
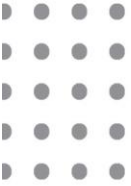
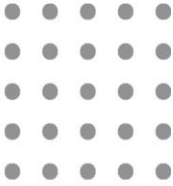


**Experience of electronic litigation in the Saudi
system as an interlocutor of legal protection in
the right to litigation as a constitutional right**

Dr. Mohammed Ali Hassan Ewedah

Department of civil and commercial procedure law

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- **Submit the lawsuit and sent it remotely**
 - **Submit the documents and memorandums**
 - **Reasoning of sentence**

Introduction

As a supplement to the e-services system, and the harmony of the requirement of e-treatment system, and according to the first article of (71) of the judicial system and the article 72 of the legal procedural and the 7 article of commercial courts, and what it involve of setting up the provision and the primary rules of the judicial procedures online (Remote Litigation)

(Electronic Litigation) maintain the Judicial safeguards according to the globalization achieve those safeguards that convenience with the nature of that path for the following:-

First: achieve confrontation:

through the (Remote Litigation) provide the right of defense through make the parties able to see the whole what is provide in the case and that includes the memorandums and documents which are provide during the trail or during the preparation and establishment and confrontation of the parties,

Remote Litigation achieve easier apply of the previous project of what the minister sophistication (documentary of the trails with the audio and image)

and the agreement of using the remote litigation service that the minister is bind to register and save the e-case logs, and it's secret, and it's not allow to see it or deliberate or copy it otherwise according to the embodied provisions.

Second: Principle of Public trails:

That allow to the trail of (Remote Litigation) according to specific procedurals, in the consideration of the authority of the court in control the session system, in addition to the service of register the sessions and saving it.

First: Public Provisions

- 1- remote litigation involve the all judicial litigation that are stipulated in the laws that can be applied remotely, such as exchange the memorandums and answering it and provide the documents and the statements and set up (Codified Session) and the (Visual Session), and pronouncement of sentence and receiving the copy of the sentence and verdict it in the front of the above level court
- 2- Establishing the session of remote legislation throughout (Codified Session) or (Visual Session) and the definition of these methods and detailing their provisions will come in the third article
- 3- It's necessary to have active accounts for all the parties in the Saudi National Digital Identity Management, or the able of creating it.
- 4- Parties have the right to see the file of case remotely
- 5- Remote Litigations procedures are reserved through (Remote Litigation) platform or the certified laws from the minister for the remote litigation, and it's not allowed to for the chamber to start it from any other methods
- 6- Maintain the regulation of giving the testimony and the oath and documentation of the take off and divorce in the Remote Litigation
- 7- The Minister enactment the start evidence for remote litigation for the parties
- 8- In case of failed of following the lawsuit via the Remote Litigation it's allow for the chamber to set it in the presence

Second: Determine the dates and informing it

It doesn't follow the laws effect in the right of who doesn't be informed or didn't get the link of sign in, and the Chamber must codified the result of the informing of the dates and the arriving of the link in the setting of the session.

the date of (Visual session) through the working hours, and for the Chamber establishing it outside the working hours through the official working days without exceeding 5 o'clock, After having the approving of the Supreme Council of the Judiciary

3 - Electronic Litigation proceedings and system

According to the article (91/63) from the Executive regulation for the legal proceedings law

the service was designed to consider the notification of the beginning of the session throughout the (Remote Litigation) platform or any other remote method as a calling for the arguments - parties - that will allow to inform them of it has start and also the service was designed to consider the plaintiff and the defendant as presence or any of them when written in (Codified session) through the providing time of the chamber, or they enter (Visual session) during the 30 minutes in the specific time of it's establishing, and if he isn't be presence during it he will be treat according to the provisions law after validating of the informing, and arriving the notification of (Codified Session) and the link

of (Visual Session)

and the sessions that are established throughout (Remote Litigation)

Service are Two kind:

The First kind: Codified Session

The meaning of (Codified Session)

Empowerment the Chamber the parties of the lawsuit of written proceedings and exchange the statements and submit it in addition to forwarding the requests and the Inquiries of the chamber and answering it in codified method though the parties and attach the documents

The Second kind: Visual Session

It refers to establish the Chamber the visual session audio and image in the electronic rooms, be attendant by the parties via the verified means of communications from the electronic litigation minister, and in it Parties are discussed and complete the litigation proceedings and the pronouncement of sentence.

The procedure of (Codification Session) as follows:

1- (Codification session) start with opening Judicial chamber in the determined time, and it continue until the chamber end up it in a period doesn't exceed 30 days of opening it, and the chamber in some reasons it determine by it to be exceed the same period for one time . and the

Chamber postpone the period of (Codification Session) temporary if it's related to see the case do an action outside the intent of the chamber and the parties, as the report of the expert and so on.

2- Providing the memorandums via the visible fields, and be aware of the clarity as possible.

3- Parties can attach the images and the documents that are referred to in (Codification Session) or in the introduction memorandums.

4- The Chamber can give time for exchange the memorandums or answering on the requests to specified period during) Codification Session) when it see it's necessary for it., It's not allowed to repeat the period for the same reason otherwise for reasonable excuse will be accepted by the Chamber

5- The assistance of the judges in the chamber or the specialized authority of the exchange of the memorandums by the parties according to the number of memorandums and the time of providing it that was determined by the chamber

6- Sending text messages through the (Remote Litigation) platform to the parties about all actions that occur in the (Codification Session)

7- Aware of to the article (71) of the Legal proceeding system the secretary of the trail monitoring the chamber and open a control record about all that was mentioned in (Codification Session), The law provisions on judicial documents shall apply to him.

Allowing the expert to enter to the (Codification Session)

8- The Expert Are allowed to enter to (Codification Session), and Sent a copy of experience report remotely

9- The pronounce of sentence can't be done or to cancel the lawsuit or the provision in the case of not sending the document to (Codification Session)

10- In other noun urgent lawsuit, the Chamber determine a period to reply on the requests or the inquiries during more than 5 days

The Second Kind: The Visual Session:

The Visual Session as follows procedures:

- 1- The parties must presence and codified the full name in Arabic according to the national identification or the residence identification or the commercial logs in the user field.
- 2- The System send text message to the parties before the date of (Visual Session) by one day contains of the link of sign in to the session and the parties must enter the electronic room before the time of (Visual Session), and confirm that they are ready , in case of any party field to sign in or doesn't know how to sign in, he must contact with the unified call center 1950
- 3- The assistance of the judges take care of preparing the Laws that are used in (Visual Session) , and activate the technical system before the session get started. and assure that its safety, and there is no any obstacle or errors, and verify - through the certified methods - from informing the parties and have their own (Visual Session) links
- 4- The assistance of the judges verify that the name are written full in Arabic and be assure of the ready of the parties and the clarity of the audio and the image.
- 5- The assistance of the judges make sure that the parties are ready and and verify of their identification, and from their role in the lawsuit and write it before starting
- 6- In case of not able to establish the Visual Session or complete it for a reason of the Chamber, then a Notification

will be sent to the parties, and the Chamber determine another date after declare the reasons of the postpone.

7- If any party exit from the (Visual Session) during running it, and didn't reconnect during 10 minutes, The chamber continue establishing the session according to Statutory Provisions.

8- The man who will attend the (Visual Session) maintain its system, and mute the microphone and don't disturb or disruption or enter and exit repeatedly. All the attendance must activate the camera the whole time of (Visual Session)

9- If no one in the parties was in jail, the session can't establish any of these parties presence in the room of the trial. and the other party in the e-room

10 - Speaking be - after the session president permission - in calm and balance, and avoid the fast or be away of the microphone during speaking.

11- Parties must respect the Judicial Council when running the (Visual Session), and choose a good place to respect that moment, and the chamber must take what it's necessary in the system according to 73 article of Legal Proceedings System.

12- Parties can present their Documents through sharing their screen after the chamber acceptance, and it's not allow to sent messages in the chat during the running of (Visual Session) without taking the Chamber permission.

13- Open a control report for every (Visual Session)

14 - The presence of the Judges and their assistances and the parties during the (Visual Session) in formal clothes.

4- Deliberations and enactment the provisions:

The Deliberations session contract be with the members of the chamber electronic in (Remote Litigations) Service, with the maintain of its safety, and don't allow to enter or share except the judges who are listened to the pleading

The pronounce of the Provision and cancel the lawsuit and sentence of Non-exhaustion judgment through (Visual Session) or (Attendance session) and send the provision to the parties remotely

- Reasoning of sentence

Second Branch

Reasoning and legal and judicial induction

▪ *Legal Induction*

When a legislator in any country in any time undertakes setting rules of law, he never proceeds randomly but there is always a certain philosophy directing setting and studying legal rules. This philosophy means the objective or the comprehensive thought that law tends to realise. In order to achieve this ultimate objective there must be means to induct judgment. These means are called legal induction which means induction exclusive to law distinguishing legal logic from other sciences.

This induction depends on logical means to arrive at judgments, so induction does not contain in its indication any induction based on presumptions or associations.

This induction is related to law application directly or indirectly. Legal induction is a distinguished science has been discovered by logicians not law scholars.

Means of this induction differ according to the selected logic; in Non- imaginary logic there is nothing but syllogism by induction and in Mathematical Logics which is a type of

developed Imaginary Logics, induction is done by mathematical signs this type of induction presumes an arrangement of law in the form of principles and issues taken for granted. Whereas in the light of Non- Imaginary Logics, induction is argumentative. That is to say the judge is persuaded by demonstrations and proof. The defect or vice of this induction by syllogism is that it does not result in sound conclusions unless it is preceded by a legal method guaranteeing determination of induction premises. And this is an unsafe process because the legal method is influenced by the political circumstances and the prevailing attitude towards law. This process differs in a capitalist society from a socialist one. The defect of the mathematical induction is that overlooks law's nature as a humanitarian job which faces changeable circumstances and that induction can not be done on the basis of deaf rules. The defect of induction based on argumentation (in Non- Imaginary Logics) is that the matter is influenced by the eloquence of opponents and their abilities to persuade the judge with out stating the objective controls to persuade the judge. Thus, the matter is based on a combination of imaginary and Non- imaginary Logics upon induction. This is to be detailed soon.

Judicial induction means that practical induction done by the judge to reach a certain conclusion out of two

premises (a major premise and a minor one) for the sake of syllogism done by him. Judicial induction aims to justify the judgment or the judge's decision in order to be fair or non-authoritative. Legal induction differs from the judicial because the interest of the legal induction is the application of law on events that should be settled even if there is no dispute between opponent at a court.

Whereas judicial induction is the direct action by which the judge does his job (passes a judgment on a private case).

Reasoning is connected with legal and judicial induction; legal induction is expressed in judicial processes through judgments and decisions bases on reasons. Reasoned judgment is that judgment which presents alone a set of elements. These elements allow reaching and clarifying legal induction. Studying art of reasoning allows reaching judicial induction. Reasoning shows clearly the nature of induction done by the judge.

We should not overlap reasoning with legal induction (above- mentioned and not included in the judgment). That is because it is not stipulated for soundness of reasons to contain the intellectual processes that resulted in the judge's decision. A judgment is just an image of the judge's thought at last. Where as the preceding steps that resulted in persuasion of the judge do not appear in the judgment.

Reasoning demonstrate the judge's decision as the sole decision that should be taken by showing supports of the decision this decision is the mark that indicates the end of induction by the judge.

A judge differs from a scholar; he (the judge) should not be always committed to the circle of probabilities near to the reasonable idea. He has to abandon this circle to that of certitude in order to manifest the result of his induction which must be expressing reality.

To conclude, reasoning mission is to demonstrate that a judgment passes according to the unquestionable procedure and that there is no other way to pass. Reasoning mission does not show all steps of induction done by the judge until he passes a judgment, nor shows doubts that haunted the judge's mind before taking a decision. Reasoning, briefly, should not contain all steps of induction on the part of a judge before making up his mind, but it contains the final induction only.

Second domain

Reasoning relationship between imaginary and non- imaginary logics

In this domain we are going to study the general principles of imaginary logics and their effects on reasoning in the first branch of this domain. The general principles of Non- Imaginary Logics and their influences on reasoning are to be studied, too, in the second branch of this domain.

First Branch

Imaginary logics and Reasoning

1. Definition of Imaginary Logics, characteristics, advantages and disadvantages:

This type of logics was dominant through the last centuries of the Middle Ages when syllogism was dominant in its indication to Aristotle. That was on the remains of Scholasticism. That type is called Imaginary or formal logics because it is interested in the form of thinking not content.

Formal logics developed in the 17th C. when Descartes handled philosophy geometrically; then, he transformed it into mathematical induction. Thus, it covered all humanities provided that to apply imaginary or formal logics, all

premises (on which it depends) should be realised certainly. Descartes gave the following example for clarification: he said each time two different judgments passed by two different persons on one matter, surely one judgment was incorrect.

A branch of philosophy of law connected with Descartes' thought appeared (using mathematical induction in all humanities). This tendency is called legal positivism. Champions of this school consider.

Law as a pure human thought where man makes law by his mind and will. Michel Villey is one of this school's champions which offers law a pure rational trait. The most important effects of this school's thought on the judge's job is our interest in this field; it is to consider the judge's job a syllogism based on deduction. Whereas induction based on experiment and the study of different probabilities is not one of the means of induction in this type of logics (legal positivism) because it does not result in prompt solutions or inevitable results.

In imaginary or formal Logics, induction runs by syllogism which differs from syllogism known to fundamentalists of logics.

This kind of syllogism is called mental syllogism or estimation syllogism. That is to say realisation of conclusions if there are premises. By applying this method on a judicial judgment, we find that the major premise of a judgment is the legal rule applied on the dispute. Whereas the minor premise in the events. The conclusion is arriving at relevant results from a major premise and a minor one.

Induction could be done by syllogism at one time to reach a judgment or polysyllagism might be done in most cases (a series of syllogisms) where each syllogism becomes a premise to the next.

Imaginary or formal Logics character is tics

This logics- as stated before

Depends on syllogism. That is to say when there are premises, then there is a conclusion. Thus a result is inevitable. So, this logics is characterized by being automatic and impersonal. It is, also, characterized by being applicable to all legal sciences and others because it does not extend to the nature of topics but it studies the image of thought.

Imaginary or formal Logics Advantages

It is characterized by being a sincere servant to law as a science: first, it renders a scientific job. By this logics, law

can be made methodologically. It is a means to elucidate and present thought clearly, definitely and coherently. That is true because logical analysis and deduction lead to clarity and easiness of law application. Secondly, it does a social job because formulation of law by elicitation or deduction leads to insuring its reasonability and individuals obedience and persuasion.

Disadvantages of Formal or imaginary Logics

Many scholars of law criticized legal logic if it is formal or imaginary. Points of criticism stress the following points:

1. It is difficult- if not possible- to verify to certitude the premises necessary to do syllogism because there is nothing decisive (neither reality nor law).difficulty is due to inability to verify reality and to differences in the interpretations of laws. So, it is difficult to apply law on events automatically according to this type of logics.

If this criticism was righteous in its basis, we should not go for with its contents. Modern sciences help to choose syllogism premises in proportion to reality or law.

Practical principles such as directives and respect of law lead to verify events and truths. From an other aspect,

a judge does not always interpret law. In most cases, he does not interpret or complete law.

2. This type of logics leads to consider the judge a mere machine; this results in extinction of the pioneering role of the judge.

In fact, real criticism on formal or imaginary Logics is that devotion to it alone is impossible because it is far-reached to ascribe principles of law to a whole system of logical relationships so much that all judgments are induced by syllogism methods which depend on static rules of induction. That is noticeable because the judge's decision should be rational. A judge is not a machine to apply law mechanically on the basis of clear demonstrations but he innovates upon the interpretation of law.

After all, criticism of legal logic (if it is formal Logics) is done unanimously on the part of jurisprudence. This does not mean to deny this logic utterly; no one excludes deduction on which this logic relies.

Some scholars such as Kalinowski tried to save the formal nature of legal logic by detecting a new element of legal thoughts. These trials founded a new branch of logics called Denotative Logics.

To conduce, formal or Imaginary Logics is inadequate alone. So, logicians tended to experience another type of logics. This is called informal or Non- Imaginary Logics which we are going to discuss in the following but we have to show the effect of formal logics on reasoning.

2. Reasoning according to formal logics.

Deductively in order to reach a judgement as result of the syllogism done by the judge. Such a judgement is a conclusion out of two syllogism premises. Here, the judge finds reasoning according to formal or imaginary logics his support in two matters: first, legal system is based on the existence of written legal rules. Thus, the judge needs deduction first and syllogism next to arrive at certain conclusions.

The second matter is that reasoning eases the task of censorship on the judgement and ensures its compatibility with law and respect of defence rights.

Reasoning, too, ensures the power of judgement. That is to say offering the judgement a form indicating that it is a co-ordinated judicial work.

This action necessitates the judgement to look in the form of a clear logical structure. Efficient reasoning is done

only by syllogism which is the main device of induction according to formal or imaginary logics.

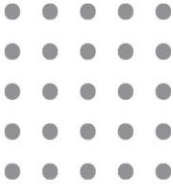
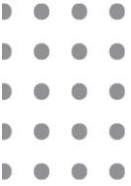

The conclusion is that formal logics is the means of clarity, coherence and interpretation and that rules of formal logics can never be excluded upon reasoning.

Adopting formal or imaginary logics upon reasoning needs to mention reasons in the text of judgement or decision.

Technically reasoning in formal logics operates in the form of deductive syllogism. In other words, a judge has to mention the major and the minor premises, then he has to mention the inevitable result or conclusion.

Doing reasoning according to formal or imaginary logics aims to demonstrate that the judge's judgement or decision is compatible to law.

A judge has to reason according to the rules of formal or imaginary logics even if the legal system is inefficient or contradicted in order to keep the fair image of the judge who does not deny justice. Although the formal logics is important to doing reasoning, modern legal thought does not



depend on this type of logics alone. Informal or Non-Imaginary logics is necessary, too, to do reasoning. This topic is to be discussed later.