity and tranquility, and this is inconsistent with the purposes of the Islamic Sharia, which made one of the purposes of marriage the protection of each spouse and the attainment of affection and tranquility between the spouses. To remove this harm to the wife, the legislator gave her the right to request divorce for imprisonment. Ibn Taymiyyah says: "The opinion about the woman of the captive and the imprisoned and the like the opinion about the woman of the missing husband, she is unable to be with him. She has the right to request divorce" [57].

The Jordanian Personal Status Law, it allows the wife of a detainee to request a divorce, as stated in Article 125: "The wife of a detainee who has been sentenced by a peremptory verdict, with a penalty restricting freedom for three years or more, may request the judge, after a year has passed from the date of his imprisonment and restriction of his freedom, to annul her marriage contract with him, even if he had money from which she could spend. If he was released before the annulment ruling was issued, the request would be rejected." [36].

The aforementioned legal article permitted the wife to file a lawsuit requesting a divorce if the following elements were present: that she states in her lawsuit that she was the wife of the defendant with a valid legal contract, that she states in her lawsuit that he had been sentenced to imprisonment for three years or more, that she requested divorce after the lapse of one year from the date of the judgment against him, and she must present the deed of imprisonment to support her claim [13], and state that the judgment is final and not subject to appeal [13].

Then the court informs the defendant to attend the litigation sessions, or he is considered absent, and the trial against him is in absentia, and on the day specified for the trial, the court calls the parties to the case and identifies the plaintiff through the identification card, and asks the defendant about the plaintiff's lawsuit. There are several probabilities for the defendant's response to the lawsuit:

**The first probability:** is the defendant's acknowledgment and ratification of what was stated in the plaintiff's lawsuit, and here the court decides to annul the marriage contract to imprison the husband.

**The second probability:** challenging the plaintiff's lawsuit with one of the acceptable defenses contained in this lawsuit, and among the defenses is the defendant's plea that the sentence of imprisonment issued against him is not final and subject to appeal, or the plea that he has not been imprisoned for a year from the date of the judgment, or the plea for the issuance of a general amnesty. For example, if the defendant pleaded the judgment against him was not final, then the court would ask the plaintiff about the plea, and if she acknowledged what was stated in the plea, the court would reject

her suit.

If she denied the defense case, the court will assign the defense claimant's spouse to prove that the defense that he raised through personal evidence with the testimony of witnesses supporting the defense case, and with official evidence that proves that the judgment is not final. The judge annuls the marriage contract.

**The third probability:** When the plaintiff is asked about the defense lawsuit, she denies what was stated in it, and then the court assigns the defense plaintiff to prove her defense. If he proves it, the plaintiff's lawsuit is rejected, and if he is unable to prove it, the judge shall order the annulment of the marriage contract.

#### **Impact of Proving Divorce Claim for Imprisonment:**

The plaintiff's proof of her claim entails the following:

1. Accepting the plaintiff's claim
2. Judgment for the annulment of the marriage contract for the imprisonment of the husband.
3. If the defendant (the husband) proves the defense of one of the substantive defenses accepted in this case, the plaintiff's claim will be dismissed, and in the event, he is unable to prove his defense, the wife's original claim will be proven, and the marriage contract is annulled [13].

#### *4.1.4 Providing Personal Evidence in Divorce Lawsuits for stopping alimony (Nafaqa):*

Islamic Sharia obliged the husband to spend on his wife, even if she was rich and affluent [54,32] because it is a right that she must have in return for the husband's right to retain her. And the Jordanian legislator emphasized the necessity of the wife's alimony on her husband, even with the difference of religion in a valid marriage, even if she was in her family's house unless she was asked to move to her husband's house and she refused illegally as of article (60) [36]. If the husband refrains from spending on his wife, the legislator gives her the right to request divorce because of the great harm inflicted on her by not spending on her.

The Jordanian legislator has given the wife the right to demand divorce for the husband's failure to spend on her, as stipulated in Article (115) of the Jordanian Personal Status Law: "If the husband refrains from spending on his wife after a verdict is issued on him for her alimony, and he has money with which the alimony judgment can be executed, the judgment is executed against him." and if the husband does not have money in which the judgment of alimony can be implemented, and the wife asks for a divorce. If he claims that he is well-off and insists on not spending, the judge shall divorce him immediately. And if he proves it, he will be given no less than one month and not more than three months to pay the alimony imposed from the date of filing the divorce case and presenting a guarantor for her future alimony. If he does not do so, the judge shall divorce him after that [36].

By considering the aforementioned article, the law authorized the wife to file a divorce lawsuit for not spending if the following elements are available in the lawsuit filed: a statement that the defendant is the plaintiff's husband in a correct legal marriage contract, and that the case of divorce is preceded by not refraining from spending a judgment of alimony previously issued rightly, and it was not implemented by the husband, and this is what the appeal decision supported: "If the husband is present or absent, then the request to divorce for the inability of the alimony must be preceded by alimony [13], it cannot be implemented." For him, the alimony judgment issued against him can be implemented according to what was stated in the appeal decision (21808) [13].

Then the court informs the defendant to attend litigation sessions or is considered absent, and the trial will be in absentia. On the day specified for the trial, the court calls on the parties of the case and the plaintiff is identified through the ID and asks the defendant about the claim of the plaintiff, and there are several probabilities for the defendant answering the lawsuit [51]:

**The first probability:** acknowledging what was stated in it and that he has money and insisted on not spending on his wife, the judge divorce him immediately, a reactionary divorce if after having intercourse unless it is complementary to the three verbal divorces, and a final divorce if it was before having intercourse, and the decision is issued based on the lawsuit, demand, certification, and approval.

As for the **second probability:** denying what was stated in the lawsuit, and defending through one of the acceptable defenses mentioned in the divorce lawsuit for non-spending, including defense of the possession of money, or defense of the wife's imprisonment, or defense of the wife's disobedience, or defense of her to leave the marital home without a legitimate justification, or defense of the spending on her and other acceptable defenses in this case. For example, if the husband's defense of the plaintiff's claim that he owns the funds and takes over the alimony on her, in this case, the court asks the wife about the defense raised by the husband, and for her answer, there are two cases [51]:



In the **first case**: she acknowledges and ratifies the defense raised by the husband, and thus the court decides to dismiss the case.

As for the **second case** of the wife's answer to the defense raised by the husband, it is: the wife's denial of this defense, and therefore the court requires the husband to claim the payment to prove his claim, and he may prove it with the official wrote evidence and personal evidence that proves his possession of the funds and his assumption of spending on them, and then the husband claiming the payment lists his witnesses, as stated in Article (56) of the Sharia Procedure Law, and he must bring his witnesses. In the event of his inability or bring his witnesses or their refusal to attend to give the testimony, he may request the court to summon them according to the procedures stipulated in the Jordanian Shari'a Procedures Law article 58-64 [39].

The court obliges the witness to swear an oath before giving the testimony (article 65 of the same law), and there is no need to utter a testament "I witness" [39]. The judge listens to the testimony of witnesses to the husband's plea. If the testimony is competent with the plea, the case is accepted, otherwise not. In the event of approval, the judge asks the plaintiff about her last statements, and the court decides its acceptance and conviction of the testimony of those who testified, and the plaintiff's claim was not proven and her claim was rejected, due to the absence of insolvency with the existence of money, and it is possible to implement the judgment of alimony from this money. It issues its decision based on the lawsuit, request, personal evidence, ratification, and acknowledgment.

As for the **third probability**: the defendant's acknowledgment of what was stated in the plaintiff's lawsuit, and the claim of incapacity and insolvency, at which point the judge instructs the insolvency plaintiff to prove his inability to alimony and insolvency. If he did not prove it, the judge divorces him. If he proved it by one of the official or personal means of proof, he would be given no less than one month and no more than three months to pay the alimony imposed from the date of filing the divorce lawsuit and presenting a guarantor for her future alimony. If he does not do so, the judge shall divorce him after that.

#### **The impact of proving the divorce lawsuit for non-spending:**

The plaintiff's proof of her lawsuit entails the following:

1. Acceptance of the plaintiff's lawsuit.
2. The judge divorces him immediately, with a revocable divorce if it is after having intercourse unless it is complementary to three divorce times, and an irrevocable divorce if it was before having intercourse, and the husband may ask his wife to return if the divorce was revocable, and the judge judges the validity of the return if he returns her during the waiting period and pays three months' alimony of what has been accumulated from her alimony and a guarantor for her future expenses.
3. If he does not pay the alimony of three months of what he has accumulated or does not provide a guarantor for its future alimony, the return is not valid.
4. If the defendant proves by one of the substantive defenses acceptable to this lawsuit, the plaintiff's lawsuit will be dismissed, and if he is unable to prove a defense, he has the right to direct the legal oath to the wife. If she takes the oath, the defense claim is dropped. I relinquish the oath, the defense claim shall be confirmed and the original claim shall be dismissed [13].

#### **4.2 The Performance of Personal Evidence in the Cases of Divorce and the Claims for Money and the Defenses Contained therein and their Impact.**

##### **4.2.1 Proof of Personal Evidence in the Claim for the Expedited Dowry and the Defenses Received Against it and their Impact.**

The dowry is one of the components of the marriage contract, and it is a right of the wife over her husband. She is entitled to it in the valid contract and the corrupt contract. But if the contract is void, she is not entitled to the dowry. The absence of any of the components of the invalid contract [25,53,33], If the dowry is identified correctly, then the wife deserves what is agreed upon in the contract, but if the dowry is not identified in the contract, the wife has the like dowry as socially known. The dowry is divided in terms of its payment to the wife into three types: an expedited dowry so that the wife collects it before the correct seclusion, and a deferred dowry so that it is postponed until after entering or the correct seclusion or specifying a known time for the payment, and the last type is the acceleration of some dowry and the postponement of others for a known period [31].

The legislator has given the wife the right to demand her expedited dowry according to what is stated in Article (136) of the Jordanian Personal Status Law: "If it is proven before legal seclusion that the husband is unable to pay the expedited dowry in whole or in part, the wife may ask the judge to annul the marriage, and the judge gives him a month, if he does not pay the dowry after that, the marriage is dissolved between them, but if the husband is absent and his place of residence

is unknown and he has no money from which the dowry can be collected, then the marriage contract is annulled without respite [36].

By looking into the aforementioned article, it becomes clear to us that the law permitted the wife to file a divorce lawsuit for non-payment of the expedited dowry if the following elements were present in the lawsuit: proof that the defendant is the husband of the plaintiff by a legal marriage contract [12]. An impediment to a request for divorce for insolvency to pay the dowry as stated in the appeal decision: "If the husband is unable before legal seclusion to pay his wife her expedited dowry, the marriage is annulled and this annulment is not considered a divorce." [13], Regarding his payment, according to what was stated in the appeal decision: "It is necessary to prove his insolvency" [13].

Then the court informs the defendant of attending the litigation sessions, or he is considered absent, and the trial against him is in absentia. On the day specified for the trial, the court calls the parties of the case and gets to identify the plaintiff through ID, and asks the defendant about the plaintiff's suit, and there are two probabilities for the defendant to answer on the lawsuit [51]:

**The first probability:** is an acknowledgment of what was stated in it, and then the court decides to prove the dowry for the wife, and the husband is given a month to pay the dowry during this period. If the dowry was paid, the judge would not annul the marriage contract, but if the period elapsed without the dowry being paid to the wife, the judge would annul the marriage contract, and the court issues its decision based on the lawsuit, request, and approval.

As for **the second probability:** denying what was stated in the lawsuit, and using one of the defenses contained in the claim for the dowry, including the claim that the deadline for entitlement to the dowry by the wife is not due, or the corruption of the marriage contract, or the husband's acquittal from the dowry to absolve the wife, or the fulfillment of the dowry by the husband and other defenses acceptable to the claim for the expedited dowry. For example, if the husband defends the plaintiff's claim for her seizure of the dowry or by the guardian, in this case, the court asks the wife about the defense raised by the husband, and for her answer, there are two cases [51]:

The **first case:** to acknowledge and ratify the defense raised by the husband, and thus the court shall dismiss the case.

As for the **second case** of the wife's response to the defense raised by the husband, it is the wife's denial of this defense, and therefore the court asks the husband to claim the payment to prove his claim, and he may prove it with official written evidence and personal evidence that proves her receipt of the requested dowry, or the payment to her guardian the expedited dowry. In this case, the court summons the guardian as a party in the trial and asks him about the husband's payment of the alimony. If he acknowledges, the case is rejected, and if he denies it, the court will ask the husband to prove his payment, and the husband may prove his payment by written and personal evidence. And then the husband lists the witnesses, as stated in Article (56) of the Code of Shari'a Procedure [39], and he must bring his witnesses, and in the event of his to bring them inability or their refusal to attend to give testimony, he may ask the court to summon them by the procedures stipulated in the Jordanian Code of Shari'a Procedure article (58-64) [39].

The court obliges the witness to swear an oath before giving the testimony (article 65), and there is no need to utter a testament "I witness" [39]. The judge listens to the testimony of witnesses to the husband's plea. If the testimony is competent with the plea, the case is accepted, otherwise not. In the event of approval, the judge asks the plaintiff about her last statements, and the court decides her acceptance and conviction of the testimony of those who testified, and the plaintiff's claim was not proven and her claim was rejected It issues its decision based on the lawsuit, request, personal evidence, ratification, and acknowledgment.

### **The Impact of Proving a Lawsuit for an Expedited Dowry:**

The plaintiff's proof of her lawsuit, or the defendant's inability to prove his defense, entails the following:

1. The plaintiff's lawsuit is accepted.
2. The defendant is obliged to pay the dowry. The judge gives the husband one month to pay the dowry during this period. If the dowry is paid, the judge would not annul the marriage contract, but if the period expires without paying the dowry to the wife, the judge would annul the marriage contract.
3. If the defendant's defense is proven and that he paid the dowry, the proof of this defense entails: dismissing the plaintiff's lawsuit, judging that the defendant's responsibility is not concerned with the dowry, and the wife's inability to refrain from obeying the husband, and entering the marital home.

#### *4.2.2 Proof of personal evidence in a claim for debt over an inheritance and the defenses received against it and their impact.*

The Jordanian legislator has given the wife the right to demand her uncollected dowry as it is a debt owed by the husband and she has the right to claim it from his inheritance. Article 42 of the Jordanian Personal Status Law states: "If a period

is specified for the deferred dowry, the wife may not claim it before the due date, even if a divorce takes place. But if the husband dies, then the term is due, and if the term is unknown, (to the facilitation, or until the request, or until the wedding), then the term is not valid, and the dowry is expedited, and if the term is not specified, the dowry is considered postponed until the occurrence of divorce, or the death of one of the spouses [36].

Looking at the aforementioned article, we note that the legislator considered the death of one of the spouses as a reason for the wife to deserve her expedited dowry, and she must file a claim for the deferred dowry after determining the inheritance and determining the heirs entitled to the inheritance. The defendants, in this case, are: (One of the adult heirs in addition to the rest of the heirs, the minor heirs by addressing their guardians, and the trustee of inheritance in addition to his job). And then the court informs the defendants to attend the litigation sessions, or they are considered absent, and the trial against them is in absentia, and on the day specified for the trial, the court calls the parties of the case and identifies the plaintiff through the ID, and asks the plaintiff to clarify her claim if it needs clarification, and asks one of the defendants, the heirs, about the plaintiff's lawsuit, and there are two probabilities for the defendant to answer the lawsuit [51]:

The **first probability**: the acknowledgment of what was stated in it, and then his acknowledgment is considered limited to himself, and the court obliges the plaintiff to prove her claim because the rest of the heirs are absent, and until the verdict is proven against the absentees, the plaintiff must prove her claim with evidence, as stated in the Journal of Judicial Judgments: "Evidence is an infringing argument for all. The acknowledgment is an argument confined to individuals only as per article 78[22].

If the plaintiff combines her lawsuit with personal and written evidence, the court asks her to name and list the witnesses, and the plaintiff's wife must bring her witnesses, and if she is unable to bring the witnesses or they are unwilling to attend to give testimony, she may ask the court to summon them by the procedures stipulated in the Jordanian Code of Shari'a Procedure (58-64) [39].

The court obliges the witness to swear an oath before giving the testimony (article 65), and there is no need to utter a testament "I witness" [39]. The judge listens to the testimony of witnesses to the wife's plea. If the testimony is competent with the plea, and the plaintiff did not collect her dowry, the court judges the payment of the dowry, otherwise, the case shall be rejected against the rest of the heirs, except for the one who acknowledges it, and it shall be executed against him in proportion to what he inherits.

The court obliges the plaintiff to take the supporting oath in the following form: "The judge shall swear her that she did not fulfill this right by herself or with others from the deceased, nor acquitted him, nor transferred it to others, nor paid it to anyone else, the deceased in return for this right has no mortgage." as per article 1746[22]. If the plaintiff took the oath of memorization, the court would ask the plaintiff and the defendants about their last statements. The court decides to establish the case and the plaintiff's entitlement to the deferred dowry and issues its decision based on the case, the request, personal evidence, and approval.

As for the **second probability**: the defendants' denial of what was stated in the lawsuit, and using one of the defenses contained in the lawsuit for claiming the debt on the inheritance, including the acquittal of the deceased from the deferred dowry for his wife, or the fulfillment of the dowry by the deceased and other defenses acceptable to the lawsuit claiming the debt on the inheritance. For example, if the defendant defends the plaintiff's claim by receiving the deferred dowry or that the guardian collected it, in this case, the court asks the wife about the defense raised by the defendant, and for her answer, there are two cases [51]:

In the **first case**: she acknowledges and approves the defense raised by the defendant and thus the court dismisses the case.

As for the **second case** of the wife's answer to the defense raised by the defendant: the wife's denial of defense. Thus, the court asks the defendant to prove his defense, and he may prove it with official written evidence and personal evidence that proves she collected dowry, or that her guardian collected it, and then the husband lists the witnesses, as stated in Article (56) of the Jordanian Code of Shari'a Procedure [39].

He must bring her witnesses, and if I am unable to bring the witnesses or they are unwilling to attend to give testimony, he may ask the court to summon them following the procedures stipulated in the Jordanian Code of Shari'a Procedure (58-64) [39].

The court obliges the witness to swear an oath before giving the testimony (article 65), and there is no need to utter a testament "I witness" [39]. The judge listens to the testimony of witnesses to the heirs' plea. If the testimony is competent with the plea, the case is proved, otherwise, it is not. In the event of approval, the judge asks the plaintiff about her last statements, and the court decides her acceptance and conviction on the testimony of those who testified and the lack of proof of the dowry for the wife and issues its decision based on the lawsuit, request, personal evidence, and approval.

If the defendants are absent from the trial on the specified day and date, the court decides to proceed with the case in absentia at the request of the plaintiff and assigns the plaintiff to prove her claim with personal and written evidence. If the plaintiff proves her claim, it asks her to take a supporting oath. If she takes the supporting oath, the court asks the plaintiff about her last statements, and the court decides to establish the case and the plaintiff's entitlement to the deferred dowry and issues its decision proving the plaintiff's claim and entitlement to the deferred dowry, based on the suit, the request, personal evidence, and written evidence.

If the plaintiff is unable to prove her claim with personal and written evidence, or if she refuses to swear the supporting oath, the court shall issue a decision dismissing the plaintiff's suit and she is not entitled to the deferred dowry.

#### **The impact of establishing a debt claim on the inheritance:**

The plaintiff's proof of her claim, or the defendant's failure to prove his defense, results in the following:

1. Acceptance of the plaintiff's claim.
2. The deferred dowry is taken from the deceased's inheritance.

If the defendant proved that the defense that the dowry is paid, the proof of this payment entails: rejecting the plaintiff's lawsuit, and ruling that the deceased is acquitted of the deferred dowry, and the plaintiff is not entitled to it from the deceased's inheritance.

## **5 Examples of the Decisions of the Judgments of the Sharia Supreme Court and the Court of Appeal Related to Testimony and its Impact on the Cases**

In this part, we review two examples of decisions issued by the Sharia Court of Appeal and the Supreme Sharia Court. The first relates to divorce cases, and the second relates to money claims that depended on personal evidence as a means of proof and the defenses contained therein and had an impact on the issuance of these decisions by Sharia courts of various degrees. It must be pointed out that the real names of the people involved have been replaced by symbols, to preserve the privacy of the persons and the confidentiality of information.

### *5.1. A Judgment Example in the Case of "Divorce for Discord and Conflict".*

This judgment was issued by the Sharia Supreme Court in the case of divorce for discord and dispute, and Resolution No. 22 of (2021) was taken in it, and the decision stated:

Appellant: (X) his attorney, attorney (X1)

Defendant: (Y) His attorney, (Y).

The subject of appeal: a divorce for discord and conflict .

The Appealed Judgment: The Appeal Decision issued by the Amman Sharia Court of Appeal No. (1682/2020 - 120292) dated 9/23/2020.

After reviewing the minutes of the case and all the papers related to it, the facts, as indicated by the appeal judgment and other papers related to it, are summarized as follows: the plaintiff (who was appealed against) has instituted the case on the basis (2668/2020) against his wife, the defendant (the appellant) by requesting a divorce for discord and dispute over a proof of saying that the defendant (...) is his wife and they are married by a valid contract. And that she belittles him and his family and mistreats him, which led to the emergence of conflict and deep strife, and life between them became impossible, and he was harmed by the existence of this strife.

When examining the case before the Court of First Instance, the plaintiff attended by an attorney, and the defendant attended in person and by an attorney, and the defendant's lawyer answered, confirming the marriage and legal entry between the plaintiff's defendant, and denied the rest of the case. The court assigned the plaintiff's lawyer to prove, and after the plaintiff made a list of his evidence, the court heard his witnesses, the court found that the testimony of witnesses (W1, W2, W3, W4) matches the case, and agree with each other, and the plaintiff (the respondent) presented the marriage contract document as written evidence.

The court asked the defendant's lawyer if he has a defense against the witnesses, and he submitted a memorandum stating that the witnesses' testimonies do not match and that there is deep worldly enmity between them and the defendant and that they rejoiced at her grief and grieve for her joy. The court asked the defendant's attorney to clarify his appeal, and he said: There is no explanation for him other than what was mentioned, so the court decided to reject his appeal and announced its conviction with the witnesses' testimonies. A reconciliation session was held for the plaintiffs attended by the defendants and their attorneys. The court made every effort to reconcile, but it was unable to do so, and postponed the case for more than a month, hoping for reconciliation. And when the conciliation between the two parties was not

completed during the specified period, the court ordered to assign two mediators from the litigants' families but was unable to do so, so it sent two mediators from outside their families, namely, the two lawyers (L1, L2). The defendant claimed before the two mediators that the plaintiff had divorced her and that she had filed a lawsuit to prove divorce, so the court decided to stop the lawsuit pending a decision on the divorce lawsuit.

After the divorce case was decided upon and a judgment was issued dismissing the defendant's lawsuit and the judgment was confirmed on appeal, the two parties' attorneys asked to continue the case from the point at which it was stopped. The aforementioned two mediators held a conciliation and arbitration session and issued their decision with the result they reached, and the court decided not to adopt the decision of the two mediators because the defendant did not wait enough time for her working conditions. The court re-sent the same two mediators, so the two mediators held a conciliation session and issued their decision with the result they reached.

On (11/8/2020) the Court of First Instance issued its judgment following the decision of the two judges to divorce the aforementioned plaintiff and his wife who married in the correct legal contract, with a first clear of divorce utterance for discord and dispute, and that the aforementioned defendant has the right to demand from an amount of three thousand nine hundred and ninety-nine dinars and six hundred fils, which is the compensation that was estimated by the two mediators after deducting the percentage of abuse and what she took from her dowry, and that she must have the legal waiting period.

The defendant appealed the ruling of the lower court according to a statement of claim submitted by her attorney, requesting the annulment of the ruling of the court of the first instance for not referring the defendants to family reform offices and for other reasons.

The Amman Sharia Court of Appeal reviewed the appeal and issued a judgment on (23/9/2020) supporting the judgment of the Court of First Instance.

The appellant submitted a plea to the head of the Shari'a Supreme Court, requesting permission to appeal against the judgment of the Court of Appeal, due to an emerging point represented in the effect of not transferring the case that accepts family mediation to the Family Reconciliation and Reconciliation Offices, and on November 5, 2020, a decision was issued giving the appellant permission to appeal by the judge authorized by the head of the Shari'a Supreme Court accepted permission, and on 6/12/2020. The appellant's representative submitted his appeal against the aforementioned Court of Appeal ruling under a regulation that ended with a request to set aside the judgment of the Court of Appeal and oblige the appellant to pay fees and expenses, due to an error in the application of the law for two reasons:

**First:** The appeal decision erred not to transfer the parties of the case to the Family Reconciliation Office by the Court of First Instance, contrary to the provisions of Paragraph (e) of Article (11) of the Sharia Procedure Code. Nevertheless, the Court of Appeal upheld the decision of the Court of First Instance.

**Second:** The appeal decision erred because it did not address all the grounds for appeal.

The defendant, through his lawyer, responded to the appeal with a statement that ended with a request to support the appeal decision and drop the reasons for the appeal, and oblige the appellant to pay fees, expenses, and attorney's fees.

Upon examination and after deliberation, it was found that:

**First, in terms of form:**

As there is nothing in the case papers that indicates that the appellant has been notified of the permission decision, the appeal against non-informing is something that must be accepted in form.

**Second, on the subject:**

This court judged in the appeals submitted to it after the appellant obtained permission to appeal from the head of the Sharia Supreme Court or his authorized representative, to limit consideration to the legal point for which the permission was given. The Court of First Instance did not refer the two parties to the Family Reconciliation Office in the court, in violation of Article (11) of the Code of Shari'a Procedures, so the appealing judgment violated the law, which is the legal point for which the permission was given. And since the aforementioned Article (11) stipulates that the parties of the dispute must be referred to the Family Reconciliation Offices in cases that accept mediation in the form of an order, as the text came in paragraph (e) thereof: (The judge must refer divorce registration applications and cases that accept family mediation to the offices of reform, mediation and family reconciliation). This provision implies that it is the duty of the judge who is examining the case to carefully consider the merits of the case in terms of his susceptibility to conciliation and family mediation, or his insusceptibility to do so. If the subject matter of the case accepts family conciliation and mediation, then the judge must refer the case to the family reform offices to carry out the task entrusted to them, since that was the case and the subject matter of the lawsuit in the present appeal is the separation of discord and dispute, and it is a subject that accepts conciliation and family mediation, which is evidenced by a clear and unambiguous indication



that Article (126) of the Personal Status Law, which stipulates that in divorce provisions for discord and dispute, the court must conciliate between the litigants.

If this is decided, will the conciliation procedures legally established in the procedures of this case dispense with the transfer of the two parties to the conciliation offices? And is the conciliation that takes place in the procedures of this case the same as that takes place in the conciliation offices so that the defect in the reconciliation procedure between the litigants by the court compels the parties not to transfer the two parties to the conciliation offices, and therefore the failure to apply the legal text is redressed and the intended purpose of the text was achieved by the court's procedures during proceeding with the case, it is answered that:

The conciliation procedures in the case of discord and dispute carried out by the court are fundamentally different from the conciliation procedures in the family conciliation offices, as the conciliation that takes place in the conciliation offices aims to end the dispute by any means agreed upon by the parties under what is stated in Article (4) from the regulations of family conciliation and reconciliation offices. If this is the case and this case is acceptable to mediation at the conciliation offices, and since the article requires the court to transfer the parties of the dispute to those offices, which is an inevitable procedure in such a case. And since the Court of First Instance did not apply this procedure and agreed to that is the Court of Appeal in its appeal decision, the Court of Appeal has thus failed to apply the law, so its decision, in this case, is free to repeal.

**For the above reasons the court ruled in the majority:**

**First:** Acceptance of the appeal in form.

**Second:** The aforementioned appeal ruling is repealed and the case is returned to the Court of Appeal for consideration by pleading.

**Third:** The appellant must be obliged to pay the fees and expenses and fifty dinars for attorney fees.

Documented on the seventh of Shawwal for the year one thousand four hundred and forty-two Hijri, the nineteenth of May of the year two thousand and twenty-one AD.

**Given this case, we note the following:**

The plaintiff proved her claim with personal evidence that was compatible with the case, which had the following impacts:

1. Acceptance of the plaintiff's lawsuit, and proof of discord and conflict between the dilapidated spouses.
2. The court made every effort to reconcile the dilapidated spouses but was unable to reconcile them.
3. The case was referred to the two mediators to reconcile the dilapidated spouses, and they were unable to reconcile between them.
4. The Court of First Instance ruled to divorce the litigants with a clear divorce for discord and dispute.

We note that the Sharia Court of Appeal upheld the decision of the Court of First Instance in terms of form and content, but the Supreme Sharia Court upheld its decision in terms of form and rejected it in terms of content because the case was not transferred to the reconciliation family offices and was satisfied with the reconciliation efforts made by the court and by the two mediators. Thus, the Supreme Court's response to the decision of the Sharia Court of First Instance and the Court of Appeal was not due to a defect in the procedures for hearing personal evidence, or a defect in the content of personal evidence.

We also note in this case that the defendant challenged the personal evidence submitted by the plaintiff of worldly enmity, and this appeal resulted in the court asking him to clarify and prove this appeal, and the plaintiff of the appeal was unable to prove it, which led to its disregard and its lack of impact on the course of the case.

*5.2 Example of Judgment in the Case of "Claiming Alimony for a Wife"*

This ruling was issued by the Amman Sharia Court of Appeal and the Sharia Supreme Court in the case of claiming alimony for a wife, and Resolution No. 679 of (2018) was taken, and the decision stated:

Appellant: (X) his attorney, attorney (X1).

Respondent: (Y) and his attorney (Y1).

**Subject: Wife Alimony.**

Appealed judgment: adversarial issued by the Amman Sharia Court - Cases on 27/12/2016 No.: 563/186/186 Basis 2908/2015

Appeal date: 15/1/2017 AD

Result: validation

Appeal Number: 679/2018-110909

After reviewing the case report and all related documents:

The aforementioned plaintiff (X) claimed that she is the wife of the aforementioned defendant (Y) and that he left her without alimony or spender and that her alimony is obligatory on him, and since the two parties to the lawsuit did not agree to impose alimony and did not agree to elect an expert before them and left this matter to the court, so the Court of First Instance elected Trustworthy Experts Lawyers (L1, L2, L3), where the experts met with the parties to the case and then submitted a report to the court upon their experience stating that they estimated the aforementioned plaintiff, an amount of three hundred Jordanian dinars for all the legal requirements and that it is not sufficient for her less than that and that the defendant can pay this amount. The defendant appealed to the Court of First Instance regarding his inability to pay this amount, and the court did not enable him to substantiate his appeals. Since this judgment was not accepted by the defendant, he appealed it on 15/1/2017 according to an appellate list, including the reasons he deems to rescind the judgment, which were that he spends a direct expenditure on the plaintiff and that the amount that the experts informed of is beyond his capacity and ability. The Sharia Court of Appeal has scrutinized the case and issued its judgment upholding the judgment of the Court of First Instance according to Appeal Decision No. 684/2017 - 107414 dated 6/3/2017.

Since this ruling was also not accepted by the appellant, he appealed against it to the Shari'a Supreme Court on 13/4/2017 AD. The Shari'a Supreme Court audited the case and issued its judgment No. 17/2017-23 on 14/6/2017 AD, overturning the ruling of the Court of Appeal because the Court of Appeal upheld the judgment of the Court of First Instance, which did not accept the defense made by the appellant, stated that he was unable to pay the reported amount, and asked this court to consider the case by pleading. The Court of Appeal notified the parties of the case, where the two parties' Lawyers, a Lawyer of (X1) as a representative of the appellant, and a Lawyer of (Y1) as a representative of the appellee to attend, and the court asked the appellant's attorney to clarify his defense, so he clarified the defense. The court asked the plaintiff's lawyer about this plea, and he denied it, and since the court assigned the appellant's lawyer to prove his defenses about his appeal, he named three witnesses, the testimony of one of them matched the appellant's plea, while the testimony of the rest of the witnesses did not match this plea, so the court considered him unable to prove his appeal. The court asked him if he wanted her to swear the legal oath to deny this appeal. He said he wanted her to swear the legal oath to deny this appeal. The court made a written copy of the legal oath to deny the defense and presented it to the appellee she took the oath in its pictorial form and based on the lawsuit and the request and the appellant was unable to prove his challenge to the experience and the appellant took the oath the legality of denying the payment, the Court of Appeal, pleading, ruled to dismiss the appellant's payment that he was unable to pay the estimated alimony, and thus upheld the judgment of the Court of First Instance No. 563/186/186 dated 12/27/2013. The judgment obliges the aforementioned appellant (X) to pay an amount of three hundred Jordanian dinars to his wife of the appellant (Y) mentioned as alimony for her and all her legal necessities and obliging him to pay that to her as of the date of the request on 9/3/2015 AD, and including the fees and expenses as an adversarial judgment and pleading before the court Sharia Supreme Court, publicly understood to those present in writing on 06/16/1439 AH according to 3/04/2018 AD.

**When reviewing this case, we note the following:**

1. That personal evidence (experts) was relied upon in estimating the alimony owed by the defendant and the Court of First Instance issued its decision based on what was proven through personal evidence.
2. The Court of First Instance ruled that the plaintiff's lawsuit was proven, and her husband, the defendant, must pay an amount of three hundred Jordanian dinars for all legal necessities.
3. The defendant appealed to the Court of First Instance in the matter of his inability to pay this amount, and the court did not enable him to substantiate his appeals.
4. The Shari'a Court of First Instance and the Shari'a Court of Appeals' failure to heed the defendant's appeal against the personal evidence report resulted in the Shari'a Supreme Court overturning the Shari'a Court of Appeal ruling.
5. The defendant relied on personal evidence to prove his defense to the Sharia Court of Appeal when considering the case in pleading after the Supreme Sharia Court reversed its ruling.
6. The contradiction of the witnesses' testimony to the defendant's claim in the defense of the judgment resulted in his inability to prove his defense, and thus the judgment for the plaintiff to pay monthly alimony (300) dinars from the date of filing the case after taking the legal oath at the request of the defendant after his inability to prove his payment.

## 6 Results and Recommendations:

Through studying and researching this topic and looking at some applied examples of the decisions of the Sharia Supreme Court and the Court of Appeal related to testimony and its impact on the case, several results and recommendations were reached:

### 6.1 The most important of these results are:

1. The impacts of proving divorce and money claims by personal evidence are many and varied according to the diversity of the claimed right, the most important of which are: the continuation of the lawsuit, the establishment of the claimed right, and the judgment for the lawsuit.
2. The personal evidence is affected by the defenses raised against it when it is proven, and that is from two aspects: the first of them: leads to the disqualification of this evidence and the failure to take it into account if the case is under consideration, and as for the second aspect: in the event of the issuance of a judgment in the case, the witnesses shall be guaranteed.
3. The failure of the court to take the pleas raised on personal evidence or neglect it and not ask the defendant about it, entails the reversal of the judgment of the court of the first instance by the Sharia Court of Appeal, or the Sharia Supreme Court, whether through the convict's appeal against the judgment issued or by the Court of Appeal And the Supreme Court considers cases on its own, to preserve the public right.
4. The Jordanian Shari'a Procedures Law did not lay down the legal articles related to the testimony's performance, and it referred in some of its articles to that with a focus on how to bring a witness. On the other hand, the Jordanian legislator developed legal articles that regulate the procedures for hearing testimony in the Civil Procedure Code No. (24) for the year (1988) and its amendments.
5. The defenses that may respond to the testimony vary according to the variety of reasons for the refusal. Among the reasons for refuting the testimony are personal reasons related to the witness's condition and objective reasons related to the testimony.

### 6.2 Most important recommendations:

The researcher recommends that the legal evidence be detailed by a special law that is independent of the Code of Sharia Procedure and is called the "Jordanian Sharia Law of Evidence", as to be with the case in civil evidence law.

## Conflict of interest

The authors declare that there is no conflict regarding the publication of this paper.

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