

CHAPTER II

LITERATURE REVIEW

2.0 INTRODUCTION

The background of this study was briefly explained in the previous section. In this section, the literature review related to the issues of court, an overview of justice system in Jordan, the importance of e-courts, example of court case management systems, e-court system in Malaysia. Moreover, to discuss the difference between traditional court and e-court, finally highlight the case management system and its benefits.

2.1 COURTS

A courtroom is a tribunal, usually a governmental establishment, with the authority to adjudicate legal disputes between events and perform the administration of justice in civil, prison, and administrative issues in accordance with the rule of law (David, 1980).

In both common law and civil law legal systems, courts are the central means for dispute resolution, and it is generally understood that all individuals have an ability and right to bring their claims at the a court. Equally, the rights of those accused of a

crime contains the right to present a defense at the court. The system of courts that explains and performs the law is collectively known as the judiciary. The place where a court sits is known as a venue (Topulos, 2005).

The room where court proceedings occur is known as a courtroom, and the building known as a courthouse; court facilities range from simple and very small facilities in rural communities to large buildings in main cities (Blackstone, 1830). The practical authority given to the court is known as its jurisdiction which is the court's power to decide certain kinds of questions or petitions (Arya, 2012).

The term "the court" is also used to refer to the presiding officer or officials, usually one or more judges. The judge or panel of judges may also be collectively referred to as "the bench" (in contrast to attorneys and barristers, collectively referred to as "the bar"). In the United States, and other common law jurisdictions, the term "court" (in the case of U.S. federal courts) by law is used to describe the judge himself or herself (Hassan and Mokhtar, 2011). In the United States, the legal authority of a court to take action is based on personal jurisdiction, subject-matter jurisdiction, and venue over the parties to the litigation.

2.2 OVERVIEW OF JUSTICE SYSTEM IN JORDAN

The Judicial systems in Jordan; Jordan's constitution guarantees the independence of the judicial systems, clearly stating that judges are "subject to no authority but that of the law." While the king must approve the appointment and dismissal of judges, in practice these are supervised by the Higher Judicial Council, which forms independent

decisions regarding the periodic recommendations submitted to it by the Ministry of Justice (Abul-Ethem, 2002).

2.2.1 Types of Jordanian Courts

The Jordanian Constitution, 1952 and its amendments determined the foundations on which the courts system is being based while the details of the same were left for special laws. In fact, it provided that the judicial authority would be assumed by the courts of several types and degrees and that all the orders shall be issued according to the Law in the name of the King (Jordan Constitution, 1952). Further, article (99) of the Constitution divided the courts to three types: civil, religious and private courts. In fact, article (100) provided that the types of the courts, degrees, sections, specialties and manner of running of the same shall be adopted by a private law provided that this law shall state upon establishing Higher Justice Court (Otani, 2012).

2.2.1.1 Religious

The religious courts involve shari'a (Islamic law) courts and the tribunals of other religious communities, namely those of the Christian minority. Religious courts have primary and appellate courts and deal only with issues including personal law such as marriage, divorce, inheritance and child custody. Shari'a courts also have jurisdiction over matters pertaining to the Islamic waqfs. In cases involving parties of different religions, regular courts have jurisdiction (Abul-Ethem, 2002).

2.2.1.2 Special Court

This court was established by a special law, which is also called the State Security Court. The reason for its created is the cancelation of military courts in Jordan, this court composed of military and civilian judges, which concerned and

focused on crimes of inside and outside security of the Hashemite Kingdom of Jordan, drugs, terrorism offenses and other crimes. The results of this court can be appealed before the High Court of Justice (Abul-Ethem, 2002).

2.2.1.3 Civil

The same means the courts that has the general jurisdiction to practice the right of giving orders through trials over all the persons in all the civil and criminal articles including the cases filed by or against the government to the exclusion of the articles in which the right of jurisdiction may be vested upon religious or special courts pursuant to the provisions of the constitution or any other legislation applicable. However, the civil courts include Magistrate Courts, Courts of First Instance, Courts of Appeal, High Administrative Courts and the Court of Cassation (Supreme Court). The Jordanian civil law system has its foundations in the Code Napoleon, a French legal code 2-implemented in Egypt in the early 19th century (Abul-Ethem, 2002).

The following is the classification of the civil courts:

1. First Degree Courts

- Magistrate's Courts.
- First Instant Courts

2. Second Degree Courts

- Appeal Courts.
- The Cassation Court.
- The Higher Justice Court (the Administrative Courts).

2.2.1.4 Jurisdiction of Magistrates Courts in Jordan

These courts are constituted of a single judge or sometimes two judges. These courts are spread all through the several governorates, districts and areas of the

Kingdom. However, they are formed according to a regulation to be issued by the Council of Ministers pursuant to article (3/A) of the Civil Courts Formation Law No. (17), 2001 setting their venue jurisdiction. Further, they shall practice the power vested upon them pursuant to the Magistrate's Courts Law or otherwise any law or regulations applicable. However, and according to their Law, then they shall have the jurisdiction as follows:

In Civil Cases:

1. The civil and commercial cases related to a debt, movable or immovable property provided that the value of the claimed matter shall not exceed three thousand Dinars.
2. The counterclaims regardless of the value.
3. The cases claiming of damages provided that the value of the claimed matter shall not exceed three thousand Dinars.
4. The counterclaims claiming of damages emanating from the principal case falling within the jurisdiction of the Magistrate's judges regardless of the amount being claimed of in the counterclaim.
5. The matters branched out of the principal case of the interest, damages, benefits and expenses regardless of the value.
6. The cases of the right of watering, traffic and drinking which use is being banned by the beneficiaries.
7. The cases of repossessing the property confiscated from the holder regardless of the value of the said property provided that the ruling related to the property itself shall be avoided.
8. The cases set for vacating the leased asset if the value of the case (i.e. the annual rent) shall not be more than three thousand Dinars.

9. The cases set for distributing the joint immovable properties regardless of the value.
10. Attaching the movable and immovable properties provisionally in debt cases falling within their jurisdiction provided that the restrictions shown in the Civil Procedures Law shall be observed regarding the permission to attach in addition to having the competency to attach the benefits emanated from the matter disputed in protection for the same against the damages.
11. Dividing the movable properties regardless of the value if being dividable and to rule for selling the same under the supervision of the Execution Department if not being dividable.
12. Further, the Magistrate's Courts have also the type jurisdiction to entertain all the labor cases according to the provisions of article (137/A) of the Labor Law No. (8), 1996 which provided that (the Magistrate's Courts shall have the jurisdiction to urgently entertain the cases emanated from the individual labor disputes to the exclusion of the cases related to the remuneration at the areas including remuneration authority formed according to the provisions of this Law provided that the same shall be settled within three months as from the date of filing the same to the Court).

In Criminal Cases:

The Magistrate's Court has the jurisdiction to entertain all the violations, false testimonies crimes, perjury resulted from magistrate's cases and offences which maximum penalty shall not exceed sentencing to jail for a term of two years to the exclusion of:

1. The offences shown in the first chapter of the second section of the Penal Code No. (16), 1960, i.e. the offences committed against the internal and external state security.
2. The offences for which a special provision was made to the effect that a court other than the Magistrate's Courts shall entertain the same.

The Jordanian judicial system is an effective judicial system in the cornerstone of achieving justice equality and safeguarding the rights of citizens. The exercise of the judicial system in Jordan through the courts should be given to the courts in accordance with provisions of the law. The main sources of the legal system in Jordan are the Constitution, which is to identify the concepts of Sharia rule on civil matters, and French law, particularly the law of "Napoleon". As mentioned previously divided the courts into three types: ordinary courts (Civil), religious courts, and special courts. Civil courts consist of the court of First Instance which is interested in (the first level to consider the issue), the Court of Appeal which interest (the second level of the cases), and the Court of Cassation which is the highest judicial body in the Kingdom (Abul-Ethem, 2002).

2.3 ELECTRONIC COURT (E-COURT)

The idea of e-court will assist to link all cases procedures between all courts via online. Judges can consider the appeals online wherein the case remains in the same district court but the higher courts give its decision online based on the recorded facts of the case. Such a step will not only help the people but will also reduce the backlog of cases files (Kumar, 2012).

Further the use of IT in the areas such as recording of court sessions, high resolution remote video to determine fraudulent documents, fingerprints scanning and verification, remote probation monitoring, electronic entry of reports and paper work will further speed up the court procedures (Kumar, 2012).

The definition of e-court or the court of informatics is: the process where the traditional courts are made more effective and speedier through the use of (ICT) from case registration till its final adjudication, all is done in an online environment (Arya, 2012).

Sherwani (2007) showed the experience of the District Karachi-East(Pakistan) in implementing the case flow management system which achieved a very great advantages to the court system in this district (Sherwani, 2007). Moreover, Schrinel (1983) explain that the efficiency of e-court system depends in its recording procedures that is each court should manage to save court records electronically to protect them from damage or loss.

2.3.1 Importance of E -Court Systems

The e-court system can be used to capture basic case information as they are filed, and tracked the branch courts. "This ensures that basic case data is entered only once to avoid repetition in the administrative processes" Schrinel said 1983, adding that all pertinent information about cases would be readily available both to courts and the public. The e-court system also minimizes or prevents errors in court fee payments, by automatically assessing the correct fee to be charged. The system records payments made for each case and prints out official receipts.

Assigning of cases or "docketing" as well as raffling of cases to judges are all done electronically through the e-court.

The system also monitors and manages important case dates, and records different actions made during hearings, as well as the status of cases (Schrinel, 1983). Mohamed (2011) conducted a study to explain the development and implementation of e-court system in Malaysia, the study concludes that e-court system must be implemented in all the country courts due to its importance in facilitating the judicial operations nationwide. Moreover, among the other advantages to this system are case filling and electronic indexing in which all cases are updated in daily basis and can be accessible anywhere, the other one is case proceeding which includes recording of witnesses, judges, order and judgments.

2.3.2 Examples of Court Case Management System

The case management information system has been developed by American Professional Development Advisory Committee of the National Association for Court Management (NACM), this system contains a personnel management subsystem; a budget and accounting subsystem; and a supplies, logistics, and facilities management subsystem (Steelman et al., 2004). The heart of such a system is the case information subsystem to support the court's case flow management efforts. This subsystem was designed to support not only case-processing transactions for individual cases but also operational controls, management controls, and strategic planning. A comprehensive automated case management information system have features supporting the following activities: indexing, docketing, notice preparation, court scheduling and calendar preparation, management and statistical report generation. This case flow management includes many technological operations such as maintaining records, supporting court management of pretrial, trial and post dispositional events, conferences and hearings; monitoring case progress; flagging cases for staff and

judge's attention and providing needed management information and statistics (Steelman et al., 2004).

2.3.2.1 E-Court System in Malaysia

Based on the concept of 'green court' with less usage of papers, two high courts in Kuala Lumpur were used as pilot projects in 2004. The complete e-court system in Malaysia began in March 2011 (Hassan and Mokhtar, 2011). Four types of mechanism that form the e-court are Video Conferencing System, Case Management System, Community and Advocate Portal System, and Court Recording and Transcription System. In addition, E-filing has also been recently introduced to complement the E-Court system (Hassan and Mokhtar, 2011).

The court system in Malaysia has been frequently criticized because of its dilatoriness in resolving disputes and resulted in back-log of cases. As a result, a new system known as the e-court has been introduced. The e-court system emphasize on the use of mechanism which is much faster and efficient.

The idea of e-courts in 1996 and materialized in 2002 but was late due to the economic crisis in late 1990 (Mohamed, 2011). Process servant management and information kiosk are also very useful operations for this system. The automation of the court system anywhere can play very vital role in enhancing the role of justice help to save efforts and time consequently enhance all judicial operations as a whole (Saman, 2012) .

Case study has been carried out by(Saman and Haider, 2013), about Malaysian electronic record management system. This case study was carried out in Kuala Lumpur, Putrajaya and Selangor.

The findings of the study showed that the implementation of this system led to a tremendous improvement in management resulting in very efficient service delivery to the public (Saman and Haider, 2013).

2.4 TRADITIONAL COURT SYSTEMVs E-COURT SYSTEM

Rishi (2011) made the comparison between traditional courts and e-courts systems. These differences show the main difficulties of the traditional paper-based system in the courts, in contrast shows the advantages and benefits of e-courts system. The following table 1 shows the main differences between traditional court and e-court as following:

Table 1: Differences between Court & E-Court (Rishi & Mohanty, 2011)

Traditional Functioning	E-Court Functioning
Physical carrying of case File and evidences to courtroom at each hearing.	No need to carry case file and evidences at each hearing in physical form, same are available at click of mouse to Judge and concerned staff.
Physical carrying of case documents and evidences if required by Judge, Judicial Secretary for review.	Reduces the human load on the court premises also ease the maintenance of evidences and documents. Court authorities can avoid frequent physical movement of case related files and evidences
No provision of sharing case information online.	Different courts are able to share the information online.
Required case documents and evidences of case file are submitted manually in court by Police, Hospital, Forensic Officials and other stake holders.	Through e-court concerned Police, Hospital, Forensic Officials and other stake holders can upload the required documents to the case file from their premises itself. System provides adequate security mechanism like role based user access.
Case cannot be proceed due to the non-availability of accuse/witness on the scheduled date and case delays many years for final hiring.	With the help of video conference facility accuse/witness can participate in court room proceeding.

2.5 CASE MANAGEMENT SYSTEM (CMS)

The case management system (CMS) is a sub-system of e-court system designed to meet justice sector needs and enables the governments to improve their justice systems by automating court processes. This system concern in case activities such as monitoring case activities, searching case by ID number. It also strengthens the accessibility and integrity of the justice system by enabling users to interface electronically with court services (Synergy, 2014).

2.5.1 Cases Workflow Management

Figure 1 illustrates the workflow of case management system, which is unique to each individual court. This system allows administrators to organize the filing, processing, approvals, appeals, reproduction, and editing of case documents based on court regulations and protocols. The workflow Engine expedites case processes by helping to clearly define stages, roles, and permissions for case management. Document templates enable court staff to easily create and edit subpoenas, warrants, affidavits, orders and decisions (Synergy, 2014).

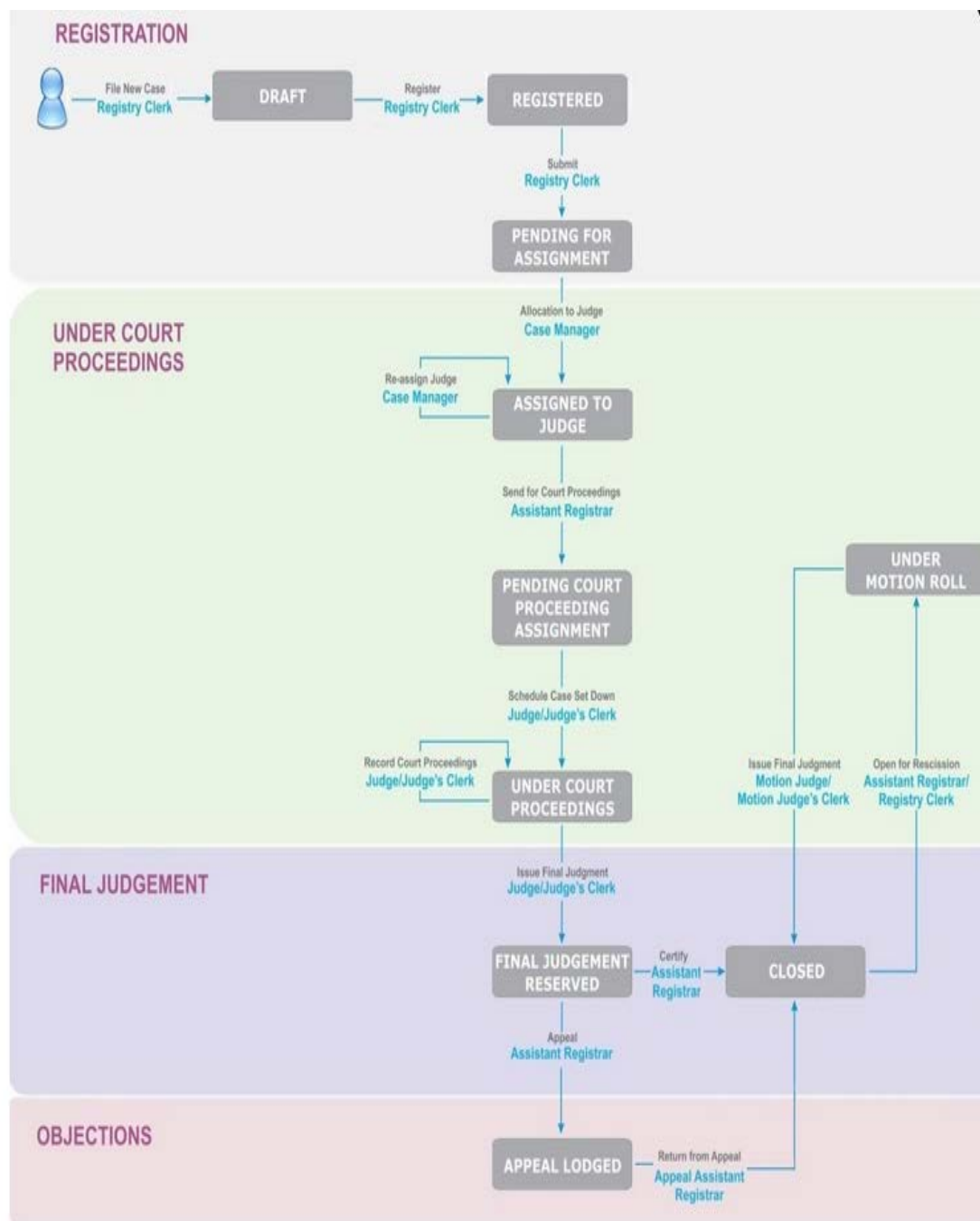


Figure 1: Cases Management Framework (Synergy, 2014)

2.5.2 Benefits of Case Management System (CMS)

A well-designed case management system (CMS) functionality provides meaningful benefits to the courts, such as more efficient data entry, more effective data retrieval, better tools and enhanced bar and public access (Rooze, 2010).

A case management system (CMS) can help courts to address many problems such as allowing electronic access to the court's users and more effective use of court resources for data input and retrieval, as well as in system deployment and maintenance. Moreover, CMS helps secure the data records from any internal or external threats. Finally, money savings, staff efforts and save the time consuming can be achieved using CMS, such as electronic notification (Richard, 2012).

Based on the real investigation of court management system in Jordan, there is no electronic management system was developed to manage the court activities, (see appendix D & E). Therefore this study aims to develop new case management system in order to manage various activities of cases at the courts in Jordan.

According to Kabay (2000), the basic reasons that should care about information systems security are that the information needs to be protected against unauthorized disclosure for legal and competitive reasons; all of the information that stored and retrieved must be protected against accidental or deliberate modification and must be available in a timely fashion. Also must establish and maintain the authenticity (correct attribution) of documents created, send and receive. Finally, if the poor security practices allow damage to systems, may be subject to criminal or civil legal proceedings; if the negligence allows third parties to be harmed by compromised systems, there may be even more severe legal problems (Kabay 2000). Consequently, the new proposed system take into account the security and privacy aspects in order to secure the information that gathered between the systems users through the various activities.

2.6 CHAPTER SUMMARY

This chapter reviews the court concepts, types, and activities. On the other hand, the e-court concepts and aspects reviewed to clarify the advantages of e-court systems over the traditional court systems. The related works of e-court system discussed to analyze the activities of case management systems of court environment. This research focuses on the case management implementation in Al-Tayba court in Jordan which considered as civil court /first degree court /magistrate's courts. There are two main types of cases in Al-Tayba court which are civil and criminal cases in addition to financial cases (included in civil cases).