

THE EFFECT OF REFUSING TO PRODUCE DOCUMENTS IN SUPPLY CONTRACT DISPUTES: A COMPARATIVE STUDY BETWEEN EGYPTIAN AND OMANI LAW

O EFEITO DA RECUSA EM APRESENTAR DOCUMENTOS EM DISPUTAS RELACIONADAS A CONTRATOS DE FORNECIMENTO: UM ESTUDO COMPARATIVO ENTRE AS LEIS DO EGITO E DE OMÃ

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Abstract

This article addresses an evidentiary imbalance that frequently shapes commercial supply disputes in Egypt and Oman: the dispositive documents are often held by one party, which may refuse production. The topic is selected because current practice shows that the ordinary allocation of the burden of proof can enable strategic non-disclosure and distort outcomes. The study identifies a gap in Arabic comparative writing, where good faith in contractual performance is commonly discussed as a substantive principle, while the procedural consequences of documentary non-cooperation are treated separately. The article proceeds on two linked hypotheses. First, good faith in performance (Egyptian Civil Code, art 148; Omani Civil Transactions Law, art 156) entails a duty of documentary cooperation in supply relationships. Second, unjustified refusal to produce a dispositive document may warrant a controlled judicial presumption and may also support contractual fault where the refusal deprives the other party of a serious chance to prove its claim. Methodologically, the study uses doctrinal legal analysis and an integrated comparison of statutory provisions and selected judicial approaches in both systems. No empirical instruments or statistical data are used. The study's results are operational. It formulates

Resumo

Este artigo aborda um desequilíbrio probatório que frequentemente caracteriza os litígios comerciais no Egito e em Omã: os documentos decisivos são frequentemente detidos por uma das partes, que pode recusar-se a apresentá-los. O tema foi escolhido porque a prática atual mostra que a atribuição normal do ônus da prova pode permitir a não divulgação estratégica e distorcer os resultados. O estudo identifica uma lacuna na literatura comparativa árabe, onde a boa-fé no cumprimento contratual é comumente discutida como um princípio substantivo, enquanto as consequências processuais da não cooperação documental são tratadas separadamente. O artigo parte de duas hipóteses interligadas. Primeiro, a boa-fé no cumprimento (Código Civil Egípcio, art. 148; Lei de Transações Cíveis de Omã, art. 156) implica um dever de cooperação documental nas relações de fornecimento. Segundo, a recusa injustificada em apresentar um documento decisivo pode justificar uma presunção judicial controlada e também pode sustentar a culpa contratual quando a recusa priva a outra parte de uma chance séria de provar sua alegação. Metodologicamente, o estudo utiliza análise jurídica doutrinária e uma comparação integrada de disposições legais e abordagens judiciais selecionadas em ambos os sistemas.



a three-part test for unjustified refusal (control, dispositive relevance, absence of legitimate justification). It also proposes a staged reasoning method for courts to draw the presumption while safeguarding the right of defence and legitimate confidentiality. The article concludes with targeted recommendations, including clearer procedural standards and calibrated effects for refusal, especially in Egyptian law.

Keywords: Good Faith, Documentary Cooperation, Refusal to Produce Documents, Judicial Presumption, Burden of Proof, Supply Contracts, Evidentiary Fairness.

Não são utilizados instrumentos empíricos ou dados estatísticos. Os resultados do estudo são operacionais. Ele formula um teste em três partes para a recusa injustificada (controle, relevância decisiva, ausência de justificativa legítima). Também propõe um método de raciocínio em etapas para que os tribunais cheguem à presunção, salvaguardando o direito de defesa e a confidencialidade legítima. O artigo conclui com recomendações específicas, incluindo normas processuais mais claras e efeitos calibrados para a recusa, especialmente na lei egípcia.

Palavras-chave: Boa-fé. Cooperação documental. Recusa em apresentar documentos. Presunção judicial. Ônus da prova. Contratos de fornecimento. Equidade probatória.

1 INTRODUCTION

Supply contracts generate frequent litigation in Egypt and Oman. The dispute often turns on documents held by one party, such as delivery schedules, invoices, stock records, and correspondence. When those records are withheld, the burden of proof can distort outcomes and undermine procedural justice.

This study links the evidentiary problem to the substantive principle of good faith in performance. It asks when refusal to produce a dispositive document should trigger a judicial presumption, and how that presumption can be applied without undermining defence rights or legitimate commercial secrecy. The hypothesis is that good faith implies a duty of documentary cooperation, and that unjustified refusal may warrant a controlled judicial presumption and, in some cases, contractual fault.

Methodologically, the study uses doctrinal analysis and an integrated comparison of Egyptian and Omani rules and case law. Structurally, Part I explains the substantive basis of the duty and its legal characterisation. Part II sets out the procedural conditions for compelling production and the discipline required in judicial reasoning when refusal occurs.

Part I: The substantive basis of the documentary refusal presumption - good faith as a source of the duty to cooperate in evidence

2 THE SCOPE OF GOOD FAITH IN SUPPLY CONTRACTS

2.1 Good faith in performing supply obligations as a source of the duty of documentary cooperation

The principle of good faith in performance under Egyptian Civil Code, art 148(1), governs performance from formation to completion. It requires more than literal compliance. It requires cooperative conduct that enables the contract's purpose.¹

In supply contracts, this implies a duty of documentary cooperation. A party who controls delivery records, invoices, or correspondence should make them available when a dispute turns on them. Withholding such records breaches good faith (Egyptian Civil Code, art 148; Omani Civil Transactions Law, art 156).

Omani law gives this duty procedural force. Under Omani Evidence Law, art 21, the court may order production of any dispositive document in a party's possession. Unjustified refusal allows the court to infer a judicial presumption as to the facts the document would prove.²

This approach aligns with the Omani prohibition of abuse of rights (Omani Civil Transactions Law, art 59) and with performance in good faith according to custom (art 156). It also matches doctrine that treats good faith as both a negative duty (no fraud) and a positive duty to cooperate.³⁴

Case law supports this reading. The Egyptian Court of Cassation links good faith to cooperation and rejects using formal positions to harm the other party.⁵ Omani

¹ Mohamed Rabie Anwar Fath al-Bab, *The Effect of the Principle of Good Faith in Terminating Fixed-Term Contracts (An Analytical Comparative Study)*, *Al-Majalla al-Qanuniyya (Legal Journal)*, vol. 11, no. 1, Cairo University - Faculty of Law - Khartoum Branch, 2022, p. 218.

² Ahmed Mohammed Ahmed al-Zain, *Al-Wasit fi Qawa'id Qanun al-Ithbat al-'Umani (The Middle Commentary on the Rules of Omani Evidence Law)*, *Dar al-Kitab al-Jami'i*, 2024, 1st ed., p. 187.

³ Yahya Ahmed Bani Tah, *The Principle of Good Faith at the Stage of Contract Performance: A Comparative Study with Egyptian and English Law*, PhD dissertation, Arab Open University - College of Graduate Legal Studies, 2007, pp. 179-183.

⁴ Mohamed Hussein Mansour, *Sharh Qanun al-Ithbat wa Qanun al-Mu'amalat al-Iliktruniyya al-'Umani: Mabadi' al-Ithbat, Mafhum wa Malamih al-Ithbat al-Iliktruni (Commentary on the Omani Law of Evidence and the Electronic Transactions Law: Principles of Evidence, Concept and Features of Electronic Evidence)*, New University Press, 2018, pp. 85-120.

⁵ Egypt Court of Cassation, Civil, Appeal No 5287 of Judicial Year 74, session 17 February 2014, *Majallat al-Maktab al-Fanni*, vol. 65, ruling 46, p. 279.

commercial courts likewise treat refusal to comply with a production order as bad faith conduct that may justify a presumption.⁶

Taken together, Egyptian Civil Code, art 148 grounds the substantive duty, and Omani Evidence Law, art 21 provides a workable procedural response when cooperation is unjustifiably withheld.

2.2 The relationship between the civil obligation of documentary cooperation and the procedural sanction for breaching it

The comparative analysis shows different legislative approaches while maintaining a unified purpose. Omani evidence law contains an explicit provision (Article 21) whereas Egyptian law relies on general principles derived from good faith (Article 148) and from general evidence provisions such as Article 20 of the Egyptian Law of Evidence. The Omani codification achieves clarity and uniformity of application: parties know in advance that unjustified refusal may generate a presumption against the refusing party. In contrast, the Egyptian approach leaves the matter to judicial discretion, which may lead to variance depending on each judge's conviction. Despite the differing methods, both systems share the same philosophy: a party must not make his possession of a document a way to evade the duty of cooperation in good faith. In this way, practical integration is achieved to serve evidentiary justice without harming the right of defence.

It is inferred from Article 156 of the Omani Civil Transactions Law, which corresponds to Article 148 of the Egyptian Civil Code, that it expands the scope of good faith to include what is required by custom and usage. Commercial custom mandates cooperation in delivering documents exchanged between the supplier and the importer, or between the supplier and the contracting authority. If one party refuses this cooperation, he is considered to have breached a legal obligation, not merely a moral duty. This breach has two consequences: partial transfer of the burden of proof to the refusing party and enabling the judge to infer bad faith in cooperation, which justifies building a presumption against him. Article 31 of the Omani Evidence Law grants the court the power to assess evidence according to its appropriateness and is the tool that allows the judge to apply this sanction in light of the principle of good faith.

⁶ Oman Supreme Court (Labour & Commercial Circuit), Cassation Appeal No 621/2020, 2022 Labour & Commercial Judgments Collection, p. 122.

Egyptian legal analysis has recently considered good faith a source of auxiliary obligations that arise during performance of the contract, including obligations of disclosure, cooperation and presentation of common documents. From this perspective, contractual obligations are not limited to what the contract expressly stipulates. They include duties imposed by good faith. By analogy, a party to a supply contract who withholds documents that would prove performance or default is deemed to have breached the legal obligation to cooperate. In the Omani system, scholars emphasise that procedural provisions, especially Article 21, must not be read in isolation from general principles of civil transactions. They must be interpreted in light of Article 156, which makes good faith a mandatory rule. The Omani legislator did not merely state the procedural means. He laid down a complete philosophy that makes the opponent's behaviour in the evidence stage an extension of his behaviour in the performance stage⁷.

2.3 Judicial decisions in Egypt and Oman

Show a common judicial trend: a party who refuses to cooperate in producing documents weakens his legal position before the court. Egyptian jurisprudence gradually moved from viewing good faith as a theoretical principle to applying it as an operative rule in evidence. A litigant who conceals a crucial document is seen as abusing his right to evidence, thereby losing the court's sympathy and tipping the balance in favour of his opponent. Similarly, Omani jurisprudence holds that refusal to comply with a court order to produce a dispositive document demonstrates procedural bad faith and justifies the judge in inferring a presumption against the refusing party.⁸

The integrated comparison of the two systems reveals that the obligation of documentary cooperation has become a hybrid obligation: it is civil in its source and procedural in its sanction. If a party breaches this obligation, the judge moves from duty to effect, relying on Article 21 of the Omani Evidence Law for activation and Article 148 of the Egyptian Civil Code for interpretation. Thus, the philosophies of contractual justice and judicial justice converge: good faith is no longer a mere supplement to the contract

⁷ Hossam EL-Din Ahmed Abd al-Hamid Sharif, "The Legal Nature of the Duty to Mitigate Damages: A Foundational Comparative Study," *Journal of Law for Legal and Economic Research*, Faculty of Law, Alexandria University, vol. 1, no. 1, January 2023, pp. 167-276, DOI: 10.21608/lalexu.2023.291843.

⁸ Ramadan Mohamed Ahmed Abu al-Saud, *Usul al-Ithbat fi al-Mawad al-Madaniyya wa al-Tijariyya* (Principles of Evidence in Civil and Commercial Matters), University House, 1994, p. 45.

but a means to distribute the burden of proof fairly in commercial disputes, particularly supply disputes characterised by unequal control over documents.

Accordingly, the procedural sanction arising from refusal, as organised by the Omani Evidence Law, is not independent of the civil obligation of cooperation but a natural extension of it. Good faith is the foundation. Refusal is the breach. The judicial presumption is the result. Justice moves from the realm of contractual behaviour to the forum of litigation, achieving integration between the Egyptian and Omani texts in protecting the truth and preventing litigation from being a means of concealing it.

3 THE LEGAL CHARACTERISATION OF DOCUMENTARY REFUSAL

3.1 Documentary refusal as a judicial presumption inferred from the party's negative conduct

The Egyptian and Omani systems rest on a core principle: the judge, in matters of evidence, does not treat proofs as rigid facts but as occurrences that reveal the parties' intentions and conduct. From this standpoint, refusal by one party to produce a dispositive document is not merely a factual event. It is legal conduct carrying evidentiary significance from which the judge may derive a judicial presumption of the truth of the other party's claim.

In Egyptian law, this idea is derived from the spirit of Article 148 of the Civil Code, which obliges contracting parties to perform the contract in good faith, combined with Article 5, which prohibits abuse of rights, and from evidence provisions such as Article 20, which allows a party to request the court to compel his opponent to produce the document dispositive of the case. Taken together, these texts mean that withholding the document is not only a breach of cooperation. It is misuse of the right to evidence, because the party holding the dispositive document prevents justice from reaching the truth.

In Omani legislation, the matter is addressed explicitly in Article 21 of the Evidence Law: if the court orders a party to produce a document and he refuses without justification, the court may consider that refusal a presumption of the truth of the facts to be proved by that document. The Omani legislator transferred the burden of evaluating intention from juristic interpretation to statutory rule by enacting an express procedural rule creating a judicial effect for the party's negative conduct. Article 31 complements this

framework by giving the judge authority to weigh evidence according to its relevance, including presumptions drawn from conduct.

Linking good faith to evidence has prompted debate. One view treats documentary cooperation as necessary for fair litigation; another warns against forcing a party to create proof against itself. The prevailing position supports a rebuttable presumption of refusal, on the basis that a party should not benefit from breaching a legal duty.⁹¹⁰

In case law, the Egyptian Court of Cassation has affirmed that the court may draw inferences from the conduct of the parties and give preference to one piece of evidence over another, and that refusal by a party to produce a document in his possession may be considered a presumption of the truth of what the other party alleges¹¹. In Oman, the courts apply Article 21 directly, treating unjustified refusal to produce a document as a judicial presumption subject to judicial discretion. This presumption is not conclusive but rebuttable and may be contested by other evidence, consistent with Article 31, which grants the judge discretion in comparing evidence¹².

The comparison shows that both systems recognise the judge's authority to infer presumptions from parties' conduct. The difference lies in the Omani legislator's express codification of the rule, whereas in Egypt it remains inferred from good-faith principles and the judge's general power to assess evidence. The result is the same: transforming the civil duty of cooperation into a judicial tool for distributing the burden of proof fairly. The presumption arising from refusal does not create the right. It tilts the balance of plausibility when the court is deprived of a decisive piece of evidence by a party's conduct.

From this understanding, documentary refusal becomes part of the elements that shape judicial conviction and cannot be overlooked when its three components are present: control over the document by the party, the document's relevance to the case and absence of a legitimate justification for refusal. When these elements are met, good faith moves from being a civil rule to a judicial standard, and refusal becomes a judicial presumption capable of changing the outcome of the case. Thus, the judicial presumption based on

⁹ Abd al-Salam Ahmed Abdullah al-Ashqari, "The Role of the Civil Judge in Evaluating and Managing Written Evidence," *Journal of Human and Natural Sciences*, vol. 6, no. 12, December 2025, pp. 453-467, DOI: <https://doi.org/10.53796/hnsj612/31>.

¹⁰ Mohamed Rabie Anwar Fath al-Bab, "The Effect of the Principle of Good Faith in Terminating Fixed-Term Contracts: An Analytical Comparative Study," previously cited, p. 265.

¹¹ Egypt Court of Cassation, Civil, Appeal No 1073 of Judicial Year 52, session 8 November 1990, *Majallat al-Maktab al-Fanni*, vol. 41, part 2, p. 632.

¹² Oman Supreme Court, Appeals 2019/1323, session Tuesday 20 October 2020.

refusal is not merely an auxiliary means of proof but a concrete embodiment of contractual justice designed to prevent exploitation of factual disparities between parties.

3.2 Documentary refusal as contractual fault giving rise to liability for loss of the chance to prove

The civil foundation of the documentary refusal presumption is that good faith in performing a contract is not just an ethical duty. It is a legal obligation that produces multiple effects when breached. Article 148 of the Egyptian Civil Code requires performance in good faith and, together with Article 157, which permits rescission of the contract when one party breaches his obligation, and Article 5, which forbids abuse of rights, it signifies that failure to cooperate by producing documents is a contractual fault that may entail liability. In the Omani system, this concept is complemented by Article 156 of the Civil Transactions Law, which obliges performance in good faith and accordance with custom and usage, and Article 59, which prohibits abuse of rights. Article 21 of the Evidence Law establishes the procedural effect of that fault by making unjustified refusal a presumption of the truth of the facts sought to be proved. This opens the door to civil liability for the damages arising from such conduct.

The legislative structure reveals that the Egyptian legislator established the substantive basis of liability in the principle of good faith, whereas the Omani legislator provided the procedural mechanism by which the breach is revealed. If a party to a supply contract refuses to produce dispositive documents - delivery schedules, invoices or inventory records - he not only breaches the duty of cooperation but also causes dual harm: direct harm by delaying arrival at the truth before the court and indirect harm by depriving the other party of a fair opportunity to prove his right. This “chance of proof” is a legitimate legal interest, and its loss constitutes damage recognisable in civil liability.

Egyptian legal scholarship has settled on recognising “loss of chance” as a distinct category of compensable damage, sensing the gravity of breaching the duty of cooperation between contracting parties. A contracting party who withholds a document dispositive of the right commits a breach of good-faith obligations and thereby deprives his opponent of a reasonable means of proving his claim. This refusal produces several legal effects: first, it directly impacts procedural equality of arms. Second, it entitles compensation for the harm arising from the loss of a serious and probable chance. And third, it shows the

existence of a contractual fault requiring civil liability, because withholding evidence is a direct violation of an obligation imposed by the nature of the contractual relationship¹³.

Consistently with this, the Egyptian Court of Cassation has held that the burden of proving performance and discharge of the obligation lies on the debtor once the obligation is established, and that refusal to produce a dispositive document in his possession despite a court order creates an evidential effect against him, whereby a copy provided by his opponent may be considered identical to the original when certain conditions are met¹⁴. In Omani case law, we have indicated that the Supreme Court has repeatedly held in commercial cases that refusal by a party to produce a document ordered by the court not only yields a judicial presumption but may also give rise to full civil liability if actual harm results from the refusal.

These unified judicial trends demonstrate a deep understanding of the integration of legal principles across procedural and substantive fields. A single act yields a set of coherent legal effects working together to protect legal positions and rights of the parties.

The comparison shows that the Egyptian and Omani systems meet in treating good faith as a source of dual effect: on the one hand, it imposes a positive duty of documentary cooperation. On the other, refusal to comply is a contractual fault if it causes damage. However, the Omani legislator distinguished itself by codifying the procedural effect of refusal in Article 21, whereas the Egyptian legislator left it to the judge to infer from the spirit of the texts. At the level of consequences, both systems allow the judge to impose a dual effect: drawing a judicial presumption in evidence and awarding compensation for loss of the chance to prove, applying Articles 148 and 5 of the Egyptian Civil Code and Articles 156 and 59 of the Omani Civil Transactions Law.

It can be said that documentary refusal in supply disputes constitutes a unique model of integration between civil and procedural rules. The sanction moves from the arena of litigation to the field of obligations. When the judge establishes a presumption against the refusing party, he activates the procedural rule. When he awards compensation for loss of the chance to prove, he activates the substantive rule. Both decisions rely on the principle of good faith, which has become a basis for restoring contractual and evidential balance in modern commercial relationships. Good faith transforms from a supplementary

¹³ Mustafa Rateb Hassan Ali, "Compensation for Loss of Chance," *Journal of the Faculty of Sharia and Law in Assiut*, vol. 28, no. 28, September 2016, p. 735.

¹⁴ Egypt Court of Cassation, Civil, Appeal No 150 of Judicial Year 49, session 28 April 1983, *Majallat al-Maktab al-Fanni*, vol. 34, part 1, p. 1099.

rule into a generative rule that produces tangible effects in judicial judgments and ensures practical fairness in the field of evidence.

4 THE PROCEDURAL MECHANISM FOR ACTIVATING THE PRESUMPTION

4.1 Requests to compel production of a dispositive document

4.1.1 The formal and substantive conditions for a request to compel the opponent to produce the dispositive document

The judge's power to compel a party to produce documents is one of the most important tools for activating the duty of good faith in procedural matters. Article 21 of the Omani Evidence Law regulates this power. It allows the court to order a party to produce any document that is dispositive in the case if the document is under his control. To accept such a request, the application must specify the document and the fact to be proved by it, provide indications that the document is under the opponent's control, and show that the request is relevant to the dispute. Article 31 of the same law states that the court evaluates the evidence according to its relevance to the case. Thus, the court is not bound automatically to order production. It must assess the seriousness and relevance of the request.¹⁵

By contrast, Article 20 of the Egyptian Evidence Law provides that a party may request the court to order his opponent to produce a document that is dispositive in the case if the document is common to both parties or has been relied on by the opponent at any stage of the litigation. Article 168 of the Civil Procedure Law entrusts the management of the case to the court and allows it to order what it sees fit to reveal the truth. Accordingly, the Egyptian system, although less detailed than the Omani legislation, recognises the principle of requesting the production of a dispositive document when the request is specific and serious, but leaves its assessment to the judge's discretion.¹⁶

¹⁵ Talal bin Sultan al-Ma'uli, "Reflections on the Omani Evidence Law," *Judicial Journal*, issue 2, Sultanate of Oman, 2010.

¹⁶ Ahmed Abu al-Wafa, *Commentary on the Provisions of the Law of Evidence in Civil and Commercial Matters*, Mansha'at al-Ma'arif, Alexandria, 1978.

The comparison shows that the Omani legislator laid down precise procedural rules for the request, whereas the Egyptian legislator referred generally to the court's power. These rules revolve around three essential elements. First, the request must be specific and describe the document accurately. A general or vague request is unlawful because it turns the procedure into an impermissible document-fishing expedition. Second, the document must be dispositive in the case, meaning that it must influence the resolution of the dispute. This follows from Article 20 of the Egyptian Evidence Law and Article 21 of the Omani Evidence Law. Third, the applicant must provide reasonable indications that the document is under the opponent's control, in application of the phrase "under his control" in Article 21.

Egyptian legal scholarship considers these three conditions a guarantee against abusing the right to proof, based on Article 5 of the Egyptian Civil Code, which prohibits misuse of rights. If the request is not dispositive or lacks seriousness, making it constitutes in itself a breach of the duty of good faith in litigation.¹⁷ In Oman, scholars stress that Article 21 is a precise procedural translation of the cooperation duty set out in Article 156 of the Civil Transactions Law, and that the court must verify the elements of the request before issuing its order. Otherwise, the decision may be annulled for defective reasoning or lack of interest.¹⁸

As for the courts, the Egyptian Court of Cassation has held that the court orders a party to produce a document only if the document is necessary to decide the dispute, and that a general request that does not specify the fact or the document must be refused for lack of seriousness.¹⁹ Similarly, the Omani Supreme Court has ruled that a request to compel the opponent to produce a document must include its description, the subject matter of the fact, and indications that it is under the opponent's control, and that the document must be dispositive. Otherwise, the request is rightly rejected. The court also emphasised that a malicious request contravenes the duty of good faith in litigation and exposes its proponent to sanction.²⁰

¹⁷ Ahmed Mohammed Ahmed al-Zain, *The Intermediate Commentary on the Rules of Omani Evidence Law*, Dar al-Kitab al-Jami'i, 2024, 1st ed.

¹⁸ Talal bin Khalaf al-Ma'uli, "Request to Compel the Opponent to Produce Dispositive Documents in the Case," *Judicial Journal*, Sultanate of Oman, 2010.

¹⁹ Egyptian Court of Cassation, civil judgment, appeal no. 5287/74, session 17 February 2014.

²⁰ Oman Supreme Court, Cassation case no. 621/2020, *Collection of Labour and Commercial Judgments*, 2022.

The integrated comparison therefore shows that both systems share the same aim although they use different means. Egyptian law leaves the details to judicial discretion based on the spirit of procedural justice in Article 148 of the Civil Code, while Omani law codifies them in Articles 21 and 31 of the Evidence Law. The result is the same: a request to compel the opponent to produce a document is accepted only if it is made in good faith, is specific and dispositive, and is supported by reasonable indications of possession.

Fulfilment of these conditions turns the request into a tool for enforcing the documentary cooperation duty that emerges from Article 148 of the Egyptian Civil Code, and gives the judge immediate power to impose the procedural obligation laid down in Article 21 of the Omani Evidence Law. Conversely, if the conditions are absent, the request falls within the realm of abuse and must be dismissed. Thus, good faith governs not only the parties' conduct in performing the contract but also their conduct in managing the case. It becomes a procedural obligation that even restricts the very requests for proof.

4.2 Balancing commercial secrecy and the right of defence under Article 21 of the Omani Evidence Law and Article 168 of the Egyptian Civil Procedure Law

Applying the court's power to compel an opponent to produce a dispositive document raises a delicate issue regarding the limits of this power when it conflicts with commercial secrecy or the confidentiality of financial and technical data. The balance between the duty of cooperation that good faith imposes and the duty to protect trade secrets is one of the most sensitive issues in civil and commercial procedure.

In Omani law, Article 21 of the Evidence Law lays down a general rule allowing the court to order a party to produce a document that is dispositive in the case, while Article 31 confers on the court the power to assess whether such an order is appropriate in light of the circumstances. Reading the two provisions together shows that the judge must balance two interests: the interest of justice in uncovering the truth and the interest of the party in preserving the confidentiality of his information. This balancing power derives from the general principle in Article 59 of the Civil Transactions Law, which prohibits abuse of rights. Claiming secrecy must not become a tool for hiding the truth or obstructing justice.

In the Egyptian system, although the Evidence Law does not expressly address commercial secrecy, the general procedural rules in Article 168 of the Civil Procedure Law entrust the court with managing the case in a manner that ensures justice. It is

therefore implied that the judge may organise the inspection of documents in a way that protects the parties' interests. Article 148 of the Civil Code obliges litigants to act in good faith, preventing them from using confidentiality as a pretext to withhold a dispositive document, and Article 5 of the Code adds a restrictive dimension by prohibiting abuse of rights.

Egyptian scholarship holds that secrecy is not an absolute exception to the documentary cooperation duty but rather a relative constraint subject to the necessity test. Where the requested document is necessary to decide the dispute, the requirements of justice call for its production, albeit with measures to protect confidentiality, such as restricted inspection or production of a redacted version.²¹ Omani scholarship adopts the same approach, considering that Article 21 allows the court to balance the interests and adopt intermediate solutions, such as showing the document to the judge alone or redacting non-dispositive parts. This means that the Omani procedural rule has laid down the principle of proportionality in evidence, which is an application of good faith in procedural matters.²²

In Omani judicial practice, the Supreme Court has consistently held that the court's power to manage evidence is a discretionary power governed by the criteria of seriousness and relevance. The court may refuse malicious or abusive requests or requests unrelated to the subject of the dispute. The court also held that a judgment is defective if it fails to discuss material documents and arguments, as this infringes the right of defence and constitutes insufficient reasoning.²³

In Egyptian practice, the Court of Cassation has held that assessing evidence and documents and extracting facts therefrom, as well as evaluating an expert's report, are matters within the sole competence of the trial court provided that its judgment is based on plausible reasons. Accordingly, the court may, as it deems necessary to reveal the truth, conduct document inspection and examination to the extent that serves the purpose of proof without excess, including referring documents to an expert or adopting the report as part of the reasons if the court is satisfied with its basis.²⁴

²¹ Mustafa Rateb Hassan Ali, "Legal Protection for the Holder of Undisclosed Information in the Pharmaceutical Industry," *Judicial Journal*, Sultanate of Oman, issue 8, 2020.

²² Mohamed Fawzi Latif Nuwajji, "The Principle of Document Confidentiality before the Administrative Judge: A Comparative Study in Qatari and French Law," *Journal of Legal and Economic Research*, issue 47, May 2018.

²³ Omani Supreme Court, judgment no. 2016/105, session Tuesday 3 January 2017.

²⁴ Egyptian Court of Cassation, civil judgment, appeal no. 1073/52, session 8 November 1990.

The comparison shows that the Omani legislator provided a clear statutory framework to achieve the balance between these two principles, whereas the Egyptian legislator left it to the judge's discretion based on general principles of procedure and civil law. Nevertheless, both systems share the core idea that secrecy is not an absolute justification for refusing documentary cooperation and that the judge remains responsible for safeguarding the balance between justice and the parties' rights.

The practical result of this balance is that the court may, in both systems, order the opponent to produce the dispositive document while taking measures to preserve confidentiality, such as limiting inspection or redacting non-dispositive data. Thus, the request achieves the desired balance between good faith as a procedural duty and the party's right to protect legitimate interests. Article 21 of the Omani Evidence Law and Article 168 of the Egyptian Civil Procedure Law therefore embody a practical application of the philosophy of proportional justice, making documentary cooperation a relative duty governed by necessity and appropriateness.

5 DISCIPLINED JUDICIAL REASONING FOR THE PRESUMPTION

5.1 The four stages in building judicial conviction under Article 21 of the Omani Evidence Law and Article 148 of the Egyptian Civil Code

The presumption arising from refusal to produce a document is highly sensitive because it is based on a negative act. In practice, activating this presumption requires careful verification of its conditions as a fundamental guarantee for the proper administration of justice. Omission of any essential element may transform the presumption into an instrument of abuse rather than a means of fairness. For this reason, some scholars have proposed a practical guide to assist judges in testing each condition before ordering the effect: verifying the dispositive nature of the requested document, confirming that it is under the opponent's control, issuing an express court order to produce it, and ensuring that there is no legitimate reason for the refusal.²⁵

This approach ensures that the presumption is applied only in the narrowest necessary and most certain scope, and that the reasoning is built on clear stages of

²⁵ Yahya Ahmed Bani Tah, *The Principle of Good Faith at the Stage of Contract Performance: A Comparative Study with Egyptian and English Law*, PhD thesis, Arab Open University, 2007.

verification. Article 21 of the Omani Evidence Law grants the judge the power to consider refusal a presumption of the facts to be proved by the document, but links this power to the existence of a prior court order and the absence of a legitimate justification. In the Egyptian system, although there is no explicit provision, the substance of these conditions is inferred from Article 148 of the Civil Code, which imposes good faith, Article 20 of the Evidence Law, which requires that the document be dispositive, and Article 168 of the Civil Procedure Law, which grants the judge authority to manage the case and ensure justice.

From these provisions, the researcher may infer that judicial reasoning in cases of refusal passes through four interrelated stages. First, the document must be dispositive in the case. The presumption is not based on a document that is not necessary to decide the dispute, in accordance with Articles 20 of the Egyptian Evidence Law and 21 of the Omani Evidence Law. Second, the opponent must have control of the document, as indicated by the phrase “under his control” in Article 21 of the Omani Law, whether control is actual or legal. Third, an express court order to produce the document must have been issued. The effect does not follow from mere voluntary refusal but from disobedience to the court’s order. Fourth, the refusal must be unjustified. If the opponent provides a legitimate reason such as essential confidentiality, the presumption is excluded, applying the rule prohibiting abuse of rights in Article 5 of the Egyptian Civil Code and Article 59 of the Omani Civil Transactions Law.²⁶

The Omani Supreme Court has held that refusal is not considered a presumption unless it is proven that the document is dispositive, under the opponent’s control, and ordered to be produced, and that there is no legitimate justification.²⁷ The Egyptian Court of Cassation has emphasised that judicial presumptions must be drawn from established facts that are dispositive of the dispute.²⁸

The comparison shows that the Omani legislator codified the four stages explicitly, while the Egyptian judiciary inferred them from general rules. Nonetheless, the outcome is the same: a presumption may be built only on a legal fact comprising complete elements.

²⁶ Oman Supreme Court, appeals no. 2019/1323, session 20 October 2020.

²⁷ Oman Supreme Court, appeals no. 2019/1323, session 20 October 2020.

²⁸ Hossam al-Din Ahmed Abd al-Hamid Sharif, “The Legal Nature of the Duty to Mitigate Damages: A Theoretical Comparative Study,” *Journal of Law for Legal and Economic Research*, vol. 1, issue 1, January 2023.

Thus, disciplined judicial reasoning becomes an essential safeguard for the correct application of the documentary refusal presumption. It links the civil rule in Article 148 of the Egyptian Civil Code, which establishes the cooperation duty, with the procedural rule in Article 21 of the Omani Evidence Law, which provides the effect of refusal. The presumption is not built on suspicion but on legal logic based on objective verification of the nature of the document, its possession, the order to produce it, and the legitimacy of the refusal.

5.2 The proposed normative model for applying the documentary refusal presumption in supply disputes

Integrating Article 148 of the Egyptian Civil Code with Article 21 of the Omani Evidence Law requires developing a normative framework that helps judges and lawyers apply the presumption of refusal in a disciplined manner that balances the right of defence and the duty of documentary cooperation. The matter is no longer a matter of pure discretion. It needs a clear procedural methodology to ensure uniform application and reduce inconsistency in judgments.

This model starts from merging the substantive basis - the duty of good faith in the performance of obligations - with the procedural basis - the court's power to compel the opponent to produce dispositive documents. It consists of five practical steps that constitute elements of judicial examination before ordering the effect of refusal.

Determining the nature of the document and its dispositive effect. The judge must verify that the requested document affects the resolution of the dispute, based on Article 20 of the Egyptian Evidence Law and Article 21 of the Omani Evidence Law. Documents that are not dispositive may not be the subject of an order or serve as the basis for an effect.

Proving the opponent's possession or control of the document. Reasonable indications must be provided that the document is "under his control" as expressed in Article 21 of the Omani Law. Otherwise the request fails. This principle follows from case law requiring actual or legal control rather than conjecture.

Issuing an express court order to produce the document. The relevant refusal is the refusal that follows a court order. This condition follows from Article 21 of the Omani Law and the spirit of Article 168 of the Egyptian Civil Procedure Law, which empowers the judge to manage the case and issue orders necessary to reveal the truth.

Testing the legitimacy of the reasons for refusal. If the opponent invokes commercial secrecy or legitimate confidentiality, the judge must balance his interest with the interest of justice according to the proportionality principle expressed in Article 59 of the Omani Civil Transactions Law and Article 5 of the Egyptian Civil Code. The court may inspect the document itself or request a redacted version.

Determining the appropriate judicial effect. After verifying the previous conditions, the judge determines the appropriate effect according to his discretionary power under Article 31 of the Omani Evidence Law. He may consider refusal a presumption of the facts, lighten the burden of proof on the other party, or incorporate the matter into his reasoning without fully shifting the burden.

Omani courts have adopted this gradation. The Supreme Court has ruled that the presumption arising from refusal is not applied until the legal conditions are verified, and that the reasoning must show the stages of verification.²⁹ In Egypt, the Court of Cassation has established a similar principle by holding that refusal to produce a dispositive document may lead the court to infer an intention to harm the opponent provided the judgment is based on plausible and disciplined reasons.³⁰

The comparison shows that this normative model aligns texts with practice. It makes Article 148 of the Egyptian Civil Code the generator of the duty, Article 21 of the Omani Evidence Law the enforcer of the sanction, and the five verification stages the means of disciplined reasoning. It also allows lawyers to prepare their requests and defences systematically, taking good faith into account and preventing abuse of rights.

The operational result of the model is that the presumption of refusal is applied only after a logical examination based on: the document's dispositive effect, the opponent's possession, the order to produce it, the legitimacy of the refusal, and the appropriate effect. Thus, the balance between cooperation and secrecy is achieved, and contractual justice is translated into practical procedural justice in supply disputes.

6 CONCLUSION

The study yields the following findings and recommendations.

²⁹ Oman Supreme Court, Labour and Commercial Division, appeal no. 105/2016, session Tuesday 3 January 2017.

³⁰ Mustafa Rateb Hassan Ali, "Compensation for Loss of Chance," *Journal of the College of Sharia and Law in Asyut*, vol. 28, issue 28, September 2016.

7 FINDINGS

Good faith as a documentary cooperation duty in supply contract disputes. The study found that good faith is not merely a hermeneutic value. It manifests as a practical duty requiring the party who controls supply documents to enable his opponent to see them. Breach of this duty upsets the balance of proof and favours the party who monopolises the evidence.

The presumption of refusal is not an automatic sanction but a conditional judicial construction. The procedural effect of refusing to produce a document is not imposed automatically. It arises only after verifying specific elements (dispositive effect, possession, court order, absence of justification). This structure ensures that the presumption is used correctly and not turned into a procedural penalty.

Divergent legislative approaches between express provision and judicial construction. The comparative analysis showed that the Omani approach tends toward legislative clarity through an express provision allowing the court to infer the presumption when there is unjustified refusal, while the Egyptian approach tends to base the effect on general principles and judicial interpretations, which may lead to relative variability in application.

Refusal to produce a document may entail civil liability in supply contract disputes. The study concluded that withholding a dispositive document affects not only the weight of the evidence but may amount to a contractual breach if it deprives the other party of a serious opportunity to prove his right. This effect is particularly evident in supply disputes, which revolve around records of performance, delivery, invoices and correspondence.

The proposed normative model improves reasoning quality and prevents abuse. The study presented a standard test to regulate the description of unjustified refusal and a stepwise method for judicial reasoning when applying its effect. This contributes to unifying practical standards and avoiding loose conclusions or deficient reasoning.

7.1 Legislative recommendations

Codifying the presumption of refusal by an express provision in Egyptian law. The study recommends that the Egyptian legislator include a provision in the Evidence Law that gives the court the power to regard unjustified refusal to produce a dispositive

document as a presumption, while specifying the conditions and requirements. This would reduce inconsistency and increase legal certainty.

Defining “dispositive document” and regulating the request to compel production. The legislatures should set a clearer legislative or procedural standard for the concept of dispositive effect and the requirement to specify the document and its connection to the dispute. This would prevent malicious or broad requests and ensure that orders to produce documents are linked to resolving the dispute rather than fishing for evidence.

A specific provision for balancing commercial secrecy and the right of defence. The study recommends adding in Egypt, and elaborating in Oman, a provision governing claims of trade secrecy when a dispositive document is requested, requiring the court to adopt clear alternatives: deposit of the document for limited judicial inspection, delivery of a redacted copy, or submission to a neutral expert with limited disclosure to the point of dispositive content. This would prevent secrecy from becoming a pretext for hiding the truth or harming the defence.

Legislative gradation of the effects of unjustified refusal. The legislator should establish a “ladder of effects”: a rebuttable presumption, then easing or shifting the burden of proof by the gravity of the refusal and the document’s dispositive weight, and, only if necessary, treating the fact as established within the minimum scope needed to decide the case. The court should explain the step it applies and why.

Linking the procedural effect to civil liability in the case of malicious refusal. The study recommends strengthening the possibility of civil liability in Egypt and Oman for malicious refusal that deprives the other party of a serious opportunity to prove his right, especially in supply disputes. This would deter misuse of documentary control and prevent profiting from unlawful concealment.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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