

THE EFFECT OF SUBSTANTIATING AN APPEAL

(COMPARATIVE STUDY)

(Abstract)

An appeal is considered one of the regular methods of challenging verdicts and is also considered a practical manner to achieve the principle of litigation on two levels, as it aims to re-consider the lawsuit again before the higher court (the Court of Appeal) after being considered by the lower court.

The appeal submitted to the Court of Appeal results in transferring the dispute to a higher court whereby it becomes solely the competent court to decide the dispute the subject matter of the appeal. The Court of Appeal does not accept to entertain into issues except those that have already been decided upon by the lower court.

Therefore, the Court of Appeal is limited to the disputed parties as these are contained in the same lawsuit at First Instance Court, whether Plaintiffs or Defendants, entered, or have been entered in the lawsuit. On the other hand, the Court of Appeal is also limited to entertaining the causes of appeal contained in the pleadings whereby the legislature stipulated that these be clear, not vague or be general in nature. Otherwise, the Court of Appeal shall render the statement of appeal as void.

The reason of that is to enable the Court of Appeal to control the disputed issues i.e. the subject matter of the issue and to practice its role from a legal and subjective point of view based on the decision of the Court of First Instance and consequently proceed in issuing its own decision on the Appeal presented thereto based on the issues appealed from the decision of the Court of First Instance.

Based on this, the Court of Appeal reconsiders the weight of the evidence and the defenses submitted and assess the benefit of accepting any new evidence and review of the appealed judgment, and shall have the final say in this regard through a substantiated judgment containing all factual and legal elements of the disputes. Thereafter, the Court of Appeal may decide whether to ratify the appealed decision, amend it, dismiss it completely, or dismiss part of it, and such basis, the Court of Appeal would issue its final decision in the case.

This research points out also an important issue relating to the procedures of issuing judgments by the Court of Appeal, after bringing the case to the Court of Appeal by the Court of Cassation, whereby in accordance with the Palestinian law, the Court of Appeal shall be restricted to the legal issue that the Court of Cassation has raised and decided upon even though such issues were contrary to the Court of Appeal's opinion.

At the end of this thesis, the researcher will come out with several recommendations and conclusions, with the hope that these will contribute in remedying flaws to certain procedures relating to appeal in addition that it would give the opportunity for other researchers to contribute in the development of this thesis and improve any missing areas therein.