



The Oath of Non-Lying in Acknowledgment as a Means of Proof in Civil Law

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Received:11/09/2024

Accepted:08/10/2024

Published:01/12/2024

Abstract:

Acknowledgment is considered one of the strongest means of proof stipulated by law as it directly relates to the truth. This is because it involves a declaration made by the person against whom it is used, lending it a high degree of credibility. As a result, acknowledgment has gained decisive authority in resolving disputes and reaching judgments in favor of the acknowledged party in court. However, a party may claim that their acknowledgment was false, raising doubts about the validity of such an oath. This study concludes that when a plaintiff submits an acknowledgment issued by the defendant and requests a judgment based on it, the defendant has several options: to deny the acknowledgment, admit to it, or accept that it was issued by them but dispute its content or accuracy. In such cases, the defendant may direct an "Oath of Non-Lying in Acknowledgment" at the plaintiff to verify the acknowledgment's truthfulness. The Palestinian Evidence Law does not address this type of oath; therefore, this study recommends that the legislature introduce specific provisions regulating the Oath of Non-Lying in Acknowledgment and clarify whether it should be classified as a decisive or supplementary oath. The originality of this study lies in its analysis of the Oath of Non-Lying in Acknowledgment, which is not addressed in the Palestinian Evidence Law, with reference to the Majallat al-Ahkam al-Adliya, which does regulate it.

Keywords: *The Oath; Decisive Oath; Supplementary Oath; Acknowledgment.*

يمين عدم الكذب بالإقرار كوسيلة إثبات في القانون المدني

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تاريخ النشر: 2024/12/01

تاريخ القبول: 2024/10/08

تاريخ الاستلام: 2024/09/11

ملخص:

يُعدُّ الإقرار من أقوى وسائل الإثبات التي نصَّ عليها القانون فهو يتصل بالحقيقة؛ لأنه إخبار من نفس الشخص عليه، فالصدق مؤكد فيه، لذلك اكتسب الإقرار حجية قاطعة في فض المنازعات والفصل فيها أمام القضاء وترتيب صدور الحكم لصالح المقر له، إلا أن المقر قد يدفع بأن إقراره كان كذباً، وهنا يثور الشك حول صحة هذا اليمين من عدمه، وبنهاية هذه الدراسة توصلت الباحثة إلى أنه عندما يُقدّم المدعي إقراراً صادراً من المدعي عليه ويطلب الحكم عليه بمقتضاه، فيترتب على المدعي عليه إما إنكار الإقرار أو الاعتراف به أو الإقرار بأنه صدر عنه؛ لكنه ينازع في مضمونه أو صحته، وهنا يحق للمدعي عليه أن يواجه يمين عدم الكذب بالإقرار للمدعي لإثبات هل كان الإقرار صحيحاً أم كاذباً، فقانون البينات الفلسطيني لم يتطرق لهذا اليمين، لذلك توصي الدراسة بأنه يجب على المشرع تنظيم نصوص خاصة تنظم يمين عدم الكذب بالإقرار، وتحديد نوعها هل هي من ضمن اليمين الحاسمة أم المتممة؛ وتكمن أصالة الدراسة في تحليل موضوع يمين عدم الكذب بالإقرار الذي لم يرد في قانون البينات الفلسطيني، واللجوء إلى مجلة الأحكام العدلية التي نظمتها.

الكلمات المفتاحية: اليمين؛ اليمين الحاسمة؛ اليمين المتممة؛ الإقرار.

1. Introduction

The oath is considered an unconventional means of evidence in proving rights, holding significant and impactful influence on disputes presented in courts. It is used to infer proof of the fact in question, making it established even if not with absolute certainty. The oath is often invoked when a party cannot substantiate their claim with other evidence. It bears a religious nature, relying on the individual's conscience and faith; therefore, it must be taken in a specified form before the court, whether as a judicial or non-judicial oath. The judicial oath differs from other methods of evidence, as it serves as a basis for issuing judicial rulings against the parties involved.

At the same time, acknowledgment is a crucial means of evidence, holding decisive authority in resolving disputes before the judiciary. It serves as irrefutable proof against the person making the acknowledgment and leads to a judgment in favor of the other party. By default, an acknowledgment is presumed accurate, and any claim by the acknowledging party that it was false is not accepted, as this would undermine its legal value. However, in practical life, it is common for some individuals to draft an acknowledgment in a document and sign it, even if it does not reflect reality, often as part of an agreement with the other party for a specific purpose, such as formalizing a transaction. For instance, a seller may declare that they have received the full payment and record this acknowledgment in writing to facilitate the registration of a property sale at the land registry, even if the payment has not been received in full. In such cases, the buyer's obligation for the remaining amount persists, yet disputes may later arise between the seller and buyer, bringing them to court. The buyer may then present this document as proof that the full payment was made, as stated in the document. Here, the seller acknowledges the document and their signature but claims the statement in it is false and contradicts reality, having made it solely to facilitate registration procedures and similar matters. This type of oath may also arise in personal status cases, such as disputes over the prompt dowry for a wife. Despite the significant role of this oath, most contemporary legislations lack provisions that mention or regulate it, making reference to the "Majallat al-Ahkam al-Adliya" necessary in such cases.

1.1 Significance of the Study

The study of the Oath of Non-Lying in Acknowledgment is highly relevant today, as it provides an effective tool enabling the court to scrutinize the truthfulness of a false acknowledgment and to establish confidence in the legitimacy of the claim. This method decisively resolves disputes before the court, as no evidence contrary to the acknowledgment is admissible afterward. The importance of this research lies in the fact that both the oath and acknowledgment are essential means of proving rights and returning them to their rightful owners, thus achieving justice, assuring individuals, stabilizing society, and facilitating the work of the judiciary. Through acknowledgment, a person affirms the rights of others against themselves, offering the judge assurance in rendering a judgment. Acknowledgment is regarded as the strongest form of evidence, as it originates from the individual fully competent to bind themselves, signifying that they are fully aware and committed to what they have acknowledged.

1.2 Research Objectives

This research aims to shed light on the nature of the Oath of Non-Lying in Acknowledgment according to the applicable civil legislation. It seeks to clarify the concept, ruling, and legality of this oath, outline its characteristics, conditions, and resulting implications, and specify the cases in which the Oath of Non-Lying in Acknowledgment cannot be invoked.

1.3 Research Problem and Questions

The default assumption is that an acknowledgment is truthful, but circumstances may arise where the acknowledging party claims their acknowledgment was false. This raises the question of the validity of the acknowledgment: Is it false, or not? Given that the judiciary is a platform for justice and the assertion of rights, the Oath of Non-Lying in Acknowledgment was introduced as a means to confirm or refute the truthfulness of the acknowledgment, which ultimately determines the judgment for one

of the disputing parties. The research problem thus lies in the fact that, while the Palestinian Evidence Law addresses both the oath and acknowledgment, it does not cover the Oath of Non-Lying in Acknowledgment, which is instead addressed by the *Majallat al-Ahkam al-Adliya*. This problem gives rise to several sub-questions:

1. What is the concept of the Oath of Non-Lying in Acknowledgment?
2. What is the scope or range of directing the Oath of Non-Lying in Acknowledgment?
3. What is the legal characterization of the Oath of Non-Lying in Acknowledgment?
4. Is it a decisive or supplementary oath, and what is its legitimacy?
5. What are the characteristics, conditions, and effects of the Oath of Non-Lying in Acknowledgment?

1.4 Methodology of Research

The researcher in this study adopted a comparative descriptive-analytical approach, which involves describing, gathering, and analyzing all relevant information. This approach includes consulting books, master's and doctoral theses, judicial rulings, and jurisprudential opinions related to the research topic.

2. Chapter one: The Oath of Non-Lying in Acknowledgment as a Means of Evidence in Law

The oath is a legal system derived from the principle of justice, which mitigates the limitations of the evidence restriction system, serving as an indispensable tool for ensuring the stability of transactions. This oath assumes that the defendant's acknowledgment and subsequent challenge to its content are inaccurate. In this context, the claimant must confirm that the acknowledgment was indeed issued by the defendant, even if the defendant disputes its content and claims it does not align with the truth (Marqus, 1986a, P 864). For example, if a person claims that another owes them an amount of five thousand dinars and bases their claim on written evidence presented to the defendant, who acknowledges the document but argues that its contents were not received, then the claimant must swear that the defendant's acknowledgment was not false (Al-Mu'min, 1948, P 201).

Thus, this chapter is divided into two sections. The first section discusses the nature of the Oath of Non-Lying in Acknowledgment and its legal basis, while the second section addresses the characteristics and conditions of the Oath of Non-Lying in Acknowledgment.

2.1 First Requirement: The Nature of the Oath of Non-Lying in Acknowledgment and Its Legal Basis

The law delineates the methods through which evidence may be presented and truth uncovered. Evidence is defined as the establishment of proof before the judiciary using the means prescribed by law to demonstrate the existence of a legal fact that produces consequences. Among the methods of evidence are acknowledgment and oath, which are processes not initiated by the parties but are left to the discretion of the judge (Al-Sanhouri, 2004, P13). The Palestinian Evidence Law No. (4) of 2001 specifies in Article (7) the methods of evidence as follows: "written evidence, testimony, inferences, acknowledgment, oath, inspection, and expertise." The judge is bound by these methods. Therefore, judicial oaths may be either decisive or supplementary. Furthermore, a false oath constitutes a religious offense punishable by God, who has threatened severe punishment for those who swear falsely. At the same time, it is a crime subject to legal penalties.

This section is divided into two branches. The first branch addresses the concept of the Oath of Non-Lying in Acknowledgment, while the second branch explores the legal basis for the Oath of Non-Lying in Acknowledgment.

2.1.1 First Subsection: The Concept of the Oath of Non-Lying in Acknowledgment

The oath serves as a means to establish a right for the parties and resolve disputes merely by referring the oath from the judge to the parties for them to swear and undertake all the related procedures. Therefore, it is essential to define both the oath and acknowledgment in order to arrive at the definition of the Oath of Non-Lying in Acknowledgment.

An oath is defined as a testimony before God Almighty about the truthfulness of what the swearer claims or about the truthfulness of what the opponent claims, accompanied by a sense of reverence for what is sworn and fear of punishment in this life and the hereafter. According to Abu Hanifa and the majority of jurists, an oath is based on intention and certainty and must be coupled with the name of God and bind the swearer to an action or inaction (Al-Qurtubi, n.d., P 409). In legal contexts, an oath aims to strengthen one party's claim (evidence or denial). The performance of the oath involves swearing by God in the manner determined by the court based on the facts of the case. This is confirmed by the Code of Judicial Rulings, which states in Article (1743): "If it is intended to swear one of the litigants, he swears by God's name, saying: 'By God' or 'I swear by God.'"

Acknowledgment is defined as the acceptance and recognition of a right (Qasim, 2005, P 227). It is characterized as a definitive statement about a right binding on the informant, or one that entails a right or judgment against him, or denying a right belonging to him or its consequences (Nuriya, 2018, P 8). Suleiman Marqus defined acknowledgment as a person's recognition of a right against another with the intention of recognizing this right in his liability and relieving the other party from proving it. Al-Sanhouri described it as a person's acknowledgment to another of an incident that grants a right, with the intent of obliging himself to this acknowledgment. Article (115) of the Palestinian Evidence Law defines it as "the acknowledgment of a fact or legal action by the opponent, claimed against either party."

The Oath of Non-Lying in Acknowledgment is an oath permitted by law for the acknowledging party, based on a regular or notarized document from a notary public, to deny the contents of that document. The party may request this oath to affirm that he was not lying in his acknowledgment. Therefore, it is an oath directed by the acknowledging party ("the defendant") after he has lost any other evidence that refutes his opponent's claim, thereby appealing to his conscience and moral responsibility.

2.1.2 Second Subsection: The Legal Basis for the Oath of Non-Lying in Acknowledgment

Jurists have differed regarding the permissibility of requesting the Oath of Non-Lying in Acknowledgment. Imam Abu Hanifa and Hamad al-Shaybani hold the view that it is not permissible to direct this oath because swearing is only valid in a legitimate claim, and it is inconceivable to have an oath in a claim of lying due to the inherent contradiction within it. However, Imam Abu Yusuf permitted directing the oath based on reasoning, supported by what is stated in the Code of Judicial Rulings in Article (1589): "If one claims that he is lying in his acknowledgment, he must swear that the acknowledging party is not lying." For example, if one provides another with a written document stating, "I borrowed so many dinars from so-and-so," and then claims, "Although I gave this document, I have not received the mentioned amount yet," the acknowledging party must swear that the acknowledgment in this case is not false.

It is evident from this that the refutation in this case pertains to the fact of receiving the amount and not to the act of signing. Thus, this oath assumes that an acknowledgment was made by the defendant through a document presented by the plaintiff, which the defendant then disputes. The defendant acknowledges that the document was indeed issued by him or the person to whom it is attributed, but he denies that its contents are true, which resembles a form of pretense. If the defendant denies the presented document and it is confirmed after scrutiny that the signature, seal, or fingerprint indeed belongs to him, he cannot claim lying in the acknowledgment, and at that point, the oath should not be directed against his opponent.

2.2 Second Requirement: Characteristics and Conditions of the Oath of Non-Lying in Admission

The oath of non-lying in admission possesses a set of characteristics and conditions that must be considered when it is directed. Therefore, this section has been divided into two subsections: the first subsection addresses the characteristics of the oath of non-lying in admission, while the second subsection discusses the conditions for directing the oath of non-lying in admission.

2.2.1 First Subsection: Characteristics of the Oath of Non-Lying in Admission

The oath of non-lying in admission possesses the following characteristics: it is a means of proof granted by law to the admitting party who contests their admission; its direction requires the waiver

of other methods of proof; it is an oath that can be challenged; it may be directed in any civil case and at all stages of litigation except for the appeal stage; it is a judicial oath that is administered in court regarding the same case in dispute; and it serves as a decisive oath in the case (Abdul Wahab, 2016, P 16).

1. A Means of Proof Granted by Law to the Admitting Party Contesting Their Admission

The Palestinian Evidence Law specifies the means of proof in Article 7, which includes the oath as one of the means of proof. This oath is established for the benefit of the admitting party (the defendant) in cases of disputing the admission only. It allows the admitting party to direct the oath of non-lying in admission toward the admitting party (the plaintiff), and the court does not have the authority to direct it on its own initiative to the admitting party. At the same time, the court does not have the right to refuse to direct it when requested by the party for whose benefit it was established.

It is evident that this oath is similar to the decisive oath in that it can only be directed upon request from the opposing party, while it differs from the supplementary oath, which the court has the right to direct on its own initiative. The Court of Cassation emphasized this in one of its decisions, stating: "The defendant has the right to request that the plaintiff take the oath of non-lying regarding the admission stated in the promissory note for the amount claimed, certified by the notary public, as long as the document did not indicate that the payment was made in the presence of the notary public" (Court of Cassation, Decision No. 1133, P 72). In another ruling, it stated that: "The divorce of the wife before consummation and her demand for half of the dowry, both the immediate and deferred, and the wife's claim that she acknowledged receiving her immediate dowry according to the marriage contract does not render her unable to prove her claim of not receiving the immediate dowry until the husband is sworn not to have lied regarding the plaintiff's acknowledgment of receipt based on the marriage contract and that she received her immediate dowry" (Court of Cassation, Decision No. 462, P 182).

2. Requesting Its Direction Requires Waiving Other Means of Proof

Article 111 of the Evidence Law states: "Requesting the direction of an oath involves waiving other means of proof regarding the fact to which it pertains if the requesting party insists on directing it." Consequently, the oath of non-lying in admission is one of the means granted by law to the admitting party due to their inability to prove their false claim. However, requesting its direction necessitates waiving other means of proof as long as the admitting party insists on directing it toward the admitting party (the plaintiff). The obligation to take the oath means that the requesting party has waived their right to utilize other means of proof.

While the admitting party requesting the oath may still resort to other means of proof to substantiate their claim, this requires them to withdraw their request for the oath before their opponent takes the oath.

3. It May Be Directed in Any Civil Case and at All Stages of Litigation Except for the Cassation Stage

Article 116 of the Evidence Law states: "It is permissible to direct the decisive oath at any stage of the case." Therefore, the law allows the admitting party to request the direction of the oath of non-lying in admission to the admitting party (the plaintiff) in civil cases, regardless of their value, at all stages of the case, and before all trial courts and their levels, as long as no final ruling has been issued. The Palestinian Cassation Court has ruled that "the decisive oath may be directed at any state of the case and in any dispute; however, it cannot be directed regarding a fact that is prohibited by law or contrary to public order and morals" (Palestinian Cassation Court, Decision No. 34/2008). Article 111(3) of the Evidence Law also states: "The decisive oath cannot be administered before the Cassation Court, nor can its administration be postponed until after the consideration of the case in cassation."

Consequently, it is not permissible to direct the oath of non-lying in admission for the first time before the Cassation Court, as it is the highest judicial authority exercising judicial oversight over all courts. It is not a level of litigation where a party can take an oath before it; its role is limited to monitoring the application of the law and the integrity of the procedures taken by the courts.

4. The Oath Is Rebuttable

The party to whom the oath of non-lying in admission has been directed may rebut it against the opponent who directed it. The Cassation Court has ruled in this regard, stating: "The plaintiff may rebut the oath of non-lying in admission against the defendant." This differs from the complementary oath, which cannot be rebutted against the other party, as established in Article 123 of the Evidence Law, which states: "The party to whom the court has directed the complementary oath cannot rebut it against the other party."

5. Judicial Oath Performed in Court Regarding the Subject of the Dispute

The judicial oath, which is performed in the court session, is considered one of the means of proof in the case brought before the judiciary. This oath is accompanied by definitive knowledge and may only be directed in relation to a valid lawsuit. It serves as a safeguard for religious conviction, allowing the parties to rely on their sense of conscience. This oath is administered before the court during the trial proceedings or under its supervision when conducted outside the court, such as when an expert is called for an on-site inspection, where the oath is also administered.

There are several scenarios for the claim of false admission, including confronting a seller who refuses to deliver the sold item (the defendant) with a deed organized by a notary public, which includes his admission of sale and receipt of payment. In response, the seller may acknowledge having received the payment; however, he may claim that he has not actually received it, as the buyer requested him to expedite the documentation of the sale, with the delivery and receipt to occur later.

Another scenario involves interpreting the acknowledgment in a contract of a false deposit, where the defendant claims that the contract is fictitious and that its true nature is a gift, not a deposit.

Thus, it is clear that the defendant acknowledges the existence of all instances in the ordinary deed, which has been certified by the notary public, but he contends that his acknowledgment was false, without providing written or oral evidence. Consequently, the law permits the defendant to submit a request to the court to administer the oath to the accuser (the plaintiff), affirming that his acknowledgment was not false.

6. Decisive Oath in the Case

The Law of Evidence, in Article 114, states: "The decisive oath is the oath that concludes the case." It is defined as the oath directed by one party to the other when the former is unable to prove his right, thereby resolving the dispute. It is called "decisive" because it resolves and ends the contention (Nash'at, 1997, P 69). The Palestinian Evidence Law defines it in Article 131 as: "The oath directed by one party to the other regarding disputed matters or any of them to resolve an ongoing dispute." Thus, this oath is directed by the party lacking the evidence required by law to prove his claim against the party who has denied his asserted right. Arab legislations have agreed to classify it as an oath that concludes the case (Zbeidat, 2010, P 303).

Here, the oath of not lying in acknowledgment may be confused with the decisive oath. Article 11(1) of the Jordanian Evidence Law states: "Whoever is confronted with an ordinary deed and does not wish to acknowledge it must explicitly deny what is attributed to him regarding handwriting, signature, seal, or fingerprint; otherwise, it serves as evidence against him." However, this contradicts the established judicial principle prohibiting the use of a decisive oath or personal evidence to prove something contrary to what is contained in a written document. Consequently, the judiciary has allowed both oaths to be directed in the same case. The Court of Cassation has ruled: "Since the sale contract in question includes an acknowledgment from the plaintiff of receiving the specified price of (38,000) dinars stated in the contract, the oath directed to the defendant regarding this matter is the oath of not lying in acknowledgment, as intended in Article 1589 of the Majalla (Ottoman Law). On the other hand, the oath directed to the defendant to prove that the actual price is (60,000) dinars and not (38,000) dinars is a decisive oath. Therefore, the wording of the oath that must be directed to the defendant in the current case should include part related to the oath of not lying in acknowledgment and another part as a decisive oath. Since the plaintiff has failed to prove his claim, informing him by the court of the first instance that he has the right to direct both the decisive oath and the oath of not lying in acknowledgment does not contradict the law" (Decision No. 2729/2018).

It is clear from the characteristics of the oath of not lying in acknowledgment that it is an optional oath that the court cannot direct on its own without a request from the obligated party. It was established for the benefit of the party unable to prove the false payment by acknowledgment in a written deed. This oath resolves the dispute and concludes the case, and it can be directed back at the party who issued it. These are also the characteristics of the decisive oath. Therefore, the oath of not lying in acknowledgment is considered a form of the decisive oath. However, Dr. Suleiman Marqas classified it as a form of the complementary oath, also known as the "oath of despair," because it is an oath deemed hopeless.

2.2.2 Second Subsection: Conditions for Directing the Oath of Non-Lying in Acknowledgment

The assertion of false claims and the oath of non-lying in acknowledgment may be established under a specific condition: the acknowledgment of the opponent before the court that the contested document was issued by him and that the signature on it is his, while claiming that the legal fact contained in the document is false. Therefore, directing this oath requires several conditions (Abdul Wahab, 2016, P 18). These conditions are:

1. The subject of the case must be a demand from the plaintiff "the acknowledge" to compel the defendant "the acknowledged" to comply with what he has previously acknowledged. For instance, the plaintiff may request in his lawsuit that the defendant be compelled to pay the debt amount due to the expiration of its term and his failure to settle it. Furthermore, this acknowledgment must be effective in the case; thus, the acknowledged party cannot request an expertise on the signature or hear evidence regarding the circumstances surrounding the signing of the document, as such requests would not be effective given the presence of the acknowledgment.
2. The evidence presented by the plaintiff "the acknowledge" must be either a written or official document, and this document must include an acknowledgment from the defendant "the acknowledged" regarding a specific legal act. It is not permissible to direct this oath in contracts that the law requires to have a specific form for their validity, as formality is a requirement for the formation of the contract, such as legal acts of sale or mortgage concerning real estate. The law mandates registration in the real estate registration department for such acts. The Real Estate Registration Law defines a real estate act in Article (3) as "any act that creates, transfers, modifies, or extinguishes a right of ownership or any of the rights mentioned, and a real estate act shall not be valid except by registration in the real estate registration department."
3. The acknowledgment must be in writing, and the acknowledged party must claim that he was lying in it. Thus, it is not permissible to direct the oath if the acknowledged party denies the issuance of the document presented in the case, and the document's attribution to him is proven through comparison. This is because there is a contradiction between denying the acknowledgment in the presented document and requesting the oath of non-lying in acknowledgment, which prevents hearing the claim. The Court of Cassation ruled on this matter in one of its decisions, stating that "the attorney of the appellant had acknowledged the validity of his client's signature on the promissory note and his client's indebtedness for the claimed amount, so his defense in this regard contradicts what he had previously acknowledged, which requires that it not be heard.... Therefore, there is no justification for the appellant to direct the oath of non-lying in acknowledgment" (Court of Cassation, Decision No. 147, cited in Abdul Wahab, 2018, P 19). Consequently, the defendant must declare before the court that the document was issued by him; denying this implies that the document was not issued by the defendant. If the denial involves the fabrication of the document, the court will resort to presenting it to specialized experts to verify the seal or fingerprint on it. If the defendant claims forgery and the court find strong evidence supporting this, it will decide to refer the matter to the competent court for adjudication. The court will rule in favor of the defendant if the validity of the document is established for the one denying it and dismiss the plaintiff's claim if this is not proven. In both cases, there is no legal justification for directing the oath of non-lying in acknowledgment.

It should be noted that the defendant who acknowledged the plaintiff's claim during the hearing and then, before concluding the review, retracted his acknowledgment and claimed that he was lying cannot request to impose an oath of non-lying in acknowledgment on his opponent. This is because it is not permissible to retract an acknowledgment, and the acknowledged party here contradicts what he had acknowledged. Similarly, this oath is not permissible if the defendant acknowledged the debt mentioned in the presented document and claimed total or partial settlement after the acknowledgment, i.e., after writing the debt document, as this supports that the plaintiff was not lying in his acknowledgment.

4. The acknowledged party must assert that he was lying in his acknowledgment stated in the document, stating, "It is true that I acknowledged in the presented document that I borrowed the amount from the acknowledge 'the plaintiff,' but in reality, I did not receive anything from him." Here, the plaintiff acknowledges the act of borrowing while denying the receipt.
5. The acknowledged party "the defendant" must not have any evidence to refute the acknowledgment's veracity; for directing the oath of non-lying, it occurs if the acknowledged party does not possess evidence for his claim. However, if there is evidence, the oath cannot be directed. Thus, there must be no conflict between the defenses of the party requesting the oath. It is impermissible for the denier of the acknowledgment to deny signing the acknowledgment and, at another time, deny his indebtedness, based on the principle that there is no evidence with contradiction. Additionally, the request to direct the oath of non-lying must not contradict the apparent situation. Therefore, it is impermissible to request this oath and present written evidence affirming the acknowledgment's validity.
6. The acknowledged party "the defendant" must request from the court to impose an oath of non-lying in acknowledgment on his opponent, as the court does not possess the authority to direct it of its own accord.

3. Chapter Two: The Legal Framework of the Oath of Non-Lying in Acknowledgment as a Means of Evidence

The oath of non-lying holds a specific strength within the context of legal transactions, and there are particular exceptions when directing the oath of non-lying in acknowledgment. Consequently, this section is divided into two subsections: the first subsection discusses the scope and exceptions of directing the oath of non-lying in acknowledgment, while the second subsection addresses the legality of the oath of non-lying in acknowledgment and its effects.

3.1 First Requirement: The Scope and Exceptions of Directing the Oath of Non-Lying in Acknowledgment

The oath is considered an indirect method of evidence in judicial proof because its indication does not directly pertain to the fact that is intended to be proven. A party resorts to it when they lack evidence or when the evidence required by law for restricted proof is unavailable. Hence, the importance of this oath arises, as it is regarded as part of the justice system that helps mitigate the drawbacks of restricted evidence. It grants a party the right to rely on the decisive oath to resolve a dispute, while simultaneously empowering the judge to direct supplementary oaths to complete the evidence that is lacking.

The party to whom the oath is directed may take it according to the legal procedures established in their faith. The judicial oath that falls within the scope of evidence and establishing proof before the courts, which reveals the disputed right, must pertain to the facts of the case on which the oath is to be sworn. Furthermore, the formula approved by the court must relate to the source of the right that gave rise to the obligation (Marqus, 1986a, P 198). Consequently, this subsection is divided into two branches: the first branch discusses the scope of directing the oath of non-lying in acknowledgment, while the second branch addresses the exceptions to directing the oath of non-lying in acknowledgment.

3.1.1 First Subsection: The Scope of Directing the Oath of Non-Lying in Acknowledgment

The oath of non-lying in acknowledgment may be directed toward any ordinary acknowledgment issued by the acknowledging party, whether written or oral. The Palestinian Evidence Law defines acknowledgment in Article (115) as: "The opponent's confession of a fact or legal act claimed by

either party." Article (1607) of the Judicial Rulings Magazine stipulates that: "If another person is ordered to write his acknowledgment, it is deemed an acknowledgment in its essence. For instance, if a person instructs a clerk by saying: 'Write me a document stating that I owe so-and-so a certain amount of money,' and signs it with his signature or seal, this is considered an acknowledgment in writing, like a document he wrote by hand."

Furthermore, Article (1609) of the same magazine states: "If someone writes a document or has it written by a clerk and gives it to another person signed or sealed, if it is formal—meaning it was drafted in accordance with the formality and customary practices—it is considered a written acknowledgment and is regarded as valid as oral acknowledgments and ordinary receipts given."

Thus, it is evident that any document issued by the acknowledging party is considered an acknowledgment if it complies with customary practices, such as receipts for payments or deliveries. The Court of Cassation has ruled that: "If the defendant claims in the case that he signed these promissory notes on the condition that the plaintiff would subsequently pay him their value and that the plaintiff did not fulfill his obligation and did not pay the value of the promissory notes... Therefore, the oath that should be directed to resolve the dispute in this case is the oath of non-lying in acknowledgment, which requires the plaintiff to affirm that the defendant is not lying in his acknowledgment and signature on the promissory notes in question" (Jordanian Court of Cassation, Decision No. 428/2003).

This means that the Jordanian judiciary considers the promissory note to be an acknowledgment and permits directing this oath to the beneficiary who endorsed the promissory note, as the fact of the absence of consideration for the document pertains to the beneficiary and not to the holder of the promissory note.

It is worth noting that the law does not specify a particular form for the acknowledgment; instead, it defines it as a person's admission of a right against another, which applies to any paper or document containing an acknowledgment of another's right, regardless of its wording.

3.1.2 Second Subsection: Exceptions to Directing the Oath of Non-Lying in Acknowledgment

The oath of non-lying in acknowledgment may be directed toward any acknowledgment issued by the acknowledging party. However, there are certain cases in which the acknowledgment is issued by the acknowledging party, but the oath cannot be directed against the party receiving the acknowledgment (Abu Issa, 2013, P 438). These exceptions include:

- 1. If the acknowledgment is issued from an official document organized by the competent employee, such as legal deeds and other documents organized by the judge within his jurisdiction:** If a person acknowledges in court that he has received a debt, or that he owes another person something, or that he has no right against another, he cannot thereafter contest this acknowledgment nor can his opponent direct an oath against him (Al- Khoury, 1991, P 499). The Court of Cassation has ruled that: "The document in question is considered an organized and officially documented written instrument, and it can only be challenged through forgery; therefore, the oath of non-lying in acknowledgment cannot be directed" (Jordanian Court of Cassation, Decision No. 1874/2002). Consequently, the Palestinian Evidence Law defines official documents in Article Nine as: "Documents organized by public employees and those similar to them who are authorized to organize them according to legal procedures." These documents are enforced without the need to prove their contents and are valid unless proven to be forged. The acknowledgment stated by the acknowledging party is deemed valid until evidence is provided to the contrary, and in this case, the oath can be directed even if the document is official.
- 2. If the acknowledging party waives his right to contest a false acknowledgment and states that he does not claim the acknowledgment to be false nor requests the oath of the other party ("the one receiving the acknowledgment"):** In this case, he is not entitled to direct the oath of non-lying in acknowledgment to the recipient, as what has been relinquished cannot be reclaimed.

3. **If some parties include a condition in their transactions that waives the right to direct the oath of non-lying in acknowledgment:** However, I believe that the waiver of the right to direct this oath should occur after the acknowledgment is made, not prior.

3.2 Second Requirement: Legitimacy of the Oath of Non-Lying in Acknowledgment and Its Effects

The legitimacy of the oath as a form of evidence in Islamic law is established through the Quran, the Sunnah, and consensus. Allah Almighty states: "And if he had fabricated upon Us some sayings, we would have seized him by the right hand" (Surah Al-Haaqqa, verses 44-45). This indicates that the oath of non-lying in acknowledgment is legitimate and carries consequences. Therefore, this subsection is divided into two branches: the first branch addresses the legitimacy of the oath of non-lying in acknowledgment, while the second branch discusses the effects of the oath of non-lying in acknowledgment.

3.2.1 First Subsection: Legitimacy of the Oath of Non-Lying in Acknowledgment

The oath is derived from justice and is supported by religious and doctrinal guarantees. In this regard, it mitigates the drawbacks of restricting evidence, as previously mentioned, and serves as a necessity that cannot be overlooked to ensure the stability of transactions. Consequently, the legislator has established the oath of non-lying in acknowledgment because it is not permissible to prove the contrary of what is established in writing except through writing. The Court of Cassation has ruled that: "A plea of false acknowledgment is a plea that cannot be proven by oral evidence, as a claim or plea contradicting what is included in the written evidence, in accordance with Article 29(1) of the Evidence Law, is only confronted by an oath regarding the false acknowledgment" (Court of Cassation, Decision No. 121/1973, p. 1023). This means that if the defendant denies the plaintiff's claim and asserts that his liability is not encumbered and that he has not received the amount claimed after acknowledging it by signing, he can only be required to have the plaintiff take the oath of non-lying in acknowledgment. The Court of Cassation has ruled that: "The oath of non-lying in acknowledgment is directed to the plaintiff according to the provisions stated in the Judicial Decisions Journal" (Court of Cassation, Decision No. 258/2010).

3.2.2 Second Subsection: Effects of the Oath of Non-Lying in Acknowledgment

When the oath of non-lying in acknowledgment is directed at the claimant, he has the option either to swear the oath according to the formula provided by the court, winning his case, or to refrain from swearing the oath, thereby validating what his opponent has claimed, leading the court to rule against his case. Alternatively, he may respond with an oath directed at his opponent who invoked the oath (Decision No. 991/1971). In this scenario, the obligation to swear the oath shifts to the acknowledge, who then has the choice to either take the oath, resulting in the dismissal of the plaintiff's claim in favor of the defendant, or to refrain from swearing the oath. In the latter case, this implies the falsity of his plea and the validity of the acknowledgment stated in the evidence presented in the case, leading the court to rule in favor of the plaintiff (Abdul-Wadud, 1970, p. 179).

The opponent is considered to have refrained from taking the oath if it was initially directed to him and he did not respond to it or take it. He may also refrain from it if it was directed at him, and his behavior may indicate such a refusal; for example, if he remains silent when the oath is directed to him without contesting it or modifying its wording (Al-Nadawi, 1986, P 136). Alternatively, he may evade swearing the oath by providing an ambiguous or incomplete answer. However, he is not considered to have refrained from taking the oath if he is absent from the session designated for him to take the oath as required by his opponent; because the refusal to take the oath can only occur during the session designated for it (Marqus, 1986b, P 184).

As mentioned earlier, the oath of non-lying in acknowledgment is considered a decisive oath because it resolves disputes. If the defendant ("the acknowledge") acknowledges the evidence presented in the case and claims that his acknowledgment was false, and the court grants him the opportunity to direct the oath but he does not comply, he loses the case. Conversely, if he requests the oath to be taken and the opposing party ("the claimant") swears it, he loses based on the oath directed at him. If the opponent refrains from swearing it, the court will rule to dismiss the case. Thus, the dispute is resolved in all cases of refusal either in favor of the one who swore the oath or against

the one who refrained from it. The ruling issued in the case holds the force of *res judicata* regardless of whether it was based on the refusal or the oath, and it cannot be contested (Al-Amiri, 1949, p. 129). The oath is directed at the acknowledge and he is obliged to swear it, as the request to swear an oath is considered part of the agent's duties in litigation (Al-Qadi, 1949, P 129). This applies to guardians, executors, and trustees, any of whom may request the opposing party to take the oath. While it is permissible for the agent to request the oath, it is not permissible for anyone other than the person to whom the oath was directed to swear it, since this matter is personal and pertains solely to the character of the one swearing (Abu Al-Wafa, 1978, P 481).

Furthermore, while the heirs of the acknowledgee may swear the opposing party, they may also request the opposing party's heirs to swear the oath. However, this oath must be directed in the form of a non-knowledge clause because the debt-related event occurred between the acknowledgee and the deceased "the claimant." Each heir must swear that he does not know whether the acknowledgee was lying in his acknowledgment; a single heir's oath is insufficient, as representation does not apply in swearing oaths. Therefore, if the oath is directed at all heirs and some of them swear while others do not, the oaths of the former do not hold against the refusal of the latter. In this context, the oath of non-lying in acknowledgment is directed alongside an oath of verification (Al-Takroori, 2013, P 346).

The oath may also be directed in labor cases to secure labor rights and in commercial papers to confirm whether payment has been made. The oath of non-lying in acknowledgment serves the interests of the party for whom the acknowledgment was made, i.e., the beneficiary of the content of the disputed document. For instance, if there is a promissory note and the maker or endorser claims its invalidity, meaning the acknowledgment contained therein is invalid, it is the right of the person disputing the acknowledgment to request the oath. If the bearer of the promissory note swears to its validity and what it contains, this means that the promissory note and the acknowledgment therein are valid, and this acknowledgment binds the defendant against whom it is presented, based on Article 50(1) of the Jordanian Evidence Law No. 30 of 1952 and its amendments, which states: "A person is bound by his acknowledgment unless he denies it by a judgment."

4. Conclusion

Through this research, I have presented what pertains to the oath of non-lying in acknowledgment according to the Code of Judicial Decisions and the Palestinian Evidence Law. The oath and acknowledgment are considered among the most important pieces of evidence presented by the parties before the court to prove their rights. The importance of the oath becomes evident when there is a lack of necessary evidence to clarify the issue in dispute. In such cases, the party claiming a right against another has no choice but to resort to the oath. In the absence of evidence, the plaintiff has no option but to lose the case, as there is no judgment without evidence. An acknowledgment is not always truthful, and it does not harm the acknowledgee to swear this oath as long as his claim is valid.

Consequently, this oath is regarded as a form of decisive oath, as the legislator grants the right to direct it to the acknowledgee who claims that his acknowledgment in the document is false, whether it be an official or private document. However, these claims are not admissible in acknowledgments issued by the relevant official authorities; rather, they must be challenged through forgery. The outcome of swearing this oath results in a ruling in favor of the one who swears it, while the party that refrains from doing so loses the case. Whether the oath is sworn in this case or not, it definitively resolves the dispute, concluding the case, and the judgment issued therein acquires the authority of *res judicata*.

Therefore, I have reached several findings and recommendations, which are:

4.1 Results

- When the plaintiff presents an acknowledgment issued by the defendant and requests a ruling based on it, the defendant's position can only fall into one of the following cases: either to deny the submitted acknowledgment, to fully admit the acknowledgment that was issued, or to acknowledge that it was issued by him but dispute its content or validity. In this case, the

defendant has the right to direct the oath of non-lying in acknowledgment to the plaintiff to prove whether the acknowledgment was true or false.

- The judgment issued in a case of the oath of non-lying in acknowledgment holds the authority of *res judicata*, regardless of whether the judgment was based on refusal to swear or on taking the oath, and it cannot be contested.
- The Code of Judicial Decisions mentions the oath of non-lying in acknowledgment but does not explicitly state it in the Palestinian Evidence Law; therefore, most of the rulings have been based on jurisprudence and interpretation.
- The oath of non-lying in acknowledgment is considered a form of decisive oath, and directing it, swearing it, or refusing to swear leads to resolving the dispute. Both oaths may be directed in the same case.

4.2 Recommendations

- Since the Evidence Law does not specify the oath of non-lying in acknowledgment, I suggest that the legislator organize specific texts regarding this oath to prevent disputes about it and to explicitly determine the nature of this oath, whether it is a decisive oath or a complementary oath.
- There are many decisions that refer to the oath of non-lying in acknowledgment, but they have not received sufficient discussion and analysis. Therefore, I recommend that the legislator thoroughly discuss and analyze these decisions, given the importance of the role of the oath of non-lying in acknowledgment in evidence.
- I propose that the Jordanian legislator amend Article (11/1) to be limited to the case of denying the issuance of the document only, so that some cannot invoke it when their liability is disputed, and they do not acknowledge the issuance of the acknowledgment.

References:

- Abu Al-Wafa, A. (1978). *Commentary on the Texts of the Evidence Law*. 4th Edition, Alexandria.
- Abu Issa, H. (2013). The Oath of Non-Lying in Acknowledgment. *Law Journal*, 157(2).
- Al-Khoury, F. (1991). *Principles of Civil Procedure*. 2nd Edition, Damascus, Arab Publishing Office.
- Al-Qadi, Munir (1949). *Explanation of the Magazine*, Al-Ahali Press, Vol. 4, Baghdad.
- Al-Takrouiri, Othman (2013). *Al-Kafi in Explaining the Law of Evidence in Civil and Commercial Matters*, Dar Al-Fikr Library.
- Zbeidat, Y. (2010). *Explanation of the Palestinian Evidence Law in Civil and Commercial Matters*. Palestine.
- Al-Sanhouri, A. (2004). *The Mediator in Explaining the Civil Law*, Dar Ihya' Al-Turath Al-Arabi, Beirut.
- Al-Amiri, S. (1949). *A Summary of Evidence Theory*. Baghdad, Al-Ma'arif Press.
- Abdul Wadood, Y. (1970). *Lectures on Evidence Law*, Cairo, Dar Al-Nahda Al-Arabia.
- Abdul Wahab, A. (2016). *The Oath of Non-Lying in Acknowledgment in Iraqi Legislation*, Iraq, *Generation Scientific Research Journal*, No. 4, 11-25.
- Qasim, M. (2005). *Principles of Evidence in Civil and Commercial Matters*. 2nd Edition, Beirut, Al-Halabi Legal Publications.
- Al-Qurtubi, A. (n.d.). *The Beginning of the Scholar and the End of the Moderate*. Dar Al-Ma'rifah.
- Marqus, S. (1986 a). *Principles of Evidence and Procedures in Civil Matters in Egyptian Law*, Cairo, Dar Al-Jil for Printing, Vol. 2, 4th Edition.
- Marqus, S. (1986 b). *The Comprehensive Explanation of the Civil Law, Principles of Evidence and Procedures in Civil Matters*. Cairo, University Publishers.
- Al-Mu'min, H. (1948). *Evidence Theory: General Rules, Acknowledgment, and Oath*. 2nd Edition, Baghdad.
- Al-Nadawi, A. (1986). *Explanation of the Evidence Law*. 2nd Edition, Baghdad.
- Nash'at, A. (1997). *The Message of Evidence*. 7th Edition, Cairo, Dar Al-Fikr Al-Jami'i Printing and Publishing.
- Nuriya, S. (2018). *Acknowledgment in Evidence in Islamic Jurisprudence and Algerian Civil Law*, Master's Thesis, Abdul Rahman Mira University.

Laws and Legislation:

- Evidence Law.
- Real Estate Registration Law No. (43) of 1971, amended.
- Code of Judicial Decisions, issued in 1877, published in the Official Gazette in 1930.
- Evidence Law in Civil and Commercial Matters No. (4) of 2001, published in the Palestinian Gazette, No. 38.
- Jordanian Evidence Law No. (30) of 1952 and its amendments, published in the Official Gazette, Page 200, No. 1108, dated 17/5/1952.
- Court of Cassation, Rights, Decision No. 121/1973, *Lawyers Journal*.
- Court of Cassation, Decision No. 991/1971, issued on 29/4/1974.
- Palestinian Supreme Court, Civil Cassation No. 258/2010, issued on 15/6/2010.
- Court of Cassation, Civil Procedures, *Code of Judicial Decisions*, Decision No. 1133, 1987.
- Jordanian Court of Cassation, Rights, Decision No. 428/2003, issued on 11/4/2002.
- Court of Cassation, *Judicial Magazine*, Issue No. 1, Decision No. 462, issued on 16/10/1983.
- Palestinian Court of Cassation, Decision No. 34/2008, Oath, Ramallah, issued on 26/10/2008.
- Court of Cassation, Rights, Decision No. (2729/2018), issued on 15/5/2018, published on the Qararak website.
- Court of Cassation, Rights, Decision No. 1874/2002, issued on 3/10/2002, published by the Justice Center.