

## **Non-Hearing of a Lawsuit within the Legal Period, "Statute of Limitations" and the Impact on Dropping of Rights; (Jurisprudential Study in Comparison of the Civil Law of Jordan)**

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### **Abstract**

*Statute of limitations (Prescription) is one of the principles that have great impact linked closely to the matter of life for the positive law, which is considered, in general, a period of time that elapses and constitutes a material fact that does not have a legal affect by itself, but it is supported by possession and on one hand this is called the statute of limitations (prescription) gained and on the others, if it is related to personal rights of the right of the other party. There is a disagreement among the scholars in the matter of consideration or invalidity of such right to be sanctity. In this research, we would like to shed some lights on the statute of limitations, the impact and implications on dropping of the rights.*

The types of personal rights, financial and commitments that are subject to long term prescription shall not be counted, but for the types that their prescription is shorter as they are defined, since they are exceptional types, each one shall be specified according to a special law provision.

Each right has no law provision, shall be subject to shorter prescription; so, shall be the general long term prescription. <sup>(1)</sup>

However, should note that each right has a special provision, shall be subject to a short term prescription and the provision should be interpreted concisely in a manner that shall not be applied only on cases that are included therein, if the short term prescription is not applied which is causing difference in the stipulations, therefore, shall not be subject to such long term prescription by fifteen year. <sup>(2)</sup>

### **Introduction**

All praise belongs to ALLAH, LORD of all the worlds, and peace to be upon HIS Messenger Prophet Mohammad, His Family and on His Companions.

The principle of "statute of limitations (prescription)" is almost the principle of the policy which is not included in any civil laws of the world, so it is a clear principle to those who are saying that to preserve stability in dealing in order to maintain public interest applied and in order to achieve security among people, so that no one demands others to adhere with commitment over the time after neglecting to claim his right in previous years. So, laws went in line with such negligence to achieve to the public interest by dropping such right after the lapse of the certain time. Islamic law did not approve prescription which means in other words "the statute of limitations" and did not accept, whether it is a gainful obsolescence or statute of limitations (prescription), since this right is a personal right being sacred and shall not be prized to anyone other than the owner(s), though it is neglected or left for a long time, therefore, no one shall have the right to possess the wealth or the property of others adopting the pretext of time passing or to drop what he is entitled to the favor of another party using this tool, since the release of a deed has its own principles and rules in Islamic Law (Islamic Shari'a).

However, this basic does not prevent some Sharia' scholars to consider some scriptures and in consideration of jurisprudence interest to say (after hearing the lawsuit after a while) without having impact on dropping the right or possession as a faith.

The Civil Law took into consideration what is derived from Islamic Shari'a this saying and stated for not to hear the lawsuit after a while on the basis of prescription set forth in the positive laws.

I have written this research on the subject of **statute of limitations (prescription)** and its impact and implication on dropping the right in comparison of the Jordanian Civil Law, where I referred to the recent and veteran Islamic jurists, also to the books of Civil Laws; therefore, I divided this research as follows:

- First theme:** Definition of statute of limitations (prescription) and its types, it owns to demands
- First demand: Definition of statute of limitations (Prescription) linguistically and idiomatically.
- Second demand: Types of statute of limitations (Prescription).
- Third Demand: Difference between acquired and dropped statute of limitations.
- Second theme:** Statute of limitations (Prescription) in Islamic Jurisprudence
- Third theme:** Definition of statute of limitations that drops (prescription), its nature and the rights included therein
- First demand: Definition of statute of limitations (prescription) that drops and its nature
- Second demand: Rights that included therein that cause statute of limitations (prescription).
- Fourth theme:** Periods of statute of limitations (prescription) and how it is calculated
- First demand: Periods of statute of limitations (prescription).
- Second demand: Methods of calculating the statute of limitations (prescription).
- Third demand: The Principle of validity of the statute of limitations (prescription)
- Fourth demand: Ruling on agreeing to modify the statute of limitations (prescription).
- Fifth demand: Disruption of statute of limitations (prescription).
- Sixth demand: Refrain of the status of Limitations (Prescription)
- Fifth theme:** Implications of statute of limitations (Prescription)
- Then, I write the conclusion where I showed the most important findings that I found in this Research.

## First Theme

### Definition and Types of Statute of Limitations (Prescription)

First demand: Something becoming old, so, it is old and this is contrary of being incidence, becoming old, and oldness, present forwarding and become old, so it is old<sup>(1)</sup>.

Statute of limitations idiomatically: Sheik Zarka, generally, defines the idiom "Types of statute of limitations (prescription)" that it is passing of certain time on a liability belonging to a person without claiming in a considerable method to recover it, or to possess such debt/property, or being an in-kind right does not belong to his possession under stipulation set out by the law.<sup>(2)</sup>

Some others defined "statute of limitations (prescription)" by: a situation directed to call the debtor in a way that shall drop the right of claiming the debt in case it is adhering to by one who has interest herein.<sup>(3)</sup>

Jurisprudents and the interpreters of the law; state that the period in an identifying statute of limitations shall differ according different laws

Second demand: Types of statute of limitations (Prescription): This demand is split into two divisions: statute of limitations (Prescription) and possessing of limitation.

**First: Dropping statute of limitations (Prescription):** This conduces to the dropping of rights, in other words, it is an independent cause for the elapse of the commitment of the debtor without fulfilling the obligation of the liability without having any other causes of the lapse.<sup>(4)</sup> This type is the subject matter of our study in this research.

**Second: Possessing prescription:** This conduces to acquire the in-kind; that means "an independent cause" to gain the in-kind right from the holder who owns it legally in full.<sup>(5)</sup>

**Third demand: Difference between Dropping statute of limitations (Prescription) and possessing prescription:** there is a big difference between dropping statute of limitation and possessing prescription, briefed as following:

There is a big difference between Dropping statute of limitations (Prescription) and the possessing prescription; we can brief this as follows:

1-IbenManzour, Lisan Al Arab, v 12, p 4465; Al Razi, Mukhrat Al Sahah v 1, p 219

2-Explanation of Syrian Civil Law, v 2, p 458

3-Anwar Sultan, Rules of Commitment, p 409

4-Al Zarka, Explanation of Syrian Civil Law, v 2, p 459

5-Al Zarka, above reference, v2 p 459

- 1- Dropping statute of limitation (prescription) shall terminate personal and in-kind rights (except property right), in case the owner of the right does not for a certain period go after claiming to what is being possessed for a certain period determined by the laws.
- 2- Dropping statute of limitation (prescription), is not coupled with possession, while the acquiring prescription is coupled with possession.
- 3- Dropping statute of limitation (prescription) is not adhered, unless that to be through pleading, while acquiring prescription can be adhered to through a lawsuit or by a plea in bar.
- 4- Acquiring prescription shall be taken in consideration in good faith, contrary to dropping statute of limitation.<sup>(1)</sup>
- 5- Acquiring prescription; is not only a supportive to the situation, but converts the fact to a right, as it converts it to possession, but in case of Dropping statute of limitation (prescription), we only find that it confirms the situation, a event that remained for a long period.

## Second Theme

### The legality of the statute of limitation (prescription)

#### In Islamic Jurisprudence

Muslim scholars are different in the matter of the legality of Statue of limitation and they are divided into two parties.

**First party:** Shafai's and the earlier Hanablis and Zahiriyas stated that statute of limitation (prescription) is absolute illegal, so they did not mention the rules and relevant matter that late to it, but they only proclaimed its illegality.<sup>(2)</sup>

They based their judgment on the following points:

- 1- The saying of the Prophet (peace be upon him); ***any Muslim right shall not be abolished due prescription.***
- 2- They also inferred; that if the debt confirmed to be in disclosure and remained so, shall not be abolished as long as nothing afflicts on it causing to drop such debt.<sup>(3)</sup>

**Second party:** Hanafis and Malkis, Iben Al Qayyem Al Jawziyah, Abadios they said that; statute of limitation (prescription) legitimate in general.<sup>(4)</sup>

They based their judgment from the following inferences:

- 1- What has been narrated by Said Bin Al Musayyeb, raised to the Prophet (peace be upon Him) that: (who possesses something for ten years<sup>(5)</sup>, shall be of his property)<sup>(5)</sup>.

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1-Al Sanhour, Al Waseet v 3 p 995, Al Far, Rules of Commitment

2-See: Al Sha'rani, Al Mizan Al Kubra v 2, p 158; Al Zeaili, Clarification of Facts v 3 p 185

3-Al Dasouqi, Al Dasouqi'sMargine, v 4 p 237

4-Al Dasouqi, Al Dasouqi'sMargine, v 4 p 236, Al Hattab Mawaheb Al Jalil v 6 p 224, 220, Al Zeaili, Tabein Al Haqa'iq v 3 p 185, Ibenrushd, Al Bayan and Al Tahseil v 11, p 145, IbenQayyem Al Jawziah, Al Turuk Al Hakeemah, p 88, 115, Itfaish, Sharh Al Neyal v 7 p 99 and after

5-Imam Malik, Al Mudawanah Al Kubra, v 12, p 192, IbenFarhoun, Tabsirat Al Hukkam, v 2 p 320

This Hadith came by another narration manner through Zaid Iben Aslam (whoever possesses something for ten years shall turn to be of his property)<sup>(1)</sup>,

in another narration, through Iben Abbas that the Prophet (peace be upon Him) said; (that he who possesses a piece of land for ten years and the litigant is present, and the litigant does not change and deny, therefore it is for the for the possessor along with its age and there is no plea for the litigant)<sup>(2)</sup>

The significance is evident in the Hadeeth regarding possession and who possesses something for ten year therefore it turns to be his property. This is taken in consideration by the jurisprudents in inferring the possession, also infer hereof for prescription given that the example here in the generality of the word and not for the cause.

- 2- They said that; the silence of the real owner during the civil lawsuit against the disposal of possessor by holding, as the possessor deemed to act freely as the owner for a long time in the property while the owner is

present and does not ask for the property and / or claiming that and the possessor is not inhibited by any legal inhibition, by which indicates that the real owner is neglecting such ownership, as this deem to be an acknowledgment to the favor of the possessor, that as the owner has no right and no claim against this action, i.e it shall be treated as an acknowledgment of concession of right , so the real owner legal case shall not be taken in consideration hereafter as there is no evidence herewith.<sup>(3)</sup>

### Preference

Who looks in the evidences of the parties, and in the inferences that each party is taking in account, shall realize that there is no contrariety among their evidences, despite it seems from the first look that there is deference among them and such evidences put forth are not matching in the matter of concept related to them, both are declaring that the time has no impact to overthrow the right of the owner and the possessor and release the party for the favor of another one and the time passing is not entail to drop the right regardless the lapse of time, but rather, time may be used apparently as a presumption for acquiring the right through judicial authorities.

As for the first Hadeeth, in general, indicates that the rights can be litigated, but cannot be transferred by the lapse of time, whether being in-kind or debt. However, if the time lapse is coupled with the special possession which is mentioned by the scholars, this should be in accordance with a strong presumption, therefore, the right shall be owned by the processor and unchanged and can dispose wrongfully as a real owner according to the religion though he got a judgment from the court. Therefore, such differentiation in some sections between the ruling of judiciary and the ruling of religion made among the human beings which is torn by different emotions. The adoption of judgment is built upon suspicion and not on certainty, this is indicated by the Hadeeth that the Prophet (peace be upon Him), that two litigants came disputing about heritage, The Prophet (peace be upon Him) said; (You are disputing to me and may one of you have more ability to display his evidence more than the other, so I judge to him according to what I hear. So anyone I gave him some of his brother's right; I therefore, assign to him a piece of the hellfire).<sup>(4)</sup>

(1) Abu Dawood, Al Marasil, p 286

(2) This hadeeth came in such words in Musnad Al Rabi' Bin Omar Bin Habeeb Al Azdi Al Basri, v 1, p 237 No. 601; Atefish, Sharh Al Neyal, v 7, p 105.

(3) Al Hattab, Mawheb Al Jalil, v 6, p 224

(4) Muslim, Saheeh Muslim, v 3, p 1337 Hadeeth No 1713, Al Bukhari, Sahih Al Bukhari with Fath Al Bari, v 5, p 398. Hadeeth No 2458

As for the second Hadeeth, means that; possessing something its ownership is non-transferable by itself to the possessor, but it is transferred by legal disposal, even the real own is attending, see the property in the hand of other and does not claim such property, and does not deny that all during this period, so possession is considered to be according many stipulations stated by jurisprudents are deemed by those jurisprudents as legitimate evidence indicating the ownership cannot stand before the acknowledgment of the possessor that no right to own the possessed property, so, the evidence presented by the claimer shall not be lawful to maintain such possession, while the presumption of possession shall be stronger than the acknowledgment of the possessor, stating that no right the possessor has in the property. Hereby, what is meant by the Hadeeth that;(who ever possess something for a long time, the judged the ownership of the property), that if the possessor claims the possession before the judge and does not acknowledge the ownership to the litigant and this what IbenRushd indicated by saying: (possession shall not transfer the ownership of the possessed property to the possessor, but deemed to be an indication hereof).<sup>(1)</sup>

This will evidence that Islamic Jurisprudence considers the lapse of time does not acquire a right for a person and does not also drop the right, but the scholars consider that hear abstinence after a while of time or the time indicates the possession of a certain person possessing a property, this shall appear to reveal such possession. As for religion, time shall not have impact on causing a person to acquire or shall drop the rights.

### Third Theme

#### Definition of statute of limitations that drops (prescription), and foundation which it is based upon

**First demand:** Definition of statute of limitations that drops (prescription).

The Jordanian Civil Law does not include certain definition for statute of limitations that drops (prescription), but the scholars made every effort in setting out a definition with this respect as follows:

Some of those scholars defined statute of limitation (prescription), it is a method created to terminate the commitment by lapse of time, where the debtor does not take with that time action to redeem his right.

Some of them defined it by: lapse of time shall prevent hearing the lawsuit. <sup>(3)</sup>

The idea of statute of limitation (prescription), in correspondence to this, it has a parallel idea in the laws affected by the Islamic Shari'a: "the preventive of hearing the lawsuit" or "lapse of time that causes statute of limitation (prescription)" and was adopted by the Jordanian Civil Law, where Article 449 states that: "the right shall not be terminated by the lapse of time, but shall not allow hearing the lawsuit the denying party within the lapsing time of fifteen years without giving a legitimate excuse taking in consideration where, in particular, no judgments have been issued herein. <sup>(4)</sup>

By close examination, we note that the provisions of statute of limitation (prescription) in the Jordanian Civil Law is derived from the Islamic Jurisprudence and the scholars saying (jurisprudence), in particular, Hanafi's jurisprudence where it is stated in the Journal of Justice in

- 1- Al Nafrawi, Al Fawakeh Al Dawani, v 2, p 245, IbenFarhoun, Tabsirat Al Hukkam v 2 p 362-363
- 2- Antaki, statute of limitation (prescription), p 3
- 3- IbenAbdin, HashiyatIbenAbdin, v 5 p 419, Rustumm, Sharh Journal of Justice, p 983
- 4- Al Muthakkarat Al Idhahiah for the Jordanian Civil Law, v 2, p 448-449

Article: 1660 states as follows: "pleading time lapse shall prevent the judge from hearing the lawsuit". <sup>(1)</sup>

The Jordanian Civil Laws as being impacted by Islamic Jurisprudence states the statute of limitation (prescription) shall not cause dropping to the right, however, the lapse of time shall be considered as a preventing factor to hear the lawsuit, as the impact of time in the law shall not be intended on the right itself, but the lapse of time shall have such impact.

**Second demand:** the basics which statute of limitation (prescription) are based on

The basics that the status of limitation (prescription) are based on is necessary for establishing transactions and the right after a long time lapse, as this is imposed by the public interest since it is not allowed to keep the debt in the debtor's liability for ever, as this will affect the required stability in the transactions and shall impact the freedom of the person and shall not bring justice. It is enough to imagine a society does not include statute of limitation (prescription) in his legal regulations, so to what extend shall this society business be precarious and unsteady and confusion shall take place instead of stability. <sup>(2)</sup>

There is another consideration conforms a special type of rights, it is the prescription of periodic and renewable debts, where the legislator desires to prevent the accumulation of debts owed by the debtor due to the lapse of time; as it is supposed that the settlement of debts should be from the revenues of the debtor, if the debts are left to accumulate, should therefore, to deduct a sum from the capital of the debtor. <sup>(3)</sup>

The basic relating to the idea of statute of limitation (prescription); Is to prevent accumulation of debts.

**Third demand:** Rights which are covered by the statute of limitation.

Originally, all right and claims are principally subject to the principle of prescription. Prescription responds to all personal rights that creates the relation with the creditor and by which shall arrange the obligation on the debtor and should fulfill such obligation of settling some amount or to deliver the sold item or refrain to do any work as refraining to do a certain activity, so, fulfillment shall not be personal intervene made by the debtor, so the obligation hereof will personally. Basically, personal obligation shall bear statute of limitation according to laws hereof, in case there is a provision arranges such statute of limitation in terms of time and reasons of cessation and interruption and in case it is subject the statute of limitation or not; so, should subject the obligation to this provision, but in case there is no provision with this regard, therefore should be subject to the general rules relating to the statute of limitation, in this case, shall be barred by limitation for 15 years and shall be deemed as cessation and interruption.

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1- Journal of Justice, Article 166.

2- See: Al Sanhoury, Al waseet, v 3, p 996, Munther Al Fadhel, The General Theory for the Obligations, v 2, p 398

3- Al Far, Rules of commitment, page 218, quoted from Dr. Suleiman Marques, Explanation of the Civil Law, clause 893

It is not allowed to abandon that before the right being proven, and therefore, consent hereof shall be null for a period less than fifteen years. <sup>(1)</sup>

As for the in-kind rights as such rights are similar to the personal rights, can apply the statute of limitation on usufruct, easement and other property in-kind rights due to non-usage for fifteen years.

Copy rights are excluded from statute of limitation and shall not be applied here in case the owner abandons his property for more that fifteen years, however, statute of limitation shall be applied when the property being abandon is placed in possession and the possessor fulfilled the related stipulations of prescription. <sup>(2)</sup>

The rights which are not subject to statute of limitation shall be excluded, they are the rights that the law barred them to be dealt with, as the special personal rights related to Civil Status, such as kinship, as civil names due to non-usage, therefore any person can redeem the kinship of his family, his grandfathers' names relying on the document and contracts, also his right in divorce, but the rights entitled on him may drop such as expenses, the share of heir in inheritance, dowry as agreed on at the time of concluding the marriage process.

Should differentiate between the right and permission, the right is subject to prescription, and when is feasible, should deal with it according to the law. The lawsuit shall guarantee the right of prescription, while the legal permission is not subject to prescription. <sup>(3)</sup>

#### **Fourth Theme**

##### **Limitations of Prescription**

###### **First demand: Limitations of prescriptions**

The purpose of defining the limitations of prescriptions that prevents hearing the lawsuit regarding each right, that to obstruct judiciary and without prejudice the right whatsoever it is the reason after the lapse of the limitation of prescription.

First: General prescription, long term or the normal prescription:

The general basic in the Jordanian Civil Law that the lawsuit shall not be heard after the lapse of fifteen calendar year; this is call general, long term or the normal prescription.

Article No. 449 provides that; "the right shall not lapse by time lapsing, but the lawsuit related shall not be heard, the denial of the lapse of fifteen years, without legitimate excuse taking in consideration the special provisions herein. (3)

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1- Ali Ahmad Hassan, prescription in civil and commercial articles, p 270, Mohammad Ali Al Amin, Prescription, p 228, Al Zarka v 2 p 463

2- Tulbah, prescription, p 6

3- Mohammad A. Latif, Acquiring Prescription and statute of limitation Prescription.

Unless otherwise there is no a specific provision in the law stating specifically a period less or more than the period for particular obligation, the statute of limitation for such obligation shall be fifteen years.

###### **Secondly: The five-year prescription**

This type is applied which owns a limit of five years and is divided into two type in terms of rights.

a. Periodic renewable right as the rents values of buildings, agricultural lands, salaries and pensions.

Article No 450 of the Jordanian Civil Law provides that: 1- the lawsuit of the claim shall not be heard in terms of any periodic renewable right, such as rents of buildings, agricultural lands, salaries and pensions by five-year lapses if was left without a legitimate excuse. This prescription stated in the paragraph is based on social considerations on the strength of compassion and mercy extended to the debtor and to be protected from the accumulation of debts.

The periodic rights debtor shall pay from his renewable income, but if the creditor keeps silent and does not claim of such debt for a period, such silence shall induce accumulation of debts on the debtor, which shall cause inability to fulfill the obligation, where he shall pay from his capital which will lead him to insolvency and damage. So, the law sought to limit accumulation of these debts, so, it is restricted into five years.

These debts have their special character than other debts, they are due periodically and in short term dates, such as each three months, one month or one week, as they successively renewable by time passing and time succession whereas shall increase in terms of value

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1- Explanatory Annotation for the Jordanian Civil Law, v 2, p 481-482

2- See: Al Zarka, Syrian Civil Code was enacted, v 2, p 464, Al Sanhour, Al Waset, v3 p 1014.

3- Explanatory Annotation for the Jordanian Civil Law, v 2, p 482

Whenever date is due for payment, so, the debts are required to contain the following points: <sup>(1)</sup>

1- Periodic debts such as building rents and agricultural lands;

2- Debts annually due or in dates less than one year; and

3- Debts increasable by nature whenever new payment is due.

The Jordanian Civil Law excluded which debts with a five-year character as follows: <sup>(2)</sup>

1- Due income payable by the supervisor or the trustee of endowment;

2- Due income payable by the possessor with bad faith.

In these two rights the lawsuit cannot be heard. The denier should leave the right for fifteen years.

This is on the basis that the possessor and the trustee of endowment commitment in the two above presumptions is a wrongful act, since the beneficiaries of this debts do not claiming to recover of such debts as the debt is an income, but considering this is a compensation payable by the possessor or the trustee of the endowment against the prejudice incurred due to the yields that possessor who is with bad faith has made, or due to the consumption made from such endowment as a result of his encroachment and carelessness. <sup>(3)</sup>

Nevertheless, if an instrument containing the periodical renewable right, this acknowledgement or the instrument is subject to general prescription was made fifteen years ago.

b. The people with right of free professions, such as doctors, pharmacist, lawyers, engineers, experts, professors, teachers, bankruptcy agents and brokers, provided that such right are due to their favor against works related to their profession they did and expenditures they paid. <sup>(5)</sup>

The law contained provisions pertinent those professionals, and everything not included herein shall be referred to the general basic relevant to prescription, where prescription is inapplicable on their rights in case fifteen years have been passed. <sup>(6)</sup>

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<sup>1</sup>- Mohammad A. Latif, *Acquiring and Dropping Statute of Limitation (Prescription)*, p 488-490

<sup>2</sup>- Second paragraph of Article 450 of the Jordanian Civil Law

<sup>3</sup>- Al Far, *Rules of Commitment*

<sup>4</sup>- See: The Second paragraph of Article 453 of the Jordanian Civil Law

<sup>5</sup>- Article 451 first paragraph, see: *Explanatory Comments of the Jordanian Civil Law v 2 p 482*

<sup>6</sup>- Mohammad A. Latif, *Acquiring and Dropping Statute of Limitation (Prescription)*, p 505

The lawsuit shall not be heard with such right after lapse of five years even the debtors remain maintaining business with others for the creditors, since the consideration is in calculating the period should be in the right itself and in its maturity. <sup>(1)</sup>

If an instrument or acknowledgment was executed for any right of the rights, such right shall not be prescribed unless fifteen years lapse from the date of execution of such instrument or acknowledgment.

This is analogous with the period of hearing the lawsuit of rights confirmed in written instrument. <sup>(2)</sup>

**Thirdly: Prescription each two years**

It is being obvious from the provision of Article 452 of the Jordanian Civil Law; that the rights shall not be heard when denial is there, and presence of the legitimate excuse if two years lapsed, these rights are:

- 1- Rights of merchants for items they supply to persons who do not trade with such items, most often, these items are consumed due to usage, such as foodstuff and garments.

In this case, adherence to such prescription, the following conditions should be fulfilled: <sup>(3)</sup>

a. The seller should be a merchant, in the common sense of law, therefore; the provision is applicable on the roaming vender who carries commodities for sale to the public, not on the farmer who sells his products directly to the consumers.

b. His profession should be trading with the items supplied to his customers. The provision is inapplicable on items that the merchant does not sell and trade, such as the case of a merchant who sells agricultural products (fruit or vegetables...etc) since he is not selling his own land products as a merchant.

c. The buyer buys the item for his own consumption, it is the same if he is a trader or not. Consequently, the dealer may demur with statute of limitation (prescription) against the merchant who supplies his foodstuff and household, since the buyer in such case is not a dealer.

- 2- Rights of industrialists, this include:

a. Prices of the items that their factories produce and offer for sale to the public, but items that factories sell to dealers, this provision is inapplicable.

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1- Explanatory comments in Jordanian Civil Law, v 2, p 486

2- Article 453, second paragraph of the Jordanian Civil Law, see the Explanatory comments v 2, p 483-486

3- Mohammad A. Latif, Acquiring and Dropping Statute of Limitation (Prescription), p 512, 413, Al Zarka, interpretation of the Syrian Civil Law v 2, p 476

b. Rights of industrialists among those with free professions, such as barbers, in return of their services they do not provide to their clients and from the prices they have supplied.

3. The wages of labors, servants, employees who works on daily, weekly or on lump sum basis and who are working on unit basis such as builders and carpenters, but as for the employer who are paid on monthly basis, this provision is inapplicable since their rights are non-droppable unless there is a five-year prescription.

4. The of the hotels and restaurant owners regarding the residence , food, drinks and all amounts spent on their customers as well as the laundries made to their clothes.

The law established this statute of limitation (prescription) on the basis of fulfillment where these categories are living on their salaries step by step, in case two years elapses, the law may actually assume that they have their right <sup>(1)(2)</sup>

If an instrument or acknowledgment is executed with regards of any right of these rights as the one mentioned, the statute of limitation (prescription) such rights shall not drop unless fifteen years lapse. <sup>(3)</sup>

Second demand: How to calculate the period of statute of limitation (prescription):

This prescription which prevents hearing the lawsuit is calculated in days not in hours.

So, it is calculated directly the following day from the first validity day and ends in the last day hereof, also this entails not to include the first day but the last day. <sup>(4)</sup>

Seasonal occasions and festivals falling in the prescription period shall be included in the calculation. However, if the last coincides seasonal or an official day by which the creditor fails to claim his right, this be considered a force majeure also it is considered the inhibition provided in the Jordanian Civil Law, so, the statute of limitation (prescription)



- 1- See: Al Zarka, Explanation of Syrian Civil Law, v 2, p 477; Al Far, Rules of commitment P 224; Mohammad A. Latif, Acquiring and dropping statute of limitation (prescription) p 516
- 2- Mentioned that in the Syrian Civil Law and the Egyptian one made the statute of limitation (prescription) regarding the rights one year and given a name (prescription of one year; see: Al Zarka: Explanation of Syrian Law, v 2, p 475; ohammad A. Latif, Acquiring and dropping statute of limitation (prescription) p 511
- 3- See: the Explanatory Comments in Jordanian Civil Law, Article 453
- 4- Article 456 of the Jordanian Civil Law; see: Explanatory Comments 2/482

Shall refrain and shall not to be included, this prescription shall continue in the first valid day hereafter to allow the official claim. <sup>(1)</sup>

So, in calculating matter this period, shall include the predecessor to the following successor's relevant periods. Supposedly, the creditor died after the maturity of the debt by seven years, and the prescription is fifteen years, therefore, only eight years remain for the successor to claim for the debt, if such period lapses without claiming the debt, this debt shall drop by the impact of statute of limitation (prescription) since the period herein includes the successor's in the matter of calculation. <sup>(2)</sup>

**Third demand:** the Validity Principle of Statute of Limitations (prescription).

The general rule of this validity principle that each prescription is not included in a special provision stating its prescription, the validity hereof shall be from the maturity of payment day of the debt,

So, the basic is that the prescription should start from the date of debt is due for payment, thus, the creditor shall not be able to claim for the debt before maturity, and the creditor's ability should be existing in claiming the debt but the creditor did not, accordingly, the prescription of the debt therefore shall fall in the statute of limitations as a penalty to his negligence. If the debt still undue until a certain period, this prescription shall be inapplicable only from the maturity of the debt as long as the creditor unable to claim it prior that. <sup>(3)</sup>

From the applications herewith, the prescription shall not be valid in a suspended debt based on of being refrained except at the time when the term expires. If determination of the term is commissioned to the judge, as in the commitment of payment when being able, hence, the prescription shall be enforced after the determination hereby and the lapse of the term determined by the judge. <sup>(4)</sup>

As for the maturity guarantee – the commitment of the seller to compensate the buyer in return of the sale's maturity of an item in hand to others – from the time of maturity confirmation by a final judgment. <sup>(5)</sup>

**Fourth demand:** Ruling of spending on the adjustment of the of statute limitations (prescription).

The identification of the prescription term is considered from the issues of the general rule, spending on shortening or lengthen the term of prescription shall not be correct, yet, the term and the method of calculation should remain as established by the law

1- Al Zarka, Explanation of Syrian Civil Law 2/485; Al Waseet 3/1057, 1056

2- Al Sanhoury, Al waseet, v 3, p 1057; see: Article 455 of the Jordanian Civil Law.

3- Previous reference, v 3, p 1059

4- Al Zarka, Explanation of Syrian Civil Law 2/483

5- Al Far, Rules of Commitment, p 225; see: Article 454 in the Jordanian Civil Law, Comments, v 2, p 483.

Shall be considered legal condition <sup>(1)</sup>, Article No 463 provides as follows (it is impermissible to agree on raising a legal case after the default of the period identified by the law). <sup>(2)</sup>

It is obvious from the aforementioned; it is impermissible to agree on adjusting the term or prescription by lengthening such term for the favor of the creditor or by shortening to the favor of the debtor.

**Fifth demand:** Interruption of Statute of Limitation (Prescription)

Interruption of Statute of Limitation (Prescription) is intended to cancel the valid prescription term due to an action taken by the creditor or due to the declaration taken by creditor or due to declaration issued by the debtor in terms that a new prescription term starting from the elimination of the reason which conduced to interruption. <sup>(3)</sup>

If the presumption of abandonment of the right before the expiry prescription term that the right's owner confronts his opponent shall point out adhering to claim his right, this educes non-non-abandon of his right during the prescription term, consequently, this claim conduces to dismissal of the previous term, so that it was not existing and this is what was called by the law interruption of prescription. If the prescription has commenced, then the right's owner took any action that confronts his adversary as this caused the interruption of prescription.

From such actions that the creditor may take to interrupt prescription are as follows:

- 1- **Legal claim and alike:** This will be by raising a lawsuit, as the registered plead, amicable claim, or the official warning through a process server, but it is a must to raise a lawsuit. <sup>(4)</sup>
- 2- **Forewarning:** The declaration that the creditor directs to the debtor legally through a process server, should be a warning or a forewarning in an executive manner given, to be as an executive instrument in the hand of the creditor as an executive ruling or to be an official contract given the execution capacity and the declaration should designate this instrument along with the declaration, also should include a warning stating that the debtor should fulfill the provisions of the executive instrument, otherwise, execution on his property shall take place. <sup>(5)</sup>

Legal claim for interrupting the validity of statute of limitation (prescription) shall include:

a. Raising a legal case for claiming the debt

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- 1- Al Zarka, Explanation of Syrian Civil Law, v 2 p 480
  - 2- Explanatory comments for the Jordanian Civil Law, p 484
  - 3- Al Far, Rules of commitment, p 226
  - 4- Tulbah, p 150-151
  - 5- Previous reference, p 171; Al Far, Rules of commitment, p 227

b. Casual application

c. Application of implementing judicial clearance

d. Sponsor insertion

e. Challenging a litigant in his plea or his memorandums by the other litigant with respect payable debt.

In all cases, it is stipulated that the application or confutation should be accompanied with an obligation of payment committing the debtor pay the debt.

- 3- The attachment, whether being execution or preservative attachment. In the matter of property execution, such shall start with a forewarning notice and the statute of limitation (prescription) shall be interrupted by this action, whether being registered or not.
- 4- Debtor's application or pleading: the creditor who submits a bankruptcy of a debit notice to the court, together with a statement showing the amounts claimed, shall be considered as a claimant who, and such shall be a judicial claim which interrupts the statute of limitation (prescription) or if the claimant by himself requests to declare his bankruptcy or insolvency. <sup>(1)</sup>
- 5- Acknowledgment or recognition of the debt: the prescription shall be interrupted in case the debtor acknowledges the right of the creditor expressing that explicitly or implicitly manner, also may infer from any action that acknowledgment is made, as examplt for such implicit acknowledgment requiring the debtor to fulfill the obligation of such liability, or the debtor shall settle the interests of liability, or part of such liability. The judge of the subject matter shall estimate whether the actions made by the debtor contains an implicit acknowledgment or not. <sup>(3)</sup>

Here, should this acknowledgment disclose the intention of the debtor in confessing such debt, and the interrupting action is relating the right which required to be fulfilled. <sup>(4)</sup>

**Sixth demand: Interruption of prescription:** this is intended for stopping the prescription that its validity commenced but a contingent situation occurred causing to interrupt it, so, the period lapsing during such contingent situation, such as lack of capacity and alike or absence of eligibility and alike, if such contingent situation ceases to exist, the statute of limitation (prescription) term shall resume. <sup>(5)</sup>

Whereas the statute of limitation (prescription) or non hearing of lawsuit based on the law of limitations (prescription), shall for the creditor a sufficient period enabling him to claim his right, however, if the creditor stays without claiming his debts, while it is possible, the right here shall drop, so, it is normal not to be placed under accountability for the period when the creditor has the inability to claim for his right; thus, it is necessary not to include this period in the calculating the prescription period. It is then said, that the prescription is refrained to be valid.

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- 1- Zewain, Prescription, p 239 – 240
  - 2- Tulbah, Prescription, p 1720
  - 3- Zewain, Prescription, p 254 – 258
  - 4- Munther Al Fadel, General Theory of commitments, v 2, p 229

The Jordanian Civil Law expresses the invalidity hereof, if it is found that there is an excuse inhibits the right claim, hence, Article 475 state as follows: <sup>(1)</sup>

- 1- The passage of time that prevents from hearing the lawsuit, whenever a legitimate excuses if are found; inhibits claiming the right.
- 2- Not to calculate the period of excuses in the decided one.

However, the Law does not explicitly provide the excuses that cause the principle of non hearing the lawsuit, as the Explanatory Memorandums of the Jordanian Civil Law express exclusively some excuses as well as lack of capacity. <sup>(2)</sup>

From those examples regarding these excuses; case of was, captivity, interruption of transportation for any reason of the force majeure, such as a flood and earthquake.

Also, the joint liability, so during the presence of such, shall consider this as an inhibition that prevents the validity of statute of limitations (prescription), since the person will be unable to claim by himself before the judicial authorities.

From those famous inhibitions is the marital relationship, as a spouse claims the other one to fulfill the obligation of liability, especially one of the spouses claims the other one through the court shall not go well with the existence of marital situation, as this shall threaten marital life with troubles and jeopardy. <sup>(3)</sup>

Thus, the law does not specify the general inhibitions by which claiming the right shall unattainable, but leaves the matter for the judge's estimation.

If such inhibitions take place when the right is maturing to be fulfilled, the prescription then being prevented and so the forbearance shall exist.

But if the prescription starts where no inhibitions are there, and then one of the mentioned inhibitions found during the prescription term made the claim unattainable, this shall impose no prescription as such inhibitory situation; if such situation no more exists, prescription shall resume to be valid, by then, will add the calculated period prior to inhibition to the period after lapsing, i.e, there are time intervals among the parts of period consisting the prescription. <sup>(4)</sup>

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- 1- See: Explanatory Memorandums for the Jordanian Civil Law, v 2, p 483
  - 2- Previous reference v 2, p 487
  - 3- Al Zarka, Explanation of the Syrian Civil Law, v 2, p 493-494
  - 4- Previous reference v 2, p 492-493

### **Fifth Theme**

#### **Implications of dropping statute of limitations (prescription)**

It is due that the statute of limitation shall not be forcible by the force of the law, the judge is not required to rule by his own, but should adhere to, however, should distinguish between the subsequent period of the completion of the prescription term and the period prior being brought to the court. In the first period, the commitment of the debt remains due to be fulfilled as it is still in force during the prescription period since the lapse of the period by itself does not the commitment, and so, it does not change the nature of the obligation, and shall exist pending until it is obsolete which entails the following results:

- 1- If the debtor fulfilled the obligation within this period, thus, such fulfillment is considered correct, given that the debtor fulfilled a due obligation, and
- 2- If the debtor provided a guarantor to the creditor after the prescription term and adhered before the court with the guarantor, such guarantee shall be valid in view of the fact that the guarantor shall guarantee the existing obligation, and the provision of such guarantee is considered an abandonment of the right in the statute of limitation (prescription).
- 3- If the debtor abides by the drop of the debts due on him by the prescription, but abides by the clearance process, while the debt is owed to the creditor, and to the one owed to him by the creditor, in such case, the clearance process shall take place and the debtor is consider as an assignor implicitly to hold up with the prescription term which occurred to his favor.

But if the statute of limitations period (prescription) is completed and the debtor raises it before the court, in such case the commitment shall drop along with its consequences.

Therefore the completion of the statute of limitation (prescription) shall have two impacts:

- 1- Lapse of debt
- 2- Non-fulfillment of natural commitment thereunto.

**First: lapse of debt, sequences at the time of adhering to the statute of limitation (prescription):**

In case the debtor adheres with prescription, the debt shall drop and lapse (the lawsuit shall not be heard) and the creditor will be unable to force the debtor pay and therefore the debt and its consequences will also drop along with sequent such as the guarantee, official mortgage, franchising, jurisdiction right and so on, so the guarantor shall be released and the mortgage shall lapse as well as the jurisdiction right when the original debt lapses by prescription since the subsequent shall vanish when the original debt lapses.<sup>(2)</sup>

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1- See: Mohammad A. Latif, Prescription of Acquiring an Dropping, p 598; Al Sanhoury, Al Waseet, v 3, p 1171

2- Al Sanhoury, Al Waseet, v 3, p 1157

The debt lapses by prescription not from the time of completion of prescription tem, but from the day such prescription stars, and thus the debt shall be no more existing during the validity of the prescription term, the interests maturing during the said term also shall drop due as well as the debt's sequent. Otherwise such interests and sequent have lapsed by themselves are not lapse independently by prescription, due to that the last five years interests shall remain an outstanding for the favor of the creditor as a periodic and renewable debt during the period of prescription hereof yet incomplete.<sup>(1)</sup>

This is inferred from the provision of entails non-hearing along with the sequences relating to the debts even the prescribed period has not been completed due to non-hearing of the lawsuit with these consequences".<sup>(2)</sup>

Second: Default of the normal commitment from lapsing debt by prescription

On such basis, the lapse of debts without fulfilling the dept and without the satisfaction of the creditor, should be influence only on lifting the legal protection from the right, "and non-hearing of the lawsuit", and leaving the debtor free hereafter to fulfill or not, perhaps debtor's conscience moves and fulfill the obligation, or undertakes to do so. This is inoculation to the Law with an element of good manners, which is better than dropping the right and releasing the debtor for such debt without fulfillment along without any having any effect on him, as this is a good sense of integrity and feeling of justice in spite of the fact that the interest the interest is in strengthening the conscience of human.<sup>(3)</sup>

As a fact that the natural obligation is defaulting from the lapsing right, that shall be a proper reason for the optional fulfillment and undertaking to meet such obligation, while should be considered fulfillment of what is not right, but it is a fulfillment for existing debt outstanding and the element of responsibility and indebtedness are absent, if the fulfillment occurred after the option was take knowing that it not obligatory to fulfill, yet this is considered correct, so recovery shall not be allowed also it permissible to promise fulfillment of such obligation, and such promise shall be obligatory to the debtor and should fulfill by him. As such promise has been made based on an evidence and option. The prescription term shall apply prescription term again on this promise from date of maturity, but should note that the new prescription term shall be fifteen years even though the previous term was less than that.<sup>(4)</sup>

- 1- Mohammad A. Latif, Prescription of Acquiring an Dropping prescription, p 600-601; Al Far, Rules of commitment, p 233
- 2- Explanatory comments for the Jordanian Civil Law, v 2, p 484
- 3- Al Zarka, Explanation of the Syrian Civil Law, v 2, p 488
- 4- Mohammad A. Latif, Prescription of Acquiring an Dropping prescription , p 601-602, Al Zarka, Explanation of the Syrian Civil Law, v 2, p 488-498, Al Sanhoury, Al Waseet, v 3, p 1170 and beyond

### **Conclusion**

And so, this is a briefed research in statute of limitations (prescription) wherein I have found the following findings:

- 1- The Jordanian Civil Law adopts the same compartment of Islamic Shari'a (Islamic Law), in terms of provisions as it provides (non-hearing of the lawsuit by lapse of time), not by the lapse of the right as some of the Arab laws do.
- 2- Muslim jurists do not provide statute of limitations (prescription), but they provided possession and non hearing of lawsuit by lapse of time.
- 3- The idea of prescription is based on the establishment of transactions and public interest achievement.
- 4- Prescription is divided into two parts: Acquiring and dropping prescription.
- 5- Dropping prescription includes all rights, except the copyright, where the law does not allow dealing with it.
- 6- Originally, the general prescription is fifteen calendar years, however, as provided in the law.
- 7- The prescription is calculated by days, and shall start from day that the debt becomes due.
- 8- It is impermissible to agree on adjusting the prescription term as it is a public regulation.
- 9- Prescription shall entail lapse of debt and yield natural commitment owed by the debtor.

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