

MULTIPLE LITIGATION IN CIVIL LAWSUIT

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A B S T R A C T	KEY WORDS
<p>The invasion of right to privacy is considered as one of the modern torts in the English law and referred to as the tort of invasion of right to privacy. It is worthbearing in mind that this kind of tort was not known in the previously in the English law, and the defamation action did not give protection to the right to privacy, because it has only protected the reputation, and the law of tort, which is considered as a part of the common law, did only include the duty of confidence or duty of confidentiality, which participated in the presence of the traditional tort called the tort of breach of confidence or breach of confidentiality. as far as the Iraqi law is concerned, The Iraqi constitution of 2005 determined the context of the right to privacy, whereas the Iraqi civil law No. 40 of 1951 does not contain any provision determining the context of this right, nor does it provide for act regarded as the violation or invasion of this right.</p>	

Introduction

The first topic : privacy and its characteristics

The first requirement / definition of the rivalry

antagonism in language

It means controversy, dispute, or both (controversy and dispute.

Rivalry in the legal terminology

The answer is yes or no, and it was said that it is the correct claim or the explicit answer is yes or no, and it was said that it is the opponent's answer by affirmation or denial.¹

Litigation in legal terms

The Iraqi jurisprudence defined it as a means of expressing the submission of the dispute to the judiciary .

A part of the Egyptian jurisprudence defined it as a legal phenomenon that includes the sum of the procedural actions drawn by the law, which aims to issue a ruling on the matter with the aim of resolving the dispute and removing the obstacle that hinders the path of legal life). It was also known as (a legal situation that arises from the judicial claim and requires that the litigants and the court take the procedures leading to the settlement of the dispute².

And the French jurist Kiwenda defined it as (the group of actions related to the purpose of applying the will of law in a specific case). A part of the French jurisprudence defined it as (the legal situation in which the litigants and the court exist throughout the presentation of the dispute to the judiciary³).

And we see that whoever defines litigation as (a set of successive judicial procedures carried out by the litigants or their representatives and the judge and his assistants according to a specific system drawn by the Procedure Law and begins with a judicial claim and proceeds with the aim of obtaining a ruling on the subject), was successful to a large extent, because the litigation is indeed a set of The successive procedures issued by the litigants or their representatives, the judge and his assistants, with the aim of obtaining a decisive ruling on the subject matter of the dispute before the judiciary, even if it is envisaged that the litigation will achieve its goal, by ending before the final settlement of the dispute, if one of the reasons leading to the litigation's termination is achieved. before deciding on its topic .

The second requirement / characteristics of the opponent

Civil litigation has several characteristics, namely:

Firstly. It is a set of sequential judicial procedures:

Litigation is a moving phenomenon until it reaches its desired goal, it must go through three main stages that represent a basic gradation that is necessary in order to achieve its goals. Then it ends with the last stage, which is the stage of issuance of judgment . The litigation in these stages follows its procedures one after the other in a chronological sequence and follows a logical sequence, so that it seems that each of the litigation procedures is a prerequisite for the procedure that follows it. Litigation sometimes expires without reaching the final stage when one of the reasons for its termination is realized . And there are those who see that litigation is synonymous with judicial procedures that are taken in the courts of justice, because what is meant by litigation is all actions that aim to apply the law in a specific case through the judiciary.

While another believes that the civil litigation does not mean all judicial procedures that are taken in the courts, but rather is limited to the judicial procedures necessary to issue judgments, and it follows from this opinion that the precautionary measures such as those of the state judiciary and procedures that target a material activity such as execution procedures, even if they are in fact procedures Judicial, but the term litigation in the strict sense does not include it . It seems that the second opinion deserves support, because the settlement of disputes, although it is the main task of the judiciary, but it is not the only task, as there are orders issued by the state judiciary that are issued after taking a series of judicial procedures. All judicial procedures simply taken in the court arena can be called the term litigation.

Secondly . Multiple Persons Litigation:

The litigation is characterized by its multiplicity of persons, and it is not possible to imagine a litigation involving one person, as there must be at least two litigants, one of whom presents it to the judiciary and is called the plaintiff, and the second is directed to him called the defendant, and without a plaintiff and defendant there is no civil litigation, and for this reason they are called the parties to the litigation . There may be multiple plaintiffs or defendants in a single dispute since its inception or during the course of the dispute through the intervention or inclusion of others in the dispute, and it follows that the person is considered a party to the dispute that he acquires a number of rights, including the right to defend and present defenses, and this capacity also results in bearing a group Among the duties are the burden of proof and bearing the costs of the litigation . The judge is considered an essential person in the litigation, because the litigation requires that it be presented to a judge in order to decide on it and

give its subject matter judicial protection. This is why it is said that there is no litigation without a judge, and the example of the procedures that the judge performs are the preparatory decisions that are issued during the course of the litigation and the judicial rulings that end the litigation. The litigants may seek the assistance of their agents in directing the litigation.⁴

Therefore, the litigation attorneys are from its persons, not from its parties, because their role is limited to providing technical assistance to the litigant, and their main characteristic remains that they are judicial aides, because they assist the judge in performing his mission with the legal culture, knowledge and experience they possess in the law that enables them to formulate the lawsuit petition and present defenses in a sound legal form. Among the judicial assistants are experts, judicial assistants, and judicial informants, because they contribute significantly to the litigation procedures.⁵

Third. Legality of litigation procedures:

The litigation is characterized by the fact that its procedures are legal, because the law draws these procedures and organizes their sequence at each stage of the litigation, and because the parties to the litigation are restricted to the procedures imposed by the law, so they are not entitled to take procedures other than those drawn by the law, but they are bound by the logical order and chronological sequence of the litigation procedures. It is accepted from them to submit or delay the litigation procedures, contrary to the order and sequence created by the law.

The third requirement / conditions of the discount

The existing dispute must meet several conditions, namely :⁶

1. The parties to the dispute must have the capacity to litigate.
2. The two litigants must appear in person or through their representatives.
3. The litigation must be submitted to the competent court, that is, it must be the one with jurisdiction to hear the case.
4. The aim of the litigation should be to obtain a ruling that ends the dispute.
5. The forfeiture of the litigation does not lead to the forfeiture of the litigant's right, so he may return the dispute to the judiciary with a new litigation, as long as his right has not been extinguished by the statute of limitations.
6. The litigation takes place from the date of notification of the lawsuit to the defendant.

The second topic

The first claim / civil lawsuit

The lawsuit is the legal means that protects and claims rights, and some jurists define the civil lawsuit as an authority for a person, in order to resort to the judiciary to determine his right or to protect it, while others believe that the civil lawsuit is the authority to resort to the judiciary in order to reach law enforcement .⁸

Therefore, the civil lawsuit is to authorize the individual - the owner of the right or the legal position - the victim of the right to obtain this protection, and this right is what is called the lawsuit. There is also another means of dispute settlement called the Civil Case Management, which is a set of procedures aimed at organizing the case, collecting data and determining the origin of the dispute in order to settle it by alternative means to the courts .

On this basis, the civil lawsuit is a means to protect the right and is not a right in itself, just as he envisions the existence of several lawsuits at the same time in order to protect the right, as rights have other legal ways to protect them, such as the legal defense, but what distinguishes the lawsuit is that it is filed to the court. As for the other methods, the right holder may proceed with them without the intervention of a legal authority. Accordingly, it follows from the civil lawsuit that it has several characteristics, which are:⁹

1. Lawsuit is a legal means: it is what distinguishes it from other acts, such as reviewing the security authorities in order to lift an assault from a person .
2. The lawsuit is a means of defense and protection of rights or obtaining or approving them: the person does not have the right to fulfill his right by himself, but he must resort to the judiciary by filing a lawsuit .
3. Lawsuit is an optional and not compulsory means: a person can resort to the judiciary or waive a civil lawsuit, for any reason, as he is not obligated to file a lawsuit .

The second requirement / the elements of the civil case

The civil lawsuit has pillars that do not rise without it, as it is based on the presence of the plaintiff and the defendant, and some add the defendant, which is the reason for filing the civil lawsuit. The plaintiff or the defendant, which is what is called interference in the civil lawsuit, but in principle, the basic pillars of the civil lawsuit are the plaintiff and the defendant. and as follows :¹⁰

claimant

The plaintiff in a civil lawsuit is every person who has suffered harm, whether material, moral, or moral, and it is required that the damage caused is direct, verified, and identifiable, for example: a person's injury to his body or the cutting of a member of the body, and here the civil lawsuit is suspended until the lawsuit is decided. As for the moral harm, it is an example of an injury to a person's honor or reputation, and the civil claimant may be the person who suffered harm, i.e. the victim, and it may be another person who did not directly harm him, for example: the son who was harmed by the harm that befell his father. In order for the lawsuit to be accepted, it is required that the defendant be of the capacity or qualified to file the lawsuit, and what is meant by the capacity in the civil lawsuit is that the person filing the civil lawsuit is injured, and is qualified to institute the lawsuit, in the sense that he has the legal capacity to institute it, or he has the right to appoint someone to legally represent him, and if there is no In the latter, the investigating judge or the court must appoint a person to take charge of the civil claim.

Defendant

He is the person who is required by law to compensate for the damage he caused to the other, as the law requires that a civil lawsuit be filed against the one who caused the damage, and if this person is not qualified for litigation in terms of his lack of the necessary capacity for litigation, then the lawsuit must be filed in this case against his representative. Legally, and in the absence of a legal representative, the court shall have the right to appoint someone to act on his behalf or his representative.

The third requirement / types of civil lawsuit

Civil lawsuits are divided into three types as follows :¹¹

Civil action in kind

They are the lawsuits that are based on an in-kind right, such as a property claim, for example, and since the in-kind rights are original and ancillary and are contained exclusively, the in-kind lawsuits are also contained exclusively.

Mixed suits

These are lawsuits that are based on two types of rights, the first is a personal right and the second is a real right, which arise from a single legal process.

Transferred lawsuits

Transferred lawsuits are lawsuits in which the defendant (subject of the claim) has movable property.

Real estate lawsuits

They are lawsuits in which the defendant (subject of the claim) is real estate or a real estate right, and they are of two types.¹²

The third topic

The first requirement / conditions of the civil case

In order for a civil lawsuit to be valid and free from any blemish or defect, certain conditions must be met in it, and these conditions are as follows:¹³

Eligibility

Capacity is one of the most important characteristics of legal personality, as it depends on determining the person's activity and effectiveness, in terms of his ability to acquire rights and assume obligations on the one hand, and to practice actions and actions related to these rights and obligations in a legally reliable manner on the other hand. Accordingly, the capacity required to institute a civil lawsuit is the capacity to perform, as the law stipulates that the parties to the lawsuit or litigation must enjoy the legal capacity to which the lawsuit relates, and in the event that they lose that capacity, they must be represented by someone specified by the law for that task .

interest

Undoubtedly, the right to institute a lawsuit is restricted by the need for this lawsuit to be instituted to be related to a specific interest, and this interest is legal protection, and it is achieved if the plaintiff obtains a benefit from behind the lawsuit, and this interest is represented in the requirement of the right or the removal of the aggression against him or compensation The interest must be available at the time of submitting the request to the court, whether original, incidental or temporary, and the interest must continue until the case is considered and decided. This is because the lesson is in the availability of the interest at the time the lawsuit is filed, considered and decided, and not only in the date of its filing .¹⁴

Rivalry

The litigation in a civil lawsuit is defined as a set of procedures that start from the time the lawsuit statement is announced, until the time it expires by adjudicating its subject matter or expires by conciliation or overturning, as the duration of the lapse of civil judgments differs from the lapse of the existing litigation between the two parties to the lawsuit .¹⁵

The second requirement / procedures for filing a civil lawsuit

The procedures for filing a civil lawsuit before the competent court must include two types of aspects, namely :¹⁶

Theoretical aspects of civil lawsuit procedures

It is to accurately specify the case data, as it contributes to determining the correct method of pleading, and then all that data related to the subject matter of the dispute must be arranged accurately; In order

to prevent the filing of a second lawsuit, and otherwise a penalty may be imposed on the lack of such data, so the judge is forced to ask the plaintiff to fix that defect, within a certain period, otherwise the court will invalidate the lawsuit petition, as the law stipulates that the lawsuit petition must be united, that is, the lawsuit must be filed with one petition, and in the event that the lawsuit includes more than one lawsuit, the court has the right to instruct the plaintiff to limit his request to one lawsuit.

Practical aspects of civil lawsuit procedures

These aspects are summed up in how the lawsuit petition is written practically, which depends on the person who prepares it, whether from lawyers or specialists in law, and includes: how to present the subject of the lawsuit, coherent linguistic formulation, and accurate inference in the legal texts directly related to the subject of the lawsuit. How to submit a petition for action, which must be submitted directly to the judge, who in turn forwards it to the judicial assistant; For the purpose of registering it and giving it a serial number according to the precedence of its submission, then it is stamped with the court's seal, and it is sent to the accounts to collect the legal fee for it¹⁸

The third requirement / litigation in Iraqi law

Discount from the general system:

The amended Civil Procedure Law No. 83 of 1969 dealt with the litigation in Articles (4 and 5) of it, so Article (4) of it stipulated that (it is stipulated that the defendant be a litigant whose approval entails a judgment estimating the issuance of a declaration from him, and that he is judged or bound by something based on the estimation that the claim is proven with that The litigation of the guardian, the trustee, and the trustee with respect to the endowment's money is valid, and his litigants are those whom the law considers a litigant, even in the cases in which his approval is not enforced (and Article (5) stipulates that) it is valid for one of the heirs to be a litigant in the lawsuit that is instituted against or for the deceased, but the litigation is in the eye of the estate's assets He is the inheritor of that eye.¹⁹ The court must ascertain the existence of litigation in the case from the outset, and when proceeding with checking the notifications of attendance. If the two parties appear, it must verify their personalities and their relationship to the case because it is the right of the law and public order. The court may check whether the defendant is fit to litigate the plaintiff or not, because the trial of two There is no legally binding relationship between them, which is a waste of time and preoccupation with frivolity and may harm the rights of others. The court may, if it finds that the litigation is not directed, decides to dismiss the lawsuit at any stage of the lawsuit, as Article (80/1) of the Civil Procedures Law stipulates (if the litigation is not directed, the court will decide even on its own initiative to dismiss the lawsuit without entering into its basis). And that the defense of the litigation may be made at any stage of the lawsuit, and the litigants adhere to it, as stipulated in Article (80) of the Civil Procedure Law, as Paragraph (2) of it stipulates (the litigant may express this defense in any case in which the lawsuit is) and it is permissible to plead that he is not directed Litigation even before the Court of Cassation when appealing against the judgment decision, as stipulated in Paragraph (3) of Article (209) of the Code of Civil Procedure, where it states (it is not permissible to make a new payment or bring in new evidence before the court competent to consider the appeal in cassation except for the payment litigation and jurisdiction, and the case has already been judged²⁰.

Persons who are not suitable as litigants in the lawsuit:

There is a group of people who are not fit to be litigants in the lawsuit, and their litigation is useless, and filing a lawsuit against them has no effect, and they are:²¹

1. The person who did not place his hand on the claimed object.
2. The depository for the buyer.
3. The depository for the creditor of the depositor.
4. The debtor owes the creditor.
5. The buyer's buyer to the seller.
6. The tenant to the tenant in the cases of abandonment and the prevention of opposition because it must be filed by the lessor or the landlord against the tenant or the usurper.
7. The lessee to the mortgagee.²²
8. The agent to lend to the objector.
9. A creditor to another creditor.

Conclusion

The issue of litigation is one of the important procedural issues in the Civil Procedure Law, as it is agreed upon that certain conditions must be met in order to accept the consideration of the case before the judiciary. At the forefront of these conditions is the litigation condition or capacity, which must be met by both the plaintiff and the defendant, which means The existence of a link between the persons of the case, namely the plaintiff and the defendant through whom the case is initiated, and the right or the legal position that is the subject of this case.

The argument that the litigation is not directed is considered public order and the parties cannot agree to violate it or not to raise it, in addition to that it is a right of the law so that it can be raised in any state of the case and the court can raise it on its own even if the litigants do not stick to it, even for the first time before The court competent to hear the appeal by cassation, and its lack of availability leads to dismissing the case without entering into its subject matter.

The importance of litigation is due to its role in achieving judicial protection for its owners. It is not permissible to resort to the judiciary except for those who need this protection, and this protection is not granted by the judiciary except for the owners of disputed rights and legal positions. The importance of the litigation does not stop at this limit, but rather the aim of its request lies also in confirming the effectiveness of the judgments issued by the judiciary, because the judgment issued in a case does not have its effectiveness unless it is issued against the person with the capacity in this case. In addition, this condition aims to protect courts from tampering, as if lawsuits were allowed to be filed by those who do not have the capacity of adversary, malicious lawsuits would multiply and much of the judges' time and effort would be wasted.

The importance of the subject matter also comes from the importance of the litigation itself in its achievement of a just and prompt court if the validity of the litigation's orientation is decided before delving into the subject matter of the case and that it prevents the repetition of the subject matter of the case, as it prevents the filing of more than one case in one subject matter, and thus prevents conflict. Judicial rulings and their conflicts, and this is due to the fact that it is possible to defend it at any stage of the lawsuit, even before the Court of Cassation, in addition to the fact that verifying it in advance prevents re-consideration . Any litigation procedure, and this matter by its nature is sufficient to reduce the number of many cases that burden the courts, which leads to saving time for studying cases and resolving them within the prescribed time limit, in addition to highlighting the positive role of the court through the important role it plays, represented in its ability to raise it on its own. itself, and all of this confirms that the litigation is one of the essential conditions for considering the case in all stages of the

trial, even in those who challenge the ruling and who raises a defense from the defenses, but despite all that, this issue did not receive enough attention on the part of the legislator, and therefore the jurisprudence dealt with the litigation a lot . This is by giving a brief summary in the general literature, and jurisprudence did not collect the legal rules related to them and root them in an intellectual and logical unit. Therefore, these rules seem dispersed and there is no link between them . Its legal nature, and this is what led to its mixing with other suspected procedural actions, such as the lawsuit, the substantive right, and the judicial claim.

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