



The Indirect Lawsuit in the Saudi Civil Transactions System Compared to Islamic Jurisprudence

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Abstract:

Contemporary laws pay great attention to the issue of protecting debts and ensuring the implementation of obligations because of their tangible impact on the circulation of funds and economic activity, and stipulate in their laws a number of guarantees for this purpose, in the context of legislative development in the Kingdom of Saudi Arabia, the new civil transactions system enacted a number of these methods, this research studied one of them and was entitled “The indirect lawsuit in the Saudi civil transactions system compared to Islamic jurisprudence.” It tried to answer a number of questions about its definition, nature, conditions, and effects, compared to Islamic jurisprudence. It concluded with a number of results, the most important of which are: that indirect lawsuit is based on two basic ideas: the interest of the creditor in ensuring the debtor’s fulfillment and not procrastinating, and the legal representation of the debtor when he does not claim those rights according to the conditions stipulated by the system, Saudi system has enacted conditions and procedures regulating them in a way that guarantees their effectiveness and the absence of abuse in their use, and the jurisprudence is not without Islamic Sharia jurists from a number of branches as they said that it is permissible for a creditor to use the rights of his debtor, but they came in various branches scattered in the chapters of jurisprudence and not as an integrated legislative principle.

Keywords: lawsuit, indirect, debtor rights, guarantees, civil transactions.

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Introduction

The effect that results from the emergence of a civil obligation owed by a specific person is the obligation to implement it, and it is called “the effect of the obligation in itself,”¹ and that is the performance of its object, the obligation here includes all personal rights, whether it is an obligation to perform a specific (such as handing over a debt) or to perform work (such as a contractor building a house) or by abstaining from it (such as the partner’s obligation not to compete with his partner during or after the establishment of the partnership for a certain period), and this performance is a duty determined by Sharia and law.

¹Mark 1/6.

Due to the importance of this effect and its repercussions on the transactions of individuals, and even on the movement of the economy and the circulation of funds in the state, and because of the debtor's failure to fulfill them, comparative civil laws intervene by enacting a number of guarantees for the implementation of the obligation, most of which are in the form of lawsuits initiated by the creditor to ensure the fulfillment of his rights from the debtor, It guarantees the implementation of the obligation and protects the general guarantee for creditors from risks, It is a protection for the obligations of debtors in particular and a guarantee for the conduct of transactions and the movement of funds in general. The Saudi system has taken this principle and the Civil Transactions System issued by Royal Decree No. (M/191) dated 11/29/1444 AH stipulates the following means:

1. The creditor's use of his debtor's rights (indirect lawsuit), in Article (182).
2. The lawsuit for the non-enforcement of the debtor's actions against his creditors (the police lawsuit), in Articles (283-188).
3. Mock lawsuit, in Articles (189-190).
4. Withholding money, in Articles (191-195).
5. Insolvency lawsuit, Article (196) referred to its statutory texts.

In this research, we discuss the definition of the first method under the title "Indirect lawsuit in the Saudi Civil Transactions System Compared to Islamic Jurisprudence," and God bless us.

The importance of the topic: The importance of researching the topic appears because it is one of the topics of the theory of obligations. Which is considered the basis of civil laws, and because guarantees for the implementation of obligations have a direct impact on the movement of funds, the economy, and the strengthening of credit, and the creditor's use of his debtor's rights (indirect lawsuit) provides the creditor with appropriate protection from the risk of the debtor's failure to claim his rights from others if his funds fall short of payment. with his debts.

Research problem and questions: Contemporary civil laws provide a number of means to ensure the implementation of the obligation, and to protect creditors from the debtor's negligence in fulfillment or his disposition of his money and rights to the detriment of them, and one of these means is the "indirect lawsuit," and hence this research came to study this method in light of The Saudi civil transactions system compared to Islamic jurisprudence, and answers a number of questions, the most important of which are:

- 1- What is the concept of indirect lawsuit? What is its nature?
- 2- What are the conditions for an indirect lawsuit? What are its effects?
- 3- What is the position of Islamic jurisprudence on indirect lawsuits?

Research methodology:

The descriptive analytical comparative approach, as the rulings of direct lawsuits will be studied in light of the Saudi civil transactions system, and the opinions of commentators on them will be surveyed, and the position of Islamic jurisprudence on them.

Research divisions: The research includes an introduction, five requirements, conclusion, and a list of references, according to the following division:

Introduction: It includes the importance of the research, its problem and questions, the research methodology, and its divisions.

Requirement one : The concept of indirect lawsuit and its name.

Requirement Two : The nature of the creditor's use of his debtor's rights.

Requirement Three: Conditions for a creditor to use his debtor's rights.

Requirement Four : The effects of using indirect lawsuits.

Requirement Five : the indirect lawsuit in Islamic jurisprudence.

Conclusion: The most important results of the research

Reference list.²

REQUIREMENT ONE

The concept of indirect lawsuit and its name

It is “the creditor’s representation on behalf of his debtor in claiming the rights he has from others if he does not claim them in order to maintain the general security”³. It may happen that the debtor has rights and debts in the receivables of others, but he refrained from claiming them and did not file a lawsuit to collect them due to his negligence or intent to harm his creditors, the creditors, or one of them, uses the rights of their debtor with others by claiming them, because collecting them includes them in the general guarantee of the creditors, and supports their debtor’s ability to fulfill their debts, and it is called (lawsuit) because it is often carried out through it.⁴

It is called (indirect) because the creditor is not the one who moves it, but rather his creditors carry it out under conditions stipulated by the system (⁵), and then the outcome that results from it goes to the debtor and not the creditor, so if the creditor benefits from it, it will be after it enters the debtor’s responsibility, so it is an indirect way.⁽⁶⁾ It includes (the debtor’s rights) and debts owed by others, such as the seller’s creditor filing a lawsuit against the buyer to demand that he deliver the price to the seller or cancel the sale for non-delivery, such as objecting to a judicial ruling issued against his debtor because it effects on his money, as well as taking measures that preserve the debtor’s rights with others, such as registering mortgage and cutting of limitations.

A group of jurists believes that the term “lawsuit” falls short of covering the manifestations of the creditor’s use of his debtor’s rights other than through a lawsuit, such as registering the mortgage and objecting to rulings that are not in favor of his debtor, which are part of its nature, and that calling it “a lawsuit for the creditor’s use of the rights of its debtor” is more accurate.⁽⁷⁾ The Saudi Civil Transactions System has taken the two terms and used them. .

Here a question arises: If the indirect lawsuit is filed by the creditor in the name of his debtor, what is the position of the Saudi system regarding the direct lawsuit filed by the creditor in his name directly against his debtor’s debtor in order to obtain payment directly from him?

Legal scholars determine the right of the creditor to use lawsuit ,provided that the right is in the process of being paid and free of dispute and that the creditor does not demand more than what is owed by his debtor, If these conditions are met and the creditor uses them, he will have a privileged right over the rights of his debtor, so that other creditors will not compete with him when his rights are fulfilled from this debt, and the debtor’s debtor will not be permitted, after warning him, to this right is paid to

² Thanks and appreciation to the Deanship of Research and Graduate Studies at King Khalid University for funding this work through research project No. RGP2/596/45.

³ Abu Al-Khair, p. 156

⁴ Al-Bakri 648/3.

⁵ Shanab, p. 626, Al-Fadl, p. 492.

⁶ Abdul Baqi, p. 128.

⁷ Abu Al-Saud, pp. 115, 126, Sultan, p. 22

someone other than the creditor who claimed it.⁽⁸⁾ Some laws have adopted it, such as the Egyptian,⁽⁹⁾ Iraqi ⁽¹⁰⁾ and other laws, but it is only proven by a special legislative text.⁽¹¹⁾

Therefore, the Saudi Civil Transactions System did not establish a general rule for it. It is taken into account that it is permissible for the subcontractor to claim directly from the employer if the contractor refers it to him in accordance with Article (474), where it states: “The subcontractor may not claim for himself the employer for anything that the contractor is entitled to unless he refers him to the employer,” and as the laws stipulate Which took the direct lawsuit in other special cases, such as the landlord’s lawsuit against the subtenant directly, and the principal’s lawsuit against the agent’s deputy, or vice versa, without the agent⁽¹²⁾

The Saudi Civil Transactions System did not provide for these cases.

REQUIREMENT TWO

The nature of the creditor’s use of his debtor’s rights

(The nature of the indirect lawsuit)

The third paragraph of Article (182) stipulates that “the creditor is considered a representative of his debtor in the exercise of his rights, and every benefit that accrues from the exercise of these rights shall be from the debtor’s funds and a guarantee for all his creditors.” The creditor is a representative of his debtor, and it is a legal representation that originates in the text, and therefore the creditor uses it in the name of the debtor, even without his permission or excuse, and he must be included in it, so he will be a party to the lawsuit, this obligation is stipulated in the law and does not depend on the request of the parties or the judge’s discretion.

If the creditor is awarded those rights, they do not belong to him and they are not enforced for his benefit, rather, they fall within the debtor’s funds and enhance the general guarantee for all of his creditors, so whoever uses his debtor’s rights is not subject to anything over others. He does not collect his right from it directly, and it does not give him priority in collecting from it, nor is it permissible for him to dispose of his debtor’s right by way of reconciliation or release, and the debtor still has the right to use his rights and claim them as a principal in claiming his right⁽¹³⁾ Therefore, it is not a precautionary measure and is not an executive procedure, but it paves the way for mostly to initiate an execution request⁽¹⁴⁾.

REQUIREMENT THREE

Conditions for a creditor to use his debtor’s rights

Paragraphs (1, 2) of Article (182) stipulate the conditions that must be met in order to use an indirect lawsuit, and they stipulate: “

⁸ Shanab, p. 632, Al-Fadl, p. 489.

⁹ Sultan, p. 28.

¹⁰ Al-Hakim, p. 73.

¹¹ Al-Sanhuri 979/2, Al-Hakim, p. 74

¹² References in previous footnotes.

¹³ Al-Bakri 649/3.

¹⁴ Abdul Baqi, p. 128.

1 - Every creditor, even if his right is not due for payment, may use the rights of his debtor, except those that are specifically related to his person or are not subject for seizure, if the debtor does not use these rights and this would lead to an increase in his debts over his funds.

2- For the creditor to use his debtor's rights, it is not necessary to notify this debtor, but if a lawsuit is filed in the debtor's name, he must be included in it.

And in its light; We present the conditions that must be met to use the indirect lawsuit as follows⁽¹⁵⁾

1- The creditor's right must be certain, even if it is not due for performance, meaning that it must be verified and undisputed, even if its performance is contingent on a condition or deadline, It is not due for performance when filing an indirect lawsuit, because it does not aim for direct implementation in favor of the creditor, but rather aims to preserving the debtor's general security.

2- That the rights of the debtor that the debtor wants to use are financial rights that have been transferred from his responsibility to others, and the claim for them aims to return them to him and not to grant him rights that were not previously granted to him, therefore, the indirect lawsuit must be within the scope of its purpose, which is to preserve the general guarantee of the creditor from the effects of the debtor not using his rights and not claiming them. Therefore, the following falls outside the circle of using the debtor's rights and claiming them:

A) Non-financial rights related to the debtor's person, such as political rights and family rights, It is not permissible for the creditor to file lawsuits related to proving percentage in the name of the debtor or a lawsuit to cut off alimony and the like, and such as moral rights.

B) Financial rights related to the debtor's person, such as managing his money.

C) Financial rights that cannot be seized because the lawsuit has no benefit and is of no use if there is no possibility of seizing a specific property and executing it. This was stipulated in Article (21)⁽¹⁶⁾ of the Implementation System issued by Royal Decree (M/35) dated 13/8. /1433 AH, and its executive regulations issued by Ministerial Resolution (526) dated 20/2/1439 AH and their amendments.

¹⁵ Mark 283/6, Saleem, p. 162, Shawqi, p. 40.

¹⁶ It reads: It is not permissible to seize and implement the following:

1- State-owned funds.

2- The house in which the debtor and his legal dependents live, and the execution judge estimates its sufficiency, unless the residence is mortgaged to the creditor.

3- The means of transport of the debtor and his legal dependents, and the execution judge shall estimate its sufficiency, unless the means is mortgaged to the creditor.

4- Wages and salaries, except for the following: A - The amount of half of the total wage, or the salary for the alimony debt.

B - The amount of one-third of the total wage or salary for other debts. In the event of a conflict, half of the total wage or salary is allocated to the alimony debt, and a third of the other half is allocated to other debts. In the event of multiple debts, a third of the half is distributed among the creditors according to the legal and legal aspects.

5- What is necessary for the debtor to practice his profession or craft on his own.

6- The debtor's personal necessities, and the enforcement judge estimates their sufficiency.

3- The debtor's failure to use his rights with others, and his silence about claiming them. However, if he uses them, the creditor has no right to do so because there is no reason for him to act on behalf of the debtor.

4- That the debtor's silence about exercising his rights leads to an increase in his debts and a weakening of the general guarantee, as the debtor may remain silent about exercising his rights because this does not affect the rights of his creditors and his ability to fulfill them. However, if his silence affects the rights of creditors and leads to difficulty in fulfilling them, then this constitutes the (interest) element in the lawsuit filed by the creditor is that the debtor can argue that the debtor has no interest for creditor in this if he proves his ability to fulfill his right, and the indirect creditors' lawsuit is rejected based on that.

5- Inserting the debtor into the lawsuit filed by the creditor against the debtor's debtor. If this is not achieved, the lawsuit will not be accepted, perhaps the reason for this is to have the opportunity to defend his rights, whether his role after that was positive by demanding, paying, proving, and so on, or was negative by being satisfied with what the creditor provided, who initiates the lawsuit on his behalf, this condition is not binding unless a lawsuit is filed in the name of the debtor, therefore, it is not binding if the exercise of his right is through precautionary measures other than through a lawsuit.

Requirement Four

The effects of using indirect lawsuits¹⁷

Based on the above-mentioned nature and conditions of the indirect lawsuit, the following results:

- In this lawsuit, the creditor has the right to demand everything that the debtor has the right to demand, even if it is more than his debt, because this lawsuit aims to strengthen the debtor's general guarantee, and is not for the creditor to enforce what the debtor receives from it, so he does not monopolize anything of the outcome of this lawsuit, nor he has priority over other creditors, and he takes enforcement measures against his debt independently of the indirect lawsuit.
- The debtor still has the right to dispose of his money in all legal ways, and this lawsuit does not result in a ban on him or preventing him from disposing of it.
- The debtor's debtor may use all defenses against the debtor's creditor against the debtor's creditor, such as set-off and prescription.
- The direct lawsuit ends with settlement or reconciliation between the parties to the original relationship.
- The proceeds of the indirect lawsuit shall go to the debtor and shall be a guarantee for all creditors, and the creditor who used it shall be an example to them, unless he has the right to submit another document.

Requirement Five

The indirect lawsuit in Islamic jurisprudence

Jurists stipulate that the plaintiff must have standing and have an interest in the case.¹⁸ As for the condition of standing, it must be fulfilled by one of two things:

- The lawsuit must be brought by the person with the direct right, whether he initiates it personally or through his representative.
- To be someone other than the holder of the direct right with permission from Sharia law, such as the authority of the Sultan over public funds and rights, so he appoints entities that act on his behalf in claiming rights and public funds.¹⁹

¹⁷Al-Alfi, p. 97, Abu Al-Saud, p. 127, Sultan, p. 25.

¹⁸The Saudi Code of Sharia Procedures stipulates it in its third article: "No request or payment shall be accepted in which the owner does not have an existing, legitimate interest..."

As for the condition of interest, it is fulfilled by the claimant having an interest related to preserving one of the five necessities and preventing harm to it. If the character and interest are not met in the case, it will not be accepted and the judge will reject it.²⁰

What appears by observing the sayings of the jurists is that they differentiate between two situations:²¹

One of them: in the event of the debtor's bankruptcy and the debts of his creditors are due, in this case, the majority of jurists hold that it is permissible to sell his property to pay off his creditors, as well as renting out his property to pay off his debt, requesting an interdiction against him and preventing the enforcement of his actions, and the permissibility of claiming the creditors (creditors) from others and claiming what belongs to their debtor, if the debtor has money with a third party, and the debtor did not dispute him or was absent, and the Saudi system addressed what related to this case in the implementation system.

The other: In the event that before his bankruptcy and the debt is due, it is not permissible to direct the lawsuit to the debtor's debtor in principle, because the debt is owed by the debtor and not his debtor, however, some branches of jurisprudence have stated that it is permissible for a creditor to demand the rights of his opponent if he is going to transfer to him, and it is permissible for a creditor to demand expense from a debtor who is obligated to it.

The indirect lawsuit known in the systems deals with this second case, and through its description and taking into account its nature and some of the branches mentioned by the jurisprudential schools, it is something that can be taken based on these jurisprudence and as a matter of legal policy and reform, and this is based on:

1- These jurisprudential rulings mentioned for the first case are far more effective than simply claiming the debtor's rights over his debtor, because they include collecting the debtor's money and executing on it to pay off his debts without his will. As for the indirect lawsuit, in its legal concept: the claimed funds go to the original debtor and strengthen his general guarantee.

The plaintiff is like the rest of the creditors and does not have priority in recovering his debt, so the opinion that it is permissible is a matter of priority, so everyone who says that it is permissible to interdict the debtor and sell his money, and it is in the clear interest of the creditors,

2- The system surrounded this lawsuit with a number of conditions that outweigh its interest - and mentioned advance - the most important of which is: that the subject of these rights should not be related to the person of the debtor, and that failure to claim his rights leads to an increase in his debts over his money, but if his money exceeds his debts, then there is no reason to take the indirect lawsuit, and this is consistent with the requirement of the majority of jurists who went to the permissibility of interdicting the bankrupt and executing his money if his debts have surrounded his money, but if his money is more than his debts, then there is no need to say that.

3- The debtor must be included in his creditor's lawsuit with his rights, and in this way the condition of character in the lawsuit is fulfilled for those who say it is independent of the interest condition, as for those who see them as something, the interest in the indirect lawsuit of the creditor and his debtor is apparent.

Accordingly, the condition of the creditor's capacity to be fulfilled in a lawsuit to exercise the rights of his debtor is what some jurists have said. The system has enacted procedures for directing this lawsuit as it is

¹⁹ Al Khaneen 34/1

²⁰ Dr. Muhammad Al-Qarni, Judicial Executive Bonds in Islamic Jurisprudence and the Saudi System, p. 64.

²¹ Expanding on these issues: Debt Protection in Islamic Jurisprudence, Dr. Ibrahim Rahmani, Dar Al-Bashaer, Beirut, 1st edition, 1432 AH, 147/2, 233, 364, 396. The original is a doctoral dissertation in two parts.

a prosecution that originates in the text of the system, the system only requires collecting benefits and paying off harms. It has also surrounded it with a number of conditions that guarantee the absence of exaggeration or transgression in using it.

Conclusion :

The research reached a number of results, the most important of which are:

- 1- The indirect lawsuit aims to preserve the debtor's money and strengthen his general guarantee to creditors.
- 2- The indirect lawsuit is based on two basic ideas: the creditor's interest in ensuring the debtor's fulfillment and not procrastination, and the legal representation of the debtor when he does not claim those rights according to the conditions stipulated in the law.
- 3- The Saudi system developed, as it adopted the idea of indirect lawsuit, and enacted the conditions and procedures regulating it to ensure its effectiveness and non-abuse in its use.
- 4- Islamic jurisprudence defined the claim of a creditor's use of his debtor's rights in various branches scattered throughout its chapters and not as an integrated legislative principle..

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