



وزارة التعليم العالي والبحث العلمي  
جامعة الموصل - كلية الحقوق

## الشكلية في الخصومة المدنية - دراسة مقارنة -

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رسالة ماجستير

في القانون الخاص/ قانون المرافعات المدنية

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أستاذ قانون المرافعات

## المستخلص

إذا كان الأصل أن الفرد يباشر حقه في اللجوء إلى القضاء بالمطالبة القضائية، فتتعدد الخصومة ليصدر حكماً في موضوعها على وفق السير العادي للأمور، فإن المبدأ الذي يحكم إجراءات التقاضي هو قانونية الشكل بمعنى أن القانون هو الذي يحدد الإجراء الواجب اتخاذه، ويحدد شكل هذا الإجراء وعناصره ومستلزماته الموضوعية والإجرائية ويرتب آثاره، وهذا ما يضيف على قانون المرافعات سمته الغالبة بأنه قانون إجرائي شكلي.

وتُعد الخصومة المدنية الشكل الذي يصدر فيه العمل القضائي، ولهذا يعنى المشرع بتنظيمها بطريقة تكفل ضمانات التقاضي الأساسية وتعمل على صيانة حقوق الدفاع، وتكفل الفعالية لمبدأ المواجهة، وتمنع تحيز القاضي وتبعد الخصوم عن تعسفه، وتؤدي إلى سير الإجراءات في حيادية ونزاهة، فضلاً عن دورها في تحقيق المساواة بين المتقاضين من حيث خضوعهم لذات النظام الإجرائي الذي يحكم شكل الخصومة المدنية، فالشكل هو الهيكل الأساسي للخصومة المدنية؛ لأنه يهيمن عليها من بدايتها وحتى انقضائها، ومن خلاله يعالج المشرع موضوع النزاع إلى لحظة الفصل فيه.

وأنهينا بحثنا بخاتمة أوجزنا فيها أهم النتائج التي توصلت إليها الدراسة، وأبرز التوصيات التي نقترحها لمعالجة إشكالية البحث.

## **Abstract**

If the origin is that the individual exercises his right to resort to the judiciary with a judicial claim, then the litigation is held to issue a ruling on its subject according to the normal course of things, then the principle that governs the litigation procedures is legal form, meaning that the law determines the procedure to be taken; determines the form and elements of this procedure and its substantive and procedural requirements; arranges its effects, and this is what gives the pleadings law its predominant feature as a formal procedural law.

Civil litigation is the form in which judicial action is issued, and for this the legislator is concerned with organizing it in a way that guarantees basic litigation guarantees, works to preserve the rights of the defense, ensures the effectiveness of the principle of confrontation, prevents the judge's bias and distances the litigants from his arbitrariness, and leads to the conduct of procedures in impartiality and integrity, as well as its role in Achieving equality between litigants in terms of their subjection to the same procedural system that governs the form of civil litigation. The form is the basic structure of civil litigation, because it dominates it from its inception to its expiry, and through it the legislator addresses the subject of the dispute until the moment of its settlement.

We dealt with the subject of the study in three chapters. In the first chapter, we presented what formality is in civil litigation, where we dealt with the definition of formality and its importance in civil litigation, and its role in respecting procedural rights such as the right of defense and the principle of confrontation, as well as the concept of procedural action in civil litigation, its characteristics, elements and nature. Legal, studying formality as an internal element on the one

hand and an external element in civil litigation on the other hand, and standing on the foundations of the validity of procedural work.

As for the second chapter, we dealt with the legal regulation of formality in civil litigation. We presented the concept of civil litigation and the general principles that govern it, its requirements and its legal nature, as well as defining the basis of formality in litigation and stating its nature and sources, and standing on the role of the judge, litigants and others in controlling formality in civil litigation. Clarifying the role of formality in protecting the procedural public order by defining the concept of the idea of public order and procedural public order, and the extent to which the rules of formality relate to public order and its relativity in the field of procedural formality, and to address some of the applications of formalism in civil litigation.

As for the third and final chapter, we dealt with the penalty for violating the formality, through which we presented the concept of invalidity, its doctrines, its types, and the conditions for adhering to it.

Through research on the subject, we have addressed the most important problems raised by formality in civil litigation in terms of theoretical and practical reality.

We ended our study with a conclusion in which we summarized the most important findings of the study, and the most prominent recommendations that we propose to address the problem of the study.

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# **Formality in Civil Litigation**

**- A Comparative Study -**

**Bawer Bahjat Abdulrahman**  
**A Master Thesis**  
**In**  
**Private Law/ Civil Proceedings Law**

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