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Research Article

New Claims and Causes of Action before the Court of Appeal in Jordanian Civil Procedure

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Abstract: The issue of introducing new claims before the Court of Appeal, particularly with respect to their subject-matter and cause of action, remains uncertain and has generated considerable controversy. This is largely due to the absence of clear legislative provisions regulating such matters. Article 190 of the Jordanian Civil Procedure Code merely stipulates that, in the absence of specific provisions concerning appeals, the rules applicable before the Court of First Instance shall apply. However, this reference is insufficient to empower the Court of Appeal to exercise its jurisdiction effectively in disputes concerning the admissibility of new claims related to their subject-matter and cause of action. Permitting new claims regarding subject-matter and cause of action would enable litigants to secure a more comprehensive resolution of the dispute, thereby avoiding the additional costs associated with initiating fresh proceedings. The pursuit of justice should prevail over rigid procedural restrictions derived from the principle of two-degree litigation and the immutability of the dispute. Claims cannot be regarded as entirely new where they are connected to the original application, since a change in the cause of action does not necessarily undermine the stability of the dispute, provided the remaining elements of the case remain intact. Consequently, this position supports the acceptance of new claims in terms of both subject-matter and cause of action, contrary to the approach of the Jordanian legislator. An appeal effectively reopens the dispute before the Court of Appeal. The limits imposed on this process should therefore be moderated by allowing new claims related to subject-matter and cause of action, provided such claims are essential for resolving the appeal and are introduced under conditions that safeguard the principle of two-degree litigation without causing prejudice to the parties' rights.

Keywords: Procedural Law, Legal Provisions, Causes of Action, New Claims, Admissibility of New Claims

1. Introduction

A claim is deemed new when it diverges in any of its constituent elements from those originally submitted before the Court of First Instance, whether in relation to its subject-matter, the parties involved, or its cause of action. It is a well-established legal principle that an appeal has a devolutive effect, which entails transferring the case record from the Court of First Instance to the Court of Appeal, where the statement of appeal leads to the re-examination of the dispute. Nevertheless, this re-examination is bound by a degree of immutability, as the case is transmitted with the elements as presented before the Court of First Instance. The principle of immutability after the transfer to the appellate stage is firmly recognised in procedural jurisprudence as a fundamental rule governing appeals.

Accordingly, the Court of Appeal is required to review a dispute that has already been examined, together with the evidence previously assessed, which restricts the scope for altering any of its elements, whether related to the parties, subject-matter, or cause of action [1; 2; 3]. Changes and developments, however, introduce a dynamic that challenges the rigidity of immutability and promote a degree of flexibility that aligns with the pursuit of justice. Overly rigid formalities may generate constraints that conflict with the broader aim of justice. In this context, examining the progression of cases before the Court of Appeal, including the acceptance of new claims or alterations to the cause of action, becomes a reasonable and defensible approach [4; 5; 6; 7].

1.1 Research Problem

The central difficulty in this research arises from the absence of explicit legal provisions defining the notion of a new cause of action and specifying the extent to which it may be introduced for the first time before the Court of Appeal. Furthermore, the legislator in the Civil Procedure Code has treated the cause of action in appeals as equivalent to the challenge cause of action, rather than recognising it in the sense of the judicial cause of action, which constitutes a core element of the case. This distinction intensifies the complexity of the research problem.

1.2 Research Questions

This study seeks to address a number of key questions:

1. To what extent is it permissible to present a new claim or a new cause of action for the first time before the Court of Appeal?
2. How should the concept of a judicial cause of action be understood?
3. Under what circumstances can a claim be regarded as new in relation to its cause of action or subject-matter?
4. What position does the Jordanian legislator adopt concerning new claims with respect to subject-matter and cause of action?
5. What position does the Egyptian legislator adopt concerning new claims with respect to subject-matter and cause of action?

1.3 Research Objectives

The purpose of this research is to clarify the concept of the new judicial cause of action and to explore the extent to which civil litigation can adapt by allowing changes introduced for the first time before the Court of Appeal that influence the cause of action. The study further examines the position of the Jordanian legislator as reflected in the Civil Procedure Code and compares it with the stance of the Egyptian legislator as expressed in

the Civil and Commercial Procedure Code. In addition, it analyses the interpretations adopted by both the Jordanian Court of Cassation and the Egyptian Court of Cassation in this regard.

2. Research Methodology

The first section of this study will examine the new claim in relation to its substantive element, whereas the second section will focus on the new cause of action.

3. Literature Review

This comparative article, centred on Romanian procedural law, examines the implications of permitting new claims before the Court of Appeal. It contends that this practice undermines the principle of double jurisdiction, which requires trial and appellate courts to retain distinct functions. The article identifies procedural risks associated with introducing issues not raised at first instance during the appeal stage, including potential delays and unfair disadvantage to the opposing party. It further considers proposals for reform aimed at restricting the admission of new claims in order to safeguard the integrity of the appellate process [8].

A master's thesis from Middle East University investigates the adjudication of civil lawsuits in Jordan, with a particular emphasis on the appellate stage. The study devotes significant attention to assessing whether new claims may be raised before the Court of Appeal, seeking to balance judicial efficiency with legal certainty. It highlights the legislator's intention to avoid the unnecessary prolongation of disputes while simultaneously protecting litigants' substantive rights [9]. Allowing new claims at the appellate stage in Jordan would, however, weaken the principle of double instance review by transforming appeal from a mechanism of legality control into a quasi-retrial, thereby creating predictable consequences such as delays and imbalance between the parties. Comparative perspectives confirm that, within civil law systems, the function of appeal is "to review questions of law and [to] preclude litigants from raising new issues and facts," thereby confining the dispute to the framework determined at first instance [10].

Contemporary European harmonisation reflects the same orientation. The ELI–UNIDROIT Model European Rules place emphasis on concentrating factual and legal claims at the trial level, permitting amendments at the appellate stage only under narrowly defined conditions. This approach seeks to promote procedural efficiency and equality between the parties, rather than reopening the substantive merits [11]. Regional policy experience further indicates that procedural avenues at higher levels should not be redirected to expand the scope of disputes. Even in jurisdictions experimenting with parallel judicial frameworks, reformers underline that jurisdictional innovation requires careful management to prevent strategic manipulation and unnecessary delay [12].

In the Jordanian context, the practical conclusion is clear: legislation should expressly prohibit the submission of new causes of action and substantively different claims for relief at the appellate stage. Limited exceptions should be reserved for supervening facts or the inclusion of indispensable parties. It must also be emphasised that incidental or cross-appeals serve as responsive mechanisms and do not permit enlargement of the dispute. Such measures would preserve the principle of double jurisdiction, shorten the time required for resolution, and maintain the appellate court's role as a body of legal review rather than a secondary trial court.

3.1 The New Claim in its Substantive Element

The dispute originates with the initial claim lodged before the Court of First Instance. The plaintiff's statement of claim sets out the claim in full, thereby establishing its elements in terms of the parties, the subject, and the cause. The court is bound by these elements, adjudicating the matter strictly on the basis of its subject-matter and cause of action, limited to the parties involved. Any matter not contained within the initial claim is, as a general rule, treated as a new claim. Such claims must be subject to careful scrutiny before acceptance, since admitting them could undermine the principles that underpin appeal as a legal mechanism, as previously outlined [13]. Broadly speaking, a claim is considered new whenever it could stand independently as a separate action before the Court of First Instance, without being dismissed on the grounds of prior adjudication, in accordance with the rules governing the authority of res judicata.

Claims that merely clarify, explain, or amend the original claim are not regarded as new. Similarly, claims incorporated within, or directly resulting from, the original claim are excluded from the category of new claims. For instance, a request to appoint a judicial custodian or a trustee, even if made for the first time before the Court of Appeal, is considered a natural extension of the original claim rather than a new one. A claim, however, becomes new whenever it departs from the original in any of its essential elements, even if it still relates to the same dispute upon which the case was initiated. When a party extends beyond the scope of the claims previously submitted before the Court of First Instance, such excess, even if connected to the same dispute, constitutes a new claim and must be rejected if raised for the first time at the appellate stage.

It is important to distinguish between a new claim and a new plea. A claim that diverges in subject-matter, cause of action, or parties is categorised as a new claim, while a plea constitutes one of the arguments advanced by an opponent to contest the other party's case, without modifying or enlarging the claim itself. Thus, a new plea cannot be equated with a new claim [13]. In summary, a new claim modifies the elements of the dispute, whereas a plea merely serves as a defence that shifts in response to the opposing party's argument, without altering the substance of the case. By way of example, if a defendant pleads that the statutory limitation period for filing a pre-emption claim has expired, and this plea is dismissed on the basis that the action was filed within the prescribed period, the defendant's subsequent assertion that the claimant failed to pay the purchase price within the legal period—although raised for the first time before the Court of Appeal—would be treated as a new argument rather than a new claim.

Accordingly, the original claim does not present difficulties when considered by the Court of Appeal, unlike new claims as defined above, since the original claim does not alter or enlarge the scope of the civil case. As a general principle, new claims are not admissible before the Court of Appeal. Any development in the scope of the civil dispute that introduces a new claim obliges the appellate court to reject it, as acceptance would contravene the principle of two-degree litigation. Moreover, admitting a new claim would contradict the very nature of appeal, which is directed against the judgment of the Court of First Instance, presupposing that an error was made in relation to matters that were originally submitted for adjudication. It would be illogical to hold the Court of First Instance accountable for matters that were never presented to it. It should be noted that the original claim may be accompanied by ancillary requests that are not considered new claims, and that the respondent may submit counterclaims or invoke set-off. Building upon this distinction, the following discussion will address the legislator's perspective on the consequences of the original claim and counterclaims, and the extent to which such claims may be classified as new claims that are inadmissible before the Court of Appeal. Subsequently, the treatment of defence claims and set-off will be examined in detail.

3.2 Consequences of the Original Claim and Counterclaims

The Plaintiff may, before the Court of First Instance, introduce supplementary claims that alter the subject matter of the dispute. These may involve corrections to the original claim or modifications to its subject matter. Since the subject matter constitutes one of the three defining elements of a case, the general rule is that any alteration to it results in the creation of a new or distinct case. Nonetheless, comparative procedural standards recognise a limited exception at the first-instance level to address supervening facts. In contemporary practice, this exception is justified on grounds of case management and fairness, rather than allowing unrestricted modifications of the dispute [11; 14; 15].

In alignment with this approach, Article 115/A of the Jordanian Civil Procedure Code permits amendments before the Court of First Instance, but restricts them to either the subject matter or the cause of action, prohibiting changes to both simultaneously. This restriction is intended to prevent procedural ambushes while accommodating changes arising after filing. For example, if litigation concerns ownership of a property that is subsequently destroyed, the Plaintiff may amend the claim to one seeking its value [11; 14; 16]. The Jordanian Court of Cassation has ruled that an original claim, which initially sought to bar a demand made by the Defendant against the Plaintiff, could be modified to one for restitution where it emerged that the Defendant had already deducted the disputed sum from compensation due to the Plaintiff. Comparable legal systems similarly permit such adjustments when they arise from newly revealed facts and are remedial in nature, provided the amendment does not fundamentally alter the controversy as framed [11; 14].

Beyond this, the Plaintiff may also submit claims that complement, derive from, or are inseparably connected with the original claim. Such claims do not constitute a change in subject matter but rather an extension of it, such as demands for contractual or statutory interest or for the yields (fruits) generated by property in an ownership dispute. Comparative

doctrine classifies such relief as accessory, in which ancillary elements follow the principal claim [17; 18]. Furthermore, the Plaintiff may seek precautionary or interim measures, a conventional form of ancillary relief intended to preserve the existing situation until final judgment is rendered [19].

Similarly, the Defendant may advance additional claims extending beyond defensive pleas, seeking instead affirmative relief. These include interlocutory applications and, more significantly, counterclaims filed before the same court. Modern jurisprudence emphasises that a counterclaim is an autonomous claim in its own right rather than a secondary component of the defence. For example, in the context of EU trade mark litigation, a counterclaim for invalidity is regarded as independent in both scope and outcome from an infringement action, and thus may proceed separately once properly raised [20]. This principle corresponds with Article 116 of the Civil Procedure Code, which provides for: (i) judicial set-off and damages connected to the original claim, (ii) counterclaims that reduce or qualify the Plaintiff's entitlement if upheld, (iii) requests inseparably linked to the original case, thereby ensuring functional joinder and procedural economy, and (iv) claims permitted by the court where these relate to the subject matter of the dispute [15; 21; 22].

The Defendant's right to counter the Plaintiff's claims through his response to the statement of claim extends to:

1. Seeking judicial set-off and damages resulting from the original case or from procedures associated with it.
2. Submitting claims which, if accepted, would result in full or partial rejection of the Plaintiff's demands, or acceptance of those demands with restrictions favouring the Defendant.
3. Raising claims inseparably connected to the original case.
4. Introducing claims authorised by the court that are related to the original dispute.

A counterclaim constitutes an independent claim in both its subject matter and its cause of action, yet it remains intrinsically connected to the original claim, such that each influences the other. Where this connection is absent, the Defendant's claim ceases to function as a counterclaim and instead assumes the character of an original claim, thereby giving rise to a new case. Consequently, supplementary claims submitted by the Plaintiff and interlocutory applications advanced by the Defendant are admitted before the Court of First Instance as exceptions, justified by the practical need to accommodate the evolving dynamics of litigation [23; 24].

3.3 Defense Claims

The Defendant may counter the Plaintiff's claims through all recognised forms of defence, whether substantive, formal, or pleas of inadmissibility. He may rely on any means that serve to dismiss the Plaintiff's claim, such as invoking res judicata, redemption, nullity of the proceedings, lack of jurisdiction, or the invalidity of service, since these measures are designed to undermine the legal foundation of the Plaintiff's position [25; 26; 27]. The concept of defence claims refers to any counterclaim aimed at the same right pursued by the Plaintiff but designed to prevent recognition of that right, thereby obstructing a judgment in the Plaintiff's favour, whether wholly or partially. For example, a claim denying the Plaintiff's entitlement to a right, or a claim that a right is defective due to a flaw in its supporting instrument, constitutes a defence claim, as does reliance on the statute of limitations or on legal set-off. By contrast, purely defensive pleas are limited to contesting the existence of the disputed right without generating an independent claim to a new right. This distinction clarifies the difference between substantive defences and defence claims [28].

In principle, both substantive defences and defence claims, insofar as they directly contest the Plaintiff's original claim, are admissible even if raised for the first time before the Court of Appeal. Any defence that seeks to prevent a judgment in the Plaintiff's favour, whether in whole or in part, or that has the potential to alter the appealed decision, may be introduced at the appellate stage. The main exception concerns judicial set-off, which will be addressed later in this study. For instance, if the Plaintiff seeks enforcement of a sale contract and immediate payment, the Defendant may counter by requesting annulment of the contract. Such a counterclaim, even if submitted for the first time before the Court of Appeal, is permissible as it directly prevents enforcement of the Plaintiff's demand. This reflects the principle of freedom of defence, regarded as a cornerstone of procedural law [29]. The principle of freedom of defence takes precedence over the principle of two-degree litigation, as each party is entitled to present any defence that advances his case, provided the law does not impose a fixed period for submitting it. However, pleas subject to forfeiture, such as formal objections that must be raised before the merits are examined, remain subject to procedural limits.

3.4 Claims for Set-Off

Set-off constitutes one of the recognised mechanisms for discharging obligations. It takes place when two parties simultaneously hold the positions of creditor and debtor, such that reciprocal debts are extinguished to the extent of the smaller amount. In essence, set-off functions as a means of debt settlement, where a liability owed to one party is compensated by a corresponding obligation owed in return. Three principal forms of set-off are identified: compulsory or legal set-off, which operates automatically by virtue of the law; contractual or voluntary set-off, which arises from the parties' mutual agreement; and judicial set-off, which is effected by judicial order [24].

In the case of compulsory set-off, the mutual debts must correspond in type, description, maturity, and enforceability, without prejudicing the rights of third parties. Where these strict conditions are satisfied, the set-off takes effect automatically and does not require initiation by an original claim. Contractual set-off, by contrast, is used when one or more of the conditions for legal set-off are absent, and it is established by agreement between the parties. Judicial set-off, however, is declared by a court on the basis of an original or interlocutory application from the interested party. Judicial set-off becomes particularly relevant where the condition of undisputed debt is lacking. In such cases, the claim is filed either as an independent action combined with the original proceedings or as a counterclaim lodged by the Defendant. A simple plea of judicial set-off is insufficient; a properly constituted claim must be submitted. Under Article (116/1) of the Civil Procedure Code and Article (347) of the Jordanian Civil Code, a judgment for judicial set-off is contingent upon an original or counterclaim seeking this relief [23; 25].

Although judicial set-off functions as a defensive mechanism, it is not purely a plea of defence but is instead categorised as a new claim in the broader sense, and it represents one of the most significant counterclaims available to the litigant. Its importance lies in two principal aspects. First, it creates an efficient mechanism for the fulfilment of obligations by consolidating reciprocal claims into a simplified process of payment. Second, it provides a safeguard for creditors, particularly in situations where one party faces insolvency. Thus, while judicial set-off achieves the Defendant's defensive objective of avoiding an adverse judgment, it does so through the recognition of a new claim.

Turning to the Jordanian legislature, the Civil Procedure Code contains no explicit provision prohibiting the submission of new claims before the Court of Appeal. However, this absence does not imply that such claims are permitted. On the contrary, the introduction of new claims is incompatible with the principle of two-degree litigation, which requires disputes to be heard first before the Court of First Instance. The Jordanian Code does not adopt the model seen in Egyptian legislation, where prohibition is expressly stated along with narrowly defined exceptions. Nevertheless, Jordanian jurisprudence recognises a functional equivalent through judicial interpretation [28].

The Jordanian Court of Cassation has consistently maintained that the filing of new claims before the Court of Appeal is prohibited, reasoning that acceptance would undermine the litigants' right to two degrees of jurisdiction. Allowing a new claim at the appellate stage deprives one of the parties of the opportunity to challenge it before the Court of First Instance. Reflecting this position, the Court has ruled unequivocally that claims envisaged in Articles 113 and 114 of the Civil Procedure Code may not be raised for the first time before the Court of Appeal, as this would strip the party concerned of a stage of litigation. Similarly, it has declared that a counterclaim cannot be introduced at the appellate stage, for such a practice would preclude the parties from contesting the issue by appeal [13].

Despite this firm jurisprudential position, the researcher suggests that the prohibition should not extend indiscriminately to all claims. A distinction must be drawn between entirely new claims, which alter the substantive elements of the dispute, and subordinate or interlocutory applications that remain connected to the original claim. Judicial set-off, for example, although technically a new claim, remains closely tied to the original dispute and primarily serves to neutralise the Plaintiff's claim by offsetting it. On this reasoning, subordinate claims that are inextricably linked to the original dispute should be admissible before the Court of Appeal, without contravening the principle of two-degree litigation.

This interpretation finds support in legislative practice. Article (185/C) of the Jordanian Civil Procedure Code grants the appellant who was tried in absentia at first instance the right to submit replies and evidence before the appellate court. Article (59) similarly allows a litigant with a legitimate excuse to exercise full defence rights even at the appeal stage. These provisions, while framed as procedural guarantees, in effect create exceptions to the rigidity of the two-degree principle. Additional confirmation may be found in Article (13/A) of the Landlords and Tenants

Law, which expressly permits the pursuit of wage claims accruing after the initiation of proceedings. The Jordanian Court of Cassation has upheld the admissibility of such claims at the appellate level, confirming that they are valid even when filed for the first time on appeal.

The Egyptian legislator, by contrast, codified the prohibition on new claims in Article (235) of the Civil and Commercial Procedure Code. This article establishes the general rule that new claims cannot be admitted on appeal, with the court empowered to reject them ex officio. However, it recognises limited exceptions, such as wages, salaries, interest, or compensation accruing after the initial filing, as well as modifications to the cause of action where the subject matter of the original claim remains the same. Compensation for malicious appeals may also be awarded. The rationale for this rule is clear: an appeal represents a challenge to the judgment of the Court of First Instance, and it cannot extend to matters not previously adjudicated. To permit otherwise would contravene the logic of appellate review and violate the principle of two-degree litigation, which is a matter of public order. Accordingly, Egyptian law, like Jordanian jurisprudence, affirms that new claims in appeal proceedings are inadmissible, and litigants may invoke their inadmissibility irrespective of the case's stage.

4. The Egyptian Legislator's Viewpoint on the Rule Prohibiting New Claims before the Court of Appeal

Unlike the Jordanian legislator, the Egyptian legislator explicitly identifies certain exceptions to the general prohibition on introducing new claims before the Court of Appeal. These exceptions may be outlined as follows [13].

4.1 First: Requesting the Addition of Wages, Interest, Salaries, and Other Supplements Due after Filing Final Claims before the Court of First Instance

In light of this exception, it becomes clear that the claims permitted under it cannot be regarded as entirely new; rather, they constitute supplementary matters connected to what was originally brought before the Court of First Instance. This exception is confined to claims that emerge only after the submission of final claims at first instance. Accordingly, for such claims to be raised before the Court of Appeal, the party concerned must have already advanced them in part at the Court of First Instance, and their enforceability must have arisen only after the filing of final claims at that stage [16]. The rationale for this exception lies in the fact that these claims operate merely as subsidiary extensions of the principal claim. Consequently, presenting them before the Court of Appeal for the first time does not amount to the initiation of a separate case. Furthermore, it would be procedurally unsound to require the party to revert to the Court of First Instance and pursue these supplementary claims in a distinct action, since such an approach would conflict with the principle of procedural economy and rationalisation [30].

4.2 Second: Requesting More Compensations after Filing the Original Claims

This exception rests on the premise that the subject of the original claim concerns compensation. Accordingly, the claimant may submit a request before the Court of Appeal to increase the amount of compensation when the damage caused by the same fact underlying the initial claim has intensified. The additional compensation sought must therefore be directly connected to the fact already presented before the Court of First Instance, rather than arising from a new fact. In such circumstances, the injured party is entitled to seek an increase in compensation after the submission of final claims at the Court of First Instance, once the case has progressed to the Court of Appeal.

4.3 Third: Claiming Compensation for Malicious Appeal

An appeal may sometimes be lodged with malicious intent, namely for the purpose of causing harm to the respondent, including obstructing the enforcement of the judgment. While the right of appeal is granted to the losing party, this right is not unlimited, as its exercise must not be undertaken in bad faith or with a malicious objective. The claim for compensation arising from a malicious appeal is not regarded as an accessory to the original claim, since it is not subordinate to it. Nevertheless, the Court of Appeal has an interest in examining such a claim due to its inherent connection with the appeal before it. Compensation in cases of malicious appeal is granted on the basis of a claim submitted by the injured party, who must establish both the existence of harm and that the appeal was pursued with malicious intent. Such compensation is restricted to the harm caused by the filing of the malicious appeal and does not extend to damages linked to malicious seizure or harm resulting from expedited enforcement.

4.4 Fourth: Article (235) of the Egyptian Civil and Commercial Procedures Code Provides an Exception Related to the New Cause of Action

Consideration of this particular exception will be postponed until the discussion of new causes of action before the Court of Appeal in the second subsection of this section. In conclusion, the researcher suggests that an additional exception should be recognised in relation to a newly discovered fact. This could be incorporated alongside the exceptions expressly stated in Article (235). The French legislator, for instance, explicitly permits in the Civil Procedure Code the filing of new claims that arise from facts uncovered during the appellate proceedings. Although the Egyptian legislator does not expressly provide for this in Article (235), it is nonetheless possible to regard the newly discovered fact as an exception to the prohibition of new claims before the Court of Appeal. This is justified on several grounds, notably that the discovered fact does not constitute a new claim in the sense previously clarified. Since it remains connected to the original claim and does not alter its subject-matter or cause of action, its consideration before the appellate court should be viewed as an extension of the original claim rather than the introduction of a new one. Allowing such a fact to be presented merely ensures that the claim is submitted in full before the Court of Appeal, which would otherwise be incomplete without reference to it [24].

The Egyptian legislator appears to have indirectly addressed this matter in Article (228) of the Civil and Commercial Procedures Code. This provision states that if a judgment is issued on the basis of fraud, a forged document, false testimony, or the concealment of a decisive document by the opposing party, the time limit for appeal only begins from the day the fraud is discovered, the forgery is acknowledged or judicially proven, a judgment is rendered against the false witness, or the withheld document is disclosed. Through this provision, the Egyptian legislator implicitly acknowledges the significance of a newly discovered fact and its impact on appellate proceedings. The researcher further considers that many of the issues addressed in Article (228) are also recognised as grounds for retrial, which confirms that the Jordanian legislator likewise acknowledged the importance of newly discovered facts within the framework of retrial as an extraordinary appeal. This demonstrates that the discovered fact should be regarded as an additional exception to those expressly set out in Article (235) of the Civil and Commercial Procedures Code, which prohibits the submission of new claims before the Court of Appeal.

5. New Causes of Action before the Court of Appeal

The cause of action represents one of the three essential components of a case, alongside the parties and the subject-matter. Despite this, it remains one of the most intricate issues in legal theory. The term is employed in different contexts: at times it is used to describe the act giving rise to liability, at other times it denotes the infringed right requiring judicial protection. It is also understood as the legal foundation upon which the Plaintiff establishes his claim. Clarifying the meaning of cause of action is particularly significant when considering the applicability of res judicata, since the identity of cause of action is one of the prerequisites for invoking its validity. Furthermore, the cause of action plays a central role in defining the boundaries of a civil dispute before the Court of Appeal. As a general rule, appeal proceedings necessitate consistency in the components of the original claim, including the cause of action. On this basis, the following discussion will examine the concept of cause of action and judicial interpretation regarding its alteration before the Court of Appeal, with the aim of assessing whether a new cause of action may be raised at this stage and how such a change affects the development of the scope of civil proceedings before the appellate court.

5.1 Concept of Cause of Action

Judicial disputes are composed of a series of facts presented by the parties with the objective of securing a judicial ruling. The court achieves this by applying the relevant legal provisions to the facts under

consideration. Consequently, the parties exert a decisive influence on shaping the definition of the cause of action. At the same time, the judge bears the responsibility of applying the appropriate legal rule to the dispute, which requires him to evaluate and deduce the judicial cause of action from the facts submitted [31; 32]. Thus, both the factual and legal elements of the dispute contribute to shaping the understanding of the cause of action [33].

Despite this, the notion of cause of action is not free from ambiguity. The central issue lies in whether it should be regarded as part of the factual elements that give rise to the claimed right, that is, the subject-matter of the dispute, or whether it should instead be linked to the legal provision, in the sense that the legal rule itself constitutes the judicial cause of action. This ambiguity directly affects the scope of the judge's authority when applying the law to the facts. If the cause of action is defined as the legal provision, the judge is confined to the legal grounds put forward by the parties and cannot substitute or alter them. Conversely, if the cause of action is defined as part of the factual foundation of the right being claimed, the judge is likewise constrained from modifying it in adherence to the principle of judicial neutrality. From this debate, two principal approaches have developed. The first identifies the cause of action with the governing legal provision, while the second regards it as stemming from the factual circumstances of the case.

5.2 First Theory: Basing the Causes of Action on the Legal Rule

Supporters of this theory attempt to define the cause of action by linking it simultaneously to the legal principle, the legal provision, and the fact subject to legal qualification. According to this perspective, the cause of action is grounded in the legal principle upon which the Plaintiff builds their claim. Each legal provision is regarded as deriving from a broader principle, meaning that provisions fall within categories of principles to which they are subordinated. Consequently, every cause of action raised by litigants is considered to rest on a specific legal provision that itself is encompassed within a more general legal principle. Within this framework, when examining the unity of cause of action, the distinction between legal provisions is not decisive, but rather the principle they share. However, this approach is criticised for its ambiguity, particularly because litigants are not obliged to identify the exact provisions on which their claims rely. In response to this limitation, a refinement of the same theory emerged, advocating that the cause of action should be based directly on the legal provision itself. From this standpoint, the cause of action is derived from the legal rule forming the foundation of the litigant's claim. Thus, the judicial cause of action is viewed as originating from recognised sources of obligation in the law, such as contract, tort, unilateral will, or statutory provisions.

This development, however, suffers from similar deficiencies to those found in the principle-based approach. Litigants are still not compelled to identify the specific legal provision that supports their claims. Furthermore, the multitude of legal rules—some substantive and others procedural—makes it problematic to equate them with causes of action. Moreover, the legal provision functions as an argument advanced by the litigant rather than constituting, in itself, the cause of action. Finally, a third approach has been proposed, linking the cause of action to the legally qualified fact. Here, the cause of action is seen as the act or conduct that generated the claimed right. Under this definition, the alleged fact forms the essential component of the judicial cause of action. Nevertheless, this approach is also open to criticism, as the legal qualification of facts is not the responsibility of litigants but rather a core judicial function. Even if the parties attempt such characterisation, it does not bind the court, which retains discretion in legally framing the facts.

5.3 Second Theory: Basing the Cause of Action on the Facts Submitted before the Court

Proponents of this theory argue that associating the cause of action with a legal rule or provision does not provide an accurate definition of its concept. Instead, the cause of action is represented by the factual occurrence or legal act upon which the judicial claim is founded, regardless of how the litigants classify the facts or which legal provision they rely upon in their pleadings. Within this framework, the cause of action is determined by the factual components of the dispute, while the legal provision lies outside its scope. The manner in which the litigants interpret or characterise the facts is not binding upon the judge. Thus, the Plaintiff's reliance on specific facts as the basis of his claim determines the cause of action with precision, and any difference in the legal characterisation of those facts between the parties or by the court does not alter the cause of action itself.

For instance, if the Plaintiff initiates proceedings for compensation on the grounds that the Defendant caused harm, the subsequent classification of the facts as either tortious liability or contractual liability does not change the cause of action, which remains anchored in the factual basis presented by the Plaintiff. The process of characterisation remains separate from the concept of cause of action. This perspective aligns with the jurisprudence of the Jordanian Court of Cassation, which has established that legal characterisation falls within the exclusive remit of the judiciary. In its ruling, the Court clarified: "The cause of action and the claim arising from it are distinct from its legal characterisation. The legislator requires litigants, with regard to pleadings, only to set out the factual elements from which the cause of action arises and to state their claims accordingly. Determining the legal foundation of the case and its characterisation is not the duty of the parties but rather the responsibility of the court, which must apply the relevant legal provision, even if the parties have invoked another provision, provided that the facts and claims as pleaded are adhered to."

The Court further ruled: "The characterisation of the case based on the facts and evidence presented, the assessment of such evidence, and the preference of one set of evidence over another fall within the discretionary powers of the trial court pursuant to Articles (33) and (34) of the Evidence Law, so long as the conclusion reached is permissible and logically acceptable, with the Court of Cassation exercising no oversight over such matters."

In light of these principles, it can be concluded that the judicial cause of action is constituted by the set of factual circumstances that give rise to the right being claimed before the court [34]. It is not linked to the legal provision, the judicial characterisation of the facts, or the right invoked, but rather to the factual foundation that justifies the judicial claim.

5.4 Case of Changing the Cause of Action before the Court of Appeal

The judicial cause of action constitutes one of the three fundamental elements of a case, alongside its subject matter and the litigating parties. It is derived from the set of facts presented before the court, which form the basis for the parties' claims. Consequently, any alteration in the cause of action necessarily reflects a change in the factual foundation of the case. A cause of action is deemed new when it introduces new facts, which makes it inadmissible to alter the cause of action for the first time at the appellate stage. Such a modification would result in the introduction of factual circumstances not previously examined by the Court of First Instance, thereby undermining the principle of two-tier litigation, even if the other components of the case remain unaltered in substance. In the following discussion, the positions of both the Jordanian and Egyptian legislators will be examined with respect to the possibility of changing the cause of action for the first time before the Court of Appeal.

5.5 First: The Jordanian Legislator's Viewpoint on Changing the Cause of Action before the Court of Appeal

The Jordanian legislator addressed the issue of adding and modifying causes of action in Article (115/3) of the Code of Civil Procedure, specifically in relation to additional claims that the Plaintiff may submit during the proceedings initiated by the original claim. Such claims may involve amendments or additions to the causes of action originally presented. This provision, however, is confined to proceedings before the Court of First Instance. The legislator did not expressly regulate the possibility of altering the judicial cause of action before the Court of Appeal. Allowing new causes of action to be introduced at the appellate stage, according to the previously established understanding of judicial cause of action (distinct from the cause of appeal or cause of challenge), would amount to presenting new claims supported by new factual foundations. This would contradict the principle of two-degree litigation, as it would effectively introduce facts that had not been considered by the Court of First Instance.

Reference may also be made to Article (184) of the Civil Procedure Code, which, as earlier discussed in relation to causes of appeal, enables the appellate court to allow the appellant to present causes of action not included in the initial statement of appeal. It further grants the Court of Appeal the discretion not to be bound by the causes of action advanced by the appellant. Nonetheless, the provision fails to specify whether the intended causes of action are to be understood as new substantive claims or as appeal-related causes in the form of pleas and defects invoked against the contested judgment. A careful reading of this article suggests that it pertains to the causes of appeal relied upon by the appellant in contesting the judgment, rather than to the judicial cause of action as a

constituent element of the case. On this basis, it may be concluded that introducing new claims by way of altering the judicial cause of action before the Court of Appeal is not permissible.

From a doctrinal perspective, the absence of an explicit legislative provision permitting changes to the judicial cause of action at the appellate level may be seen as a limitation on litigants' rights. The Jordanian legislator could have adopted a more flexible approach by permitting a change in the judicial cause of action, provided that the subject matter of the original claim remains unaffected. For instance, where a Plaintiff initially claims ownership of a property on the basis of a sales contract and fails in that claim, it appears unjust to prevent reliance on acquisitive prescription at the appellate stage. In this scenario, the cause of action changes while the subject matter of the claim remains constant. However, it remains essential to ensure that such changes do not produce contradictions in the appellant's claims, as this would compromise the coherence and persuasiveness of the legal argument.

5.6 Second: The Egyptian Legislator's Viewpoint on Changing the Cause of Action before the Court of Appeal

The Egyptian legislator expressly regulated the issue of altering the judicial cause of action before the Court of Appeal in paragraph (3) of Article (235) of the Civil and Commercial Procedures Code. This provision stipulates: "It is permissible, while the subject of the original claim remains unchanged, to change its cause of action and add to them".

Accordingly, the judicial cause of action may be altered or supplemented for the first time before the Court of Appeal, provided that such modification does not affect the subject-matter of the original claim. The rationale underlying this provision is that a judicial claim, regardless of its cause of action, ultimately seeks judicial protection of a particular legal status. Therefore, a change or addition to the causes of action, while preserving the subject-matter of the original claim, is consistent with the principle of procedural rationalisation, since the legal status in need of protection remains the same as that submitted before the Court of First Instance and included in the original claim. Allowing the Court of Appeal to consider new or additional causes of action in this manner also prevents the initiation of a fresh dispute before the Court of First Instance.

In any case, the acceptance of a new cause of action before the Court of Appeal rests upon the provision of Article (235/3) and does not require any further justification, provided that the subject-matter of the original claim is preserved. However, the alteration of the cause of action must be directed towards affirming the claimant's right, in such a way that the new or additional causes of action do not negate the original ones but coexist with them. The Egyptian Court of Cassation has affirmed this position, ruling that: "Even though this provision permits, without any modification to the subject-matter of the original claim, changing or adding to its causes of action, this is conditional upon the Plaintiff's intent in changing or adding to it to confirm his entitlement to the original claim that was before the Court of First Instance, i.e., in addition to the causes of action on which he was based".

In this respect, the researcher contends that the interpretation adopted by the Egyptian Court of Cassation imposes a condition not explicitly stipulated by the legislator in Article (235/3). Nevertheless, the court's reasoning may be justified on the basis that a complete change of cause of action could amount to raising a new claim, which remains prohibited before the Court of Appeal.

6. Conclusion

Having concluded the analysis of new claims with regard to their subject-matter and causes of action, and the extent to which they may be introduced for the first time before the Court of Appeal under the Jordanian Civil Procedure Code, the Egyptian Civil and Commercial Procedure Code, and the jurisprudence of the respective Courts of Cassation, the following findings and recommendations have been identified:

1. New claims, whether in their subject-matter or cause of action, represent one of the most significant aspects of civil litigation before the Court of Appeal. They directly affect both the stability and the potential evolution of the dispute, serving the broader objective of justice by ensuring that the appellate court delivers a comprehensive and conclusive judgment on all dimensions of the civil conflict transferred to it by virtue of the devolutive effect of appeal.

2. The admissibility of new claims at the appellate stage is governed by two fundamental principles underpinning the appeal process: the principle of two-degree litigation and the principle of immutability of the dispute.

3. In Jordan, the Court of Appeal lacks jurisdiction to accept a modification in the cause of action, even in situations where all other components of the case remain unchanged.

4. The Jordanian legislator has not provided explicit regulation on the admissibility of new claims in their subject-matter when raised for the first time before the Court of Appeal. This legislative silence leaves uncertainty regarding the possibility of submitting such claims, particularly in relation to set-off claims introduced for the first time at the appellate level.

7. Recommendations

1. It is recommended that the Jordanian legislator introduce an explicit provision permitting the submission of a new cause of action, even if raised for the first time before the Court of Appeal, provided that the other constituent elements of the case remain unchanged.
2. It is further recommended that the Jordanian legislator authorise the acceptance of claims that are intrinsically linked to the original claim and cannot be separated from it, even when introduced for the first time at the appellate stage, in order to minimise the recurrence of disputes and the multiplication of proceedings.
3. The Jordanian legislator is also encouraged to permit the submission of judicial set-off claims before the Court of Appeal for the first time, as this would promote procedural efficiency and reduce litigation costs, ensuring that parties entitled to set-off are not compelled to initiate fresh proceedings.

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