

Judicial Presumption and its Role in Criminal Evidence

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Abstract

This paper explores the concept of judicial presumption and its role in criminal evidence, focusing on Jordanian legislation while incorporating a comparative analysis. It begins by defining judicial presumption and distinguishing it from other forms of evidence, such as legal and civil presumptions. The paper outlines the similarities and differences between criminal and civil judicial presumptions, highlighting the flexibility in criminal matters where the judge has broader discretion in forming convictions. It further examines the nuances of evidence and its importance in criminal proceedings, noting the distinctions between direct evidence and indirect indications. The study reviews relevant Jordanian legal texts and judicial decisions, presenting insights into how judicial presumption is applied in practice. It concludes with findings and recommendations aimed at improving the legal framework and judicial practices, emphasizing the need for clear definitions, enhanced judicial expertise, and effective case management. This comparative study underscores the significance of judicial presumption in strengthening the integrity and reliability of criminal evidence.

Keywords: Judicial Presumption, Criminal Evidence, Jordanian Legislation, Comparative Analysis, Legal Framework.

Chapter One: The Introduction

Introduction

Evidence has always played a significant role in the judicial process, serving as one of the essential pillars that enable the judiciary to reach a just ruling. Obtaining evidence directly related to the incident under investigation can often be

challenging, if not impossible. Judges are not always able to ascertain the facts directly and must rely on reasoning, employing principles of inference and logic to uncover as much of the truth as possible.

The importance of evidence in the legal system has grown even more pronounced in modern times, owing to scientific and technological advancements. These advancements have provided sophisticated tools that have greatly enhanced the ability to uncover judicial evidence, particularly in the realm of scientific evidence. In our current era, where criminals increasingly use advanced and precise methods to commit crimes without leaving traces, scientific evidence has become one of the most trusted means of ensuring criminal justice.

Recognizing the critical role that judicial presumptions play in criminal proof, this research explores the topic in depth. The rules of evidence hold great importance across various branches of law, as a right without supporting evidence is effectively nonexistent. Evidence substantiates the right and ensures its recognition. Its significance lies in being a means of proof sanctioned by the legislator and upheld by the judiciary and legal scholars.

Judicial presumptions are diverse and numerous in the realm of proving facts. This study focuses on Jordanian law, with comparisons to Egyptian and Lebanese law. The choice to address the issue of judicial presumption and its role in criminal proof stems from its critical importance in this area. The decision to research this topic, despite the inherent challenges, is motivated by a belief in the value of pursuing difficult and complex subjects. Exploring judicial evidence involves navigating uncertainties, where opinions and viewpoints may vary, making the task both challenging and intricate. However, driven by the conviction that true fulfillment comes to those who dare to tackle difficult tasks, I undertook this research to bring it to completion.

Research Problem

This research aims to explain the relationship between proofs by evidence in general and proof by judicial presumption, particularly focusing on its applicability as evidence in criminal cases. The research problem revolves around

determining the validity of presumption as indirect evidence in criminal proceedings, especially in the absence of explicit legal provisions addressing this issue. Additionally, the study explores the differing opinions in legal scholarship regarding the acceptance of presumption as evidence in criminal cases.

Element of Research Problem

Addressing the research problem involves answering the following questions:

1. To what extent is a criminal judge free to consider indirect evidence in a criminal case?
2. What is the stance of Jordanian and comparative legislation on criminal proof through judicial presumption?
3. What are the views of legal scholarship and the judiciary regarding criminal proof based on judicial presumption?

Research Plan

The research hypotheses are the anticipated answers to the previously mentioned questions that constitute the elements of the study problem. They are expected to be as follows:

1. First Hypothesis: A criminal judge is free to consider any evidence he deems appropriate to uncover the truth, based on his subjective conviction.
2. Second Hypothesis: It can be inferred from Jordanian and comparative legislative texts that judicial presumption is considered sufficient evidence in criminal cases.
3. Third Hypothesis: Judicial presumption is recognized as acceptable evidence in criminal cases, in line with judicial rulings and the prevailing trend in legal scholarship.

Scope of the Study

The research problem will be explored within the following parameters:

1. First: This study is confined to issues related to criminal proof using judicial presumption as evidence. It includes a comparison between judicial

presumption and other types of evidence, along with an explanation of its characteristics and components as a form of indirect criminal proof.

2. Second: The study will clarify the nature of the principle of the criminal judge's subjective conviction, the significance of criminal proof through judicial presumption, and the impact of modern scientific advancements in uncovering other forms of evidence.
3. Third: This study will examine the legal provisions governing judicial presumption in the context of criminal proof, as well as the oversight by the Court of Cassation on evidence based on judicial presumption, through an analysis of judicial rulings.

Chapter Two: Judicial Evidence

In this chapter, we will examine judicial presumption, starting with its definition and then discussing its elements as follows:

Section One: Definition of Judicial Presumption

Judicial evidence is named after the judge who deduces it, and it is sometimes referred to as personal evidence because it may focus on a characteristic of a person. It is also called objective evidence when it is based on a fact related to the case. Additionally, it is termed simple evidence because it accepts proof to the contrary in all cases, and persuasive evidence because its assessment is left to the judge's discretion.

Judicial presumption can be defined as: Every inference of an unknown fact from a known fact, where the conclusion is necessary and based on rational and logical necessity. The assessment of judicial presumption is left to the judge, who draws from it what aligns with his reasoning and satisfies his conscience, as he is responsible for evaluating the circumstances and their relevance to the case. In other words, it is, the conclusion that the judge must draw or deduce from a specific fact. The judge derives these pieces of evidence from the established facts before him through deduction, arranging conclusions based on premises supported by logical and rational connections. This process is rooted in the principle of rational necessity and gains strength from the judge's freedom to form his conviction.

Judicial evidence is numerous and varied. Examples include: the presence of the accused's fingerprint at the crime scene as evidence of his involvement, the presence of his footprints at the scene as proof of his participation, the sudden appearance of wealth as evidence of embezzlement, the use of a deadly weapon aimed at a victim as evidence of intent to kill, injuries on the accused as evidence of involvement in a fight, a blood stain matching the victim's blood on the accused's clothes, seeing the perpetrator leaving the scene late at night after cries for help, or evidence of prior hostility between the perpetrator and the victim. These are all forms of evidence from which the judge may conclude that the accused is responsible for the crime.

Judicial presumption is considered indirect evidence, and therefore, a logical and conclusive causal link must exist between the fact being inferred and the established fact. Consequently, the incident constituting the crime attributed to the accused cannot be considered a judicial presumption based on the statements of one accused against another. The incident serving as a presumption must be entirely independent of the criminal act attributed to the accused.

The Egyptian legislator did not define judicial presumption in the Code of Criminal Procedure but addressed it in Article 100 of the Evidence Law No. 25 of 1968, which states: It is left to the judge's discretion to extract any presumption not determined by law, and proof by these presumptions is only permissible in cases where the law allows proof by witness testimony. Similarly, the Lebanese legislator did not define judicial presumption in the Code of Criminal Procedure but mentioned it in Article 302/2 of the Code of Civil Procedure, which states: Proof by judicial evidence is only permissible in cases where proof by witness testimony is allowed, unless the legal action is challenged on the grounds of fraud or deception, or the presumption is drawn from facts that could be considered a voluntary partial or full fulfillment of the plaintiff's obligation.

The Jordanian legislator referred to judicial presumption in Article 43/1 of the Jordanian Evidence Law No. 30 of 1952 and its amendments, stating: Judicial presumption is evidence not stipulated by law, and the judge derives it from the

circumstances of the case, convinced of its significance, and it is left to his discretion.

It is important to note that the Jordanian legislator did not define judicial presumption in the Code of Criminal Procedure but referred to it within the general principle governing the criminal judge's authority in evaluating evidence in Article 147 of the Criminal Procedure Code. Despite the practical significance of judicial evidence, the Jordanian legislator appears to have followed the approach of most Arab penal laws and procedures. Even though the Jordanian legislator addressed the definition of judicial presumption in the Evidence Law, judicial presumption in civil cases differs from that in criminal cases, as the judge in criminal cases has broader powers, and his rulings must be based on certainty and conviction.

Upon reviewing the legal texts in Arab legislation, it is evident that they agree that the extraction of judicial evidence is entrusted to the judge, who deduces it from the facts and circumstances of the case.

Section Two: Elements of the Judicial Presumption

Criminal proof through judicial presumption relies on the judge's interpretation of established facts, aligning with the principles of reason and logic, to infer unknown facts. This process involves deducing the fact that needs to be proven from the premises provided by the known facts. Therefore, judicial presumption is built upon two essential elements: the material pillar and the moral pillar. We will discuss these two pillars as follows:

Material Pillar:

The material element of judicial presumption consists of established facts that the judge selects from the evidence presented in the case. These facts, also known as clues or indications, form the foundation upon which the unknown fact is inferred. These selected facts represent the known element from which the unknown element is deduced. They are called evidence because their nature or the circumstances surrounding them carry a specific significance in uncovering the unknown fact intended to be proven. This inherent significance is precisely why they are chosen as the basis for inference. If an incident lacks this

significance and does not hold any penal relevance, it cannot serve as the material element of a judicial presumption. In other words, the facts selected by the judge must possess a meaning that aids in uncovering the unknown facts under investigation, as probability is the minimum requirement for the existence of evidence. Without this characteristic—if the incident lacks significance—it remains an ordinary event and cannot be used as a material element of judicial presumption.

The judge has the discretion to choose any fact he deems productive for drawing evidence, following a thorough examination of all aspects of the case to determine the facts accurately. In the process of selecting an unknown fact, the judge may uncover other facts that are more compelling than the initially chosen one. It is crucial for the judge to investigate the existence of a causal link between the evidence and the fact to be proven. If the logical chain of reasoning breaks down during this process, the inference must be considered flawed.

The judge is obliged to question whether the circumstances permit an alternative interpretation and to continue his investigation until reaching a conclusion that is unambiguous and fully consistent with all premises. This agreement must be real and not subject to interpretation. The judge alone is responsible for selecting the known and established fact, which serves as the material pillar of the judicial presumption, whether he identifies it independently or it is presented by the parties involved.

However, this right is constrained by the necessity of presenting the evidence to the parties during the session, as this is a fundamental requirement of the right to defense.

Generally, there are no strict rules or controls governing the court's selection of the fact that forms the basis for deduction. The court is only bound by the requirement that this fact be proven with certainty, that its deduction is permissible and well-reasoned, and that it logically leads to the conclusion reached. The strength of judicial evidence in proving the case depends on the number of accurate indicators that support it. It is essential to thoroughly examine

these indicators, understand their meaning, and interpret them correctly within this context.

For evidence to serve as the material pillar of judicial presumption, it must possess the following characteristics:

1. **Precisely Defined and Clear:** The clues must be clearly and precisely defined to facilitate the deduction process.
2. **Proven with Certainty:** The evidence must be established with certainty and cannot be open to interpretation or controversy, as it is invalid to base evidence on doubtful meanings.
3. **Causal Connection:** There must be a close and logical causal link between the known evidence and the unknown fact intended to be proven. This connection should allow for the deduction of the unknown fact from the established clues according to the rules of logical inference.
4. **Consistency:** The evidence must be consistent and non-contradictory, aligning toward the same conclusion and indicating the fact being proven.
5. **Accuracy and Authenticity:** The evidence must be accurate, truthful, and not misleading or fabricated, ensuring that the inference drawn from it corresponds with the actual truth.
6. **Multiplicity and Diversity:** The evidence should be multiple and varied, as a single clue, even if strongly related to the event, may not be sufficient to definitively prove it. However, multiple and diverse pieces of evidence can reinforce the deduction process, with each piece adding new insights that complement and strengthen the others.

Moral Element:

The moral element of judicial presumption pertains to the intellectual process of deduction carried out by the judge. This process involves the application of reasoning and logic to infer unknown facts from known facts, aligning with the principles of rationality and logical necessity.

From this perspective, the moral element encompasses two main components: logic and deduction. Understanding these terms is crucial for grasping how the

moral pillar functions in judicial presumption. We will also discuss the concept of what is most likely to occur and its adequacy as evidence in criminal matters.

Logic:

The term logic, derived linguistically from speech and pronunciation, translates from the Greek word Logos, which means reason, proof, or thought. Conventionally, logic is defined as the science that aims to reveal the rational principles underlying thought, (source needed). Logic is concerned with inference, which can be either true or false. Inference is described as the mental process of arriving at a proposition, known as the conclusion, based on other propositions, called premises or evidence, to establish a relationship between them (source needed).

The human mind links meanings through a chain of connected thoughts, conscience, or will. These mental connections are logical links that relate different issues. Once a truth is reached, the mind considers its causes and searches for related results. The conclusion of a presumption starts with analyzing the actual circumstances and making assumptions based on the natural course of events. The judge assumes that events cannot occur differently than the assumptions made. These assumptions are then aligned with logical requirements. If the premises are true, the conclusion derived from them must also be true; this is known as a conclusion necessarily required by the premises. If logic is flawed in the deduction process, it leads to erroneous results. Consequently, reliable conclusions must be based on valid premises.

The court's authority to assess facts must adhere to reason and logic. The judge's conviction must result from a logical process and should be supported by rational, stable deductions leading to a specific result. Extreme analysis, filled with irrelevant details, should be avoided as it may distract from the legal solution.

Although higher courts generally do not interfere with the trial court's conviction formation, they will not uphold a decision if it clearly deviates from logical reasoning or the accepted standards of inference. For instance, the Jordanian

Court of Cassation has ruled that: When the judge derives his conviction from a presumption, he must demonstrate the logical relationship between the fact proven and the fact to be proven. This deduction must be based on certainty, free from doubt or possibility. The presumption must be adopted with caution, explaining the logical method used. Despite its suitability as evidence, it is considered one of the lower-ranking types of evidence (source needed). Another decision states: Judicial presumption is indirect evidence where the judge deduces the fact to be proven from a known fact. This deduction must align with logic and the case's facts; otherwise, it falls short of the evidentiary standards required in criminal procedure.

Deduction:

The facts that a person can perceive, despite their number, are few, which requires them to use inference to indirectly identify the greatest number of facts surrounding them through mental discourse using the methods of deduction and induction.

There are two types of inference:

Direct Inference: This involves inferring one issue from another without resorting to any intermediary, arriving at a conclusion from a premise or certain premises.

Indirect Inference: It takes two forms:

Deduction: This is the inference in which the mind moves from general, recognized issues to other partial issues. It always represents the source of rational truth. When moving from the general known to the specific unknown, we use deduction.

Induction: This is inference in which the mind moves from partial issues to a comprehensive issue. In other words, it involves studying or examining part of the aspects of a fact or parts of known facts and then moving to all the facts in a comprehensive manner. The method of induction reveals a complete, unknown matter from a partial, known matter.

The French jurist René Jarreau said that when the legislator establishes a legal rule, they use the inductive method because they establish a general legal rule, which the judge then applies to specific facts. For the judge, their method is deductive because it involves applying a fact they observed to the issue to be resolved. They do not decide a general rule from the observation of particular facts they investigate; rather, they are convinced of the general rule first and then apply it to a specific incident before them.

It can be said that the presumption combines the inductive and deductive approaches, as induction precedes deduction, and deduction is based on induction. Therefore, a result cannot be derived unless the partial facts of the elements leading to it are extrapolated. Deduction is a mental, intellectual process carried out by the judge or the court in light of the facts of the dispute before them, and the specific results those facts produce, whether by conviction or acquittal, based on the established and chosen facts in the dispute.

The judicial presumption must be certain in its meaning and not hypothetical. Extracting the unknown matter and arriving at it by deduction from the known matter must result from a logical process led by extreme precision and attentive awareness of its significance. This is because the process of deduction begins when the judge finds that the evidence they have chosen is strong enough to provide the necessary certainty. Then, they draw deductions from it in the form of judicial evidence.

Therefore, deduction itself is considered a difficult process in which the judge exerts mental and intellectual effort to form their conviction in order to extract the fact to be proven from the evidence, indications, or circumstances of the case under consideration.

Deduction varies according to judges' perceptions and the soundness of their assessment of the facts. Some judges are sound in their deduction and find the evidence valid, while others may have deductions that contradict the logic of reality. Therefore, the presumption is considered productive in one case and non-

productive in another, making the deduction of the presumption vary from one judge to another.

Reaching the truth is considered rare and often impossible. It is sometimes characterized by complexity, which prevents one from arriving at the conclusive truth. Therefore, a person resorts to the idea of what is most likely to occur among people. Deduction in judicial presumption is based on this idea, giving it the advantage of seeking help from evidence in various areas of law. If determining all the facts of a case and proving them directly were required without relying on the idea of what is most likely to occur, it would be impossible to decide between the vast number of cases, even if they were simple.

The judge's choice of the established fact should be one that raises possibilities. Therefore, the judge's establishment of the evidence is based on their choice of the predominant possibility or the most likely occurrence. A very important issue arises concerning the sufficiency of this predominant presumption for a conviction to be based on it. One of the accepted principles is the necessity of basing penal rulings on certainty, given the seriousness of the conviction and the personal and financial consequences for the accused.

Commentators of civil law are satisfied with the existence of the judicial presumption, stating that the inference of the unknown event from the known event is based on the idea of the most likely occurrence. In criminal proof, to form the evidence of judicial presumption, it is necessary to raise this strong possibility to a degree of certain certainty that does not tolerate doubt.

Chapter Three

Characteristics of Judicial Evidence and Distinguishing It from Other Evidence

Evidence in law occupies a prominent place as proof, with each type of evidence, whether direct or indirect, having distinct advantages and characteristics that differentiate it from others. Jurisprudence has developed specific characteristics of judicial presumption based on the concept of presumption as a result that the judge aims to achieve through the use of logical rules. These characteristics play a

significant role in distinguishing judicial presumption from other types of evidence. This section discusses the characteristics of judicial presumption and distinguishes it from other evidence as follows:

The First Requirement: Characteristics of Judicial Presumption

Section One: The Judicial Presumption is Indirect (Deductive) Proof

Proof of evidence is divided into direct and indirect. Direct evidence focuses directly on the fact to be proven, such as confession and testimony. In contrast, indirect evidence focuses on another fact closely related to the fact of the case. By proving this related fact, the court can deduce the fact to be proven. For example, finding the accused's fingerprint or footprints at the crime scene serves as indirect evidence of their participation in the crime.

Judicial presumption is characterized as indirect evidence, representing a process of deduction where the judge uses reason and logic to infer unknown facts and establish connections between concluded facts and their resulting outcomes.

In civil jurisprudence, judicial presumption is referred to as transformation of proof meaning that it addresses an incident related to or connected to the alleged incident rather than the incident itself. For example, the presence of a debt instrument in the debtor's possession is evidence of the debt, and acts of loyalty and disposal in the event of illness or death may indicate that a disposal is a will.

Section Two: The Judicial Presumption is a Transitive Argument

What is proven by judicial presumption is considered a transitive argument, meaning it is established for everyone, not limited to the parties in dispute. This is because the basis of this presumption is established material facts that the judge personally verifies and uses to make deductions through logical rules. This negates the suspicion that one party fabricated evidence or manipulated facts to their advantage.

Section Three: The Judicial Presumption is an Inconclusive Argument (Evidence Accepting Proof of the Contrary)

Although the judicial presumption is a transitive argument, it is an inconclusive argument, allowing the opponent to prove the contrary. Like all other evidence, judicial presumption can be challenged with evidence proving otherwise. This aligns with the principle that the criminal judge has the freedom to form their conviction based on all evidence presented.

In practice, even though judicial presumption can be refuted, it may reach a level of strength where the judge deduces the matter conclusively, leaving little room for reversal. The judge will only resolve to form the presumption as evidence after allowing the accused to present counter-evidence. This process ensures that the accused can contest the presumption by providing evidence contradicting the inference drawn.

Section Four: The Judicial Presumption is Objective or Personal

Judicial presumption can be characterized as either objective or personal. If it is based on established facts and infers other facts from them, it is considered an objective presumption. However, if it is based on characteristics of a person, such as their criminal record or disputes with the victim, it is personal evidence. The objective nature of judicial presumption is confirmed when it is based on established facts chosen by the judge from the circumstances of the case. These facts must be proven with certainty to avoid dangerous results. For instance, finding the accused's identity in a house where a dead body was discovered is an established fact that the judge may use to identify the killer, provided these facts are verified as authentic and not misleading.

Section Five: The Impossibility of Limiting Judicial Evidence

Judicial evidence cannot be restricted, as it relies on deducing unknown facts from established facts chosen by the judge based on the case's circumstances. This chosen fact varies from case to case due to the unique circumstances surrounding each case. This variability leads to a diverse range of judicial

evidence, making it impossible to codify or limit judicial evidence beyond what is established for legal presumption.

For example, in a case involving a firearm murder, the judicial evidence inferred will differ from that in a case involving poisoning, due to the different facts in each case. Despite scientific and technological advancements and modern scientific methods, standardizing judicial evidence remains impractical.

Section Six: The Judicial Presumption is Positive Evidence

The judicial presumption is considered positive evidence. Here, positive means that the accused must present the basic fact to the judicial presumption and draw conclusions from it. Essentially, the accused gathers and presents elements for the judge to infer the fact. The judge then decides whether to accept or reject the accused's presentation. The judge may accept the proven incident that forms the basis of the presumption or not. The judge may also take evidence independently or rely on evidence presented by the investigating authorities. In practice, the burden of presenting and proving defense evidence often falls on the accused, as they are more familiar with it. Conversely, the burden of proving the accusation rests with the accusing authority.

Section Seven: Judicial Evidence is Restricted in Some Cases

The legislator has equated judicial evidence with testimony in terms of proof, meaning that all rules applicable to testimony also apply to judicial evidence. In civil matters, judicial evidence cannot be used to prove legal transactions exceeding one hundred dinars or anything contradicting or exceeding written documentation.

In criminal matters, the situation differs because crimes are material, administrative facts that are not subject to the same restrictions as civil proof. Therefore, judicial evidence is permissible in all cases, as stipulated in Article 147 of the Jordanian Code of Criminal Procedure, which states: „Evidence is established in felonies and misdemeanors by all methods of proof, including judicial evidence.,

The Second Requirement: Distinguishing Judicial Presumption from Other Evidence

In this section, we will distinguish judicial presumption from other types of evidence by examining three branches. First, we will differentiate judicial presumption from legal presumption. Second, we will distinguish criminal judicial presumption from civil judicial presumption. Third, we will explore distinctions between types of evidence according to the following divisions:

The First Section: Distinguishing Judicial Presumption from Legal Presumption

In the first section of this chapter, we discussed legal presumption. We also addressed the characteristics of judicial presumption in the second section. Based on this, we can compare and contrast legal presumption and judicial presumption as follows:

First: The Similarities

The two types of evidence, judicial and legal, are based on the idea of the most likely occurrence. The two pieces of evidence are considered transitive arguments, so what is proven by them is considered valid for all, not limited to the parties to the case.

The two types of evidence are similar from a purely logical point of view, as each involves drawing conclusions from a known fact in order to determine an unknown fact. The two presumptions are similar in terms of rooting and adaptation. In terms of rooting, most legal presumptions originate from judicial presumptions. This happens after repeated derivation of a specific presumption from a particular incident, which jurists later adopt and the legislator formalizes.

As for adaptation, both types of evidence are indirect, as they shift the focus from the disputed fact to another fact close to it or closely related to it, which is easier to prove. If proven, this fact serves as evidence for the disputed fact. This is the idea of transforming proof.

Second: The Differences

The judicial presumption is at the core of the judge's work, as he selects the established fact that constitutes the material element of the judicial presumption and carries out the deduction process. In contrast, the legal presumption is created by the legislator, who determines the fact that constitutes the material element of the legal presumption and carries out the deduction process. The judge has no role in this and is obligated to apply the ruling of this presumption when the conditions for its application are met.

The judicial presumption is not conclusive, as it can always be disproven. No matter how strong it is, it is not without possibility. The legal presumption, however, may be conclusive in some cases, with the opposite being unprovable in others.

The judicial presumption is considered evidence of proof, while the legal presumption is considered an exemption from proof. Modern jurisprudence argues that the idea of a conclusive legal presumption does not fit the concept of evidence, which should allow for the possibility of disproving the assertion. Therefore, every legal presumption must be simple, and there are no conclusive legal presumptions among the means of proof. Instead, they are considered objective legal rules that must be followed.

The judicial presumption is derived by the judge, while the legal presumption is derived by the legislator. Thus, the judicial presumption cannot be limited as it is deduced from the circumstances of each case, while the legal evidence is exclusively contained in legislative texts.

The judicial presumption is an assessment made by the court, based on evidence or circumstances of the case. In contrast, the legal presumption is a general rule determined by the legislator, which establishes the evidentiary force of specific facts independently of any examination of the elements that reflect each issue.

In the case of judicial presumption, the judge has the authority to assess and weigh it, giving it the value it deserves in proof. For conclusive legal evidence,

however, it constitutes a restriction on the judge's freedom in forming his conviction about the evidence presented. The legislator's strength in this presumption limits the judge's role to verifying the proof of the fact linked to the legal presumption and applying it to the case, without discretionary authority.

The judge may refuse to accept the judicial presumption in any case and is not obligated to specify this refusal in the ruling or mention the reason for the rejection in the ruling reasons. In contrast, if the defense is submitted in substantive defense cases and the judge does not decide on it, either explicitly or implicitly, or if he decides on it without providing reasons in the ruling, the ruling becomes subject to appeal.

The Second Section: Distinguishing the Criminal Judicial Presumption from the Civil Judicial Presumption

First, it must be pointed out that the criminal judicial presumption is similar to the civil judicial presumption from a logical standpoint. Both are based on the idea of extracting the unknown fact from the known fact, and the disagreement lies in the persuasive value of the evidence in proof and the extent of its adequacy in forming the judge's belief. The reason for this disagreement lies in the rule of freedom of proof, which is a characteristic of the theory of proof in criminal matters. This is unlike the case in civil matters, where the law determines the means of proof and the rules of its acceptance and strength.

In criminal matters, the court is not restricted to specific evidence but has absolute authority to form its conviction, whether acquitting or convicting the accused, based on any evidence it extracts from what is presented in the case. The nature of crimes, which are physical, voluntary events, may be proven by all methods of proof, including the judicial presumption. This derives its strength from the principle of the freedom of the criminal judge to form his belief. Article 147-2 of the Jordanian Code of Criminal Procedure confirms this, as evidence is considered one of the original methods of proof before the criminal judge. Jurisprudence has settled on this rule, granting judicial evidence

absolute power in the field of proof, similar to all other evidence, with its assessment left to the judge's discretion.

In the civil field, based on Article 23/2 of the Jordanian Evidence Law No. 30 of 1952 and its amendments, the legislator has made testimony and judicial evidence equivalent in terms of their legal force in the field of proof. What can be proven by one method can be proven by the other. In other words, it is not permissible to prove by judicial evidence except in cases where the law permits proof by the testimony of witnesses. The legislator has thus given evidence the same status as testimony in proof, with all rules related to proof by testimony applying to evidence.

The texts regarding proof by testimony in the Jordanian Evidence Law grant testimony absolute power in proof on one hand and specific or restricted power on the other. The legislator established a general rule and provided exceptions to it, resulting in the judicial presumption in the field of proof gaining absolute and limited strength, similar to testimony.

The judicial presumption in the field of civil evidence shows its absolute strength in the following cases:

1. **Material Facts (Non-Contractual Obligations):** Material facts are tangible matters on which the law has an effect, whether these matters are voluntary or involuntary. The basic principle is that material facts are proven by testimony and judicial evidence. These facts are observable and not as precise and complex as legal transactions. Material facts can be natural events like death, fire, or flood, or voluntary events like construction.
2. **Legal Transactions Whose Value Does Not Exceed One Hundred Dinars:** According to Articles 43-2 and 27 of the Jordanian Evidence Law, the legislator has permitted proof by judicial evidence if the value of legal transactions does not exceed one hundred dinars.
3. **Commercial Matters:** Judicial evidence is permissible in all contracts and commercial transactions, whether proving the existence of an obligation or exonerating from it, regardless of the commercial value of the obligation or

its unspecified value, unless otherwise agreed or stipulated. This is due to the speed required by the nature of business and the trust and confidence it relies on.

4. Legal Transactions Exceeding the Threshold of Testimony: Proof by judicial presumption is permitted in legal transactions whose value exceeds the threshold of testimony or that contradicts or exceeds writing if the challenge is based on fraud, deception, or coercion.
5. Material or Moral Impediment to Obtaining Written Evidence: If obtaining written evidence is impossible at the time of trial, evidence is accepted by judicial evidence and testimony, regardless of the value of the dispute.
6. Loss of Bond: If the bond is lost for reasons beyond the control of the bondholder.
7. Principle of Evidence of Writing: There is a principle for evidence by writing.

Article (30) of the Jordanian Evidence Law No. (30) of 1952 and its amendments defines the principle of proof of writing as follows: ,It is every writing issued by the opponent that would make the presence of the defendant likely,, with a plan, and not signed by his signature, except that what is intended to be proved is very likely due to the validity of its existence. As it is a piece of evidence that constitutes the principle of proof of writing, it is permissible to prove it with evidence.

Even though the legislator granted the judicial presumption absolute power in civil proof in certain cases, establishing a general rule, in other cases it provided specific exceptions to this rule or restricted the role of the judicial presumption in the field of proof. Among the cases in which proof is not permissible according to the following judicial presumption are:

1. Legal Transactions Whose Value Exceeds One Hundred Dinars.
2. Legal Transactions That the Law Requires Writing to Prove, Regardless of Their Value: Such as transactions regarding real estate, reconciliation, suretyship, will, gift, etc.

3. Contradictions or Exceeding Written Evidence: It is not permissible to prove with judicial evidence in legal transactions that do not exceed one hundred dinars if that contradicts or exceeds what is contained in written evidence.

This is because contracting parties who resort to writing to prove their actions mean they preferred strong evidence. Thus, it is not permissible to diminish what they intended by permitting proof by testimony or judicial evidence. Proving what contradicts writing means proving something that refutes what was written. For example, if a sales contract states the price as ten dinars, the seller cannot prove that the actual price is twenty dinars except by writing. Proving what goes beyond writing means adding to what is written. For example, oral amendments to an obligation, whether they precede, are contemporaneous with, or follow the obligation, may be proven by testimony or judicial evidence but must be proven in writing.

Section Three: Distinguishing Evidence from Evidence

Evidence and presumption are indirect methods of proof because they do not respond directly to the facts required to be proven, whereas other methods of proof, such as confession or testimony, are direct because they respond directly to these facts, as the criminal judge derives his belief from facts that he perceives with his senses.

Despite the importance of presumption, no legal definition exists, leaving commentators the task of defining its concept and explaining its purpose. Some jurists have defined it as: External signs or acceptable suspicions without the necessity of examining them in depth or examining their aspects of opinion., Others have defined it as physical facts or external or psychological signs that indicate the acceptance of a suspicion based on an accusation related to an incident that violates the law. Examples include the accused's attempt to escape upon seeing a police officer (physical fact), the appearance of wealth on a previously unknown person (external sign), and attempts by the accused or witness to confirm certain facts to avoid responsibility or find a legal excuse (psychological sign).

Presumption is of great importance in the field of criminal proof, as it represents the material element of the judicial presumption. However, criminal jurisprudence distinguishes between the definition of presumption and evidence, with some jurists confusing the terms and using, judicial evidence, and evidence, interchangeably.

Distinguishing Evidence from Proof

Some jurists use the term ,evidence, to mean ,proof, due to the confusion between evidence and proof.

Evidence is different from proof. In criminal proof, evidence is such that the conclusion drawn from it is absolutely certain regarding the event being proven and attributed to the accused. On the other hand, evidence does not lead to a conclusion with certainty but rather suggests possibility, where the established fact may have more than one explanation.

Jurisdictions establish that there is a difference between evidence and proof, and this difference is represented by the following:

1. In Judicial Evidence: The conclusion is drawn from facts that necessarily lead to it by rational necessity, meaning that evidence is a conclusion based on certainty and conviction. Conversely, the conclusion in evidence or indications is not necessarily definitive but may allow for multiple interpretations. It is a conclusion based on possibility and probability.
2. Strength of Connection: The difference between judicial presumption and evidence lies in the strength of the connection between the known and unknown facts. In judicial presumption, the connection must be strong and solid, as required by reason and logic, so the conclusion is derived from this connection by logical necessity. Evidence, however, may have a weaker connection, as the established fact bears interpretation and possibility.
3. Sufficiency for Conviction: Evidence alone may be sufficient for conviction if the judge is convinced by it, whereas evidence alone is not sufficient for conviction. It must be supported by other evidence in the case, whether direct or indirect.

4. Legislative Use of Terms: Article (47) of the Egyptian Code of Criminal Procedure uses the term, indications, to authorize judicial officers to search and seize items based on strong indications. Similarly, the Jordanian legislator, in the Code of Criminal Procedure, uses the term, evidence, in several legal texts, including Article (99), which allows the arrest of a defendant based on sufficient evidence, and Article (114/1), which permits arrest based on evidence linking the defendant to the charged act. Article (86/1) allows the search of the accused or others if strong indications are present, while Articles (81) and (82) permit searches if there is suspicion of the accused being involved in the crime.
5. Judicial Assessment Variations: The assessment of evidence and clues can differ from one judge to another. An incident that one judge sees as necessarily leading to another may be viewed by another judge as merely suggestive, allowing for multiple interpretations. For instance, the presence of the accused at the crime scene might be seen by one judge as conclusive evidence of guilt, while another might consider it as evidence due to the possibility of other explanations.
6. Examination and Rational Deduction: Evidence requires deep, careful examination and rational deduction consistent with reason and logic. Evidence, however, requires only the predominance of opinion or suspicion without detailed examination.
7. Impact on Conviction: Doubts in judicial presumption are interpreted in favor of the accused in court proceedings, as with all other evidence. However, doubts about signs or evidence are interpreted against the accused during preliminary investigations, as no conviction is based solely on evidence; it merely initiates an investigation into the complaint and emerging suspicions.

Fifth: The Existence of Presumption and Evidence

The existence of a presumption inevitably entails the presence of a sign or indication, as there is no presumption without a sign or event. However, the presence of evidence does not necessarily entail the existence of a presumption, because the judge may not give any importance to this evidence or interpret it to determine its significance.

Conclusion

This study addressed the topic of judicial presumption and its role in criminal proof in Jordanian legislation (a comparative study) due to the importance of this subject. The rules of proof hold great significance in various branches of law. A right without evidence to support it is akin to nothingness. Evidence supports the right and enables it to prevail. Evidence holds this importance as a means of proof stipulated by the legislator and adopted by the judiciary and jurisprudence.

In conclusion, the study reviewed the most important findings and recommendations, which are as follows:

1. The Jordanian legislator did not provide a specific definition of judicial presumption in the Code of Criminal Procedure but discussed it in the Jordanian Data Law in Articles (40, 43).
2. The Jordanian Court of Cassation has recognized evidence in many of its decisions.
3. There is nearly unanimous agreement in civil, Moroccan, and Arab criminal jurisprudence on one definition of judicial presumption, which is deducing an unknown fact from a known fact.
4. There are similarities and differences between judicial presumption and other forms of evidence, such as legal presumption, civil judicial presumption, and evidence.
5. Judicial evidence is crucial in criminal matters, both from a scientific perspective due to advancements and from a practical standpoint as it strengthens other evidential elements such as witness testimony and confession.
6. The trial judge has absolute discretion in matters related to material proof of facts, but this does not exclude the Court of Cassation's oversight regarding the proof of the incident in the lawsuit. The Court of Cassation monitors judicial logic related to these facts through reasoning for the rulings, which must be based on certainty, not on doubt or guesswork.
7. The Jordanian and comparative judiciary has settled on recognizing evidence as authoritative in proof. It constitutes complete proof.

Recommendations

1. Clarification in Legislation: The Jordanian and Comparative Code of Criminal Procedure should define presumption, including definitions of legal presumption and judicial presumption.
2. Legislative Limitation: The legislator should limit the determination of legal evidence and allow the judge to derive evidence based on the circumstances and facts of each case, resorting to legal evidence only when absolutely necessary.
3. Specialization of Judges: Criminal judges should have specialized knowledge, including studies in human sciences related to criminal sciences, such as criminal and judicial psychology, criminology, criminal sociology, and forensic medicine.
4. Selection Criteria: The selection of judges should be based on competence and broad culture.
5. Reducing Burdens: To alleviate the burden on judges resulting from a high volume of cases, it is recommended to reduce the number of cases assigned to each judge. This reduction will allow judges to work more accurately and creatively.

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