



Unification of claims in the Civil Procedure Code

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Abstract

Counting the topic of unifying lawsuits in the Civil Procedure Law is one of the important topics that influences the practical aspect in the courts, and there must be. A The connection between the two claims to be unified is of great importance for the application of the defense of unifying the two claims, and that The Iraqi legislator did not define the relationship, but there are legislations that defined it, such as the Lebanese legislation, which defined it as follows: "The solution decided for one of them is." It would affect the solution that must be decided for the other." Likewise: "A relationship between two lawsuits pending before two different courts, which makes it necessary for the proper administration of justice to unify and adjudicate them." In the field of jurisprudence, the concept of unification of legal claims has been introduced. It has been stated that there is a close connection between two claims or lawsuits, which makes it beneficial to hear and adjudicate them in a single court. This is done to avoid conflicting rulings, which may be difficult or impossible to reconcile if each claim is heard and adjudicated by separate courts. and that Some scholars of jurisprudence believe that the aforementioned concept is closer to the impermissibility of division, which restricts the cases of connection. and They assert that the legislator did not only intend to consolidate lawsuits to avoid non-enforcement of judgments, but also to ensure efficient judicial proceedings and save time and effort. Consolidating lawsuits facilitates their resolution in a short time and at a low cost. Some have defined this concept in other ways. "There is a close connection between the two parties, and this encourages bringing them together before one court to investigate and adjudicate their cases collectively, with the aim of avoiding conflicting rulings between them and ensuring justice." and that The above definitions may be consistent with some referral-by-joinder laws, such as Egyptian law, but they are inconsistent with Iraqi law, which stipulates consolidation by joining. Iraqi law requires that the two lawsuits be combined into a single lawsuit before a single court, while the legal texts that allow referral by joining are satisfied with combining the two lawsuits before a single court without consolidating them. Therefore, the Iraqi judiciary issues its rulings by consolidation, not by referral. The concept is defined "Connexion "is defined as a close connection between two claims that it is deemed appropriate and conducive to the proper administration of justice to consolidate and adjudicate together before a single court. The concept of connection arises when there is a relationship between claims, such that the judgment issued in one claim has an impact on the adjudication of the other claim. According to Iraqi jurisprudence, connection exists if there is one or more common elements between the claims, such as the unity of the subject matter, cause, or persons involved. In addition, the Baghdad Court of Appeal went further by requiring unity of subject matter, cause, and parties involved to achieve unity between the two claims. And issue the appropriate decision to avoid contradiction between the two decisions.

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Introduction

Praise be to God, the Possessor of bounty and bounty, the Expander of the earth and the Raiser of the heavens without pillars. May God's prayers and peace be upon our Prophet Muhammad ibn Abdullah, the Seal of the Messengers and Prophets, and upon his pure and chosen family, and his pious companions. And after that, the Civil Procedure Law No. 83 of 1969 was

interested in organizing the procedures for pleadings, as it dealt with the procedures for pleadings, including the unification of lawsuits, the legal basis for unifying lawsuits, distinguishing the unification of lawsuits from referral, and the importance of unification in not dividing, and the main goal of unifying lawsuits is the absence of conflict between judicial rulings. We have explained the most important conditions and standards for the effects of unification, and that among these conditions is the existence of a connection between lawsuits. It is also required that the lawsuits be filed before the same court or filed before two courts of first instance, and that the mother of the lawsuit must be under pleading, and that these lawsuits be subject to the same methods of appeal, and that the unification decision is within the jurisdiction of the court in terms of acceptance or rejection, and it is permissible to appeal the unification decision. The importance of research is evident through the practical aspect of the work of the courts, and that the unification of lawsuits in the Civil Procedure Law, and this will become clear as follows:

In the first section, we discussed the nature of unification of claims and the legal basis. In the second section, we discussed the procedures for unifying claims and the resulting effects.

First: The importance of research

The importance of the research is evident in the following matters: explaining the importance of unifying lawsuits and explaining the legal effects resulting from unifying lawsuits through the Code of Civil Procedure. The importance of the message is evident in unifying lawsuits and issuing a unified decision in them.

Second: The research problem:

Through the research, several questions are raised that constitute the research problems, and we are about to state all of these problems according to a systematic plan and a scientific and practical method through an analytical study. The most important problems related to the research topic are:

Original question: What is the unification of claims in the Code of Civil Procedure?

Sub-questions:

1. What are the conditions for unifying lawsuits in the Code of Civil Procedure?
2. What are the legal grounds for unifying lawsuits in the Code of Civil Procedure?
3. What are the reasons for unifying lawsuits in the Code of Civil Procedure?
4. What is the difference between consolidation of claims and referral?

Third: Research methodology

The researcher used the analytical approach in addressing this topic and dealing with its problems, which depends on

analysis in the Civil Procedure Law.

Fourth: Scope of research

The scope of the research is limited to Unification of claims in the Civil Procedure Code within the framework of the Iraqi Civil Procedure Law No. 83 of 1969, as far as our study is concerned with this law.

Fifth: Research plan

In order to be familiar with and encompass this vital study, writing this topic required that the research plan be divided into two sections: the first is the nature of unifying claims, and the second section is the procedures for unifying claims and the resulting effects.

The first topic

What is the consolidation of claims?

Unification is considered one of the topics that are frequently dealt with in judicial procedures, to the point that almost all lawsuits that are characterized by multiple persons or multiple subjects require unification of lawsuits to avoid conflict and contradiction in rulings. Therefore, in this section we will address the nature of unification of lawsuits into two requirements, which are:

The first requirement

The concept of unification of claims and legal basis

To understand the concept of unification of the lawsuit in the Civil Procedure Law and the accuracy of the concept, and to explain the overlapping terms in it and to explain the legal basis for unification, we find that this requirement should be divided into:

The first section: Definition or concept of unification of claims

The connection between the two lawsuits that are to be unified is of great importance for the application of the defense of unifying the two lawsuits. Although the Iraqi legislator did not define the connection, there are legislations that did, such as the Lebanese legislation, which defined it as follows: "The solution decided for one of them will affect the solution that must be decided for the other ^[1]."

And define Also: "A relationship between two lawsuits pending before two different courts, which makes it in the interest of justice to unify and decide on them ^[2]."

In the field of jurisprudence, the concept of consolidation of legal claims has been introduced. It has been stated that there is a close connection between two claims or lawsuits, which makes it beneficial to have them heard and adjudicated by a single court. This is done to avoid conflicting rulings, which may be difficult or impossible to reconcile if each claim is heard and adjudicated by separate courts ^[3]."

Some jurists believe that the aforementioned concept is closer to the inadmissibility of division, which restricts cases of connection. They assert that the legislator did not only intend

¹ See Article (130) of the Lebanese Code of Civil Procedure, No. (90) of 1983.

² This definition is considered in Article (101) of the Law: Louisiana Code of Civil Procedure P. 993

³ See: Judge Medhat Mahmoud, previous reference, p. 125; Abdel Rahman Al-Alam, Explanation of the Code of Civil Procedure, previous reference, Vol. 2, p. 314; Muhammad Abdel Rahim Anbar, Civil and Commercial Procedure Law, No. 13 of 1968, 1st ed., Dar Al-Nahda Al-Arabiya, Cairo, 1968, p. 271.

² See:

CA Hooper, Civil procedure of Iraq & Palestine, Basrah; The times of printing & publishing, without year of printing p. 13.

Louisiana Code of Civil Procedure P. 993

³ See: Judge Medhat Mahmoud, previous reference, p. 125; Abdel Rahman Al-Alam, Explanation of the Code of Civil Procedure, previous reference, Vol. 2, p. 314; Muhammad Abdel Rahim Anbar, Civil and Commercial Procedure Law, No. 13 of 1968, 1st ed., Dar Al-Nahda Al-Arabiya, Cairo, 1968, p. 271.

to consolidate lawsuits to avoid non-enforcement of judgments, but also to ensure efficient judicial proceedings and save time and effort. Consolidating lawsuits facilitates separating it in a short time and at low costs. Some have defined this concept in other ways. That: There is a close connection between the two parties, which encourages bringing them together before one court to investigate and adjudicate their cases collectively, with the aim of avoiding conflicting rulings between them and ensuring justice^[4].

The above definitions may be consistent with some referral-by-joinder laws, such as Egyptian law, but they are inconsistent with Iraqi law, which stipulates consolidation by joining. Iraqi law requires that the two lawsuits be combined into a single lawsuit before a single court, while the legal texts that allow referral by joining are satisfied with combining the two lawsuits before a single court without consolidating them. Therefore, the Iraqi judiciary issues its rulings by consolidation, not by referral^[5].

According to Article 101 of the French Code of Civil Procedure, the concept of "Connexion" is defined as a close connection between two claims that it is deemed appropriate and conducive to the proper administration of justice to consolidate and adjudicate together before a single court. The concept of connection arises when there is a relationship between claims, such that a judgment rendered in one claim has an impact on the adjudication of the other claim^[6].

According to Iraqi law, a connection exists if there is one or more common elements between the claims, such as the unity of the subject, cause, or persons involved. In addition, the Baghdad Court of Appeal went further by requiring unity of the subject, cause, and parties involved to achieve unity between the two claims^[7].

The Kirkuk Court of Appeal ruled as follows: "Claims may not be consolidated unless there is a commonality between the parties, the subject matter of the lawsuit, and the cause of action in those lawsuits." It is worth noting that the Iraqi legislator addressed the issue of consolidation in several provisions of the Code of Civil Procedure. Paragraph 2 of Article 37 discusses multiple parties in a single lawsuit, and paragraphs 2, 5, and 6 of Article 44 address the single cause of action and parties, or the single cause of action itself. In addition, Article 75 of the same law stipulates that if there are interconnected claims, they must be consolidated. At the same time, a jurisprudential approach has emerged that holds that unity is not a condition for consolidation. This means that for there to be a connection between claims, there is no requirement for them to have common elements. It is

sufficient for there to be a close relationship—indivisibility which necessitates consolidating the claims before a single court^[8].

Therefore, consolidation does not require that the subject matter of the lawsuit or the cause of action be the same in the claims. For example, if a lawsuit is filed to enforce a contract, and the other party files a lawsuit to annul it^[9].

While the connection between litigants may sometimes reach the point of indivisibility, which is the strongest form of connection, there is a bond between litigants that makes it impossible to separate one from the other. It is necessary, but not appropriate, for them to be tried in the same court to avoid conflicting judgments that cannot be enforced. For example, if the seller sues the buyer for payment, and the buyer sues the seller to terminate the contract^[10].

Section Two: The legal basis for consolidating claims

The legal basis for unifying the lawsuits is Article (75) of the Iraqi Civil Procedure Law, which states: "If the court finds that the lawsuits are related to a lawsuit previously filed in another court, it may decide to unify the two lawsuits and send the lawsuit file to the other court, and the decision issued by the other court rejecting the unification is subject to appeal."

The text shows that the phrase "the case file shall be sent to the other court" was included without referring to its referral, in order to distinguish the provisions and rules of unifying cases from their referral between courts that have their own provisions, so that there is no confusion between them.

It is also noteworthy that the Iraqi Civil Procedure Law did not call unification a defense, but rather called it a request, although it mentioned that in the chapter on defenses. Likewise, the Iraqi legislator did not specify a specific time for presenting such a request. However, it is not considered a substantive defense, but rather a formal defense^[11] The legislator has permitted it to be presented at any stage of the lawsuit, provided that it occurs before the conclusion of the pleadings^[12].

The Egyptian legislator considered this defense and called it (the defense of referral to connection) as one of the formal defenses that must be presented with all the other formal defenses before speaking about the subject matter, otherwise the right to it will be lost based on the provisions of Article (180) of the Civil Procedures^[13].

While we find that the Lebanese legislator, despite considering the plea of connection (association) as a formal procedural plea that must be raised at the beginning of the

⁴ See:

CA Hooper, *Civil procedure of Iraq & Palestine*, Basrah; The times of printing & publishing, without year of printing p. 13.

⁵ Ahmed Abu Al-Wafa, *The Theory of Defenses in Civil Procedure Law*, 2nd ed., 1957, Dar Al-Maaref, pp. 146-147. Rahim Hassan Al-Akeely, *Studies in Civil Procedure Law*, Dar Al-Salam Legal Library, Najaf, pp. 232-233.

⁶ Look (discrimination civilian French, resolution date 30/3/1966, Beltane Civil For the year 1966-2-315) Quoted on hopelessness Abu holiday, Pleadings, source former, S300.

⁷ Decision No. 190/Appeal/99 dated 1/5/1999 (unpublished).

⁸ Ahmed Al-Sayed Al-Sawy, Al-Wasit, previous reference, p. 256.

⁹ See: Muhammad Kamal Abu al-Khair, previous reference, p. 299.

¹⁰ See: Abdul Rahman Al-Alam, *Explanation of the Code of Civil Procedure*, previous reference, Vol. 2, p. 314.

¹¹ Islamic jurisprudence has not addressed this issue of whether unification is a formal or substantive defense, and whether a request for unification is considered a defense or not. See: Abd al-Rahman al-Alam, *Explanation of the Civil Procedure Law*, op. cit., p. 313; Madhat al-Mahmoud, *Explanation of the Civil Procedure Law and its Judicial Applications*, op. cit., p. 125; Sadiq Haider, *Explanation of the Civil Procedure Law*, op. cit., p. 151. This was also pointed out by Lafta Hamel al-Ajili, *The Plea of Unification Due to Connection*, op. cit., p. 165.

¹² Lafta Hamel Al-Ajili, *The Plea for Unification of Claims*, a study published in the *Journal of Legislation and Judiciary*, Sixth Year, Issues Three and Four, 2014, pp. 161 and 164.

¹³ Ahmed Abu Al-Wafa, *The Theory of Defenses in Civil Procedure Law*, Maaref Establishment, Alexandria, p. 260. Lafta Hamel Al-Ajili, *Defense of Unification for Connection*, previous reference, p. 161.

trial and before discussing the subject matter^[14] However, on the other hand, it is permissible to raise the plea of concomitance at any stage of the trial unless it becomes clear that it was raised late with the intention of prolonging the trial, in which case the court shall decide to reject it^[15].

Through our review of most interpretations of litigation laws and procedural legislation, we found that they use the term "consolidation of plaintiffs." However, the term "consolidation of claims or lawsuits" was not mentioned, which surprised us. This is because consolidation is not limited to consolidating plaintiffs only, but also excludes the consolidation of more than two lawsuits, as the number may reach ten claims or more or less. However, the decision to consolidate must be based on legal grounds and must be issued by the court after verifying the requirements for consolidation. Therefore, we find it necessary to amend legislation, including Iraqi legislation in Article 75 of the current Iraqi Civil Procedures Law, and adopt the term "consolidation of claims" as it is the most applicable term for consolidating claims. The two advocates^[16].

Section Three: Distinguishing between unification of claims and referral

The Iraqi Code of Civil Procedure refers to this issue in Article (76/2), which states that "the court has the power to consolidate lawsuits if another lawsuit is filed before the same court." This article indicates that if there are two lawsuits filed before the same court by the same parties, and they have the same subject and cause, the court may combine them into one lawsuit and issue one judgment. This consolidation is at the discretion of the court, as stated in the aforementioned article. Consolidating lawsuits before one court is known as "acceptance" in Egyptian jurisprudence and judiciary. The Lebanese legislator also adopted this term in Article (501) of the Code of Civil Procedure, using the term "acceptance of the two disputes," influenced by French law, which also uses this term^[17].

Consolidation involves combining several legal concepts and procedures, such as connection, the occurrence of the same dispute, indivisibility, and joining one case to another, so that they can be combined before a single court to avoid contradictory or duplicate rulings. The court must decide whether to implement the consolidation^[18].

In a resolution, two or more claims or applications are combined into a single dispute based on objective or subjective elements that justify their consolidation. This consolidation may take place before a single court, two separate courts within the same judicial system, or at the judge's own initiative or at the request of the parties themselves. The purpose of this consolidation is to prevent conflicting rulings and ensure the proper administration of

justice^[19].

The similarities between referral and consolidation of claims are as follows^[20]:

- Both have procedural implications on multiple procedural ideas, such as connection and resolution of the dispute itself, and indivisibility, which results in the transfer of the suit from the court in which it was originally filed.
- Their purpose is to prevent conflicting rulings or the issuance of conflicting rulings. The differences between them are as follows^[21]:
 - Referral means transferring a case from one court to another, while consolidation means combining the cases of multiple parties into either two courts or one court.
 - Referral raises legal issues, while consolidation does not. In consolidation, if the claims are united, the parties meet and a single judgment is issued against them, provided that the claims in the consolidated claims are identical in cause and subject matter. However, even if the two parties are united in both cases, the difference in cause and subject matter does not lead to the merger of one into the other, and each claimant maintains its independence^[22].
 - There is a difference between appealing a court decision regarding referral. Under Egyptian law, an appeal against a referral decision (Article 212 of the Egyptian Code of Civil Procedure) is permitted immediately upon its issuance, while an appeal against a joinder decision is only permitted after a final judgment is issued in the case, pursuant to the aforementioned article.
 - A referral requires a specific reason, while a decision to join does not require a specific reason, as it is considered part of the administrative procedures related to the cases.
 - Conditions for consolidation include a link between the claims included in the consolidation and that these claims be brought before the same court, whether in the same circuit or different circuits. Referral, on the other hand, requires that the case be between two different courts, one of which has no jurisdiction and the other has jurisdiction.
 - The reason for referral is lack of jurisdiction, while the reason for consolidation is the unity of the subject matter and the persons involved. We believe that consolidating the cases before the court should be mandatory, not merely optional, and is part of public policy, in order to avoid conflicting rulings in a single case.

¹⁴Article (52 and 53) of the Lebanese Code of Civil Procedure

¹⁵Article (57) of the Lebanese Civil Procedure Code

¹⁶Adnan Mayeh Badr, Problems of Civil Litigation, Part One, Legal Library - Baghdad, 2023, p. 304.

¹⁷Article (368) of the French Code of Civil Procedure states the following: "Decisions to join or separate proceedings are measures of judicial administration." The original French text is:

"The decisions of the junction or disjunction of the installations sont the measures of judiciary administration"

¹⁸See: Ali Attia Abu Heikal, The Plea of Referral of a Suit in the Code of Civil Procedure, a thesis submitted for a PhD in Law, submitted to the Faculty of Law, Alexandria University, 2003, p. 103.

¹⁹See: Ahmed Abu Al-Wafa, Theory of Defenses, previous reference, p. 253; also Al-Ansari Hassan Al-Nidani, previous reference, p. 29.

²⁰See: Ahmed Abu Al-Wafa, The Theory of Defenses, op. cit., p. 254 ff., Al-Ansari Hassan Al-Nidani, The Principle of Unity of Litigation, op. cit., p. 30. From French jurisprudence:

Solus et per rot, T.3.n.1103, p.932

²¹See: Ali Attia Abu Heikal, The Plea by Referral, previous reference, p. 103 and following.

²²See: Egyptian Court of Cassation Decision, Cassation 5/16/1972, Appeal 319, S. 37Q; also: Cassation 2/20/1978, Appeal 556, S. 43Q. Cited in: Anwar Talaba, Encyclopedia of Litigation, op. cit., p. 206.

The law also stated in Article (75) By bringing in the phrase (Send file The lawsuit to the court Other) and did not Point to Refer it He aimed to distinguish between the provisions of Tawhid Lawsuits and Its rules on Refer it between courts that she has Its provisions Private until no Located mixing Between them.

Section Four: The importance of unifying lawsuits in order not to divide them

It highlights the role of consolidation in unifying claims and the principle of indivisibility through the means adopted to protect judgments from contradiction. Each supports the other in this task, as they are two preventative measures taken by the legislature to protect judgments from contradiction. In addition, consolidation facilitates the litigation process and reduces the number of lawsuits in a single claim^[23].

Undoubtedly, the consolidation system is commendable for its effectiveness in avoiding contradictory rulings in closely related lawsuits when properly implemented. When a subsequent lawsuit is consolidated with a previously filed lawsuit due to their close connection, and both are heard by the same court that heard the original lawsuit, that court will continue to hear both consolidated cases in a single session and with a single record. After completing its investigations into both lawsuits, the court will issue a single judgment divided into two separate sections: one dedicated to the previously filed lawsuit and the other to the consolidated lawsuit. This ensures that the court ensures consistency and coherence between the sections of the single judgment, as referring the dispute to a single judge allows for a comprehensive examination of the dispute and prevents contradictions. It also helps the judge assert his authority over all aspects of the evidence in both cases and avoids fragmented judgments^[24].

Therefore, consolidating claims contributes significantly to eliminating perceived contradictions between rulings. Consolidation thus results in a single ruling on the necessary consolidated claims, rather than two contradictory rulings^[25]. Although this principle is important in protecting rulings from contradiction, its effectiveness depends on who raises it, which may be overlooked. As a result, both courts continue to consider the cases brought before them, resulting in conflicting rulings. Furthermore, the same court may fail to raise this principle, leading to the same result. A court may also misjudge the existence of the principle of indivisibility, resulting in contradictory rulings, due to an error in the exercise of its discretion. Furthermore, the Iraqi legislature has not established a fixed standard for the principle of indivisibility, causing confusion and disagreement among courts in defining its elements. Therefore, there may be a connection between claims, but the court considers this connection to be inconsistent and does not reach the level of a close connection that requires unification. Therefore, it is necessary to establish a specific standard for the principle of

indivisibility^[26].

If the plea is accepted or rejected by the court's authority, it may result in two contradictory rulings if the plea is made. In such a case, if other preventive measures fail to prevent the contradiction between judicial rulings, resorting to remedial measures is the last resort. Finally, the fact that the plea of consolidation of claims is not related to public order reduces its effectiveness in preventing the issuance of contradictory rulings, which weakens its role as a means approved by the legislature to protect rulings from contradiction.

Section Five: The purpose of unifying lawsuits

The purpose intended by the legislator in unifying lawsuits is to avoid the issuance of conflicting or contradictory rulings, because it is in the interest of the litigation system to unify lawsuits into one lawsuit heard by one judge, and this would lead to saving time, effort and procedures and reducing procedural waste, in addition to preventing the recurrence of lawsuits between courts. Also, limiting the lawsuit being heard to one judge will make him more informed and comprehensive of the subject of the lawsuit by extending his authority over all the details of the lawsuit, and this is one of the means that prevent the occurrence of conflicting rulings^[27].

The Federal Court of Cassation in Iraq issued one of its decisions^[28]: However, he said: "The court's decision to consolidate two or more lawsuits is a preventative decision, in order to prevent the possibility of conflicting judicial rulings being issued in a single dispute and subject matter, and to reduce expenses and save effort and time, and in light of the availability of certain conditions and the existence of a connection between the two lawsuits, provided that both courts are competent in type and at the same level of litigation, and that the legal methods of appeal against the ruling for both lawsuits are the same. After the issuance of the unification decision, the two lawsuits are merged and fused and become one lawsuit."

Since the plea is a formal plea that must be presented before the court at any stage of the lawsuit, the court may raise it on its own initiative even if the parties do not present it^[29] This payment is considered one of the preventive measures stipulated by the legislator in Article (76).

The aim sought by the legislator in approving this plea is to simplify the formalities of the procedures, because adopting the referral leads to prolonging the litigation procedures and the resulting delay in resolving the lawsuits, in addition to the negative conflict of jurisdiction when both courts refrain from considering the lawsuit under the pretext of lack of jurisdiction^[30].

The legislator's granting of the option to unify the claims was intended or aimed at granting the court discretionary power to unify whenever necessary, as is the case with the original appeal and the cross-appeal that are submitted to the same appeal court. Here, in this case, the claims must be unified,

²³Lafta Hamel Al-Ajili, The Push for Unification for Connection, previous reference, p. 161.

²⁴Ajyad Thamer Nayef Al-Dulaimi, Encyclopedia of Civil Procedure, Part 13, Procedural Protection of Civil Rulings from Contradiction, previous reference, pp. 184-186.

²⁵Iraqi Federal Court of Cassation Decision No. 2737/First Personal Status Authority/2008, dated September 14, 2008 (unpublished). Cited by: Ajyad Thamer Nayef Al-Dulaimi, Encyclopedia of Civil Procedure, Part 13, Procedural Protection of Civil Rulings from Contradiction, op. cit., p. 183.

²⁶Ajyad Thamer Nayef Al-Dulaimi, Encyclopedia of Civil Procedure, Part 13, Procedural Protection of Civil Rulings from Contradiction, previous reference, p. 185.

²⁷Muhammad Shaker Mahmoud Muhammad, The Principle of Finality in Defenses (An Analytical Study), a research paper published in the Forum Annual Journal, Issue 52, September 2022, pp. 449-450.

²⁸Federal Court of Cassation Decision No. 15/General Authority/2020.

²⁹Adam Wahib Al-Nadawi, Civil Procedures, Baghdad, 2006, p. 229.

³⁰Rashad Khaled Omar, Conflict and Contradiction in the Field of Civil Judicial Rulings: A Comparative Analytical Study, New University Office, Egypt, 2017, p. 84

and neither of them may be invalidated if they are submitted by the two parties to the dispute regarding the same appealed judgment, because the appeal is a right granted to each party to the lawsuit if it becomes clear to him that the judgment conflicts with his interest or was issued in a manner that he did not expect, i.e., contrary to his perceptions^[31].

The legislator's objective in invalidating the recently filed lawsuit is to prevent the accumulation of similar lawsuits, save costs, reduce effort and time, and avoid the issuance of conflicting rulings.

The second requirement

Terms and criteria for raising unification of lawsuits

If the unification of plaintiffs is a formal requirement, according to Article (75) of the Iraqi Code of Civil Procedure, then raising this requirement requires certain conditions for its acceptance by the court. These conditions include:

First: Establishing a close connection, or strong relationship, between the plaintiffs, meaning that they cannot be divided. Article (75) of the Civil Procedures Law permits the joining of a lawsuit to another pending lawsuit if there is a connection between them. Scholars have concluded that this connection indicates a strong relationship between the plaintiffs, while some believe that it indicates the union of the opponents, the subject matter, or the cause^[32].

Only the (relationship) is available without the (document) description. If there is a union in terms of opponents, subject, place, cause or request, this means that the union does not create a close connection, but only creates a connection, and that connection may not be close enough.

Some scholars and jurists believe that^[33] that it: "If two claims are closely related, it is beneficial to have them heard and decided together by one court, in order to avoid conflicting judgments."

Such a relationship is not classified as "close" unless the following conditions are met:

- The possibility of conflicting decisions or failure to reach an agreement between the parties.
- The plaintiffs' commitment to ensuring the efficient administration of justice, by saving effort, time and expenses.

The close connection is established, If the claims in dispute, jurisdiction, cause of action, or relief sought are combined in a manner that would result in conflicting or inconsistent rulings, or if their consolidation would ensure the proper administration of justice.

The Lebanese judiciary has recognized the concept of "mutual dependence" between plaintiffs^[34]. It has been established that for there to be mutual dependence between

the plaintiffs, there must be a connection between them that makes the ruling in one case affect the outcome of the other. Leaving each case independent of the others would lead to contradictory rulings on the same subject^[35].

The first section: the existence of a link between the claims
The Iraqi legislator did not provide a definition of association despite the effects that the law imposes upon its existence. Therefore, opinions differed in jurisprudence regarding its definition:

First: The type of connection between the claims:

- relationship between claims

Definition: It is the existence of a connection between two lawsuits filed before two separate courts, where the course of justice is combined and these two lawsuits are processed together and separate decisions are made regarding each of them^[36].

While we find that Lebanese legislation State that in the text "The solution decided for one of them will affect the solution that must be decided for the other^[37]." It shows the scope of mutual influence between the claims that require unification.

Some have defined it as: "A relationship between two lawsuits, which makes the ruling in one of them influential in the other^[38]."

- **Union of lawsuits in terms of opponents, subject matter and cause**

Some jurists believe that the existence of unification is due to the unification of the opponents, the subject matter, and the cause. Otherwise, it is not permissible to unify them, because the purpose of unification is to prevent the issuance of conflicting and contradictory rulings. If the claims are not united in terms of the opponents, the subject matter, and the cause, then it is not possible to imagine the issuance of conflicting rulings.

- **Unit of cause only**

The connection between the claims is intended only for the unity of cause. However, the difference between the parties is not considered an obstacle to unification, as if a group of people filed several claims to request ownership of the same property, and each claimant relied on an external pledge. In this case, there is no obstacle to unification. Rather, unification is necessary to prevent conflicting rulings, because it is unreasonable for the same property to be owned by multiple people.

Legal issue unit and one of the opponents:

- It is sufficient to achieve unification that one of the opponents in the lawsuits and the same legal issue that is required to be resolved be united with respect to the same

³¹Rashad Khaled Omar, Conflict and Contradiction in the Field of Civil Judicial Rulings, previous reference, p. 84.

³²Lebanese Court of Cassation, Second Chamber, Decision No. 6, dated 12/16/1999, Baz Collection, Volume 88, p. 379. It states: "If a ruling is made to combine two lawsuits that are related in terms of persons, subject matter, and cause, then it is decided to combine them into a single lawsuit and have them adjudicated by a judge."

³³Madhat Al-Mahmoud, Explanation of Civil Procedure Law No. 83 of 1969 and its Practical Applications, Legal Library, Baghdad, Al-Atak Book Manufacturing Company, Beirut, p. 125.

³⁴Lafta Hamel Al-Ajili, "The Push for Unification for Connection," a study published in the Journal of Legislation and Judiciary, Issues 3 and 4, 2014, pp. 162-163.

³⁵Lebanese Civil Court of Cassation Decision No. 89, dated July 10, 1964, Baz, Part 12, p. 219. Cited by: Elias Abu Eid, Procedural Defenses in Civil and Criminal Procedure, Zain Legal Publications, 2004, p. 106.

³⁶This definition is considered in Article (101) of the Law: Louisiana Code of Civil Procedure P. 993.

³⁷See Article (130) of the Lebanese Code of Civil Procedure, No. (90) of 1983.

³⁸See: Awad Hussein Al-Abidi, The Court's Discretionary Power to Unify Two Lawsuits, published on the website (www.hjc.iq) p. 2.

material thing^[39].

- The Kirkuk Court of Appeal, in its capacity as a court of cassation, ruled in its decision that: “upon reviewing the contested decision, it was found to be incorrect and contrary to the law, as the Court of First Instance, despite following the Cassation Decision No. 222/Civil/2007 issued by this body on 6/28/2007, made an error in its procedures, including the resolution of the case, as it decided on 9/30/2007 to unify the two initial files numbered 2702/B/2006 and 2722/B/2006 with the file of the initial case numbered 2701/B/2006 and to consider the latter as the original, under the pretext of the union of the opponents, the subject matter and the reason for those cases, while the Court of First Instance had previously settled each case individually and the decision issued in each one of them was appealed to the body, which in turn issued a decision to overturn each one of them without requesting the Court of First Instance to unify those cases, and as the property that is the subject of each case differs in terms of number and area.” “The location of the properties that are the subject of the other lawsuits, and the consideration for the sale of each defendant’s share in the three properties differs from the share of the other defendant, and the date of the external sale contract for the three properties concluded between the plaintiff and each of the two defendants differs from the other, and the material investigations in each lawsuit differ from the other in terms of the defendants’ admission and denial of the fact of the sale of the properties that are the subject of the external undertaking concluded between the two parties, and for the reasons presented above, it was necessary for the Court of First Instance to consider each lawsuit independently from the other lawsuit and to conduct the required material investigations in each lawsuit and in accordance with the cassation decision issued therein, and since the Court of First Instance in its appealed judgment violated the aforementioned approach, which affected the validity of its appealed decision, therefore it was decided to overturn it.”^[40]

Second: Degree of association:

When there is a strong connection between two claims, it is not always of equal strength. The strength of the connection varies, and therefore the resulting effect varies in terms of whether it requires unity or allows flexibility. Strong connections between claims can be classified into three categories:

- The close connection, or very close relationship between the claims, i.e. the lack of division then necessitates unification.

There is a very close connection that does not allow for the claims to be divided, and this connection requires consolidation. There is no other way to resolve this problem. Therefore, the court must consolidate the claims to avoid the possibility of conflicting or irreconcilable rulings^[41].

The French judiciary promised that "The convergence of claims in the presence of a risk or possibility of conflict if they are separate, leads to irreconcilable judgments."^[42]

For example, plaintiff A claims ownership of a property because the defendant, the current owner, promised to transfer ownership to him in the first suit. Meanwhile, plaintiff B also claims ownership of the same property in the second suit, alleging that the defendant promised to transfer ownership to both of them. In this case, it is necessary to consolidate the claims to determine which plaintiff has the right to claim ownership of the property. The lawsuits cannot be filed together, as two separate judgments may be issued granting ownership to each of them. One lawsuit cannot be stayed pending the decision of the other, as the condition of stay is not met and the judgment in one suit is not related to the other. Granting a stay would harm the interests of the plaintiff, who delays his lawsuit. There is no standard that guarantees priority of one lawsuit over the other and that action will be taken accordingly. The same applies to cases where a landlord files a lawsuit to prevent a tenant from constructing a building on the leased land, or where a tenant files a lawsuit to prevent a landlord from interfering with his enjoyment of the garden. It also applies to cases where a plaintiff files a lawsuit to prevent the owner, the defendant, from interfering with his enjoyment of the property as a tenant, or where an owner files a lawsuit to prevent interference as a usurper. This also includes cases of a claim to reduce or increase alimony between the person entitled to it and the person obligated to it, or a claim for an increase and a request to terminate alimony.

It is not possible to pursue both cases simultaneously due to the possibility of conflicting rulings, one of which reduces alimony and the other increases it, especially if the cases are being heard by different courts or judges within the same court. It is not permissible to postpone one case until the outcome of the other is determined, as the condition specified in Article 83 of the Iraqi Code of Civil Procedure is not met. The resolution of one case does not depend on the resolution of the other. There is no standard for prioritizing one case over the other and moving forward with it^[43].

The French judiciary has taken this into consideration, as it considers that there is agreement between the two lawsuits when the ruling issued for one of them has an impact on the ruling issued for the other^[44]. He also saw that "There is a link between the call And If there is a relationship between them, where the ruling on one of the lawsuits necessarily

³⁹Rabie Al-Zuhawi, Unification of the Two Lawsuits, a study published on the website of the Supreme Judicial Council. Adnan Mayeh Badr, Problems of Civil Litigation, Part One, Legal Library - Baghdad, 2023, p. 289.

⁴⁰Kirkuk Court of Appeal’s decision, in its capacity as Court of Cassation, No. (91/2008, dated 4/15/2008), published on the official website of the Supreme Judicial Council.

⁴¹Lebanese Court of Cassation Decision No. 38, dated March 13, 1970, Justice for the Year 1971, p. 303. Cited by: Elias Abu Eid, Procedural Defenses in Civil and Criminal Procedure, op. cit., p. 108.

⁴²French Civil Cassation Court Decision No. 177, dated January 21, 1903, Dalloz, 1903. Cited by: Elias Abu Eid, Procedural Defenses in Civil and Criminal Procedure, op. cit., p. 107.

⁴³The same meaning is found in: Elias Abu Eid, Procedural Defenses in Civil and Criminal Procedure, op. cit., p. 108. Also see: Beirut Fifth Court Decision, Decision No. 1103 dated 10/23/1970, Justice for the Year 1971, p. 334.

⁴⁴French Civil Court of Cassation Decision No. 689 of 1961, Civil Court of Appeal No. 4/18/1961. Cited by: Elias Abu Eid, Procedural Defenses in Civil and Criminal Procedure, op. cit., p. 106.

affects the ruling on the other lawsuit. ^[45]

- A weak connection that does not allow for the possibility of conflicting or incompatible rulings being issued between them.

A weak connection that does not allow for the possibility of conflicting or agreeing with each other, and one claim does not affect the outcome of another. The decision in one case is not dependent on the other. However, there is a close connection between the claims, at a minimum, that ensures unity of justice and efficiency in effort, time, and expense only. For example, combining the claim of one partner for wages equal to his shares with the claim of another partner for wages equal to his share in the same property, or the claim of a son for compensation from his father's killer, and a claim from a brother for compensation from the same killer. This type of document gives the court the discretion to combine the claims or not.

- There is a close connection between the claims, but they do not reach the point of indivisibility, but one of them influences the other.

A close connection between two claims, even if it does not reach the state of indivisibility. However, the claims are linked in such a way that the outcome of one can significantly affect the outcome of the other. As a result, it becomes impossible to rule in favor of the plaintiff in the first action if the plaintiff's right is established in the second action. This is because establishing the right in one action undermines the legal basis of the other. In other words, establishing the plaintiff's right in the first action completely negates any right in the second action. For example, a landlord may evict a tenant because the lease has expired and the landlord is requesting an extension of the lease for an additional three years. The issuance of an eviction judgment makes it impossible to issue a judgment extending the lease., and also, issuing a ruling to extend the lease makes it impossible to issue an eviction order. For example, the plaintiff may request eviction in the first lawsuit, while the tenant may claim ownership of the leased property in the second lawsuit, based on the landlord's promise to transfer ownership of the property to the tenant and his failure to register it in his name. There are also cases such as a lawsuit claiming ownership of the property by the plaintiff and a lawsuit by the landlord requesting an injunction to prevent opposition to the property. There are also cases such as lawsuits to annul the sale contract and lawsuits to annul the sale contract, where the request in the latter (annulment of the contract) completely negates the legal basis for the former (annulment of the contract). Furthermore, lawsuits demanding child support from their father and lawsuits to deny paternity, which the father has established for their child (the claimant of support), establish the right to claim the claim in the denial of paternity lawsuit undermine the legal basis for the claim for support. The same applies to lawsuits demanding dowry and divorce lawsuits that affect the dowry. A tenant eviction suit and the tenant's request for permission to make renovations. A claim for ownership, a claim for the removal of joint property, or a claim for the correction of ownership shares of a deceased

property owner. This type of relationship gives the court two options, with no third option. The claims may be consolidated if the remaining conditions are met, such as the union of appeal methods, jurisdiction, etc. If consolidation is not possible, one of the claims must be postponed until the outcome of the other claim. But how do we choose which claim to keep and which to proceed with? Especially since taking a particular action in this case may cause serious harm to the party whose claim has been discontinued? ^[46]

The rule adopted by the Civil Procedure Law regarding the suspension of the lawsuit is stated in Article (83) of the Civil Procedure Law, which states the following: "1- If the court sees that the ruling is dependent on the ruling in another matter, it must suspend the lawsuit and consider the lawsuit postponed until that matter is decided." Therefore, the condition of suspension only arises in one case, which is when the ruling in the lawsuit is dependent on the ruling in another matter, such as when the decision in the spousal support lawsuit is dependent on the decision in the marriage proof lawsuit, or when the decision in the lawsuit is dependent on the decision in the lawsuit challenging the validity of the document on which the original lawsuit was based, or in the demand for payment of the price of a product based on it.

Article 83/1 of the Civil Procedure Code states that a postponed lawsuit is one in which the ruling is dependent on another ruling in the same lawsuit or on a ruling in another matter. In the cases we have provided examples of in the third category (close connection between lawsuits), the ruling in one lawsuit is not dependent on another ruling in the same lawsuit. Rather, one lawsuit affects the final outcome of the other. In other words, one claim negates the legal basis of the other. Therefore, the decision regarding a child support lawsuit filed by the father does not depend on the decision regarding a paternity denial lawsuit filed by the father. On the contrary, However, the outcome of any one claim is significantly influenced by the outcome of the other claims, and it is best to resolve them all. However, if consolidation is not possible or if the claims do not need to be resolved simultaneously, even if one claim directly affects the outcome of the others, such as expenses or a paternity issue, the solution is to postpone it until a decision is reached on the other claim. Although Article 83 does not explicitly provide for this, practical circumstances indicate that postponement is necessary if consolidation is not possible. But speaking of which other claim should be postponed in this case, how is one chosen to pursue and which one to postpone? Which lawsuits should be postponed? Which ones should we file? Why is an eviction lawsuit postponed until the outcome of a lease extension request, and not the other way around? Why is a rental lawsuit postponed until a judgment is issued in a breach of contract lawsuit, due to the leased property being destroyed, and not the other way around? Why is an opposition lawsuit postponed until the outcome of a property lawsuit? Why is an alimony lawsuit postponed until a ruling is issued in a denial of paternity lawsuit? Why should an eviction lawsuit be postponed until a ruling is issued in a tenant's property lawsuit, and not the other way around?

If one claim invalidates the legal basis of another claim or

⁴⁵French Civil Court of Cassation Decision No. 315 of 30 March 1966, Civil Court of Cassation of 2 February 1966. Referenced by: Elias Abu Eid, *Procedural Defenses in Civil and Criminal Procedure*, op. cit., p. 106.

⁴⁶Rahim Hassan Al-Akeili, *The Relationship Between the Provisions of Postponing and Unifying Lawsuits*, an article published on the website of the Supreme Judicial Council. <https://www.hjc.iq/view.1021/Visited> on 10/6/2020, 11:37 PM.

violates any of its principles, a response to the invalid claim is prohibited. A claim that does not invalidate the legal basis of the other claim is postponed. Therefore, we will proceed with the tenant's property claim and postpone the eviction claim, because responding to the property claim would make the tenant an owner or partner in the property, undermining the legal basis for the eviction claim. However, an eviction claim does not invalidate the legal basis for the property claim, even if it is responded to. We will also postpone the child support claim against the father until the outcome of the paternity denial claim. The suit for annulment of the contract was postponed until the issuance of the annulment suit, as proving the acquittal suit affects the legal importance of the alimony suit based on lineage or guardianship, while the alimony suit does not affect the acquittal suit.

Hypothetically, in cases involving a close relationship - of the third category in terms of strength - it is necessary to unify them. Otherwise, it is necessary to proceed with the case that affects the legal basis of the second case, and to consider the other cases in which the element of invalidity of the legal basis of the second case is not present^[47].

Examples of the first scenario (mandatory consolidation of claims) include a claim to terminate a lease due to the deterioration of the leased property, a claim for future rent remaining after the expiration of the term, and a claim for alimony combined with a divorce claim due to its impact. These two requirements are interconnected, and efforts must be made to achieve them together. There is no obstacle to establishing them, which requires them to be firmly established.

Examples of the second scenario (necessity of resorting to alternative claims due to the absence of a condition): This includes resorting to a lawsuit for permission to carry out renovations in the leased property at the tenant's initiative, which leads to a claim for eviction. It also includes resorting to an eviction lawsuit arising from a dispute over property ownership, and resorting to a lawsuit to prevent opposition arising from a dispute over property ownership. In addition, it includes resorting to a lawsuit to remove joint ownership resulting from a claim to correct shares, and resorting to a lawsuit to remove joint ownership resulting from a property ownership claim if the property ownership claim leads to the termination of the joint ownership case or aims to obtain the full share of the plaintiff or claimants in the property. Due to the different attack methods or specialization, it is difficult to reconcile the two requirements, although each requirement has an impact on the other.

However, there is a third scenario where integration is justified, where one claim can affect the outcomes of the others. However, integration is not possible without obstacles, as the claims, such as a maintenance claim and a

denial of paternity claim, do not need to be investigated together. The only relationship between them is in their outcomes, but the investigations into each claim are unrelated. Therefore, integration is not justified; instead, the child support claim must be subordinated to the denial of paternity outcome, and child support may be imposed temporarily until the claim is resolved.

Section Two: It is required that the lawsuits be filed before the same court or filed before two courts of the same degree.

It is essential that claimants appear before two courts of the same level. It is not correct to adhere to this dual approach, whereby one case is filed before the court of first instance and another before the court of appeal in its original capacity, because stating otherwise violates the principle of two-level litigation^[48]. It is not permissible to insist on unifying the plea between the original appeal courts.^[49] and they are the courts of appeal, and they are obligated to consider my appeals based on the rulings issued in the case. It is not permissible to combine two appeals in two separate rulings, even if they were issued in related cases^[50], it allows the filing of a request for unification at the appeal stage because this is a violation of the principle of the subordination of courts to each other. This is considered part of the public order^[51].

It is essential to allow the consolidation of cases, even if they are already being heard before the same court. If the text reads, "If it appears to the court that the case relates to a claim previously filed with another court.," it is not permissible to require that the case be linked to a claim previously filed with another court. This is because the purpose of consolidation is not simply to hear both claims before the same court. The purpose of consolidation is to prevent conflicting rulings or irreconcilable positions, or to ensure the efficient progress of the judicial process by saving effort and time. Therefore, the phrase "(in another court)" should be deleted from the text, as it limits the consolidation of cases to cases where claims are before different courts. This error appeared in Iraqi law through legislation that considered referral for consolidation rather than consolidation based on affiliation^[52].

Section Three: That the lawsuits be under litigation

All claimants are still before the court in which the lawsuit was filed against them^[53] There is no room for insisting on this payment, and the Association's unit will not proceed with its implementation if any of the claims are resolved for any reason, such as settling disputes, waiving the claim, or issuing a judicial ruling invalidating the claim^[54] In the event of a final and decisive judgment, the financial transaction must be rejected^[55].

⁴⁷Rahim Hassan Al-Akeili, *The Relationship Between the Provisions of Postponing and Unifying Lawsuits*, an article published on the website of the Supreme Judicial Council. <https://www.hjc.iq/view.1021/Visited on 10/6/2020, 11:37 PM>.

⁴⁸See: Muhammad al-Ashmawi, *Procedural Rules*, p. 261; and Abd al-Rahman al-Alam, *op. cit.*, vol. 2, p. 315; Rahim Hasan al-Akili, *Studies in Civil Procedure Law*, *op. cit.*, pp. 237-238. See: Elias Abu Eid, *Procedural Defenses in Civil and Criminal Procedure*, *op. cit.*, p. 109. Also: Decision of the Fifth Beirut Court of Appeal, No. 1451, dated 11/5/1973, *Al-Adl* for the year 1974, p. 438.

⁴⁹See: Lafta Hamel Al-Ajili, *The Push for Unification for Connection*, previous reference, p. 166.

⁵⁰Muhammad Abd al-Rahim Anbar, *Civil and Commercial Procedure Law No. 13 of 1968*, 1st ed., 1968, p. 271; Rahim Hasan al-Akili, *Studies in Civil Procedure Law*, previous reference, p. 238.

⁵¹See: Judge Madhat Al-Mahmoud, *Explanation of the Code of Civil Procedure*, previous reference, p. 126, where he says: "It is permissible to request unification before the Courts of Appeal in their original capacity, or the Courts of First Instance, or the Personal Status Courts."

⁵²Rahim Hassan Al-Akeili, *Studies in Civil Procedure Law*, previous reference, p. 238.

⁵³See: Judge Madhat Al-Mahmoud, *Explanation of the Code of Civil Procedure*, previous reference, p. 125.

⁵⁴See: Articles (47/3, 54/1, 82/2) of the Iraqi Code of Civil Procedure No. (83) of 1969.

⁵⁵Rahim Hassan Al-Akeili, *Studies in Civil Procedure Law*, previous reference, p. 238.

Section Four: That the lawsuits be subject to the same methods of appeal and the same appeal authorities.

Both must be subject to the two advocates Associated with the same appeal method ^[56] If consolidation of claims results in multiple avenues of appeal among the consolidated claimants, consolidation becomes impossible. For example, if the landlord files a claim for eviction upon expiration of the lease, and the tenant files a claim for a lease extension, there is a clear relationship between the claims. However, consolidation is not permissible due to the different avenues, grounds, and periods of appeal. The court hearing the eviction case is obligated to postpone it until a final ruling is issued in the lease extension case ^[57].

For example, if a contractor requests the transfer of ownership of a property and files a lawsuit to prove his ownership of the property, accompanied by a request to prevent any objections from the other party, and takes possession of the property without any concerns, then there is a connection between the two claims. However, achieving unity is difficult due to the different methods, durations, and objectives of each claim. The court hearing the case must postpone any objections until a final judgment is issued in the ownership claim.

Section Five: That each of the courts be specialized in examining the cases brought before it.

Each court must specialize in examining the types and quantities of legal cases brought before it. These types of specializations are related to public order and must be taken into account, even if neither party specifically requests them. Local jurisdiction may be unified if there is a connection, even if one of the courts does not have territorial jurisdiction to examine the case, unless one of the parties disputes that jurisdiction ^[58], Except in cases where the legislator insists on assigning specific lawsuits to a court of specific jurisdiction. If these conditions are met, it is permissible to raise the plea by referral to court. If the plea is raised before one court, it is not permissible to proceed before another court unless a decision is issued to reject it. If the referral is approved, the court to which it is referred is obligated to consider the case and may continue the session, or decide to merge it at the end of the pleading stage in both cases, or decide to include it in the pleading session. The related case files.

The second topic

Procedures for consolidating lawsuits and their consequences

The first requirement

Case consolidation procedures

The procedure taken by the court to accept or reject the unification decision is considered by some jurisprudence to be subject to the discretionary power of the court in this regard. However, this power contains a degree of reality and a degree of law, and it is for the court to which the appeal is brought to verify the presence or absence of this connection, which is a legal element, and then it can decide to overturn

the decision or confirm it.

If the consolidated lawsuit is submitted to the court, it must prepare a report on the original lawsuit and the consolidated lawsuit that was sent to it in the original lawsuit file, record the unification decision in the pleading minutes, and mention a summary of the consolidated lawsuit and the procedures taken in it. Then it will listen to the requests and defenses of the two parties regarding the unification decision, after which the court will consider the unification decision by accepting or rejecting it.

So, we will divide this requirement into several branches, first of which will address the extent of Automatic The court from works procedures Monotheism For the lawsuits, in the second section we will discuss the acceptance of the unification decision, while in the third section we will discuss the rejection of the unification decision, as follows:

The first branch: The extent of the court's automaticity in implementing the unification procedures for lawsuits

The request for consolidation submitted by one of the parties is not binding on the court to respond to it by unifying the lawsuits that it deems necessary to consider the lawsuits together by one court, based on the fact that the text came as an option and does not carry a binding nature, as the court finds that the lawsuit requested to be consolidated with the other lawsuit has passed advanced stages of the procedures and is ready for resolution, and that the request for consolidation is only intended to obstruct the resolution of the lawsuit and prolong its duration, and that the opponent had filed it at a late time. This is what the Dubai Court of Cassation ruled in its decision that the court of subject matter has the authority to assess the existence of a connection between the two lawsuits and is not obligated to accept the defense of the referral request even if it becomes clear to it that there is a connection between the two lawsuits, when it sees that the pleading procedures in the lawsuit are nearing their end and the lawsuit has become ready for judgment ^[59]. The discretionary power is granted to the judge to consider unification so that this plea does not take a negative turn that would obstruct the course of the dispute and cause harm to the other party. Therefore, the judge has discretionary power to raise formal pleas related to the system on his own initiative ^[60].

Since the formal pleas related to public order according to the text of Article (75) of the Iraqi Civil Procedure Law, we note that the judge has discretionary power to raise the plea of unification, and his discretionary power is not absolute, but rather subject to procedural and objective restrictions, represented by exercising his authority fairly and without discrimination, and this represents a procedural restriction, as well as exercising his discretionary power in a rational, coherent, logical and reasonable manner, and this is considered an objective restriction. In addition, the court must take into account the public interest over private interests ^[61].

As for the court's action on its own initiative to carry out such

⁵⁶Eid Muhammad Al-Qassas, Al-Wasit, previous reference, p. 386.

⁵⁷See: Abdel Moneim Ahmed Al-Sharqawi, previous reference, p. 309.

⁵⁸Ahmed Abu Al-Wafa, Theory of Defenses, previous reference, p. 153, Ramzi Seif, Al-Wasit, previous reference, p. 438.

⁵⁹Appeal No. 60/11/ Judicial, July 11, 1989, Muhammad Hasan Arab, Litigation before Civil Courts in the United Arab Emirates, Legal Publications, Issued 2010, p. 177. Cited by: Lafta Hamel Al-Ajili, The Plea of Unification for Connection, op. cit., p. 162.

⁶⁰Adam Wahib Al-Nadawi, Civil Procedures, Al-Sanhouri Press, Baghdad, 2013, p. 281.

⁶¹Muhammad Shaker Mahmoud Muhammad, The Principle of Finality in Defenses (An Analytical Study), a research paper published in the Forum Annual Journal, Issue 52, September 2022, p. 449.

unification, the legislator has distinguished between two cases:

First case: If the lawsuits are filed before the same court, then in this case the court may, on its own initiative, work to unify the lawsuits as long as this is filed before it, and there is no need for a request to be submitted by one of the parties to the dispute.^[62] He based this on Article (76/2) of the Iraqi Civil Procedure Code, which states: “The court may decide to unify the two lawsuits if the lawsuit is filed before the same court.”

In this case, it is required that the parties, cause and subject be united, as it is not permissible to file a single lawsuit in more than one court. If the court responds to the party’s request to consolidate the lawsuit being heard before the other court, it must first request the lawsuit file from the court before which it is being filed to determine the connection between it and the lawsuit being heard before it. At that point, it must either decide to reject the consolidation due to the absence of any reason for connection, such as the unity of the parties, cause or subject, and return the lawsuit to its court to proceed with it. Or, if it finds that the reasons for connection exist, it must decide to consolidate the lawsuit being heard before it with the lawsuit being heard before the other court and return the two lawsuits to it for consideration together by it.

The second case: If the two lawsuits are filed before two different courts: A section of jurisprudence believes that the court does not have the right to decide to unify two lawsuits filed before two different courts, unless one of the parties to the lawsuit submits a request to do so, in accordance with the provisions of Article (75) of the Civil Procedure Law.^[63] While another aspect of jurisprudence holds that the court can, on its own initiative, unify the lawsuits even if no request for that is submitted.^[64]

The second section: Accepting the decision of unification The Court shall continue to consider consolidated cases in one report, and the cases shall be given a single number, which is the number of the original case filed before it, provided that this is noted in the notification register. This decision is not subject to appeal.

First: If the lawsuits are filed before different courts:

The other court is contacted to send the file to be consolidated. After the file is received, a summary of it is entered in the minutes of the hearing. The court must then verify whether the lawsuit filed was filed before or after the pending lawsuit. This is done by checking the date of the lawsuit filing, the date of the court’s decision to waive it, or the date of the court’s decision to grant legal aid.

If the court finds that the lawsuits before it after the lawsuits brought

If the court finds that the lawsuit before it was filed after the one brought, it must examine the conditions for unification. If those conditions are met, in this case it decides to unify its

lawsuit with the one brought, and to consider the last (brought) lawsuit as the original, and it decides to send the lawsuits to the other court, and there is no need to set a date for pleading, because a date has been set for pleading in the brought lawsuit.

If the court finds that the cases before it are previously brought:

If the court finds that the case before it is earlier than the case brought, it decides to return the file to its court, and informs the applicant to submit a unification request to the other court. If the other court sends a photocopied copy of the case file for the purpose of unifying it with the case, there is no legal objection. However, if the court decides to unify the pending cases with the photocopied case, a problem may arise if the unified court sends the cases to the other court for unification, and before they reach the latter court, it has closed the door to pleading, set a date for ruling on them, or actually issued its decision on them. In this case, the court is not permitted to consider the unified case separately after it has decided the case brought before it, and it will certainly be required to return the unified case to its court that decided to unify it to proceed with it and decide on its subject matter. It is not permissible to insist that ruling on the case has given the court a degree of knowledge of its subject matter, which makes it easier for it to rule on it, because the referral was due to the existence of a connection between them and that case, and this connection was negated by the conclusion of pleading in it.^[65] Therefore, it is better for the court to decide on unification after reviewing the original file of the lawsuit filed before the other court, and not the photocopied copy of it, to avoid problems.^[66]

Second: If the lawsuits are filed before the same court but before different judges:

In continuation of the previous unification procedures, the judge in this case, when considering cases before different judges, does not resort to unifying the case number based on the original case number. Rather, the cases take on double numbers, which are the unified case numbers, not a single number. Thus, the judge can unify the cases without the need to submit a request for unification.

Third: If the lawsuits are filed before the same court and before one judge:

The court follows the previous procedures and in completion of them regarding the consolidation of lawsuits before different courts. Here, if the judge decides to unify, he takes a double number, which is the number of the unified lawsuits, and not a single number as is the case in the first procedure that we previously mentioned, as the numbers must be mentioned together in the minutes of the pleading session, and in the ruling as well, in order for this to be noted in the basic record, and they take the number as follows (the number of the original lawsuit/its unified one).-(Consolidated case number/court name/year), so the judge can consolidate the cases in this case without the need to submit a request for consolidation.

⁶²Lafta Hamel Al-Ajili, The Push for Unification for Connection, previous reference, pp. 162-163.

⁶³Lafta Hamel Al-Ajili, The Push for Unification for Connection, previous reference, p. 184.

⁶⁴Madhat Al-Mahmoud, Explanation of the Civil Procedure Law, 1st ed., 2005, p. 125. Rahim Hassan Al-Akeili, Studies in Civil Procedure Law, op. cit., p. 240.

⁶⁵Lafta Hamel Al-Ajili, Litigation Procedures, previous reference, p. 189.

⁶⁶Adnan Mayeh Badr, Problems of Civil Litigation, previous reference, Vol. 1, p. 314.

Finally, it must be noted that the Iraqi Civil Procedure Code does not stipulate a specific method to determine how to give the original and unified lawsuits a legal name after their unification. Therefore, any method that can be followed is considered correct and is used by the judiciary in its procedures and work. However, it is preferable to give them a name that clarifies to the opponents and others that the lawsuits have been unified and free of ambiguity. This is if the lawsuits are unified before the same court, even before two different judges.

If the unification is before two different courts, some believe that the unification decision should be mentioned in the minutes of the pleadings, and a single number should be given to the unified lawsuits, which is the number of the original lawsuit, because the court gives the lawsuit a number if it is filed before it and registered with it in the basic registry, and it cannot mention a lawsuit that is not registered with it (the unified lawsuit). In this case, the lawsuit, its number, and the court before which it was filed are indicated in the ruling that will be issued in the unified lawsuits, and it is noted in the notification registry as well ^[67].

Section Three: Rejecting the Unification Decision

If the court rejects the unification decision, it must then return the unified file to its court after attaching a copy of the minutes in which it decided to reject the unification, with setting a date for pleading before the other court whose unification decision was rejected, and informing the party present of the date of the pleading, and continuing to consider the original case filed before it, and that this decision is subject to appeal by cassation before the Court of Appeal in its capacity as the court of cassation to which the court that rejected the unification decision belongs, in accordance with the provisions of Article (79) of the Iraqi Civil Procedure Law, which stipulates "If the court to which the case is referred sees that it does not have jurisdiction to consider it, then its decision is subject to appeal by cassation," as well as Article (216/1) of the same law, which stipulates "It is permissible to appeal by cassation against decisions issued to reject the unification of two related cases."

But if the other court decides-The recipient of the unification suit - the unification decision is rejected, and the suit is returned to its court. The procedures of the unified court are as follows:

If the unified lawsuit file is submitted to its court, and both parties to the lawsuit are present, and neither of them appeals the decision to reject the unification-Before the appeal authority to which the court that rejected the unification decision belongs-It must continue to consider the case in accordance with the law.

If the case file is submitted to its court, and the two parties to the case do not appear, it must verify whether the court that rejected the unification decision has set a date for the pleadings or not. If a date is set for the pleadings in the presence of both parties, the court must leave the case for review due to their absence. However, if the court (that rejected the unification decision) does not set a date for the pleadings, the unified court must set a date for the pleadings and decide to notify both parties of it.

The second requirement

Implications of the decision to consolidate the lawsuits

Section One: Non-attendance of the parties to the dispute in consolidated lawsuits

If the unified lawsuit file is submitted to the court, and the two parties to the lawsuit do not appear on the date set for the pleading, the court will draw up a report on the receipt of the unified lawsuit that was sent to it. Here, two hypotheses arise:

First: The first hypothesis:

The court decides to record the unification decision in the minutes of the hearing, and mentions a summary of the unified lawsuit and the procedures taken in it. After that, it considers the unification decision to accept or reject it. In the event that both parties to the lawsuit are not present, the court's decision differs according to whether it accepts or

rejects the unification decision, as follows:

- If the court decides to accept the unification decision
If the court decides to accept the unification, it must decide to leave the original lawsuit and the unified lawsuit for review, in accordance with the provisions of Article (54) of the Iraqi Civil Procedure Law.
- If the court decides to reject the unification decision
If the court rejects the decision due to the lack of its conditions, it must return the unified file to its court after attaching a copy of the minutes in which it decided to reject the unification decision, with a date set for pleading before the other court whose decision to unify was rejected, and then it decides to leave the original case (filed before it) for review, in accordance with the provisions of Article (54) mentioned above. In this case, a problem arises for us, which is: If the decision to reject unification was appealed, and the decision was returned annulled, and the court found that the case that was left for review was invalidated due to the lapse of the legal period, then what is the ruling in this case?

Second: The second hypothesis:

The court decides to prepare a report on the unified lawsuit and considers it part of the original lawsuit. It then decides to leave the lawsuits for review without deciding whether to accept or reject the unification decision, considering that the unified lawsuit, with the issuance of the unification decision, has become subordinate to the original lawsuit.

Section Two: The effect of the ruling on attorney fees and expenses of winning the lawsuit

If the court decides to accept the unification, then in this case the two unified lawsuits will be judged in two independents.

Paragraphs: the first for the original lawsuit and the second for the unified lawsuit. In each ruling paragraph, the court decides to grant or reject the lawsuit, and to judge its fees and expenses independently, as if they were separate lawsuits.

First: Attorney fees in unification lawsuits

Some see ^[68] The purpose of unifying lawsuits is to facilitate procedures and prevent the issuance of conflicting rulings.

⁶⁷Adnan Mayeh Badr, Problems of Civil Litigation, previous reference, Vol. 1, pp. 298-299 (footnote)

⁶⁸Adnan Mayeh Badr, Problems of Civil Procedure, Part One, previous reference, p. 302

The unified lawsuits do not become one lawsuit, but rather remain independent of each other. The evidence is the issuance of two independent ruling paragraphs for each one of them. For example: If the claim for obedience is consolidated with the alimony claim, and the plaintiff's attorney in the claim for obedience is awarded attorney fees when the judgment is issued for his client (plaintiff) for obedience, then he will also be awarded other attorney fees when the alimony claim in which his client is a defendant is dismissed. However, the esteemed Federal Court of Cassation went against this opinion in a decision that stated: "Upon reviewing the appealed judgment, it was found to be incorrect and contrary to the provisions of Sharia and the law as far as the matter was concerned with the judgment for attorney fees, as the court should have obliged the appellant to pay the attorney fees of the appellant's attorney once and not twice, as long as his claim for obedience was consolidated with her claim for divorce and she lost both claims, and since the court issued its appealed judgment without taking into account the above, which undermined its validity, it was decided to overturn it ^[69]."

Second: Expenses of winning lawsuits:

Article (76) of the Iraqi Civil Procedure Law stipulates that: "1- It is not permissible to file a single lawsuit in more than one court. If it is filed in more than one court, the lawsuit petition filed first shall be considered and the other petition shall be invalidated. 2- The court may decide to unify the two lawsuits if the other lawsuit is filed in the same court." So, we must differentiate between two cases:

If the lawsuit is filed twice before the same court

In this case, they are unified and considered together. Regarding the costs of lawsuits, some see ^[70] The first (earlier) lawsuit is borne by the defendant who lost the lawsuit, its expenses, and attorney's fees. As for the second (subsequent) lawsuit that was unified with the first (earlier), the plaintiff himself bears its expenses and attorney's fees, because he is the one who filed it despite filing a lawsuit on the same subject, provided that the lawsuits are united in terms of opponents, cause, and subject.

If the lawsuits are filed more than once before two different courts

In this case, the petition filed first is considered valid, and the other petition is invalidated. This is done by checking the date of payment of the fee, or the date of exemption from it, or the date of issuance of a decision for legal aid. Therefore, some see ^[71] The court may decide to invalidate the other lawsuit petition on its own initiative, even if the parties do not request that, in accordance with the provisions of Article (76/1) of the Civil Procedure Code.

Section Three: The effect of invalidating a lawsuit

If the lawsuits are consolidated and the defendant in one of them requests the unification of the consolidated lawsuit due to the plaintiff's absence, some believe that the effects of consolidating the lawsuits are that they become one lawsuit, and therefore it is not permissible to invalidate one of the

lawsuits and leave the other. They are either to invalidate all of them or to proceed with all of the lawsuits. However, I believe that the invalidity of the consolidated lawsuit is subject to the degrees of close connection between the lawsuits. If the degree reaches the stage of close connection that cannot be divided, then the effect of one of them extends to the other, as we indicated previously in our research. However, if it is desirable to consider the unification of them and the degree of connection does not reach the level of indivisibility, and what the Iraqi legislator calls a simple connection, then here it is possible to invalidate one of them without affecting the rest, as is the case if the compliant lawsuit is consolidated (the plaintiff in the alimony lawsuit), and she requests the invalidation of this lawsuit due to the defendants' absence in it. In this case, there is nothing to prevent responding to the request to invalidate the compliant lawsuit, and the alimony lawsuit is proceeded with, and the appropriate decision is issued in it, provided that the court verifies that the conditions for invalidation are met.

Section Four: The effect of the court reversing its decision to consolidate the cases

The court, by a unification decision, cannot unify the lawsuits unless it is certain and assured that the conditions, controls and reasons that necessitated unification have been met. However, sometimes it decides to unify the lawsuits despite the lack of one of the conditions for unification. However, to know the extent of the possibility of changing or not, it is necessary to distinguish between the decision to unify the lawsuits and the decision to accept unification, as follows:

First: Decision to unify lawsuits:

It must be said first that it is inconceivable that the court would reverse the unification decision if the lawsuits were filed before different courts, because the court that decides on unification sends the case file to the court before which it was previously filed. If that is the case, it is not permissible to reverse the unification decision, because the lawsuit has left the court's jurisdiction and it has withdrawn its hand from it, unless it decides to reverse the unification decision in the same session in which it decided on unification. Therefore, some find that reversing the unification decision is conceivable in the event that the unification decision relates to lawsuits filed before the same court and before the same judge. In this case, there is nothing to prevent the judge who decided on unification from reversing his decision if he finds that the conditions for unification are not met. The Court of Cassation ruled in a decision that: ".the court may reverse this decision - the decision to consolidate the lawsuits - during the course of the lawsuit if it finds that there is no connection between the two lawsuits due to the difference in the subject matter, the opponents, and both of them."^[72]

As for the procedures and decisions taken, if the court decides to retract the unification decision, we find that the court has the right to do so in accordance with Article (17/second and third) of Evidence Law No. 107 of 1979, which states:

Second: The court may amend the evidentiary procedures it ordered, provided that the reasons for this are stated in the

⁶⁹Federal Court of Cassation Decision No. (3982/Personal Status and Personal Matters Authority/2021 dated 3/15/2021) unpublished.

⁷⁰Adnan Mayeh Badr, Problems of Civil Litigation, previous reference, p. 308.

⁷¹Adnan Mayeh Badr, Problems of Civil Litigation, Part One, previous reference, p. 308.

⁷²Court of Cassation Decision No. (84/Civil/1971 dated 5/27/1991), quoted from: Lafta Hamel Al-Ajili, Litigation Procedures, previous reference, p. 188.

minutes of the session.

Third: The court may accept the outcome of any evidentiary procedure, provided that it states the reasons for that in its ruling.

The Iraqi Civil Procedure Law also stipulates in Article (155) that: "The court may issue, before deciding on the dispute, the decisions required by the lawsuit, and it may amend these decisions or not accept the outcome of the procedure if the reasons for that are stated in the minutes."

Therefore, according to the above, we find that there is nothing to prevent the court from reversing its decision or any action taken by it or by another court, or from not taking into account the result of any of the evidentiary procedures, provided that the reasons for that are stated in the ruling.

Second: Regarding the court that decided to accept the unification decision:

If the court accepts the decision to unify the lawsuits and considers the lawsuits together as one lawsuit, then it has the right to retract the decision to accept the unification, as there is nothing that prevents the court from retracting it whenever it finds that the conditions are not met in accordance with Article (17), even if some reject this on the basis that the court decided to accept and proceed with the unified lawsuits and take a set of procedures and decisions, as it does not have the right to retract the decision to accept the unification, even if it finds that there is no connection between the lawsuits, because saying otherwise means returning the lawsuit to the court that decided on the unification, which led to prolonging the duration of the dispute.^[73]

Section Five: The effect of unifying the lawsuits before the second-degree court (appeal) in its original capacity and severing the connection between them

The appeal is considered a level of litigation, and therefore the Court of Appeal may take whatever measures and decisions it wishes in order to reach a just judgment. If it finds that the decision to unify the lawsuits taken by it or by the Court of First Instance- "Incorrect - and there is no connection between the consolidated claims, in which case it has the right to decide to sever the connection between the two claims and consider them independently. The Federal Court of Cassation ruled in its decision that it is "...incorrect and contrary to the principles and provisions of the law, because the Court of First Instance decided to consolidate the numbered claim. with the numbered claim. despite the fact that the conditions for consolidation were not met in accordance with what is stipulated in Article (75) of the Civil Procedure Law, since the subject of the claim. and the parties therein differ from the subject and parties in the numbered claim. and whereas the Court of Appeal did not rectify the error of the Court of First Instance and upheld the ruling issued by it if it was decided to decide to sever the connection between the two claims and consider each one of them independently and link it to a legal ruling, and whereas it

issued its distinguished ruling contrary to the aforementioned legal point of view, which undermined its validity^[74]."

Section Six: Unifying the request for urgent judgment with the lawsuit filed on the original right before the court of subject matter:

There are several opinions as follows:

First opinion: It is permissible to unify the request for urgent judgment with the lawsuit filed for the original right before the court of subject matter, provided that a connection is established between them.

Second opinion: The request for urgent action is postponed until the outcome of the original lawsuit, because the ruling on it depends on the outcome of the original lawsuit. The Nineveh Court of Appeal, in its capacity as the Court of Cassation, disagreed with this opinion in a decision which stated: "...the decision to postpone the lawsuit. until the outcome of the original lawsuit is incorrect and contrary to the law because the contested decision falls within the urgent matters that must be considered urgently, in addition to the fact that the ruling on it does not depend on the outcome of the settlement of the initial lawsuit^[75]."

Some people believe that it is not permissible to unify the request for urgent judgment with the original lawsuit, because the request for urgent judgment does not decide on the original right, so it cannot be unified with the original lawsuit to avoid the issuance of conflicting rulings. This is on the one hand, and on the other hand, it is not possible to proceed with the request for urgent judgment as long as a lawsuit for the original right has been filed before the regular judiciary, and in this case the request for urgent judgment must be rejected, because the request for urgent judgment cannot be unified with the lawsuit that was filed for the original right due to the difference in the methods of appeal and its periods between the urgent judiciary and the regular judiciary, and the appeal authority may also differ, and the person requesting urgent judgment can submit his requests to the regular judiciary.

The Court of Cassation ruled in one of its decisions that: "...if the plaintiff resorts to the regular judiciary to resolve the dispute before referring it to the urgent judiciary, then the judge of urgent matters must reject the request and not postpone it^[76]."

The Baghdad/Rusafa Court of Appeal, in its capacity as a court of cassation, decided in its decision: "...upon reviewing the appealed decision, it was found to be correct and in accordance with the law to file a lawsuit between the two parties regarding the original right bearing the number. which is a pending ownership lawsuit for the same property requested and an urgent inspection of it, and thus the conditions for applying Article (144/1) of the Civil Procedures Law, which requires inspection before filing the lawsuit to establish the actual situation, the features of which are feared to be lost and which may become the subject of a dispute before the judiciary, are negated. Therefore, it was

⁷³Adnan Mayeh Badr, Problems of Civil Litigation, Part One, previous reference, pp. 306-307. Lafta Hamel Al-Ajili, The Plea for Unification for Connection, previous reference, p. 165.

⁷⁴Federal Court of Cassation Decision No. (959/960/ Appellate Body Transferred/2020 on 4/28/2020), quoted from: Judge Haider Awda Kazim, Judicial Rulings Collection, Issue, p. 135.

⁷⁵Decision of the Nineveh Court of Appeal in its capacity as the Court of Cassation, No. (659/T.B/2000 dated 8/28/2000), quoted from Ajyad Thamer Nayef Al-Dulaimi, Obstacles to the Civil Suit, Al-Jeel Al-Arabi, Mosul, 3rd ed., 2009, p. 51.

⁷⁶Court of Cassation Decision No. (2450/Civil Third/75 dated 11/16/1975) published in the Judicial Rulings Collection, Issue Two, Year Seven, p. 212.

decided to uphold the appealed decision ^[77].”

Section Seven: Appealing the decision to consolidate and reject the lawsuits

Article (216/1) of the Civil Procedure Law stipulates that: “It is permissible to appeal by way of cassation the decisions issued by the urgent court. and the decisions issued to reject the unification of two related. lawsuits.” According to this article, the decision that is subject to appeal is the decision (to reject the unification of lawsuits), while the decisions related to accepting the unification of lawsuits are not subject to appeal because they are preparatory decisions. There is also a delicate issue that must be addressed, which is: The decision that the legislator has permitted to be appealed separately is (the decision to reject the unification of lawsuits) and not (the decision to reject the request to unify lawsuits) because the latter decision is one of the preparatory decisions that are not final in the lawsuit, and therefore it is not permissible to appeal it separately, due to the explicit text of the aforementioned Article (216), as well as Article (75) of the same law, which stipulates that: “If it becomes clear to the court that a lawsuit is related to a lawsuit previously filed in another court, it may decide to unify the two lawsuits and send the lawsuit file to the other court, and the decision issued by the other court rejecting the unification is subject to appeal ^[78].”

The Baghdad/Rusafa Court of Appeal, in its capacity as a court of cassation, decided in its decision: “. Upon examination and deliberation, it was found that the decision is not one of the decisions subject to individual appeal by cassation, as stipulated in Article (216/1) of the Civil Procedures Law. This is because the decision that is subject to individual appeal by cassation in this regard is the decision issued by the other court to reject unification, meaning that the court was presented with the plea of unification of the lawsuits with the lawsuits before it, with the lawsuit being heard by another court or by the same court, due to a connection between them, and the court to which this plea was presented responded to the request for unification and decided to unify the two lawsuits, and the court to which this plea was presented responded to the request for unification and decided to unify the two lawsuits and sent the lawsuit being heard by it to the court that is considering the lawsuit that decided to unify its lawsuit with it. The decision of the other court, the decision of the other court to reject unification if the other court takes such a decision, is the one that is subject to appeal by cassation individually. This is the text of Article (75) of the Iraqi Civil Procedures Law, which is what the reasons for its legislation made clear, and it is also what the article means. (216/1) of the same law, when it allowed the appeal by way of cassation against the decisions issued to reject the unification of two related lawsuits, and for the above, and since the appealed decision is not subject to appeal by way of cassation individually, it was decided to reject the

cassation petition from this side and charge the appellant the cassation fee ^[79].

The Kirkuk Court of Appeal, in its capacity as a court of cassation, decided: “. Upon reviewing the appealed decision dated 10/8/2019, which rejected the defendant’s request to consolidate case number 7111/Sh/6119, which is a suit in conjunction with case number 1255/Sh/6119, which is a suit for separation due to harm, it was found to be correct and in accordance with the law because the legal basis for consolidating two cases is the text of Article (75) of the Civil Procedures Law, which stipulates. It is required, according to the explicitness of the aforementioned text, that the two cases be heard before two courts of the same degree and subject to one judicial system, and that there be a connection between the two cases. If the second court rejects the unification decision, then this decision is subject to appeal based on the provisions of Article (2016/1) of the Civil Procedures Law. It is established in jurisprudence that it is valid for a request for unification to be submitted by the plaintiff or the defendant, but the court is not obligated to respond to the request for unification even if its conditions are met, such as if the case being heard is in its final stages or if the interest of the opponents or One of them is that it contradicts this unification, as the ruling of Article (75) did not come in a binding manner, but rather left it to the court to assess the matter of responding to the request for unification or rejecting it in light of the interest of justice, which makes the decision of the subject court with the aforementioned description among the non-decisive decisions that the court takes before deciding on the dispute over it, and for all of the above, it was decided to reject the appeal of cassation in form ^[80].

Therefore, the court that rejected the unification decision should not return the unified case file to its court until after the appeal period has expired, because returning the file to its court may raise some problems, such as if the decision to reject the unification was appealed and the decision was returned annulled. In this case, the court must contact the other court that decided to unify the case, to return the unified file. It may happen that that court decided to reverse the unification decision and refuse to return the case, or it may happen that the other court has decided the unified case after rejecting the unification decision and other problems that may be raised by the decision to return the unified case file to its court before the appeal period has expired.

Examples of consolidation of claims:

- Unifying a claim to prevent encroachment on a property with a claim to recover possession of the same property.
- Unifying the claim of debt against the guarantor with the claim of the same debt against the principal.
- Unifying a lawsuit to remove the joint ownership of a divided property with a lawsuit to remove the joint ownership of the same property

⁷⁷Decision of the Baghdad Rusafa Court of Appeal in its capacity as the Court of Cassation No. (198/M/2017 dated 3/29/2017) published in the Legislation and Judiciary Magazine, Tenth Year, Issue 1, 2018, p. 215.

⁷⁸Lafta Hamel Al-Ajili, The Push for Unification for Connection, previous reference, p. 163.

⁷⁹Decision of the Baghdad/Rusafa Court of Appeal in its capacity as the Court of Cassation, No. (60/Urgent/1993), cited undated by: Judge Awad Hussein Al-Ubaidi, previous reference, p. 5.

⁸⁰Kirkuk Court of Appeal’s decision in its capacity as the Court of Cassation No. (74/Personal Status/2019 on 10/13/2019) quoted from: Judge Awad Hussein Al-Obaidi, previous reference, p. 5.

- Unifying the lawsuit to prevent opposition, with the lawsuit to terminate the contract and invalidate the registration^[81].
- Unifying the wife's claim for increased alimony with the husband's claim for reduced alimony.
- Unifying the claim for gold jewelry with the claim for marital furniture^[82].
- Unifying the alimony suit filed by the wife with the obedience suit filed by the husband. The Federal Court of Cassation ruled in its decision that: "...the obedience suit is considered a defense to the alimony suit, and therefore unifying them and considering them together guarantees the right of both parties to make a claim and resolves the dispute between them^[83]."

The same court also ruled in its decision that: "...the claim of compliance filed by the appellant is considered a plea to the alimony claim, and therefore it must be unified with the alimony claim^[84]."

And as it went in its decision to: "...the subject court rejected the appellant's request to unify the pending alimony suit with the compliant suit, without reviewing it and stating its subject. the connection between them is available. in addition to the possibility of proceeding with them simultaneously to reach a single ruling^[85]."

It is worth noting that some people say that the alimony lawsuit should be postponed until the outcome of the obedience lawsuit is filed, not unified.

Unifying the claim of compliance with the claim of separation. In this case, there are two opinions:

The first opinion: The necessity of unifying the claim of compliance with the claim of separation

The Federal Court of Cassation adopted this opinion in a decision that stated: "...the wife is obligated to obey her husband if the legal and Sharia conditions are met in the home provided by him, and the divorce suit combined with the compliance suit is rejected for not being proven by legally recognized methods and for not meeting the conditions for divorce^[86]."

The Baghdad/Karkh Court of Appeal, in its capacity as the Court of Cassation, adopted this opinion in a decision which

stated: "...the Personal Status Court should have unified the two lawsuits and proceeded with them together, and not postponed the lawsuit for compliance until the outcome of the divorce lawsuit^[87]."

The same court also decided in its decision: "The judiciary of this body has settled on unifying the suit for compliance with the suit for separation and not delaying the suit for compliance until the outcome of the suit for separation, in order to achieve the principle of the proper administration of justice and to protect the judiciary from tampering in accordance with what is stated in Article (5) of the Evidence Law^[88]."

Second opinion: It is not permissible to unify the claim of obedience with the claim of separation:

This opinion is based on the lack of a connection between them. Therefore, the claim for obedience should be postponed until the outcome of the divorce claim, and not combined, because the outcome of the divorce claim has an impact on the outcome of the obedience claim, and the ruling in the obedience claim depends on that outcome.

The Federal Court of Cassation adopted this opinion in a decision which stated: "...is incorrect and contrary to the provisions of Sharia and the law. The defendant's attorney stated in the session. that his client had filed the lawsuit numbered. in which she requested a separation from the plaintiff and requested to postpone the lawsuit for compliance as a result of the divorce lawsuit. The court should have postponed the lawsuit for compliance in the event that the divorce lawsuit was still under litigation, and the court's issuance of its appealed judgment without taking this into account compromised its validity^[89]."

And also in a decision issued by her which stated: "...it is not permissible to unify the divorce suit with the compliant suit due to the lack of connection between them, and also the difference in the methods of proving one from the other. The court must postpone the compliant suit until the divorce suit is decided and a final ruling is issued in it^[90]."

The Salah al-Din Court of Appeal took the same view in a decision that stated: "...the divorce suit requires delaying the obedience suit, as the decision issued in the divorce suit is productive and influential in the obedience suit^[91]."

⁸¹Decision of the Baghdad/Rusafa Court of Appeal in its capacity as the Court of Cassation No. (412/H/1998 on 3/9/1998).

⁸²Federal Court of Cassation Decision No. (3945/Personal/2007 on 10/21/2007).

⁸³Federal Court of Cassation Decision No. (1598/Sh/2016 dated 2/22/2016) quoted from: Attorneys Sufyan Abdul Majeed and Raad Taresh Kaeid, Judicial Applications, Issue 6, p. 17.

⁸⁴Federal Court of Cassation Decision No. (9515/Personal Status and Personal Matters Authority/2012 on 12/24/2012), quoted from: Attorney Rahim Al-Attabi, previous reference, Vol. 2, p. 404.

⁸⁵Federal Court of Cassation Decision No. (4621/Personal/2011 on 9/19/2011), quoted from: Attorney Mu'ayyad Hamid Al-Asadi, previous reference, mentioned in the introduction, p. (2).

⁸⁶Federal Court of Cassation Decision No. (6990/Personal Status and Personal Matters Authority/2017 dated 11/12/2017) quoted from Laith Rasim, The Cream of Personal Status Judiciary, Al-Sabah Library, Baghdad, 2020, p. 73.

⁸⁷Decision of the Baghdad/Karkh Court of Appeal in its capacity as the Court of Cassation No. (193/Personal/2018 on 12/27/2018).

⁸⁸Decision of the Baghdad/Karkh Court of Appeal in its capacity as the Court of Cassation No. (93/Personal/2019 dated 5/22/2019) quoted by Judge Laith Rasim, The Cream of Personal Status Judiciary, Al-Sabah Library, Baghdad, 2020, p. 39.

⁸⁹Federal Court of Cassation Decision No. (6548/Personal Status and Personal Matters Authority/2020 dated 11/29/2020).

⁹⁰Federal Court of Cassation Decision No. (5699/Personal Status and Personal Matters Authority/2018 dated 8/18/2018).

⁹¹Salah al-Din Court of Appeal's decision in its capacity as the Court of Cassation No. (35/Sharia/2018 dated 10/22/2018) Laith Rasim, The Cream of Personal Status Judiciary, Al-Sabah Library, Baghdad, 2020, p. 36.

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