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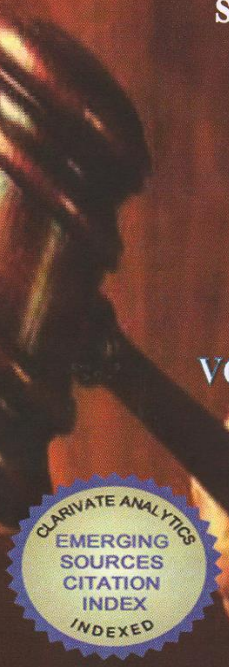

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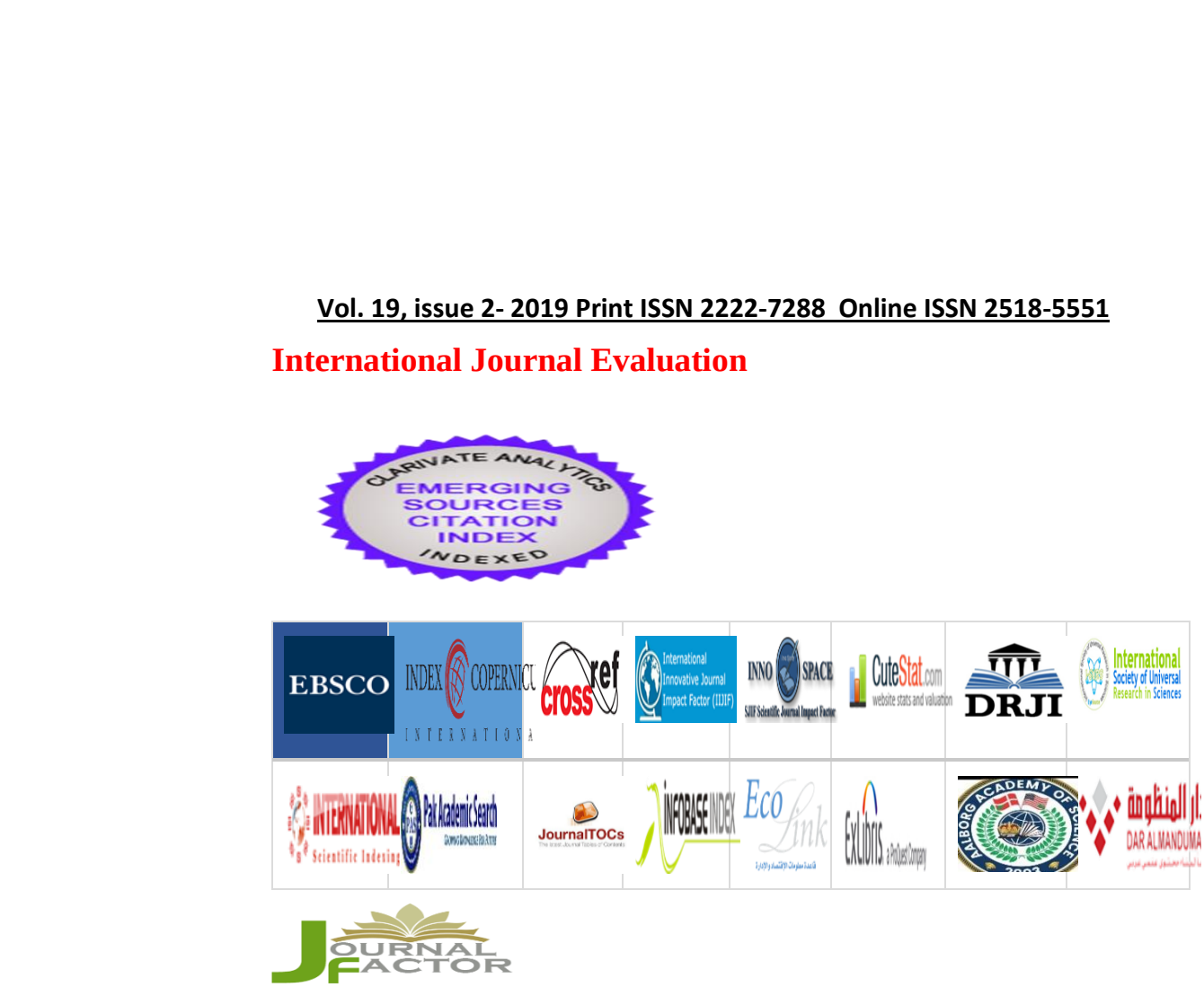

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JOURNAL OF LAW AND POLITICAL SCIENCES

TAX CRIME INVESTIGATIONS IN THE CONTEXT OF THE REVERSE COOPERATION OF THE INTERNATIONAL CRIMINAL COURT

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Abstract

The International Criminal Court has a unique potential of assistance for the requesting states that might be realized in domestic criminal investigations (so called reverse cooperation). Tax evasion is usually qualified as a serious crime under domestic legislation. Thus, tax evasion investigations are not an exception from the rule concerning assistance of the International Criminal Court but the examples of such assistance are fragmented and limited. Taking into account the needs of developing countries, there is a proposition to use the potential of the International Criminal Court more often and more widely in tax evasion

investigations especially in forms of capacity building, technical assistance and intermediary services.

Keywords: tax evasion, International Criminal Court, reverse cooperation, assistance, criminal investigation, impunity.

Part one: Introduction

As it is explained by the OECD, the term ‘tax evasion’ is difficult to define but it is commonly used as an ‘illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from the tax authorities’ [1]. Tax evasion sufficiently limits public financial resources in case of its large scale and negatively affects on education, healthcare and other obligations that are allocated to modern state. For example, Russia loses up to ₽1tn (£20bn) a year in tax evasion schemes with a further £32bn leaving the country illicitly in 2012 [2]. At the same

[1] Glossary of Tax Terms / OECD. URL: http://www.oecd.org/ctp/glossaryoftaxterms.htm#T

[2] Amos, H. Russia loses £52bn a year in tax evasion and illegal transfers, says bank chief / The Guardian. URL: https://www.theguardian.com/world/2013/feb/21/russia-loses-52-billion-tax-evasion

time, tax evasion could not be connected only with Russia because it is the common problem of all modern states especially in the era of globalization. Overall, global annual losses from tax evasion and tax avoidance are about $500bn or more that represents over 20 % of corporate tax revenues [1].

Lost financial resources are impossible to convert into public services for citizens of the state where such resources had been generated. Thus, the connection between tax evasion and positive human rights might be established because such rights could not be provided without active participation of state that needs necessary financial resources including taxes. It is well-known that 'human rights recognized by the international community through the ratification of respective multinational conventions are officially accepted as global values that should provide citizens with decent life guaranteed and protected by the credibility of state power' [2]. Taking into account the disastrous

[1]Tax avoidance and evasion - The scale of the problem / Tax Justice Network. URL: https://www.taxjustice.net/wp-content/uploads/2017/11/Tax-dodging-the-scale-of-the-problem-TJN-Briefing.pdf

[2]Iskakova, G.K. Modernity: Human Rights and Freedoms / Kazan humanitarian law university. Semipalatinsk, 2003. P. 21

impact of tax evasion on financial stability of states and opportunities of realization of human rights, there is a need to characterize the potential of the International Criminal Court in the context of domestic criminal investigations in tax crime cases.

Part two: Methods

The adoption of the Treaty of Rome in July 1998allowed to establish the first permanent International Criminal Court that became a historic milestone in the development of International Human Rights Law, International Humanitarian Law and International Criminal Law. Its uniqueness has stimulated a lot of interest from the researchers including Karin N. Calvo-Goller, Antonio Cassese, Errol P. Mendez, Harry P. Milton and Philipp Kastner. Nevertheless, there is no attempts of characterization of possible benefits from the realization of the potential of the International Criminal Court in the context of tax crime investigations. At the same time, it is obvious that tax crimes might be connected with the abuse of power especially in developing countries that might be illustrated by the Luxleaks disclosures or the Panama Papers investigation. The level of competence of authorities, corruption or the absence of necessary resources might be the serious challenges in the context of criminal investigations of this category of cases.

The purpose of the article is to clarify the potential opportunities and benefits of the assistance of the International Criminal Court in tax crime investigations on national level with the special focus on the developing countries that have obvious need in the improvement of mobilization of domestic financial resources.

First of all, there is a necessity to analyze the term ʻtax evasion' that should help to understand the negative consequences of losses via tax crimes and itsimportance as lost financial basis of realization of public policy in the different areas of social services such as education or healthcare. Then, the normative basis of assistance of the International Criminal Court in domestic criminal investigations should be characterized. This shall create the starting point for the clarification of the possible advantages for domestic tax evasion investigations in case of the assistance from the International Criminal Court.

Part three: research questions

1. What is tax evasion and how it affects human rights?

Tax evasion as social phenomena has very long history. As according to Barry Larking:ʻtax evasion, in contrast to tax avoidance, may be characterized as intentional illegal behavior, or as behavior involving a direct violation of tax law, in order to

escape payment of tax. Tax evasion is generally accompanied by penalties which may be, but are not always, criminal in nature' [1]. Thus, one could formulate the general characteristics of tax evasion despite the differences in the approaches to its definition, as follow:

- existence of intention;
- direct violation of the prescriptions of legislation;
- escape payment of taxes.

Besides its key characteristics, tax evasion also has its own forms that it might take in accordance with the intention of taxpayer or taxpayers [2]:

1) making false or incomplete statements in the tax return without prompting a successful challenge by the tax authorities (that is the most widespread method of committing tax evasion [3]);

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[1] Larking, B. International Tax Glossary. 5th ed. Amsterdam: IBFD, 2005. P. 157

[2] Smith, S. Taxation: A Very Short Introduction. Oxford: Oxford University Press, 2015. P. 77

[3]Xuereb, A. Tax Avoidance or Tax Evasion? *Symposia Melitensia*. 2015. No. 10. P. 218

2) hiding from the tax authorities that allows to function entirely out of their view (so-called tax ʻghosts’).

The economic interpretation of the problem of tax evasion is based on the fact that the tax base should be defined taking into account different variables such as incomes, sales, revenues, wealth etc., but they are often not observable. In this case, ʻthe outsider cannot observe the actual magnitude of a person’s tax base and hence cannot know the factual tax liability. Sometimes this knowledge can be obtained by means of costly audits, in which case we say that the tax base is verifiable (at a cost)’. In case of impossibility of tax base verification, taxpayers can then get tax benefits of the imperfect situation about their liability and go untaxed [1].

The measurement of losses due to tax evasion is not an easy task. Nevertheless, one could be provided with a few figures that might point at the scale of tax evasion practices:

1) the value added tax (VAT) gap amounted to €151bnin the EUonly in 2015 where the gap represents the difference between

[1]Franzoni, L. A. Tax Evasion and Avoidance. *Encyclopedia of Law and Economics*. Ed. by G. de Geest, 2nd ed. Cheltenham: Edward Elgar Pub, 2015. P. 292

the collected amount of VAT and the theoretical amount that is expected to be collected on the basis of the public information on the country's economy and the actual VAT legislation [1];

2) total tax gap for all the EU member states in 2014 equaled to more than $1,33tn [2];

3) developing countries as a whole lost about $7,8tn due to illicit financial flows (capital outflows from tax evasion, corruption and other illicit activity) during 2004-2013 where illicit financial flows represents finances that were predominantly untaxed or taxed at sufficiently lower rates in the country of source[3];

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[1] Study and Reports on the VAT Gap in the EU-28 Member States: 2017 Final Report, TAXUD/2015/CC/131. Warsaw, September 2017. P. 16. URL: https://ec.europa.eu/taxation_customs/sites/taxation/files/study_and_reports_on_the_vat_gap_2017.pdf

[2] Raczkowski, K. Measuring the tax gap in the European economy. *Journal of Economics and Management*. 2015. Vol. 21(3). P. 70

[3] Illicit Financial Flows from Developing Countries: 2004-2013. Global Financial Integrity, April 2017. P. 5. URL: https://www.gfintegrity.org/wp-content/uploads/2017/05/GFI-IFF-Report-2017_final.pdf

4) developing countries lose about $285bn per year because of tax evasion in the domestic informal economy [1].

From another point of view, it is calculated that by June 2018, jurisdictions around the world have identified €93bn in additional revenue (tax, interest, penalties) as a result of voluntary compliance mechanisms and other offshore investigations put in place since 2009 [2]. In other words, the higher level of being caught in tax evasion investigations due to the improvements in international tax cooperation pushes taxpayers to come forward and to disclose formerly concealed assets and income. Additionally, it demonstrates the potential of fighting with tax evasion in the context of mobilization of public financial resources that have the paramount importance in the context of realization of positive rights and freedoms.

[1]Cobham, A. Tax evasion, tax avoidance and development finance, QEH Working Paper No. 129, September 2008. P. 11 URL: https://pdfs.semanticscholar.org/34cf/203088c13d6fbb25a2b4b9c048a23e87e4a1.pdf

[2]OECD Secretary-General Report to the G20 Leaders. Bueno Aires, December 2018. P. 11. URL: http://www.oecd.org/tax/beps/oecd-secretary-general-tax-report-g20-leaders-argentina-dec-2018.pdf

The connection between the measures against tax evasion and the protection of human rights is underlined by the Human Rights Council in the Guiding Principles on Extreme Poverty and Human Rights [1]:

1) 'states should take into account their international human rights obligations when designing and implementing all policies, including international trade, taxation, fiscal, monetary, environmental and investment policies' (para. 61);

2) 'states must take deliberate, specific and targeted steps, individually and jointly, to create an international enabling environment conducive to poverty reduction, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection and development cooperation. This includes cooperating to mobilize the maximum of available resources for the universal fulfilment of human rights' (para. 96).

The similar provisions are included in the Maastricht Principles on Extraterritorial Obligations of States in the Area of

[1]Guiding Principles on Extreme Poverty and Human Rights, A/HRC/RES/21/11, 27 September 2012. URL: https://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf

Economic, Social and Cultural Rights (Principles 17 and 29 respectively). On the basis of these provisions, the representatives of non-governmental sector reaffirms the relations between the protection of human rights and the tax policy including anti-tax evasion measures [1].

The changes in the concept of relations between taxation and human rights had influenced on the 2030 Agenda for Sustainable Development 'Transforming Our World' adopted by the UN GA resolution 70/1 of 25 September 2015. Its provisions states that one of the goals of sustainable development is to 'strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection' (para. 17.1) [2].

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[1] Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, 28 September 2011. URL: https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23

[2] Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, 25 September 2015. URL: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

2. How and on the basis of what the International Criminal Court could assist tax crime investigations?

In accordance with Art. 5 of the Rome Statute, the jurisdiction of the International Criminal Court is strictly limited to the most serious crimes of concern to the international community as a whole including the crime of genocide, crimes against humanity, war crimes and the crime of aggression. Tax evasion is obviously absent in the proposed list of crimes.

At the same time, one might refer to the provisions of the Rome Statute that regulate other forms of cooperation between the International Criminal Court and states. Thus, it worth mentioning that Art. 93(10) could provide the necessary normative basis for the cooperation in the area of tax crime investigations (so called positive complementarity or reverse cooperation [1; 2]). As it is stated, the International Criminal Court may, upon request, cooperate with and provide assistance to a State Party conducting

[1]Sekhon, N. Complementarity and Post-colonialist. *Emory International Law Review*. 2013. Vol. 27. P. 803

[2]Imoedemhe, O.-C. The Complementarity Regime of the International Criminal Court: National Implementation in Africa. Cham: Springer, 2017. P. 48

an investigation into or trial in respect of conduct which … constitutes a serious crime under the national law of the requesting State' [1]. It should be admitted that tax evasion is a crime that is prosecuted under the national criminal legislation of almost all countries in the world. Consequently, there are no formal reasons that do not allow the International Criminal Court to give assistance on the agreed conditions with the requesting state in case of tax crime investigations. Nevertheless, one has to admit that Art. 93(10) does not define the term 'serious crimes' because it is the prerogative of the national legislator. Accordingly, it depends on the national criminal legislation, whether tax evasion is a serious crime or not.

Taking into account the possibility of the assistance in tax evasion investigations, Giuliana Z. Capaldo from the University of Salerno points out that the International Criminal Court as an institution 'whose primary mission is to combat impunity by ensuring that the most severe crimes do not go unpunished, has extended its focus to some «serious» criminal acts that are not encompassed' within its jurisdiction. She admits that there is some

[1] Rome Statute of the International Criminal Court. URL: https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

kind of drift of the International Criminal Court 'to not interpret the statutory obstacles to an expansion of the International Criminal Court's focus to serious tax fraud offences to be prosecuted as crimes against humanity as being insuperable' [1].

As an evidence of such drift, there isa clear affirmation from the Office of the Prosecutor of the International Criminal Court that provides assistance to requesting states with respect to conduct that constitutes as a serious crime under national law. The proposed list of such crimes includes an illegal exploitation of natural resources, arms trafficking, human trafficking, terrorism, financial crimes, land grabbing or the destruction of the environment (para. 7 of the Policy Paper on Case Selection and Prioritization) [2]. The presence of financial crimes in the list allows one to forecast that the International Criminal Court does

[1]Capaldo, G. Z. Getting to a Global Constitution Expanding Human Rights Law: the Application of the No-Impunity Principle to Tax Fraud Offences. *The Global Community Yearbook of International Law and Jurisprudence*. Ed. by G. Z. Capaldo. Oxford: Oxford University Press, 2018. P. 6

[2] Policy Paper on Case Selection and Prioritisation, 15 September 2016 / Office of the Prosecutor. URL: https://www.icc-cpi.int/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf

not refuse to provide assistance in case of tax evasion investigations.

The list of forms of the assistance of the International Criminal Court is not strictly defined but includes, inter alia:

– the transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the International Criminal Court;

– the questioning of any person detained by order of the International Criminal Court (subject to various safeguard aimed at protecting witnesses, and material obtained under assurances of confidentiality [1]).

Additionally, the International Criminal Court may transfer the suspect or accused to a state that has made a successful admissibility challenge in accordance with the conditions approved by the originally surrendering state [2].The other forms

[1] Schabas, W. The International Criminal Court: A Commentary on the Rome Statute. 2nd ed. Oxford: Oxford University Press. 2016. P. 1326

[2]Cryer, H., Friman, H, D. Robinson, D., Wilmshurust, E. An Introducation to the International and Procedure. Cambridge: Cambridge University, 2010. P. 549

might be the protection of victims and witnesses, training or technical assistance [1].

In our opinion, such measures are well-grounded where the necessary forms of the assistance should be determined by the features of the concrete investigation. The International Criminal Court is under 'no obligation of reciprocity towards states although it may, at its discretion, respond to incoming requests for assistance' [2]. If it agrees to cooperate with the requesting state, it will then bear the ordinary costs for executing such requests [3]. At the same time, the requesting state should be aware of formal and procedural requirements to the request on the assistance of the International Criminal Court. Otherwise, the results of the request will be negative [4].For example, according to the Law of Germany

[1]Stahn, C. Complementarity: A Tale of Two Notions. *Criminal Law Forum*. 2008. Vol. 19. P. 107

[2]Rastan, R. Testing Co-operation: The International Criminal Court and National Authorities. *Leiden Journal of International Law*. 2008. Vol. 21. P. 433

[3] Commentary on the Law of the International Criminal Court. Ed. by M. Klamberg. Brussels: Torkel Opsahl Academic E-Publisher, 2017. P. 675

[4] Prosecution's Response to Request for Assistance on behalf of the Government of the Republic of Kenya pursuant to Article 93(10) and Rule

on Cooperation with the International Criminal Court,a request made to the Court pursuant to Art. 93(10)(a) of the Rome Statute for mutual assistance or surrender of persons, as well as the accompanying documents, must have the prescribed form set forth in Art. 96(1) of the Rome Statute in connection with its para. 4 and the content set forth in Art. 96(2) of the Rome Statute in connection with para. 4 (para. 64 of the abovementioned Law) [1].

The paramount importance of the reverse cooperation in the context of developing states is underlined by Prosper M. Bernard who asserts that the assistance of the International Criminal Court 'could help fragile states strengthen their judicial systems and assert their sovereignty responsibility to deliver justice' [2]. This position is shared by Ovo C. Imoedemhe. He states that the

194', No. ICC-01/09-02/11, 10 May 2011. URL: https://www.icc-cpi.int/CourtRecords/CR2011_05702.PDF

[1]GesetzzurAusführung des RömischenStatuts des InternationalenStrafgerichtshofesvom 17.Juli 1998, 48 Bundesgesetzblatt 2002 I 2144. URL: http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl102s2144.pdf

[2] Bernard, P. The paradox of Institutional Conversion: The Evolution of Complementarity in the International Crimonal Court. *International Journal of Humanities and Social Science*. 2011. Vol. 9. No. 19. P. 204

advantages of the assistance of the International Criminal Court still exist even in case of the restrictive or limited character of such form of cooperation [1]. Additionally, one of the positive effects of the reverse cooperation is that it 'may help a State to overcome shortcomings in its domestic proceedings (e.g. unavailability due to lack of access to evidence or testimony)' [2]. It is worth mentioning that there are also the propositions to pursue complementarity on the basis of Art. 93(10) with opportunities for states to request not only technical assistance or capacity building but also legislative assistance from the International Criminal Court [3].

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[1]Imoedemhe, O.-C. The Complementarity Regime of the International Criminal Court: National Implementation in Africa. Cham: Springer, 2017. P. 49

[2]Stahn, C. Complementarity: A Tale of Two Notions. *Criminal Law Forum*. 2008. Vol. 19. P. 107

[3]Imoedemhe,O.-C. National Implementation of the Complementarity Regime of the Rome Statute of the International Criminal Court: Obligations and Challenges for Domestic Legislation with Nigeria as a Case Study (PhD Thesis). University of Leicester, March 2014.P. 253

Part four: Recommendation

Possible forms of the reverse cooperation of the International Criminal Court for domestic tax evasion investigations in developing countries

Despite the existence of the general benefits of the reverse cooperation, there is the necessity in identification of the special forms that might have in case of tax crime investigations on domestic level. Description of such forms creates a base for requesting assistance from the International Criminal Court where it is not only possible but might also be provided with the maximum level of efficiency of tax crime investigations in developing countries.

1. Capacity building.

Capacity building for tax administration might be defined as the broad process whereby tax administrations unleash, strengthen, create, adapt and maintain capacity over time [1]. Among all other factors, a huge sum of tax crime losses in developing countries shows that: effective and efficient tax administrations have crucial importance for the success of tax reforms in developing countries. At the same time, the task of

[1] Tax Administrations and Capacity Building: A Collective Challenge. Paris: OECD Publishing, 2016. P. 12

domestic resource mobilization demands effective and efficient tax crime investigations, because it is impossible to imagine the existence of fair and balanced tax system under the condition of impunity for tax evaders. That is why it seems that fiscal-capacity investments should not be limited only tax administration capacities to collect the taxes but they also have to be directed into the area of tax crimes investigations. As it is stated by Timothy Beasley and TorstenPersson, 'an investment that reduces the leakage from income taxes due to base-broadening will both yield higher tax revenue in the future and change the incentives for future governments to raise revenues from the income tax. This insight suggests that one can think of investments in fiscal capacity as (partly) strategic and forward looking'. They include the resources spent on organization and training in the respective authorities into the category of possible forms of such investments [1]. In this case, the assistance of the International Criminal Court might be desirable in the form of trainings for the authorities in developing countries, which are responsible to provide tax evasion investigations, especially in case of transboundary nature of complicated tax evasion impacting on several jurisdictions.

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[1]Besley, T., Persson, T. Why Do Developing Countries Tax So Little?*Journal of Economic Perspectives*. 2014. Vol. 28. No. 4. P. 117

2. Technical assistance.

Tax evasion is often closely connected with the improper use of opportunities of offshores and the complex financial instruments that creates additional challenges for tax crime investigations in developing countries. One of the main reasons of this situation is the lack of resources in the form of competent and skilled staff for providing tax crimes investigations. The International Criminal Court could provide its technical assistance on the case-by-case basis where it is necessary taking into account the high level of competence of its own staff on issues of criminal investigations. In our opinion, such assistance program for developing countries might be based of the example of the OECD/UNDP Tax Inspectors Without Borders (TIWB) initiative that helps to transfer skills to strengthen capacity in auditing multinational enterprises. To date, $414m of additional revenues have been raised with costs of less than $4m. It is interesting to note that the TIWB initiative is now branching out from general audit support to more specific sector audits as well as from tax

avoidance issues to tax evasion issues supporting investigations for tax and crime [1].

3. Intermediary services.

On the basis of application of the principle of complementarity as it is formulated in the provisions of Art. 93(10) of the Treaty of Rome, there is a consensus among the researchers that the Office of the Prosecutor of the International Criminal Court could also assist as an intermediary between states, 'facilitating situations where they may assist one another in carrying out national proceedings' [2]. It seems that one of the possible area of such specific assistance might be tax evasion investigations especially where criminal activityis connected with sufficient tax losses for more than one country or committing other serious crimes on the territories of several jurisdictions (for example, money laundering or financing of terrorism). At the same time, the International Criminal Court should be taken away from

[1] OECD Secretary-General Report to the G20 Leaders (OECD, December 2018). P. 14. URL: http://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-leaders-argentina-dec-2018.pdf

[2] Informal expert paper: The principle of complementarity in practice. The Hague: International Criminal Court, 2003. P. 6 URL: https://www.icc-cpi.int/RelatedRecords/CR2009_02250.PDF

any kind of intermediary any other similar activities that might jeopardize or compromise any its future role. Consequently, it is of paramount importance for developing countries because many of them do not have stable political systems and might request the assistance with the purpose to use its results in domestic political struggle.

Part five: Conclusions

The potential of the International Criminal Court is not fully realized in case of reverse cooperation on the basis of Art. 93(10) of the Treaty of Rome which provides the opportunities of assistance in serious crime investigations on domestic level. The definition of serious crimes is the prerogative of national legislators but it includes tax evasion in most of the countries. Thus, the International Criminal Court could provide assistance in tax evasion investigations on the request of state. It seems that the forms of such assistance might include capacity building, technical assistance and intermediary services. Taking into account the importance of domestic resource mobilization for providing human rights protection, high level of tax evasion and the scarcity of resources in developing countries, low- and middle-income countries should not ignore the opportunity to request the

assistance of the International Criminal Court in case of tax evasion investigations.

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SOURCES OF LEGAL RULE TO PROTECT THE WORKER FROM WORK INJURIES IN THE JORDANIAN SOCIAL SECURITY LAW

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Abstract:

The insurance of workers from work injuries and occupational diseases is one of the most important aspects enjoyed by the workers at the national and international levels. Where a set of rights were approved to the worker in case of injury during work or because of the work itself or being affected with a disease as a result of his duties under the work contract with his employer .

As a result of the multiple risks or diseases affecting the worker during his or her work, or due to their association with technology,

it is clear that these dangers cannot be covered by one or two legal sources, which calls for the adoption of multiple legal sources to protect the worker from work injuries and occupational diseases. This calls for the identification of legal sources that protect the worker starting from domestic legislation up to the international organization of protections.

Keyword: insurance, injuries, international levels, employer, technology, organization.

Introduction:

Efforts at the local and international levels to protect human resources, especially the working class , have been exerted for humanitarian considerations in order to achieve the dignity of the human being and for interest considerations as the state interest of to safeguard the health and safety of its citizens as one of its duties and for considerations of the employer interest in caring and protecting the working class, as a significant element in the capital movement directly and to increase production and achieve profits.

In order to find a balanced equation, between the labor rights and the employers, the legislation seeks to establish legal rules to maintain the right environment for work, provide occupational safety and health, and provide legal guarantees to protect the worker against work injuries and occupational diseases, and to

prevent the abuse of employers or any prejudice of the labor rights in the event of occupational injuries and diseases.

Sources of labor injury insurance rules are similar to labor law sources to a large extent due to two interrelated reasons.

The first reason is that any project or program to improve the socio- economic development in the field of production or services must prepare the necessary manpower to implement these projects. Without properly prepared manpower, these programs or projects cannot be developed.

This consideration leads us to the other consideration, which is as significant as the first consideration.

The second reason: the need for protection and security for these workers.

It is well known that the rules of occupational injury insurance are closely related to other social sciences. It requires technical studies in the fields of engineering, medicine and science, which requires the concerted efforts of specialists in these fields to directly affect the protection of workers from the occupational risks. This gives these rules its independent characteristics.

The presentation of these sources will not be a repetition of the literature on the sources of labor law.

We will try to highlight the nature of the rules for the insurance of work injuries and the special nature of the risk in this type of insurance in the Jordanian social security law and the various legal sources that protect the worker from work injuries and occupational diseases.

The study Problem:

The problem of this study is to highlight and clarify the legal rules governing the protection of workers from work injuries and occupational disease at the national and international levels and the adequacy of these legal rules to protect the workers.

The importance of the study:

In light of national legislation, regional and international efforts to expand the umbrella of protection for workers from any effects that would undermine their rights, and ensure the continuity of the worker in his work and the guarantee of rights in the event that the worker is at risk during work or because of work. The national and international bodies seek to keep abreast of the legal aspects of protection to safeguard the worker and secure his rights, and because of the slow issuance and enforcement of legislation in general, which calls for the adoption of several legal sources to control the newly created cases not listed among the risk insured cases of the worker. For this reason the official authorities tries to

find a holistic and integrated space without gaps or legal or physical barriers by relying on several legal sources to preserve the rights of worker in case of injuries and occupational disease. This is the specific aim of this study, to find out and identify these sources.

Methodology of the study:

The researcher used the descriptive and comparative method of explaining the legal sources to protect the worker through the following approaches:

The first topic: internal sources.

The second topic: Explanatory sources.

Third topic: External sources.

The first topic:

Internal sources

Preamble: The internal sources are intended to show the ways in which the rules of this insurance are established. There are laws, regulations and instructions set by the state, and there are other rules that are set by the parties themselves. Therefore, the internal sources must be divided into two parts.

The first requirement: "official" national sources

The second requirement: "non-official" professional sources.

The first requirement: "official" national sources.

Indeed, the rules for the insurance of work injuries take an important place among the total legal rules issued by the competent authorities in the State. In Jordan these regulations are stipulated under the Jordanian Social Security Law No. 19 of 2001. This law derives its legal bases as other branches of private law from the known official sources[1], in addition to the explanatory sources (doctrine and judiciary), which are taken into account for the purpose of recall , and accordingly we will divide this requirement into three branches as follows:

Section I: Legislation.

Section II: Custom.

Section III: Rules of Justice.

Section I: Legislation

The legislation is the first official source of labor injury insurance rules. The meaning of the legislation here is the Constitution,

[1] In accordance with Article 2 of the Jordanian Civil Code No. 43 of 1976, the official sources of the rules for the insurance of work injuries are: "1 - legislation 2 - Islamic jurisprudence rules most acceptable to the provisions of the law 3 - principles of Islamic law 4 - custom.

followed by ordinary legislation, issued by the legislative authority, and the sub-legislation "The executive and applicable instructions issued by the specialized executive bodies.

First: The Constitution

Social security rights are considered basic principles of the societies. The constitutional provisions that affirm the right of social insurance are clear. These provisions are directives to the legislative and executive authorities which oblige them to formulate the laws, regulations and executive decisions necessary to implement social insurance, Which consider the occupational injury insurance as the most important of its branches, Although the Jordanian constitution does not directly provide such insurance, as did the Egyptian [1]and the French[2] legislators, "to

[1] See the text of Article 17 of the Egyptian Constitution. The State is mandated to extend its services in this field to the citizens in a better situation that believes in all their categories through a report to help them face their inability to work. The State shall ensure the provision of social insurance services. Every citizen who does not have a social security system shall have the right to social security to ensure a decent life if he is unable to support himself and his family and in cases of incapacity to work, old age and unemployment. Agricultural workers, fishermen and irregular employment).

[2] See Article 34 of the French Constitution: The law sets out the following basic principles (the right to work, the right of association and social security ... and the laws governing the financing of social security ...).

affirm the text of the article in the constitution,". The text of Article 6/2 of the Constitution provides for the responsibility of the state to guarantee dignity and equal opportunity for all Jordanians[1], as well as the text of Article (23) of the Jordanian Constitution, which guaranteed the protection of the worker[2]. This shows the extent of the Jordanian legislator's keenness to lay down the principles on which the work is based in general and attention to compensation for work injuries, and protect them from occupational risks, as well as the issuance of the Social Security Law No. 30 of 1978 is based on the Constitution under the need to compensate workers in the event of injury due to work accidents.

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[1] Article 6 (2) of the Jordanian Constitution issued in 1952 states: (The State shall guarantee work and education within its means and ensure the tranquility and equal opportunities for all Jordanians).

[2] 5 See Article 23/2 of the Jordanian Constitution, which states: The State shall protect and establish legislation based on the following principles:

A - Giving the worker a wage commensurate with the quantity and quality of his work.

B. To determine the weekly working hours and to give the workers weekly and annual rest days with pay.

C. a special compensation report for dependent workers, demobilization, sickness, disability and emergency situations arising from work

Second: Ordinary legislation

Most countries regulate occupational injury insurance by special laws[1]. The Jordanian Social Security Law No. 1 of 2014 is considered as the last stage of development of social insurance legislation in general and the insurance of work injuries and occupational diseases in particular. It is the most important source of workers' rights if exposed to occupational risks and dangers. It is known that the vast majority of workers in Jordan are subject to the provisions of the Social Security Law, but still many problems facing the practical application of the rules of this social legislation.

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[1] See Article 25 of the Jordanian Social Security Law No. 1 of 2014, which states: (Work injury insurance services include:

Medical attention required by the patient's medical condition.

(B) The daily allowance for temporary incapacity to work if the injured person is unable to work due to work injury, provided that the provisions of Article (31) of this Law are observed.

C) Monthly salaries and compensation for the one payment due.

(D) funeral expenses payable in the event of the death of the insured as a result of the injury of the work,

This text is met in the Egyptian Social Insurance Act No. 19 of 2000.

For example, in respect of disputes that arises because of the wages, the basis of which the contributions are determined and provide the insured their rights. It is important to refer to the laws governing the wage according to the category of the insured [1] and also with regard to the deprivation of allowances and compensation provided for if the injury is caused by an intentional self-act of the worker or alcohol abuse, drugs or psychotropic substances, or the violation of the insured worker to the instructions for treatment, occupational safety and health,[2] or the

[1] Article 2 of the Jordanian Social Security Law explicitly states that: "The monetary or in-kind remuneration paid by the insured shall be calculated in respect of his work, the profession and the regulations determined by the regulations issued pursuant to the provisions of this law.

[2] The provisions of the Work Injury Law, the insured person who is injured from all or some of the rights, are often denied if it is proved that the victim intentionally committed the same or caused it because of his misconduct and others, which necessitates an investigation to determine the cause of the injury.

See Article 31 of the Jordanian Social Security Law No. 1 of 2014 and Article (57) of Law No. 19 of 2000 of the Egyptian Social Insurance Law. Some countries also provide for additional contributions if the injury is caused by Neglect of the employer in taking security and preventive measures in the establishment, as in Article (133) of the French social security regulation.

injury caused by another person to, which requires the application of the provisions of the Penal Code.

The laws are not limited only to the state legislation, but include the international conventions ratified by the constitutional procedure, which becomes as national applicable legislation[1]. the law referred to is not the only legislation in force on the issue of insurance of work injuries and protection of the worker, there are

[1] Article 4 (a) of the Jordanian Social Security Law No. 1 of 2014 states: "The provisions of this law shall apply to all workers who are not less than 16 years of age without any discrimination due to nationality, whatever the duration of the contract Or the form and nature of the remuneration and its value, whether the performance of the work mainly in the Kingdom or outside without prejudice to the provisions of international conventions governing the rules of double insurance, "and also Article (2 / b) of the Egyptian Social Insurance Act No. (19) 2000, which states: "... Without prejudice to the provisions of international conventions ratified by the Republic "It is noted that the Jordanian legislator did not distinguish the nationality of the worker nor the duration of the contract, and this is one of the most important things for the Jordanian legislator who made the umbrella And the duration of the contract, unlike the Egyptian legislator, which stipulated a one-year contract of employment and the existence of a reciprocity agreement. In our view, the Jordanian legislator was more successful than the Egyptian legislator in extending protection to all workers from the dangers of the profession.

other legal provisions contained in other existing legislation applicable to this law, including:

1- Jordanian Labor Law No. 8 of 1996 and its amendments:

The Labor Law, which is currently in force, includes a special chapter regulating occupational injuries and occupational diseases (Chapter X / Articles 86-96). The Labor Law is the law that brings together all labor and labor provisions).[1]

The Labor Code, in Chapter IX (Articles 78-85) on occupational safety and health, and this chapter was not addressed by the legislator in the Social Security Act. The Labor Code is the basic reference to the Social Security Act.

The second article of the Labor Code determines the definition of injury, as “any injury caused to the worker as a result of an accident during the performance of the work or because of it". It is considered in this rule what happens to the worker while going to start his work or return from it. The definition of occupational diseases, is the infection by one of the legally prescribed occupational diseases, the provisions of the Labor Law are limited to workers who are not covered by the provisions of the Social

[1] See: Dr. Fouad Dahman, Social Legislation (Labor Law), Third Edition, Damascus, 1965, p. 29.

Security Law[1] or to workers covered by social security provisions. Cases do not apply to any of the cases provided for in the Social Security Law then the provisions of the Labor Law shall apply to them as a source of protection as a complementary to the Social Security Act.

2. Civil Code:

The Jordanian Civil Code No. (43) For the year 1976, which is in force since 1/1/1977, contains a special chapter regulating the work contract (articles 85 to 832).[2]

3. The Code of Civil Procedure:

The Social Security Law guarantees some of the fundamental procedures for the insured's cases, such as the period of appeal, failure to hear the case over a certain period of time exemption

[1] See Dr. Haitham Al-Masarwa, Selected in Explanation of Labor Law, First Edition, Amman, Dar Al-Hamed Publishing, 2008, p. 237

[2] Article (832-2) of the Jordanian Civil Code: "The provisions of a labor contract shall not apply to workers subject to the Labor Law, except to the extent that they do not explicitly or implicitly contradict their legislation." The text states that: Excluded from the application of labor law provisions such as domestic workers, seafarers and seafarers remain subject to the general regulation contained in the Civil Code for the contract of employment

from fees and controls, and penalties for those fails to obtain any salary or compensation for himself or others.[1]

However, this does not preclude the fact that the Code of Civil Procedure remains complementary to these special provisions and is generally applied. If the Social Security Law is devoid of any of the procedural rules, the Civil Procedure Law is referred to.

Third: Sub-legislation "Regulations issued by the executive branch":

The legislator in the economic, social and administrative laws [2]provides in its legislation the basic rules and allows the executive authority to detail these basic rules through the secondary legislation. These sub-legislations are mainly needed in the social security law in general and the rules of occupational injury insurance in particular, This law is characterized by realism that makes it necessary to face the diversity of work injuries to which workers are exposed every day, as well as the technical issues that need to be developed detailed solutions accurate, not included in

[1] See Articles 38 and 95 of the Social Security Act No. 1 of 2014.

[2] See Latifa: d. Ahmed Abdel Karim Abu Shanab, Explanation of the Jordanian Labor Law, "Comparative Study" First Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 1988, p. 43

the provisions of the law, no matter how accurate, otherwise , these issues often requires the enactment of legislation facing this change. The sub-Legislation does not need long procedures and discussions that consume a long time being issued by the executive branch, if leaving the organization of these matters to ordinary legislation such a modification would have been impossible that needs a long procedure[1].

The importance of the regulations is emphasized, because the code of these legislative means is more effective in providing security and achieving the objective of the law. Many prevention measures require the cooperative efforts of specialists with experience in industrial security and the system of safety in institutions to ensure the safety of workplaces, There is no doubt that the value of large systems in resolving practical applications regarding disputes arising from work injuries, especially in the knowing the causes of

[1] See Dr. Abd al-Wadood Yahya, Explanation of Labor Law, Third Edition, Dar al-Nahda al-Arabiya, 1989, paragraph 17, p. 27-28.

As well as: Hassan Kira, Origins of Labor Law, 1983, p. 65.

As well as: Jalal Al-Adawi and Issam Anwar Salim, Labor Law, Alexandria, 1995, p. 110

injury, as well as in the payment of allowances for the injured and other procedures.

It was wise to leave the regulations and instructions to deal with everything that characterizes, and needs to be detailed in engineering, medical and accounting aspects.

It should be noted that the secondary legislation in Jordan is issued by a system issued by the executive authority or by instructions issued by the competent minister, which is directly related to the law or to the system.[1]

[1] Article 106 of the Social Security Law No. 1 of 2014, which granted the Council of Ministers the right to issue the necessary regulations for the implementation of the provisions of this law, including this law, including regulations for employees and employees. "Article 9 (F) of the Social Security Law No. 1 of 2014, the Board of Directors of the Corporation shall issue instructions and decisions to ensure the achievement of its purposes. It should be noted that the Chairman of the Board of Directors of the General Organization for Social Security is the Minister of Labor. Under these powers, Board of Directors No. 2/2002 dated 4/1/20 02, and has been implemented from the date of its adoption in accordance with the text of Article (1) of the Instructions.

Section II: Custom

The custom is a precautionary source that fills the gap in the absence of a provision in the rules of occupational injury insurance in the Social Security Law. it must have a material element represented by the frequency of behavior of a particular act, and a moral element represented by the literal and spontaneous application of the phenomenon in the belief that it is mandatory.[1]

The custom is characterized of being a source of labor injury insurance rules in the Social Security Act as a local custom for a particular territory or area of work, or as a professional custom limited to a particular profession or character.[2]

It should be borne in mind that recourse to custom as an official source in the scope of occupational injury insurance shall be within limited extent, because of the large number of legislative texts regulating its provisions. However, custom still has an undeniable role in certain aspects of this insurance. The determination of the worker salary is the basis for defining the monthly contributions

[1] See Mohamed Farouk Pasha, Social Legislation (Labor Law), New Printing Press, Damascus 1998/1989, p. 126.

[2] See Hassan Kira, Origins of Labor Law, Egypt, Dar al-Ma'aref Establishment, 1983, pp. 65-66.

performed by the employer in a percentage of 2% of the wages of his insured workers.[1] In many cases, the custom determines how to estimate and calculate the wage.[2] On the basis of this wage, determined by customs, the injured is entitled to the decided daily cash payment[3].

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[1] Article 24 (a) of the Jordanian Social Security Law stipulates that: The sources of funding for the insurance of occupational injuries and occupational diseases shall be the following: Monthly contributions made by the establishment at the rate of 2% of the insured's wages.

[2] Article 810 (2) of the Jordanian Civil Code states: "If the wage is not determined in the contract, the worker shall have the same wage according to the custom. If there is no custom, the court shall have discretion in accordance with the requirements of justice" (811) of the same law provides that: "The worker's wages shall be considered part of the commission, percentages, grants and service fees in the work that was customary in granting them and shall be calculated when the rights are settled or signed." The Egyptian Civil Code, / 1) "if individual contracts, collective contracts or factory regulations do not provide for the remuneration to be paid The owner of the factory shall take the estimated price of the work of the same type if any, otherwise the wage shall be determined according to the profession and the name of the authority in which the work is performed ... ", as well as the text of article 683/3, as well as the text of Article 690 of the Civil Code Egyptian.

[3] Article (29) of the Jordanian Social Security Law called the daily allowance and defined the daily allowance in Article 2 of the executive instructions for

In addition, it is the custom that determines the period of the season for seasonal work, for which the employer is obliged to contribute and to insure the worker against the risks of the profession. The disputes are often raised in the case of seasonal worker injury. It is essential to define the seasonal work in order to pay him the allowances or to deprive him.

The custom also intervenes in determining liability when the injury occurs. if the injury occurs as a result of a deliberate act of the injured person,[1] which makes the victim allegedly contrary to the custom of the profession or the usual way of performing the work in the company.

As well as the work of prevention and security where the employer shall provide security and protection for his employees to protect them. The custom plays an important role in determining the responsibility of the employer; forcing him to take the security and prevention measures required by the nature of work and the profession. Although not written in the laws, regulations or

occupational injuries and occupational diseases as: (what the institution pays the injured during the period of his incapacity due to work injury) Article (49) of the Egyptian Social Insurance Law.

[1] Article (31/1) of the Social Security Law and the text of Article 57 / A, B of the Egyptian Social Insurance Law.

instructions governing this subject, whether in the Jordanian Social Security Law or the Egyptian Social Insurance Law, but may be based on the provisions of the Labor Law.[1]

Section III: Rules of Justice

The rules of justice are the third source of the Jordanian social security law and the rules for the insurance of occupational injuries and occupational diseases after legislation and custom. The last resort of the judge if there is no solution to the matter before him in the previous sources. The reference is clear to the rules of justice in the text of article 810/2 of the Jordanian Civil Code for the estimation of remuneration. The court shall assess it in accordance with the requirements of justice. The judge shall endeavor his opinion until he reaches the conclusion of the dispute before him.[2]

It is worth to pay attention to the importance of this source for the rules of occupational injury insurance because the Jordanian social security law is the newly established and due to the scarcity of specialized legal references, as well as conflicting jurisprudence

[1] See Chapter 9 of the Jordanian Labor Code in Occupational Safety and Health Provisions (Articles 78-85).

[2] Tawfiq Hassan Faraj, Introduction to Legal Sciences, Second Edition, 1981, pp. 274-275

by specialists in the employees of the Social Security corporation who are charged with applying the provisions of the law.

The second requirement: sources of professional origin

Whatever the dispute over these sources,[1] the relevant rules are important in the practical application of labor injury disputes. These sources existed prior to the intervention of the legislator in

[1] 25 d. Abdel-Wadood Yahya, Explanation of the Labor Law, op. Cit., Pp. 28-29. Dr.. Yusuf Elias, Brief in Labor and Social Security Law, First Edition, Baghdad, 1984, p.13,There is a difference between jurists on the fact that these sources are official sources in two directions: The first trend: proponents of this doctrine went on to say that professional sources are a source of special sources to protect workers from the dangers they are exposed to, and establish the owners of this trend in the presence of these sources since ancient times under the system of communities before the intervention of the legislator in the issues of work in modern times , And these sources remained the only source to regulate labor relations and preserve the rights of workers in the event of injuries to work, as each sect or character sets their own systems until the legislator enters into labor relations. The second trend: Another aspect of jurisprudence is that literal sources are not considered official sources of workers' protection. The authors of this trend argue that the idea of literal sources does not conform to modern legal principles which do not recognize the legislative or non-state authority.

the affairs of labor in modern times, but were the only sources governing labor[1].

We will address these sources through the most important features in three branches. We will address in the first section: customary rules applied by professionals, and in section II: collective agreements, and section III: internal regulations.

Section I: Customary Rules

It is the work of the employer that is established and settled in the labor community, so that custom intervenes in the scope of occupational injury insurance and occupational diseases. For example, determining the wage of a worker is the basis for determining the rate of deducting contributions for work injuries caused by the employer for work injury insurance and occupational diseases, It is the custom that determines the period of the season for which the employer is obliged to participate,[2] the

[1] Mansour Al-Atoum, Explanation of the Jordanian Labor Law, Amman, Dar Al-Thaqafa, 2017, p.59

[2] See in this direction:

Dr. Aktham Al-Khuli, Origins of Labor Law, 1961, pp. 41-42.

Dr.. Tawfik Hassan Faraj, Labor Law in Lebanese Law, Egyptian Law, 1986, University House, Beirut, pp. 83-84. Mansour Ibrahim Al-Atoum,

insurance of the worker against the risks of the profession, and also the determination of liability when the injury occurs or the work of prevention for security.[1]

Section II: Collective Agreements

Collective agreements are considered to be the interests of the workers because of the conditions under which employers are required to take measures to ensure the safety and security of workers in the exercise of their work more than the legal texts[2]. Some agreements oblige employers to pay additional pay and benefits in cases of work injuries, in addition to the compensation stipulated by the law, including the provision of medicines and treatment by specialized doctors appointed by these specific conventions[3], some of them emphasize the right of the injured worker to retain the right to return to work after a certain period

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Explanation of the Jordanian Labor Law, (Comparative Study), Third Edition, No Publisher, 2008, p.37

[1] Ahmed Abdel Karim Abu Shanab, Explanation of the new Jordanian Labor Law, 1998, Dar Al-Thaqafa Library, Amman, p. 48.

[2] Francois Barret, Historire Travail, 1960, Due sais, je? Le point des connaissances actuelles NO. 164

[3] Michel Despax, Conventions Collectives, Paris, 1966, NO. 78, P.P. 108 – 109

and to continue to pay him the full wage during the period of treatment.[1] Some of them determine that in the event of adverse consequences of the injury before the expiry of a certain period, the injured has the right to have compensation in the event of the same injury[2] while others decide to pay additional compensation to the beneficiaries of the injured family[3].

Including the provision of protective equipment, clothes and security equipment, milk and food, to the injured workers .it is mandatory to give rest periods in hard and hazardous work, and the expansion of the scope of banned work for women and juveniles.[4]

Section III: Internal Regulations

The internal regulations refer to the set of regulations set by the employers that clarify the terms of employment or rules stipulated

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[1] Lucien Francois, La distinction enter employes et ouvriens en droit allemande, beige Francais et italien. La Haye, 1963, P.56.

[2] Ibid, op. cit, P. 57

[3] E.Modlinski, Rapport National, Pologne. P. 1630 . Actes. Du cinquieme congres International de droit du travail et de la securite social. Lyon, 1963, Tome III.

[4] Ibid, op. cit, P. 1630.

in the contract of employment, such as the definition of the start and end of work, the time of taking the meals, the breaks and how to maintain professional safety .also to determine the penalties imposed on the workers when they breach any of their obligations[1].Regardless of the jurisprudential difference on the legal adaptation of the nature of these regulations or instructions.[2] These instructions are of great importance in the area of disputes in the insurance of work injuries and occupational diseases through the time when the injury occurred. Such instructions help to resolve disputes related to work injuries without resorting to the provisions of the judiciary, because we will talk later about the conditions of work injury in the security law:

1. The accident occurred during the performance of the work.

2. Accident due to work.

3. Road accident.

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[1] See:

-Dr. Hassan Kira, Origins of Labor Law, op. Cit., Pp. 66-67.

- Ahab Ismail, al-Wakiz in the Labor and Social Security Law, op. Cit., Pp. 28-29.

[2] d. Amer Mohammed Ali, Explanation of the Jordanian Labor Law, National Center for Publishing, Irbid, 1999, p. 41

During the period of the insured's departure from his place of residence to start his work or return from it without failure or interruption or deviation from the natural way, all these conditions can be reached through the internal regulations that are regulated by the employer to determine the start and termination of work and other instructions within the internal regulations help In the protection of workers' rights in the event of occupational injuries.

The second topic: Explanatory sources (doctrine and judiciary)

The doctrine and judiciary have a role for the various branches of law, and are an explanatory source of rules for the insurance of work injuries and occupational diseases.

As a source of law, jurisprudence has played a major role in the rules of occupational injury insurance and occupational diseases, since the work of jurists is to explain the legal rules and clarify their ambiguity and comment on them, it is a source of guidance to the judge in his rulings.

As well as the judgments of the courts. It is an explanatory source and is of great importance in the field of work injuries due to the large number of disputes and the abundance of provisions therein, in particular the provisions of the Jordanian administrative Court of Cassation, as well as the judgments of the Administrative Court

of Labor Injury Disputes, to which the Social Security Institution is a party, Legal and moral obligation, to guide the judge when issuing his judgments in similar cases. Following the same solution, whenever the conditions of application of this rule are met, respect for that rule will be achieved.

Despite the issuance of labor injury regulations, these provisions were not sufficient to cover disputes arising from injuries. The legislator did well when he did not define the work accident as a comprehensive definition, allowing the judicial process to define and describe the act that results from the work as a different description.

In reviewing the rulings of the Jordanian, Egyptian and foreign courts, it was found that many of the rulings of the courts of cassation determine the concept of the road, the meaning of a primary or secondary place of residence, etc., so that these provisions and principles established in other courts.

Finally, the judiciary is considered a source of labor injury insurance rules to the extent that it helps to derive the legal principles contained in legislative texts.

Third topic: External sources

Many international, joint and bilateral efforts have been made to achieve standard rules of labor injury insurance because of the need for international cooperation because of the spread of migration and the movement of labor from one country to another.[1] The income and expenses of occupational injury insurance have played an important role in economic competition policy between projects in all countries, in addition to the massive industrial development in all aspects of economic activity, using the largest quantities of chemicals and radiation, resulting in the spread of many occupational diseases.

The symptoms may appear on the body of the worker for several years during which the worker may be transferred to work in more than one place. The symptoms of the occupational disease may appear after several years of leaving work in the establishments where he was injured from the beginning.

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[1] The number of Conventions organized by the International Labor Organization (ILO) reached 189, most recently in 2011.

Among the agreements organized by the Convention for the Compensation of Occupational Injuries and Occupational Diseases No. 42 of 1934

The international organizations are recognized of their leading role in the legalization of labor rights at the international level and guide countries to direct their domestic laws in this direction, especially efforts to establish rules for the protection and establishment of rules for the insurance of work injuries. The most important international organizations are the International Labor Organization (ILO) and Arab labor organization in the Arab countries, which will be dealt with successively:

First requirement: ILO.

Second: Arab Labor Organization.

First requirement: ILO

This organization was established in accordance to the Treaty of Versailles in 1919 as part of the League of Nations and became financially independent from the League after its gradual separation. Membership was not required to be a member of the League of There is no room to present all the international legislative acts in this research, but we will limit ourselves to presenting conventions and recommendations concerning occupational injury insurance and occupational diseases because they have a direct and binding effect on positive law (social security law) in Jordan.

Nations and was founded as a reaction to the First World War. 1945, the organization sought to be bound by an agreement signed on 30 May 1946, the first specialized organization of the United Nations, based on the basic constitutionality that a just and lasting peace can be achieved only if it is based on social justice. International Labor Parliament In the form of conventions and recommendations,[1] in the light of social, economic, political, cultural, health and other conditions.

The most important activities of the ILO are the so-called international labor standards, which include international labor conventions and international labor recommendations.

Where international labor conventions are binding on the state ratified by them, unlike the recommendations, they are not binding and can be used by States in the development of legislation relating to working conditions and all aspects, depending on the circumstances and conditions.

[1]Among the recommendations made by the ILO General Conference at its 90th session 2002, which issued Recommendation No. 194 on the list of occupational diseases and the registration and notification of accidents and occupational diseases.

The ILO General Conference has issued several conventions to protect the human labor force from the dangers of work,[1] the protection of juvenile workers[2] and the protection of women workers[3] by imposing a minimum age for employment and organizing their work at night, granting them weekly rest and annual leave or prohibiting the employment of women workers. The use of certain harmful substances, which were the Convention on the Prohibition of the Use of White Lead in Paint [4] and the need for periodic medical examination of workers to demonstrate their fitness.[5]

As well as compensation of workers or their dependents for injuries caused by work accidents, diseases and the profession's agreement, which provides for compensation of workers for

[1] See Conventions No. 153,67,63,61,57,51,49,47,46,31,30,1 on the determination of working hours

[2] See Conventions No. 18,124,90,79,78,77,60,7,6 on the protection of juveniles

[3] See Conventions No. 89,45,41.4 on the protection of women

[4] See Convention No. 13 of 1921

[5] See Conventions No. 164,124,78,77,73,16

injuries in accidents caused by work or during work and its performance.[1]

Regarding the treatment, the International Labor Organization (ILO) has issued several agreements, [2]concerning the establishment of levels of assessment of the categories subject to insurance, contributions to be paid and the allowances to which the injured person or his or her family members and entitlements should be paid. The International Labor Organization (ILO) is characterized of applying the method of codes which help its level of implementation to be applicable. if the first levels of success and stability, followed by the levels of the best workers[3], and had

[1] See Conventions No. 121,42,32,28,19,18,17.

[2] See Conventions No. 157,121,118,102,55,42,19,17,12

[3] This is evident in the application and categories of users set out in Convention No. 17 and then extended protection to other categories such as "Convention No. 55". The international trend has begun to widen towards universal coverage. Recommendations have been issued in which the protection principle (Not associated with employment contracts) with social insurance, see Recommendation No. 67 of 1944, as well as the reports of the Committee of Experts submitted to the ILO Governing Body in 1956, 1962, to cover all workers against occupational injuries and occupational diseases without exception.

a positive impact on social legislation in the countries of the world because of the flexible levels to suit different countries, whatever the Social, economic circumstances and degree of strength or weakness of the economy.[1]

The ILO also aims at equal treatment in terms of the rights of victims and their families when legal centers have been established without any discrimination on account of sex, language, belief or religion,[2] and to establish minimum principles that National legislation shall respect it so that every worker who is aware of the

[1] The Workers' Compensation Convention on Occupational Diseases was issued by the General Conference of the International Organization on May 19, 1925. This Convention entered into force on April 1, 1927, and was ratified by 96 countries. The clear variation in the economy of each of the organizing States, The various economic powers are from the great powers and have economic power, such as Germany, from the Third World countries, the weak economy and the developing countries. Seven Arab countries, such as Egypt, ratified the agreement in a timely fashion.

[2] Article 4 (a) of the Jordanian Social Security Law No. 1 of 2014 stipulates: "... the law shall be in force for all workers who are not less than sixteen years of age without distinction as to nationality and whatever the duration or form of the contract. . "The Social Security Law did not distinguish between workers, regardless of their sex or nationality, as they are equal in treatment before the provisions of the law.

occupational danger, monetary and in-kind allowances is entitled to the extent that protects him from need and deprivation and avoids the possibility of poverty.[1]

The International Labor Organization (ILO) focuses primarily on the minimum standards and the rights to which the injured person must be entitled, and the detailed rules in this area are left to national legislation in States.

In brief, there is no country, no matter how much its progress does not benefit from the international treaties, and it is not limited to the countries that have ratified it, but extends to those who have not ratified it.

The economic situation has witnessed many changes that may have important implications for international economic relations. Perhaps the most important of these changes is the regional trend. The last years of the twentieth century, since the end of the Second World War, witnessed strong trends towards the formation of regional economic gatherings. One of its components is historical,

[1] See Convention No. 118, Equality of Treatment (Social Security), which provides for equal treatment of citizens and non-citizens in social security, in which the Jordanian legislator complied with article 4 (a) Egyptian Social Insurance Law No. 79 of 1975.

cultural and geographical joint ties and these economic groupings have achieved the great steps of progress towards economic integration, which benefits workers in the event of work injuries, and perhaps one of the most important of these groups is the European Economic Organization.

In 1944, the Convention for the Establishment of the Customs Union of the Benelux States was signed. It included three European countries: the Netherlands, Belgium and Luxembourg.[1] In 1949, the European Organization for Economic Cooperation was formed. Economic relations, and dealt mainly with the development of financial stability and freedom of exchange among European States.[2]

A year after the French Foreign Minister Robert Schuman's plan, on April 8, 1951, France, Italy, Germany and the PENOLEX countries established the European Coal and Steel Community

[1] See Saleh Saleh, European Monetary Union, International Forum on the Euro and Arab Economies, April 2005, p. 10.

[2] See Roger Doheim, Introduction to the Economy, Extraordinary Smouhi Translation, Oweidat Publications, Lebanon, 1967, p. 200.

with the aim of reaching a common European market in these two strategic commodities.[1]

On 25 March 1957, the European Economic Community (ECO) was established under the Treaty of Rome, which was implemented on 1 January 1958 between the member states of Germany, Belgium, France, Italy, the Netherlands and Luxembourg, and the responsibility of those responsible for the success of this mission and the achievement of the objectives for which it was established. Through their interest in the workforce of the participating countries.[2]

The ECOWAS Convention addressed labor and social security issues, requiring the six member states to ensure free movement of workers without discrimination, and to amend social insurance laws to help free the movement of workers and to allow migrant workers to benefit from social security systems in the country[3].

[1]See Saadouni Mohamed, The Experience of the European Union in Economic Integration, a note by the BA, University Center, Bashar, Joan, 2004, p. 22.

[2] See Abdel Salam Arfa, International and Regional Organizations, Dar al-Jamhari, Libya, 1993, pp. 389-399.

[3] See Article 51 of the Convention.

The Convention also concerned the strengthening of cooperation among Member States with regard to protection against occupational hazards in occupational diseases, as well as taking necessary measures to provide health conditions in the workplace. [1]

The Convention also grants the Council of Ministers of the Organization the authority to establish mandatory executive regulations and executive decisions, which shall be binding on Member States without being submitted to the legislative authority of each of these States. These Regulations shall be considered as a new law added to the national sources of labor injury law in the Member States of the Organization.[2]

The organization has also been empowered to issue general regulations and guidelines, in addition to those mandatory in the field of injury prevention and security. The most important legislative acts issued by the third and fourth regulations issued by the organization in 1956,[3] and how to obtain and combine benefits

[1] See article 118 of the Convention

[2] See article 189 of the Convention and article 23.

[3] published in the Official Gazette of the Organization on 16/12/1959.

in cases of occupational injury and occupational diseases, and how to transfer contributions and benefits from one country to another.

In addition to coordinating the activities of the bodies that carry out the work injury insurance in the Member States. It recommended that a comparative table of labor injury legislation be drawn up and a standardized list containing toxic elements, which could lead to occupational diseases, Tables that determine the percentage of degrees of disability in case of inability.

WHO has also issued a Recommendation on Occupational Medicine to strengthen cooperation among Member States in taking health measures in the workplace and protection that must be provided to workers to protect them from hazards.[1]

[1] This recommendation was issued on 20/9/1962. The most important part of this recommendation was in the provisions related to the teaching of occupational medicine and the rehabilitation of doctors specialized in it; the physiology of work and occupational health, diseases resulting from work and poisons that arise in its environment, as well as work injuries in terms of causes and treatment methods, Industrial psychology and preventive medicine, and the efforts of the Organization in the field of occupational hazards prevention should be noted in the recommendation issued on 21 January 1967 concerning the protection of young workers and juveniles from the dangers of work

On July 23, 1962, the European Organization issued a recommendation on the establishment of a European standard list of occupational diseases applicable to Member States.[1]

From 14 to 16 July 1966, the ILO undertook an extensive study of labor injury prevention measures to standardize prevention regulations in Member States.[2]

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[1] Most important of this recommendation:

A.Member States shall include in their legislation the list of diseases attached to the Recommendation.

B - Cooperation in the exchange of technical information on occupational diseases.

C. To include in the legislation of Member States all that is necessary in order to allow benefits to be paid to a worker contracted by a professional disease in the event of a relationship between sickness and work.

D. Any Member State shall inform the Organization of the occupational diseases that it adds to its national list, even if not in the European Standard List of Occupational Diseases, so that it may be amended to be developed and adapted to occupational diseases

[2] For further information on the activity of the European Organization in this regard, see its second general report on its activities between 1/4/1966 and 31/3/1967, issued in June 1967, item 259, p. 267.

On July 20, 1966, the organization issued a recommendation on conditions for the exchange of allowances for people with occupational diseases.

On July 27, 1966, a recommendation was issued regarding the medical examination of the worker upon his / her employment and medical examination once he or she was admitted to work for a professional illness.

Second: Arab Labor Organization[1] / League of Arab States.

[1] 61 See some of the efforts made by the League of Arab States and the Union of Arab Workers in the field of the development and unification of social legislation, including the rules for the insurance of work injuries, before the establishment of the Arab Labor Organization:

- Ahmed Zaki Badawi, Labor Legislation in Arab Countries and International Levels of Work, First Edition, 1965, paragraph 158, p. As well as his presentation of the motives and objectives aimed at the unification of labor laws and social security in the Arab countries, p. 253 and beyond.

- Abdel Monem Ahmed El Banna, Secretary General of the Council of Arab Economic Unity, article in the Journal of the Arab General Union of Insurance, first year, first issue, April 1967, p. 17 and beyond. Entitled "The Arab Economic Unity Agreement, its objectives and stages, achievements achieved.

In January 1965, the first Arab Labor Conference was held at the invitation of the Iraqi Government. The conference was held annually. At the First Conference of Arab Ministers of Labor, the Delegation of the Arab Republic of Egypt presented a draft Arab Charter for Action to which all Arab countries are committed. The establishment of an Arab labor organization, characterized by the organization of the other Arab joint labor institutions by adopting the principle of tripartite representation, the three parties of production (governments, employers, workers) participate equally in all constitutional and statutory committees and bodies except for the Finance Committee The purpose of the Charter was to

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See the emergence of the Arab Labor Organization and the development of its efforts in the field of social legislation.

- Hassan Al-Akkad, First Secretary, League of Arab States, Arab Labor Organization, its inception, its specialties, January 1971, Documents of Arab Labor Conferences, Baghdad 1965, Cairo 11/1966, Kuwait 11/1967, Tripoli 11/1968, Cairo 1/1970 .

- See also: d. Mansour Al-Atoum, Explanation of the Jordanian Labor Law, (Comparative Study), I 3, Without Publisher, 2008, pp. 45 et seq.

- as well as: Ahmed Hassan El-Borai, The General Principles of Social Insurance and its Applications in Comparative Law, Part I, First Edition, Dar Al-Fikr Al-Arabi, Cairo, 1983, pp. 179-181

establish the general framework for cooperation and coordination among Arab countries in the fields of labor and to achieve similar levels in labor legislation and social insurance, with the aim of upgrading the Arab society and achieving social justice, and upgrading the efficiency of the Arab labor force along the lines of The International Labor Organization (ILO) adopted the Arab Labor Charter and the Constitution of the Arab Labor Organization.[1]

In response to international efforts on social insurance, the Arab Labor Organization General Conference approved the Arab Minimum Level Social Insurance Convention.[2]

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[1] Resolution of the Council of the League of Arab States No. 2102 / D 43, C 2, dated 21 March 1965, Documents of the Third Conference of Ministers of Arab Labor, 1967, p. 425. As well as the ratifications of Member States

[2] It is noted that this agreement, which lasted for more than four years, presented the issue of unification of the social insurance systems for the first time at the request of the Egyptian delegation at the second Arab Labor Ministers Conference in 1966. Arab countries call for securing these workers who move from their homelands to other Arab countries in search of livelihood. The request made by Egypt to the Second Arab Conference of Labor Ministers held in Cairo from 29/11/1966 to 3/12/1966 was called for:

1- Draft the social insurance agreement.

2. Standardization of social insurance terms.

3 - The establishment of a bilateral or collective agreement between the Arab countries in the field of social insurance.

It was decided to refer the draft convention presented at the Third Conference of Arab Ministers of Labor held in Kuwait in 11/1967, which was prepared by the Interim Secretariat to Member States for consideration.

(Egypt, Syria, Iraq, Kuwait and Libya), the conference was forced to postpone its consideration for the next session. When the project was presented at the 5th Conference of Arab Ministers of Labor in 5 The conference was referred back to the Preparatory Committee for the founding conference of the Arab Labor Organization and prepared a report presented to the Arab Ministers at the meeting held in Geneva on June 2, 1970. The Ministers approved this report through the first session of the Conference Of the Arab Labor Organization, which was held From 27/3/1971 to 5/4/1997, where the Conference approved the Arab Convention on Minimum Social Insurance. See:

Dr. Abdel Halim Al-Qadi, Responsibility of the Arab Labor Organization for Social Insurance, International Labor Journal, No. 3, April 1974, p. 19 and beyond.

Dr. Mahmoud Rashad Al-Haddad, Unification of Labor Legislation in the Arab Countries, First Issue, First Year, August 1973, pp. 19 et seq.

Michel and Habib Ayoub Adash, Explanation of Social Insurance Law, Dar Al Orouba

In view of the efforts made to unify the rules for the insurance of work injuries in the Arab world, Article 4 of the Arab Charter of Action states: "Arab countries agree to unify the conditions of work for their workers whenever possible." In implementing the Charter, Among the conventions included in its texts are the protection of workers' rights, attention to safety issues and protection from work and death hazards, and the most important topics related to the subject matter of the research.

First: The Arab Labor Standards Convention[1].

The most important provisions of this agreement are the provisions of Article 6 of the Convention. "The labor law in each country shall include the subject of health care for workers and their

[1] The Arab Labor Ministers Conference agreed at its second meeting at the headquarters of the General Secretariat in Cairo from September 29, 1966 until December 3, 1966, on the Arab Labor Standards Convention No. (1) for the year 1966, which was approved by the Council of the League of Arab States 3318 / D 47, dated 18/3/1966, and was amended by the Convention No. (6) of 1976 on.

(B) The second article of the Convention states: (The levels of work as set out in Part II of this Convention shall mean social development to ensure the welfare of workers, assist them in meeting their needs and contribute to the advancement of their conditions in all respects).

protection against the dangers of work. Article 8 stipulates the protection of labor legislation; the insurance shall ensure that its citizen's benefit from all the benefits and rights provided for in these legislations.

The Convention considered the working standards of public order. Article IX on working standards stated that it considered null and void any provision that was contrary to it and did not apply if it was more useful than the Convention.

Article (c) states that an independent social insurance law must be issued, including all provisions relating to it, with provisions regulating its own rights and rules. The Convention also includes preventive measures to protect the health, safety and non-exhaustion of workers by limiting work hours,[1] and the reserves taken to protect workers from damage to health, work hazards, machinery and periodic medical screening procedures for workers engaged in hazardous work in case of work injuries.[2]

Taking into account the interests of the worker, article 111 states: "The provisions of this Convention shall not affect the private

[1] Articles 42 and 52 of the Convention

[2] Articles 53 and 56 of the Convention.

legislation of each State and the other and the international treaties and conventions, if they are more beneficial to the beneficiaries.

Second: Arab Convention for the Minimum Level of Social Insurance[1]

This agreement was issued in the first session of the Arab Labor Conference, which is a sense of its importance as a fundamental goal of achieving social justice and considering that insurance is the mainstay of achieving this justice. Therefore, labor legislation has developed insurance in the Arab countries to achieve these goals.

The third chapter of the Convention includes Articles 8 to 10 on the provision of work injury insurance. Article 8 states: "The national legislation concerned shall specify the incidence of work and occupational illness, so that the number of occupational diseases shall not be less than fifteen. Includes thirty-three occupational diseases.

[1] The General Conference of the Arab Labor Organization was held in Cairo on Saturday, 27/3/1971, at the invitation of the Interim Secretariat of the Organization. I plan to adopt the proposals for the minimum level of social insurance, which is the fourth item on the agenda of the Conference. (Convention No. 3 of 1971), see the documents of the Second Conference of Arab Ministers of Labor

As stated in Article 9, what legislation should provide for a worker who has been injured by medical services until recovery, disability or death is established, in addition to rehabilitation services, compensatory services and financial aid provided during the period of temporary disability resulting from work injury.

Article 10 of the Convention states: "The national legislator shall determine the procedures for reporting occupational injuries and occupational diseases to those responsible for treatment and those responsible for the profession.

Section (4) deals with common provisions between the types of social insurance in Articles (53-65), most notably the remuneration that is used as a basis for estimating the contribution of financing and estimating the value of benefits. Article 65 also takes into account the workers' State, and bilateral treaties or agreements, which are subsequently implemented, if they are more beneficial to the insured.

Third: Labor Mobility Convention[1].

The agreement was passed in order to facilitate the movement of labor among the Arab countries and ensured that workers who move from one Arab country to another enjoy the rights and benefits enjoyed by the workers of the countries in which they move.

Article 7, paragraph 7, provides that expatriate workers shall enjoy the rights and benefits enjoyed by the workers of the receiving State, including in particular employment opportunities, hours of work and wages subject to taxes and duties, weekly rest, paid leave, social security and social security, housing and health services and occupational safety services .

[1] This Convention was adopted on 13/3/1975 at the Arab Labor Conference at its fourth regular session in (Libya / Tripoli), called the Arab Labor Transfer Agreement (amended) of 1975. A bilateral agreement has been attached to this Convention to guide States under Article (2) of 1967 on the movement of labor, was approved by the Council of the League of Arab States in its decision No. 2402 at the session held on 7 March 1968 at its forty-ninth ordinary session. By States in the scope of the article.

Fourth: The Arab Convention on Occupational Health and Safety[1]

the Arab countries believe that protecting the labor force from occupational hazards by providing a sound environment for production, which has a positive impact on the national product with its various components, and the rapid technical progress, which requires the development of occupational safety and health standards.

As the Arab countries seek to cope with technological progress in the various fields of industry, agriculture, trade, transport and services. As the Arab Labor Organization aims to improve working conditions and works to develop labor legislation to reach similar levels, the Conference decided to approve the Arab Convention on Health And occupational safety, and review the most important provisions contained in the texts.

Article 1 of the Convention stipulates that Arab legislations must include their legislation on the provisions of occupational safety and health in all areas of work and its sectors, and should include

[1] This Convention was adopted at the Arab Labor Conference held in Alexandria, 1977 on occupational safety and health. See the documents of the Conference of Ministers of Arab Labor in Alexandria, March 1977

provisions for the insurance of workers against occupational accidents and occupational diseases.

Article 2 stipulates that all Arab workers must be equal in terms of occupational safety and health, and the provisions of insurance against work accidents, occupational diseases and provisions of vocational rehabilitation regulations.

This Convention is not free of provisions for the prevention of all work risks; the provisions of article III included occupational safety and health and the technical foundations necessary to ensure safety and protection, the most important of which is the choice of location of the establishment, construction and construction and the prevention of all work hazards.

Article 5 of the Convention provides for the prevention of accidents and work hazards, which concern, inter alia, the protection of workers against the dangers of work and machinery, the conditions necessary to improve the working environment and means of work, the training and training of workers on safety means and the provision of personal protective tools.

The Convention also guarantees the protection of means of production of construction, machinery and materials.

In article 6, the Convention prohibited the employment of juveniles of both sexes in dangerous and harmful industries before reaching the age of 18, and also prohibited the employment of women in hazardous, arduous or harmful work.

Article 8 provides for the preliminary medical examination of the worker prior to joining the work to determine his suitability with his physical, physical and mental abilities and periodic medical examination of the workers.

Article 9 provides for first aid and emergency treatment within the facility, and medical services must be provided as a separate section inside or outside the facility.

Article 10 of the Convention provides for the registration of occupational accidents and occupational diseases by the employer and the adoption of measures to prevent the recurrence of such cases and the development of statistics thereon.

Several Arab conventions have also been issued by the International Labor Organization (ILO), which deal with workers in order to protect them from the dangers of the profession and limit the incidence of occupational injuries and occupational diseases.

1. Arab Convention No. 13 of 1981 concerning the working environment.[1]

This agreement is intended to improve the working environment to be the legal tool capable of providing a suitable environment and climate suitable for Arab public forces, as this contributes greatly to raising the productive capacity of the worker and his ability to perform the work.

2. The Arab Convention No. 14 of 1981 concerning the right of the Arab worker in social insurance when traveling to work in an Arab country.

The agreement is intended to encourage freedom of movement, which has positive effects on all Arab countries exporting and receiving labor. It also regulates the general principles of the Arab Labor Conventions, which stipulate that migrant workers enjoy the minimum rights and benefits enjoyed by the workers of the host country. And occupational diseases, where Article III of the Convention granted workers a pension (pension) in cases of disability and death resulting from work injuries and occupational diseases, and to receive compensation for a single payment in

[1] For further information, please see the texts of articles (2.4, 10 and 12) of the Convention

cases of work injuries and Occupational illness when pension entitlement conditions are not met[1]

3. The Arab Convention No. (18) of 1996 on the Juveniles employment .

This is in view of the need to provide necessary care for the juveniles whose conditions forced them to work and protect them from the potential harm that affects their physical, mental, psychological, social or cognitive development, and in line with what the Arab countries seek to achieve the comprehensive economic and social development, Events.

4. Arab Convention No. 19 of 1998 on the fragmentation of labor.

This agreement was issued to ensure effective and continuous monitoring of the application of provisions governing labor relations.

[1] For more information, see the text of Articles 4-8 of the Convention.

Conclusion:

We made a quick presentation of some international efforts to establish rules to protect the workers from the dangers of occupational injury and occupational diseases. It was clear that these efforts focused on one common principle, the right to social insurance and the tendency to expand this right to include as many risks as possible.

It is clear that these international efforts have not been wasted. It can be said that they have achieved great success especially in the advanced industrial countries, which have taken the insurance systems in terms of their scope to meet the above mentioned international declarations. The economic and social development of this developed country allowed this development to take place.

The objective of these efforts is to unify the maximum guarantees and allowances offered to the injured, both in kind and in cash, for the purpose of most organizations. For example, the European Economic Organization aimed at fair competition between the economic institutions of Member States , So as not to allow the workers of the State to work on the projects of another State in pursuit of the advantages it may offer on the one hand, and on the other to promote an important principle put forward by the Organization in its Convention (Article III, paragraph C) which

seeks to remove all obstacles to the movement of workers to achieve Best policies of Economic integration which promotes the economy of Europe to keep pace with the economies of the United States of America and the Soviet Union (previously), and this is what we have seen already from the enormous economic development in European countries.

Moreover, the efforts of the Arab Labor Organization seem clear in the belief that the solidarity of the labor force in the Arab world is one of the main pillars of Arab unity on the one hand, and on the other hand the right of the Arab labor force to work in conditions appropriate to the dignity of the Arab human being, The pursuit of their material and spiritual well-being in freedom, and in conditions of equal opportunities and social justice.

In accordance with the provisions of the Constitution of the Arab Labor Organization, in particular article 3, it is necessary to formulate a plan for the social insurance regulation to protect workers and their families and to standardize labor legislation and conditions of employment in Arab countries whenever possible. The agreements concerned with protecting workers from the dangers of the profession, Occupational injuries and occupational diseases, whether by setting common standards among member states or issuing conventions for the prevention of work hazards.

In conclusion, the researcher reached the following conclusions and recommendations:

Results:

1- The existence of legal rules governing and determining the rights of workers from occupational diseases at the national and international levels.

2 - The presence of national and international efforts to track the dangers facing the worker and secure legal protections.

3 - Legislative shortcomings, specifically at the national level in the provision of legal protection from the hazards of the new worker from work injuries and occupational diseases.

Second: Recommendations.

1. The continuous review by the relevant authorities of the new threats to which the worker is subjected and the legal protection against such hazards, especially work injuries and occupational diseases.

2. Establish legal standards and principles to accommodate the newly created cases to ensure protection for the worker, pending the necessary legal amendments to cover such notification of protection.

3. Holding national and international conferences, to organize protections and find alternatives and options that would raise the worker by expanding the umbrella of legal protection for the worker from occupational injuries and occupational diseases to the highest levels.

4. Holding national workshops for employers and workers to familiarize them with the rights of workers and the duties of employers in cases of work injuries and occupational diseases.

5. Direct referral from national legislation to international treaties and conventions of the legal rules to protect against work injuries and occupational diseases in the event that national legislation is free from a direct rule for securing protection.

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International Labor Organization conventions to protect the worker from work injuries and occupational diseases.

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Arab Convention for the Minimum Level of Social Insurance.

Arab Labor Movement Convention.

Arab Convention on the Environment.

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RENT AS ONE OF THE TENANT'S LIABILITIES UNDER THE JORDANIAN CIVIL CODE AND THE JORDANIAN LANDLORDS AND TENANTS LAW

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Abstract

This study deals with one of the main obligations of the tenant, namely, the payment of the rent or what so-called rental fee. It discusses the place of the rental or lease contract in general, and the rental fee in particular as one of the elements of the contract's place. it also illustrates the effect of non-payment of the rental fee according to the Jordanian Landlords and Tenants Law and the Civil Code, [1] which provides for the right of a landlord in tenant's eviction, according to specific legal conditions.

[1] The Jordanian Civil Code No. (43) of 1976 in force and the Law of Landlords and Tenants No. 11 of 1994 amended by Law No. (14) for the year 2013 in force.

Key words: Tenant, Law, Rent, Landlord, Eviction, Contract.

1- Introduction

Lease contract is one of the consensual contracts that do not need to be held for a particular form, and as like as other contracts, lease contract can be held according to the terms of agreement, place and reason. Our subject matter, herein, will be dedicated to the place and in part of it, namely the rental fee.

The Jordanian Civil Code defines the lease contract in Article 658 as the "Tenancy is a conveyance of a specific utility of a hired, by a landlord to the tenant for a specific period and amount. Article (659) of the Jordanian Civil Code provides that: “Eligibility is a condition for the conclusion of tenancy upon the time of the contract".

And in reference to the general rules of the Civil Code, where Article (118) states: “1. The actions of a perceptive minor are effective when are purely useful and ineffective when they are purely harmful. 2. However, if the behavior of a minor is between harm and usefulness, it shall be subject to its custodian release of such action or until a minor reached the legal age. 3. The Perception age shall mean the completeness of the age of full seven years”. We can also consider the tenancy contract among the management contracts, which is located between usefulness

and harm, where the custodian shall enter in contract on behalf of its minor. However, if a minor enter into a contract, it shall be subject to the custodian agreement or until a minor reached the legal age and then it shall be entitled to conclude a contract.

All the rules of eligibility required for the tenancy contracts shall be considered, as the approval of a custodian may not be sufficient in the event of an attempt to reduce the rent value because it needs the the consent of the court. If the custodian did not obtain such consent, the agreement shall be void, based on the eligibility rules.

In one decision made by the Court of Cassation, in terms of the non-eligibility of a minor for concluding a lease contract, the Court found that the payment of a partial rent by the (Perceptive) lessee is not considered. Then, the tenant shall be in breach of fulfillment of the payment of a part of the rental fees. So, he or she has to move-out under Article 5 of the Jordanian Landlords and Tenants Law. However, in terms of the claim made by the Several (lessee) that the value of the rent has been changed from 1500 dinars to 1300 dinars under the lease contract concluded between the custodian (appellee) and the Several, such waiver is considered a reconciliation in term of the rights of a minor, which needs the approval of the religious (Shari'a) Court, pursuant to Article (126) of the Jordanian Civil Code. Thus, Minors shall not

be liable to the last tenancy, and the ignorance of the court of such a contract is in place.[1]

In general, the Place of the tenancy contract is based on two basic concepts: the first is (the hired) item and the second is the (rent).

2- The Place of a Tenancy Contract

Article (661) of the Jordanian Civil Code states that " the subject of a lease contract (*Ijara*) is the Utility and the delivery of it is done by its Place handover." Therefore, one of the most important terms of a lease contract in accordance with the above text is the Utility. Such Utility shall not be realized unless it is due diligence well known, and if the lessor shall enable the lessee to utilize the hired object quietly. Once the lease is valid, the right to use the hired shall be transferred to the lessee.[2]

Despite the best efforts paid by the landlords, some disputes can not be avoided. For instance, if the tenant declines payment of the rent, in this case, eviction may be the sole option available for the landlord. Alternately, the tenant may wish to terminate the lease

[1] Decision of the Jordanian Court of Cassation (Rights) No. 1422/1993 (Tripartite Board) Date 5/4/1994.

[2] Article (676) of the Jordanian Civil Code.

earlier, he or she might have also several options, including a breach of the lease contract and then move out earlier.[1]

Subsequently, we will deal with the hired and the rent (rental fee) as tow main items for the rental contract as well as the duration of the lease. Because the lease contract belongs to the duration contracts, and we will discuss the details the (rental fee) as the subject of our research.

2.1 Hired Object

Article (2) of the Jordanian Landlords and Tenants Law defines real estate as: "the immovable property leased for non-agricultural purposes". It is clear from the above Article that the application of the law is exclusive to real estate while it does not include movables. As well, the provisions of this law shall not cover the agricultural real estates. Hence, the agricultural lands are subject to the Jordanian Civil Code as general rules. Also, the Jordanian Landlords and Tenants Law shall not apply thereof.[2]

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[1] Irving ،Shae. (2016) ،Landlords and Tenants (chapter 3) ،Nolo's Encyclopedia of Everyday Law, Nolo, United States of America, p53.

[2] Paragraph 1 of Article (711) of the Jordanian Civil Code provides for the leasing of agricultural land as one of the types of rental contracts according to the provisions: "It is permissible to rent the agricultural land with a

Therefore, any hired object outside the subject of this research, should be useable but not consumable.[1] As well, the place of a contract should be dealable and legitimate.[2] Also, it should be designated and designable. [3] Further, the place of a contract should

statement of what should be cultivated in it or to give the tenant the option to cultivate what he wants".

[1] Article (57) The Jordanian Civil Code 1- Consumer stuff are the objects that cannot be utilized of its characteristics unless by its consumption. 2- The usable objects are those with utility is achieved by using them repeatedly with the survival of object.

[2] Article (163) of The Jordanian Civil Code, provides: "1 - The place shall be accessible under the rules of the contract". 2- However, should the lawgiver prevents dealing with something or if it was contrary to the public order or public morals, the contract shall be deemed null and void. 3- The provisions relating to Personal Status such as eligibility, inheritance and provisions relating to the transfer as well as the necessary procedures for the disposal of the endowment and real estate and those procedures required for the disposal of the interned property, the endowment and public funds as well as those regarding forced pricing laws and all other laws that are issued for the purposes of consumers' needs in exceptional circumstances."

[3] Article (161) of The Jordanian Civil Code provides that: "1- The Onerous contracts require that the place of contract should be appointed explicitly without Exorbitant ignorance by referring to it in its particular place, if it is present at the time of the contract, or by a statement of its distinctive

be hold by the person who has the right or may have the right to dispose of it, or that the hired object is owned by person who has the right to dispose of it.[1]

2.1.1 The Utility obtained from the hired object

If the lessor can not enable the lessee to get benefit of the leased property for any reason, the contract is null and void. For example, because the hired object is not available and its delivery is impossible. In this case, the Utility is not capable of being fulfilled.[2] The Jordanian law has shown that the lessor shall not be

descriptions with a mention of its amount, if any, so as to avoid Exorbitant ignorance." 2- If the place is known to the contractors, there is no need to describe and define it in another way. 3- If the Place wasn't appointed as aforesaid above, then the contract shall be deemed null and void."

[1] Article (660) The Jordanian Civil Code provides that: "1. For the effectiveness of the contract, the lessor or his representative shall have the right to dispose of the property." 2- The rental of the curiosity shall be subject to the approval of the Assignee according to the considered legal conditions thereof."

[2] Article (662) of the Jordanian Civil Code stipulates that: " A contracted utility shall be: 1 - Collectible. 2 – Sufficiently known for dispute settlement."

entitlement for the rent, unless if the lessee has got the utility or has the ability to get it.[1]

If the landlord enters into a second lease and the property was already leased, the second contract shall be null and void because the Utility is not capable of being fulfilled. Also, if the Utility was capable to be fulfilled but then it becomes otherwise no more utilizable, the tenant may request to terminate the contract and move out.

However, it is not enough for the tenant to get benefit from the hired, but also the utility should be specific. For example, the utility from the rented apartment was only dwelling. Also, the utility should be legitimate, and if it is used as a disorderly house, the lease contract shall be void.[2]

2.1.2 Exceptions on the application of the Landlords and Tenants Law in terms of hired object

[1] Article (665) of the Jordanian Civil Code stipulates that: " the Rental fees is payable by the delivery of utility or by the ability to collect it".

[2] Hamza, M. (2005), The Simplification of Explanation of Jordanian Civil Code, Specific contracts, Cooperative Press' Workers Association, Amman, pp. 298-300.

A. Article (3/a), of the Landlords and Tenants Law, affirmed the exception for properties leased for agricultural use or animal husbandry purposes, under this law. In a decision made by the Court of Cassation, the Court found that if the claimant's claim was related to livestock houses and feed warehouses, it shall not subject to the Landlords and Tenants Law.[1]

In another decision made by the Court of Cassation concerning the purpose of a property leased as a cattle farm, the court found that the the Landlords and Tenants Law shall not apply to such case and that the rental of a real estate for agricultural use or animal husbandry is exempt from the provisions of the the Landlords and Tenants Law ,where this law applies only to the properties leased for commercial, industrial or residential purposes.[2]

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[1] Decision of the Jordanian Court of Cassation (Rights) No. 2164/2003 (Quintet Board) dated 3/11/2003.

[2] Decision of the Jordanian Court of Cassation (Rights) No. 1958/1999 (Quintet Board) dated 3/11/1999.

B. Article (3 / b) of the Landlords and Tenants Law exempts the real estate or parts thereof provided from natural or moral persons to their employees for the purpose of housing by virtue of their concerned work thereof, whether housing is provided for a rental fees or free, or as a right obtained from the work or related to such work, or if it was part of the wage or not, provided that the right to dwelling in such property, in any of these cases, shall be terminated by the end of the work, provided that a worker is entitled to a period of 30 days for eviction.

For example, if a landlord fired a resident manager or if he or she has resigned, the landlord will often ask him/her to leave his own property, especially if he or she has occupied a manager's unit or if his or her termination or dismissal was in bad faith. Eviction proceedings against former managers may be very complex, especially if they have a management agreement that requires a valid reason for termination or a certain period of notice. Such claims can also be complicated by the use of a single common lease and management contract and for the eviction of such a tenant employee with whom a landlord signed a separate management agreement and a lease contract. If the contract

allows the landlord to terminate the lease at any time, the landlord will have the right to serve an eviction notice to the employee. However, should the tenant has a fixed-term lease, the landlord can not terminate the lease until the lease is complete. Thus, the eviction of the employee, upon his/her dismissal or resignation while he or she is resident in the owner's property, depends on the type of contract between the employee and the landlord or the manager.[1]

C. Article (3/ c) of the Landlords and Tenants Law exempted real estates or parts thereof owned by the government, public institutions, municipalities , local councils or Common Services Councils which are leased under investment contracts, such as hotels, auditoriums, Show and Sale places, Cinemas, Parks and restaurants. In a decision taken by the Court of Cassation regarding the exclusion of the above-mentioned properties, the Court found that: "to exempt the property from the provisions of the Landlords and Tenants Law, the property should be owned by a

[1] Brown, David; Rosenquest, Nils.(2017), Evictions in California: An Overview (Chapter 1), California Landlord's Law Book: Evictions, Nolo, United States of America, p13-14.

government institution and the contract thereof should be an investment contract.[1]

Therefore, in a decision of the Court of Cassation regarding a dispute between the Several Tenant and the Jordanian Government, the Court found that the Water Authority had legal personality and shall carry out all legal acts, and that the Water Authority was not covered by the rental contract and then, the disputes between the Water Authority and the Several were not considered or covered by the provisions of the lease.[2]

D. Article (3/d) of the Landlords and Tenants Law excluded any part of the property leased for a person/ persons for providing service to the dwellers or the property itself.

2-2 Rent (Rental fees)

The second concept of the place of the lease is the rent (which is the subject of our research). The rent or rental fee is the money paid by the tenant who shall abide to pay in charge for the utility

[1] Decision of the Jordanian Court of Cassation (Rights) No. 759/1999 (Quintet Board) dated 17/10/1999.

[2] Decision of the Jordanian Court of Cassation (Rights) No. 2263/2004 (Quintet Board) dated 17/10/1999.

obtained thereof, either it is in kind or debt or benefit. The rent, whatever its form, is an essential element for concluding the lease. Typically, parties of the contract should agree to determine the amount of it.[1]

However, some prefer to identify the legal rent, as the rent mentioned in the lease and according to its increase or decrease change, whether the change made by a court or by law.[2]

Then, the rent is the amount of cash or in kind agreed upon in the lease agreement among the parties. The lease is a consensual contract, i.e. the parties are free to determine the amount of rent thereof. Since lease is one of the onerous contracts, therefore it is considered one of a tenant's obligations to enable the lessee to benefit from the leased.

The Jordanian legislations extended the concept of rent in the Civil law and gave the right to the parties to have the rental fee in kind or in debt or as a benefit and all the items with value in selling, based on Article (664/1) of the Jordanian Civil Code.

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[1] Ali, R. (2016), Specific contracts for Sale and Rent, Dar al-Kutub and Arabic Studies, Alexandria, p234.

[2] Mubarak, R. The Modern Encyclopedia in Rental Laws, National Center for Legal Publications, Cairo, Part IV, p51.

Therefore, it is necessary to set the rent whether it is money or something else, so, typically, the rent should be in cash, such as to be determined by a certain amount, for example, five thousand Jordanian Dinars, or it might be in kind, as the assignment of a real estate, machines or products or otherwise fruits or other in kind thing. The rent can also be a debt. For example, the tenant could be a creditor of the lessor and both parties agreed that the rent is the value of this debt or part of it. On the other hand, a rent can be a benefit. For example, a tenant worker who provided a service to his landlord and agreed to be paid for his work by deducting the amount of rent due to the landlord.

In one decision made by the Court of Cassation, the court relied on Article (2) of the Landlords and Tenants Law, as it defined the rental fees as the amount of fees agreed between the landlord and the tenant. Article (663) of the Jordanian Civil Code stipulates that the rent is not only money, and Article (664) of the same Code provides that the rental fees shall be in kind, debt or benefit, and whatever saleable item. Also, the work shall be covered by the concept of benefit, as the tenant worker provides its effort in favor

of its landlord, which is a benefit obtained by the owner and then it can be a compensation for the rent.[1]

In the absence of a rent in the contract, it can not be considered, in this case, a lease. Rather, it may be a contract of gift or a contract of loan or any other contract else, because rent is considered, according to the Jordanian Civil Code, one of the main elements of a lease.

However, the Jordanian civil code has dealt with this issue (the absence of a rental fee). As, some persons may rent the property without determined rent in the contract. In this case, the contract may be canceled, and the tenant who occupied the property for a given period of time is obliged to pay the rent for the previous period only, because the lease is void as it did not mention the amount of rent, according to the second paragraph of Article (664) of the Jordanian Civil Code.[2]

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[1] Decision of the Jordanian Court of Cassation (Rights) No. 434/1999 (Quintet Board) dated 13/8/1992.

[2] Article (664) of the Jordanian Civil Code stipulates that: "If the rent is unknown, it is permissible to terminate the *ijara* and pay the equivalent amount for the previous period before termination."

Article (2) of the Jordanian Landlords and Tenants Law defines Rent as "the fees agreed upon between the landlord and the tenant in the lease, plus any due increase under the provisions of this Law and the previous landlords and tenants laws." However, Article (16) of the Landlords and Tenants Law provides that the rent amount shall be reviewed every five years by the Cabinet in accordance with special regulations issued for this purpose.[1]

The Landlords and Tenants Law underlines the scope of the application of the *Ijara* fees in terms of time, where the *Ijara* fees specified by this law shall be effective from the effective date of its provisions (issued under No. 11 of 1994 and amended by Law No. 14 of 2013) and shall apply to all contracts in force prior to that date without prejudice to the due dates shown in those contracts.[2]

2.2.1 Who should be paid the Rent?

[1] Article (5/a) of the Landlords and Tenants law provides that: "The Council of Ministers shall review the rental fees (*Ijara*) according to the fair percentage deemed appropriate to meet the particular social and economic needs of the different areas of the Kingdom or any part thereof, every five years in accordance with the regulation issued under the provisions of this law.

[2] Article (14) of the Landlords and Tenants law.

Usually, the tenant pays the rent to the creditor (Landlord), as a general rule, and if the lessor dies, the rent should be paid to his heirs because the lease shall not expire upon the death of the lessor.[1] In a decision of the Court of Cassation, where the plaintiff (Landlord's heir) asked the tenant to pay the due payments of rent thereof. However, the defendant proved that he had paid the rent to the Collection department before notice. The court decided that the payment of the rent to the heirs of the deceased lessor was correct. Thus, the court declined the plaintiff's claim.[2]

Should the lessor fails to receive the rent or in the the absence of the lessor for any reason, the tenant can deposit the rent at the court fund.[3] The Lessor can also appoint an agent to collect the rental

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[1] Article (709/1) of the Jordanian Civil Code provided that: "The lease contract shall not end upon the death of any party of a contractor".

[2] Decision of the Jordanian Court of Cassation (Rights) No. 2662/1998 (Quintet Board) dated 14/3/1999.

[3] Article (15) of the Landlords and Tenants law provides that: " The deposit of rental fees at the fund of the court that the property is located within its area, shall be deemed a legal payment, while the court office shall notify the landlord of such deposit and call for delivery in charge of a fixed fee of one Jordanian Dinar paid by the depositor."

fees. While the tenant should verify the representation of such person to collect the rent on behalf of the lessor. The Jordanian legislator added that: "the submission of a discharge made by the creditor (the lessor) is considered a presumption for a debt (rent) receipt to the person who hold such discharge. However, it is excluded from these provisions, if the creditor agreed with the debtor to fulfill the rent to the creditor personally. Hence, the lessee shall abide to pay for the lessor as agreed.[1]

2.2.2 Who pays the rent to the lessor?

The rental fee shall be paid by the lessee as a public asset, and shall be paid according to what is agreed in the contract in terms of its value or type, if it is in kind, as well as the method of payment thereof. The lessee may pay the rent to the lessor or his authorized representative. However, in certain cases, the lessor may transfer the amount of the rent to an assignee and the lessee agrees to the assignment. In such case, the lessee shall pay the rent to the

[1] Article (320) of the Jordanian Civil Code stipulates: "The fulfillment of the obligation of the creditor or his deputy shall be regarded as having the capacity to satisfy the debt of the person who provides the debtor with a clearance issued by the creditor, unless it is agreed that the payment shall be made to the creditor personally".

assignee[1]. If the rent is attached by one of the lessor's creditors, the lessee shall not pay the rent to the lessor. Rather, the lessee has to abide by the decision of the court that will determine the party who should be paid, and if the lessor died the rent shall be paid to his heirs according to paragraph (1) of Article (709) of the Jordanian Civil Code mentioned earlier, based on the fact that the lease shall not expire upon the death of a contract's party.

The general rules, of the Jordanian Civil Code, provide, in Article (317), that it is legal to be paid by the debtor (and the debtor here is the lessee and it is a debtor of the rent) or by the representative of the debtor (the tenant's representative, who can be a legal representative or a consensual representative) or any other concerned person, with an interest in the fulfillment of the rent (As the guarantor of the debtor in solidarity with the lessee). It is also effective by those who have no interest in fulfilling the debt, provided that the creditor may decline to be paid from a third party,

[1] Article (993) of the Jordanian Civil Code stipulates: "The Assignment (*Al-hawalah*) is to transfer a debt and a claim from the assignor to the assignee's custody; and according to Article (994) of the Jordanian Civil Code the Assignment (*Al-hawalah*) is a bilateral contract unless any of the parties provides himself the right of recourse".

if the debtor objects to this and informs the creditor of its objection.

Article (663) of the Jordanian Civil Code also stipulates the conditions of such rent by providing that: "the rent should be known by specifying its type and amount, whether it is money, or in kind.

2.2.3 When the rent should be paid? (Pay time)

You must know the date of paying the rent that the tenant is obliged to pay, in accordance with Jordanian laws in force. The tenant shall comply with the date of payment of the rent if it is provided in the contract. However, the parties may agree to pay the rent in advance or in installments or on certain dates of fulfillment. Further, the parties may agree to set a condition providing that: "if the lessee failed to pay any payment on time, then the rest of payments shall be forthwith due in full. Such agreement shall be legal and binding to the tenant. However, if a tenant failed to pay on time, the landlord may have the legal reason for eviction. So we will show these fulfillment dates in this section.

Sometimes, the parties may not specify the dates of fulfillment. In this way, the parties commit themselves to relying on custom. The

lease and rental contracts require that a tenant pay the rent monthly in advance. The rent is often due on the first day of the month. However, the landlord is legally entitled to request payment of the rent at different times or on a different day of the month. However, the laws or the lease and rental agreements may provide otherwise.

Typically, there is no legally recognized grace period, in other words, if the tenant failed to pay the rental fee on time, the landlord may usually terminate the rent and according to the Tenants and Landlords laws, the law may provide that the landlord is entitled to terminate the rent on the day next to the due date of rent. In some laws, the landlord is required to provide the tenant with the deadlines at which he shall pay the rent before receiving a notice of termination.

Meanwhile, some laws may give landlords the right to charge fees against late payments of rent or for returned checks. Such late charges shall be legal if they fall within the provisions of the country's regulations. However, some legislations may not regulate this issue. In this case, general rules shall apply to request a reasonable delay charge.[1]

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[1] Irving, Shae. (2016), Landlords and Tenants (chapter 3), Nolo's Encyclopedia of Everyday Law, Nolo,

According to the Jordanian legislations in force, the due time of rent payment was dealt with through general provisions of the Jordanian Civil Code and there were special provisions dealt with by the Landlords & Tenants Law. According to the general rules, the tenant shall pay the rental fees on the time of the contract.[1]

However, the parties may agree on the time of rent payment, either by delaying or postponing or installment of the rental fee, and these agreements are valid and shall have legal effects according to the principle of "Consent makes the law".[2]

At all events, it is permissible to require the payment of rent in advance, and the lessor may not deliver the leased until he/she is paid the rent in advance as agreed upon by the parties, or postpone

United States of America, p39.

[1] Article (665) of the Jordanian Civil Code stipulates: "The rent is payable upon obtaining the Benefit or the Capability to obtain benefit".

[2] Article (666) of the Jordanian Civil Code provided that: "The parties may agree to pay the rent in advance or in installments or on certain dates of fulfillment"

or installment of it at certain times, in which case the tenant does not have to pay unless on the maturity dates of these payments.[1]

However, obscurity and vagueness is found if the contract passed over when to pay the rent. Where the Civil Code gave a ruling contrary to the Landlords & Tenants Law. Under the Civil Code, the rent paid for utility was absolutely due after the utility was obtained or after the ability to obtain it thereof.[2]

Article (667/2) of the Civil Code provided that the rental fees due for a specific period of time follow the custom in terms of the dates of performance or otherwise determined by the court upon the request of the stakeholder. Which means that in accordance with the Jordanian Civil Code, if the lease or rental agreement failed to specify a mechanism for the payment of the rental fee agreed upon by both parties, the payment shall be made after the utility is obtained.

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[1] Article (666) of the Jordanian Civil Code provided that: "The parties may agree to pay the rent in advance or in installments or on certain dates of fulfillment".

[2] Paragraph 1 of Article (667) of the Jordanian Civil Code provides that: " should a lease or rental contract disregarded the date of rent payment, the specified rental fees shall be payable upon the obtainment of the benefit or the ability to obtain the benefit thereof".

With reference to Article (667/1) of the Jordanian Civil Code, it seems that the Jordanian legislator has adopted two contrary provisions in determining the due date of the rent, which is payable by the achievement of utility at the end of the term of the contract or is payable upon the ability to obtain the utility, i.e. at the beginning of the contract period when the lessee becomes able to benefit of its utility. The legislator has derived these two sentences from the Code of Justice, which also contained such two different sentences.[1] However, the Jordanian legislator was to adopt the second ruling only, that is, the rental fees is payable upon the ability to obtain the utility, so the lessor has performed his obligation to the lessee by enabling the latter to benefit from the leased, so he is entitled to be paid even if he did not actually get the benefit yet. Nevertheless, the Jordanian Judiciary has adopted the first rule, that is, rent is payable by the actual achievement of utility.[2]

The above mentioned general provisions of the Civil Code, and as we know they are not considered unless we exclude the application

[1] Article (469) & Article (470) of the Journal of Justice Judgements.

[2] Al-Obaidi, A. (2015), Specific contracts, Sale and Rent, Dar Al-Thaqafa for Publishing and Distribution, Amman, p 301.

of the Landlord and Tenants law because these general provisions are restricted by special provisions contained in Article (12) of the Jordanian Landlords and Tenants Law.[1] Which provides: "If the parties do not specify how to pay the *Ijara*, the rent shall be paid monthly at the beginning of each month of the contract period. This provision shall apply if the parties did not specify the date of paying the rent, because the Jordanian Landlords and Tenants Law is a special law that restricts the general law which provides the general rules (the Civil Code) based on the rule: "*Lex Specialis derogat generali*".

However, It is possible to measure at the case of the silence from both parties, in terms of the date of payment of the rent and then consider it to be paid monthly at the beginning of each month, in accordance with Article (12), that if the parties determined the date of payment of the rent, for example every six months or at the beginning of every three months, then the rent shall be due from the beginning of each such period.

[1] Article (12) of the the Jordanian Civil Code provides that: "Should the Rental fees payment mechanism not specified by the provisions of the contract, it shall be paid monthly at the beginning of each month of the contract's period".

In a decision made by the Court of Cassation, in accordance with Article 12 of the Jordanian Landlords and Tenants Law, and since the lease set the amount of rent and determined the date of performance of the rent to be equally every three months, so the rent is payable from the beginning of each installment period, not as claimed by the several (Tenant): after the utility has been obtained. Accordingly, the conclusion made by the Subject Matter Court is legal.[1]

On the other hand, the landlord is entitled to claim unpaid rents of the former tenants. Where, sometimes, landlords take legal force against former tenants - those who have already left without paying the rental fees thereof while the Security Deposits were insufficient to cover unpaid rent. Such cases can occur in the following events[2]:

• When the rent is monthly, and the tenant has moved out without giving notice to the landlord.

[1] Decision of the Jordanian Court of Cassation (Rights) No. 2711/1999 (Quintet Board) dated 15/8/2000.

[2] Warner, Ralph. (2016), Landlord-Tenant Cases (chapter 20), Everybody's Guide to Small Claims Court, Nolo, United States of America, p 262.

• Where the lease is annual, but the tenant violates the contract by moving out before the end of the contract.

2.2.4 Where the rent shall be paid (Rent payment Place)

According to the general rules of the Jordanian Civil Code, Article (336) provides two provisions the first, in terms of the place of the hired object delivery and the second regarding the place of rent payment. Paragraph (1) of this Article provides that: "if the place of obligation is a particular thing, it shall be delivered at the place where it was present at the time of such obligation, unless otherwise provided by another provision or agreement. This is what is meant by handing over the leased property.

In terms of the obligation related to handing the rental fees, based on the general rules in the same Article, paragraph (2) of this article states that: "the place of payment of the rent, where the payment is made at the place where the debtor's home is located at the time of payment (here is the tenant's home who shall pay the rent) or where the business center of the debtor is located (the tenant's business center) if the obligation is related to such business, i.e. the leased property relates to such business.

Referring to Article (15) of the Law of Landlords and Tenants, which has determined the method of rent deposit at the Fund of the Court. Hence, the opposite shall not be considered by law to be a

legal deposit of the rental fees. Among the illegal deposits, for example, that are not considered by law, the deposit of a rent at the bank account of the landlord, where the tenant shall be considered late in paying the rent according to law, and he shall pay at the Fund of the Court in its area.[1]

In accordance with Article (15) of the law, we find that the legislator stated the deposit of rental fees at the fund of the court that the property is located within its area, i.e., it is the application of the rule that the delivery of the rental fee shall be in the premises of the real estate and under no conditions or agreement between the parties on a place to pay the rent and also requires that the lessor refuses to receive the rent.

However, in terms of the expenses of rent payment, in accordance with the general rules in Article (338) of the Civil Code, it shall be borne by the debtor (the lessee), unless otherwise agreed or provided by law. For example, the cost of rent payment through a bank transfer or through currency exchange offices, such a cost shall be borne by a tenant.

[1] Al-Obaidi, A. (2015), Specific contracts, Sale and Rent, Dar Al-Thaqafa for Publishing and Distribution, Amman, p 302.

2-3 Penalty for breach of Rent

Lease or rental is a binding contract for both parties thereof. and one of most important tenant's obligations under this contract is the rent payment. If the tenant fails to pay the rent, he/she is liable and there is a penalty falling on the tenant, because of his infringement of a contract. Any breach by a tenant, such as non-payment in whole or in part or late payment of a rent shall be deemed a violation of the Due Process of the contract. We will discuss, herein, the penalties imposed on such a breach, in accordance with the Jordanian Civil Code and the Jordanian Landlords and Tenants Law.

2-3-1 Penalty for Rental fees breach in accordance with the Jordanian Civil Code

As we have already mentioned above, there are special provisions in the Jordanian Civil Code related to the Lease and Rental contracts (*Ijara*), namely Articles (658 to 709). However, these special provisions lack for such provisions that deal with penalties for breach of rent payment. So we refer to the general rules contained in the Jordanian Civil Code, which states in Article (246) the following:

"1. In bilateral contracts (reciprocal), if any party failed to fulfill its obligation under the contract, the other party shall upon a notice

to its debtor to ask for performance of a contract or otherwise termination. 2. The court may oblige the debtor to forthwith execute the contract or giving him a grace period for a given term or it may rule by termination and remedy as applicable." Therefore, in accordance with this article, the lessor can, after giving the lessee a proper notice, demanding a specific performance through legal enforcement by the court to enforce the debtor. And the lessor shall chose to execute the decision of the court to collect the amount of the rent at the Judicial enforcement departments or he can waive the execution of the specific performance and demand termination of a contract or demand forthwith termination of a contract. However, the court may require the tenant to execute immediately or grant him a specified term, and the lessor can request remedy and the court has a discretionary authority in considering his claim either by termination or compensation.

The termination may be judicial or contractual upon a condition or a provision to be included in the contract, where it is agreed that a contract shall be terminated if either of them fails to fulfill its obligation and this condition can be strengthened by agreement that the contract shall be automatically cancelled, without the need for a ruling. On the other hand, the parties may reach the peak, by

agreement to consider that the contract shall be automatically cancelled without the need for a notice or ruling (decision) by a court, thus depriving the court of its discretionary authority.[1]

2-3-2 Penalty of breaching Rental Fees Payment Under the Landlords & Tenants Law

Article 5 (c) of the Landlords and Tenants Law states that the lessor is entitled to demand eviction under specific legal conditions (as a penalty for the lessee who is in default of paying the rent). Among those cases, the following:

- If the tenant fails to pay the rent.
- If the tenant fails to pay part of the rent which is legally due.
- If the tenant fails to pay its share of the agreed common services fee.
- If the tenant is in breach of any of the conditions of the lease contract.
- In all of the above cases, if the tenant failed to pay such fees or respect such condition, the Landlord shall give the

[1] Prof. Aziz Kazem Jabr Al-Khafaji, The Tenancy Contract, Al-Sanhoury Library, Beirut, 2018, p 232.

Tenant a notice and if the Tenant did not pay such fees or meet such condition within fifteen days from the date of such notice thereof, a landlord may demand eviction.[1]

• If the tenant recurrence failing to pay the rent or repeatedly violates any of the conditions or provisions of the contract three times or more, despite a notice by the notary public, in both cases, then a landlord may demand eviction, without the need for further notice.[2]

2-3-3 Security Deposits by a Tenant for unpaid rent

Article (1437) of the Jordanian Civil Code states that the landlord has a special privilege to collect the amount of the unpaid rent. As determined by the Jordanian legislator, it shall be for a period of two years or for the agreed term of the lease, if it is less than two years. Further, the lessor is entitled for another privilege to obtain any other consequent rights related to the lease. The Jordanian legislator has determined such a privilege by the existing movables owned by the tenant. The Jordanian Civil Code also added to Article (1439) another privilege, as an exception of the basic

[1] Paragraph (C/1) of the Jordanian Landlords & Tenants Law.

[2] Paragraph (C/2) of the Jordanian Landlords & Tenants Law.

rule, namely it gives further concession to the lessor over the movables belonging to the subtenant rather than a tenant itself. Thus, it provides for a concession made to the delayed rent over the movables and proceeds existing in the leased property, while it is owned by the second tenant. However, it was stipulated that such a concession shall be given if the contract included a provision preventing a tenant to re-lease to others. Otherwise, the concession will be only over the due amounts related to the principal tenant upon the claim.

2-4 Lease Term or Duration

The lease contract is considered a fixed-term contract. So, it is a consecutive contract, where the tenant enjoys the benefits of leased object in charge of paying the rent to the landlord and the process continues for the following periods.

On the other hand, the rent is required to be true (real). If the rent is false, the contract shall be null and void, and it may be considered a *di minimis* amount of rent which is negligible and shall not equal or match the amount of benefit thereof, and then such a rent shall be deemed nil. However, cheap rent is that amount of rent of a grave deception, but it shall not preclude the contract's validity of

the hired property, unless such deception caused to one of the parties resulted from a breach.[1]

Article (658) of the Jordanian Civil Code stated that the lease contract should upon a specified period. Therefore, the lease contract is considered among fixed-term contracts, and time is considered an essential element in these contracts, because the tenant continues to pay the rent on a regular basis and enjoys the benefit of the leased.

2-4-1 Lease term According to the Jordanian Civil Code

Article (669) of the Civil Code stipulates that the period of rental shall commence from the date agreed upon in the contract, unless otherwise it is specified thereof. However, The law also states that a rent shall not be payable for an elapsed period of time before the delivery of the hired property to the tenant, unless the latter is the offender.[2] Basically, according to the Jordanian Civil Code, it is a must to specify the duration of the lease contract and it should be

[1] Al-Fadhli, J. (2013), Al-Wajeez in the Tenancy Contract, Zain Legal Publications, Beirut, p 37.

[2] Article (668) of the Jordanian Civil Code.

known, because the rental fees is determined by the length of the use of the hired thereof.[1] If the term or duration of a lease contract is not fixed for a specific period of time, and given that a contract was concluded upon a specific rent for each contractual period, it shall be deemed necessarily a single-term contract and each part may terminate it at the end of such period. Whenever another period enters, while both parties are silent, the contract shall be necessarily renewed. However, if the parties determine the period of payment in that case, the lease shall be considered for that period and shall terminate upon its termination.[2]

The duration of the lease (*ijara*) must be known and it should not be forfeited. At all events, it can not exceed thirty years, and if it is longer, it will be returned to thirty years. It means that a lease period shall not exceed thirty years according to this law.[3] however, if the lease contract is agreed for the life of the lessor or the lessee, the contract shall be deemed valid for that period even if it exceeds 30

[1] Hamza,M. *op. cit.*, p 311.

[2] Article (670) of the Jordanian Civil Code.

[3] Paragraph 1 of Article (671) of the Jordanian Civil Code.

years.[1] However, if the lease contract provides that it remains valid as long as the lessee pays the rent, it shall be deemed valid for the life of the lessee.[2] Should the term of the lease has elapsed and it has proved to be an urgent necessity to extend it, it shall be extended as far as necessary, provided that the lessee pays the like rent thereof.[3]

However, Article (673) exempts endowment (*waqf*) and orphan's funds from such long periods of lease, where the above article states that it is not permissible to rent the endowment (*waqf*) and orphan's funds for more than three years unless upon the permission of the competent court. Should the lease period exceeds this period, it shall be fixed at three years. Article (672) of the Jordanian Civil Code also authorizes the addition of lease period to a future period and it shall be binding by the contract unless the hired is an endowment (*waqf*) or orphan's funds, so it is not

[1] Paragraph 2 of Article (671) of the Jordanian Civil Code.

[2] Paragraph 2 of Article (671) of the Jordanian Civil Code.

[3] Article (674) of the Jordanian Civil Code.

permissible to add it to a future period exceeding one year from the date of the contract.

2-4-2 Lease term According to the Landlords & Tenants Law

Article (1), paragraph (1), of Article (5) of this Law, provides: "Notwithstanding any contrary agreement, the Lessee shall have the right, under a lease contract concluded before August 31, 2000, to continue occupancy of the leased property after the end of the period of the contractual period of lease in accordance with the terms and conditions of the Contract."

Hence, contracts concluded before August 31, 2000 shall be subject to the principle of legal extension. However, the Jordanian legislator adopted, under the **the Landlords & Tenants Law,** such provisions regulating increases in rents contrary to the previous ones that provides for automatic renewal of lease upon the same rent, which was a great burden for the lessor. Where, the rental fees shall be adjusted by the increases mentioned in this law, but not as it was previously enforced by the automatic renewal of lease or rental contract. This is what provided by item (2) of paragraph (a) of Article (5) of this law: "rent raises in

contracts concluded before 31 August 2000 must follow the percentage rise determined and published by the Council of Ministers upon the entry into force of the provisions of this law according to a special regulation to be issued for this purpose. Provided that such raises should meet the particular social and economic needs of the different Areas of the Kingdom or any part thereof ".

Then, the Jordanian legislator canceled the automatic renewal of the contracts concluded from 31 August 2000 and beyond and adopted the principle of "Consent makes the law".[1]

[1] Paragraph (1) of Article (5) of the Jordanian Landlords & Tenants Law provides that: "The contracts concluded on 31/8/2000 and beyond are governed by the terms of the agreed contract thereof, whether the property is intended for housing or otherwise, and the lease contract expires at the end of the agreed period thereof".

3- Conclusion

One of the most important tenant's obligations that the tenant has to pay a rent. According to the provisions of the Jordanian Civil Code and the Jordanian Landlords & Tenants law, it is clear that the basic rule provides that the lease or rental contract should specify the amount of rent or otherwise it is null and void. Basically, the Jordanian legislations broadened the concept of rent (rental fees) where it provides the contractual parties the right to get the rental fee either, in kind, debt or benefit and whatever saleable fortune. However, the payment of cash rent is the basic rule, and a tenant shall pay it as it is provided in the lease contract, either in terms of its amount or type (if it is in kind) as well as the payment method thereof. The lessee can pay the rent either to the lessor's representative or to its authorized person.

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PREFERENTIAL RIGHTS ON MOVABLES IN JORDANIAN CIVIL LAW

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Abstract

The Jordanian legislator dealt with the general rules governing preferential rights, indicating the types of excellent rights, arranged according to their degrees. It divided preferential rights into "general," which refers to all the money of the debtor, and "specific" which refers to a particular amount from the debtor's money. It distinguished in particularly between the preferential right which applies to the movable, and the other which applies to real estate. It also distinguished between the rulings on competing preferential rights and set the limit for tracing in preferential rights for movables.

In this humble research, we are concerned about preferential rights on movables and the analysis of the problems that arise in each type and their treatment, always taking into account the position of the Jordanian legislator in articles 1436 - 1445 of the Jordanian Civil Code.

Initiatory words:

• Preferential right: A priority that the law determines for a particular right, taking into consideration its character, whereby a certain amount of money is allocated to meet a specific obligation, so that it remains dedicated to fulfilling an insured obligation.

• Movable: The Jordanian Civil Code does not define movable thing, but only defines property and considered that "everything else is a movable thing."

• Corporative right: is the direct appropriation by a person of a particular object whose appropriation is determined by law.

• Accessory corporative right: that right which is applied to something to ensure the fulfilment of an obligation. So, it is based on an original right, and does not exist without it.

Keyword: legislator, preferential rights, Civil Law, obligation, arranged.

Introduction

Preferential rights are a subsidiary corporative right which grant the creditor precedence to demand his or her right, in compliance with his or her character. It is determined by the text of the law, and indeed preferential right is established only in the text of the law.

The basis for preferential rights are considerations which have been newly legislated for in a report on preferential rights on certain debts. These considerations are sometimes based on equity, as with the seller's preference. Or, they may be based on tacit mortgage, as with preference on the debt of the lessor or the owner of a hotel, who have the privilege of the tenant's or guest's baggage in the rented property or the hotel.

Preference rights are divided into public preferences on all the debtor's funds, private preferences on a particular movable and private preferences on a given property or properties.

What concerns us in this research are private preferential rights on movable property, and an understanding of the problems that arise in each type, and their solutions, taking into account the position of the Jordanian legislator in articles (1436-1445), as follows:

- First: preference on the expenses of maintaining and restoring movables.
- Second: preference on agricultural expenses, and agricultural machinery expenses.
- Third: preferential rights on leases of real estate.
- Fourth: preference for the hotel proprietor.
- Fifth: preference for the movable seller.
- Sixth: shared preference on movables.

First: preference on the expenses of maintaining, repairing and restoring movables.

The Jordanian legislator addressed this privilege by stipulating in Article 1434 of the Jordanian Civil Code that "the funds spent on the preservation or repair of movable property shall be a preference and shall be paid after judicial expenses and the fees due to the government".

That is, the expenses of maintaining and repairing movables are those that are aimed at protecting the thing from complete or partial loss. Or, to make the thing fit for the intended purpose of its use, such as a car repairer, or watch rentals or renting a carpenter to fix furniture, and the costs of debt relief.[1]

The basis of this preference is that, if it were not for the preservation and repair of the movable property, that movable property may have been destroyed, or at least its value would have been reduced. It is fair that the creditor takes priority before others in its collection from the price of the movable[2].

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[1] Muhammad Wahid al-Din Sawar, Auxiliary Rights, 1st edtion, 2006.

[2] Bayan Yousef Rajab, Explanation of Civil Law, Preferential Rights: A Comparison of the Laws in Arab Countries, 1st edition 2009.

What are the problems that arise؟

1. Does this preference guarantee the expenses of improvement and beneficial expenses, and how can the spender of this money collect it؟
2. Since the creditor has the right to collect his secured debt as a priority from the price of the movable, what if the ownership of the movable is transferred to others؟

This preference does not incorporate improvement charges or beneficial expenses[1], such as painting the car or dyeing clothes or fabric. However, he or she may benefit from the right to imprisonment if the conditions were fulfilled as set out in Article 389 of the Jordanian Civil Code: "to whoever spends money on another's property, and has necessary or useful expenses in his or her hand, he or she should refrain from refunding until he or she collects what he is legally due."

If the movable property is transferred to a bona fide holder, then he or she must hang on to proof of possession in dealing with the debtor to obtain the movable property, so the debtor is prevented from tracking his money.

[1] Dr. Abdul Razzaq Ahmed Al-Sanhoury - Mediating in Explaining Civil Law, Dar al-Nahda al-Arabiya, Cairo, 1st edition 1952.

However, if he or she was a mala tide holder in whatever way, and he or she knows about the existence of the maintenance expenses debt or is burdened with preferential rights, then the debtor should monitor the transfer. This abides by Article 1427 of the Jordanian law and the status of this preference comes after the preference for amounts owed to the Treasury and the preference of judicial expenses, Article 1434.

If the costs of maintenance and repair are multiplied and they are commensurate with each other, they are all of the same rank and are collected by their respective value, whatever their date of disbursement.

Second: private preferential rights relating to agriculture, and these fall under three types of rights.

1 -Preferences of agriculture expenses.

2- The preference of the amounts due in return for agricultural machinery.

3-The preference of the rights of the lessor of agricultural land.

Article 1436 stipulates that the prices of seeds, manure and other kinds of fertilizers and pesticides, and the expenses of agriculture and harvest shall be a preference on the crop on whose production

money has been spent and shall be paid for after the previous rights.

This text includes two types of preference rights.[1]

A – That aimed at the agricultural crop and includes the prices of seeds and fertilizer and the expenses of agriculture and harvesting, including the wages of those involved in the preparation of land for agriculture and the wages for services.

B. It shall focus on agricultural machinery and shall include the prices of these machines and the expenses of their repair and the cost of transporting them to the land.

The debtor has a preference on expenses for the maintenance of the movable, for the costs of maintaining the agricultural machinery. He or she has the priority on preference for the expenses of agricultural machinery, but does the preference include subsequent crops؟

The preference is based on the crop that these expenses were spent on preparing or maintaining. The preference is not continued on subsequent crops. But if the expenditures result in a benefit to

[1] Dr. Said Abdel-Karim Mubarak - Summary of the Rulings of the Civil Code, Real Estate Rights, Hammad Center for Printing and Publishing, Irbid, 1st edition, 1995/1996

repeated crops for consecutive years, then preference falls on the crop of these years altogether, for example, sugar cane cultivation.

The Jordanian legislator has included a preference on agricultural costs for a number of private preferential rights applied on movables. This, even though the agricultural crop burdened with the preference is an immovable property, and that goes back to the fact that the crop is transferred by fate.[1]

The rank of this preference: this preference comes in fifth place after the preference of judicial expenses, the preference of amounts owed to the Treasury, the preference of expenses for the maintenance of the movable and public preferences. If several farmers are competing for the agriculture expenses, their debts are equal and each one collects from the price of the crop.[2]

B - the preference of amounts due in exchange for agricultural machinery. This preference includes all the money spent on the farm machine, including the price, the cost of

[1] Solomon Marks, believes that this preference does not apply to the crop except after its harvest, because before that it is located in the land and is counted as a property that only responds to property preferential rights.

[2] Muhammad Labib Shanab, Lessons in Property and Personal Insurance, Dar Al-Nahda Al-Arabiya Publishers, p. 199, p. 231.

transporting it to the land and the expenses of its repair and improvement.[1] Those who repair agricultural machinery have two preferences: the preference of the amounts due in return for the agricultural machinery and the preference of the expenses for the maintenance of the movable property.

The seller of the agricultural machinery also has two preferences: the preference of the seller of the movable and the preference in exchange for the agricultural machinery. It is in the seller's interest to adhere to the preference in exchange for the agricultural machinery because it comes in fifth place, while the preference of the movable seller is ranked seventh.

The preference applies to the agricultural machines and not to the crop. The preference remains, even if the machine became a property by privatization.

Third: Preferential rights arising from leases of real estate (buildings and agricultural lands)

Article 1437 states: "For the rent of property and agricultural land for two years or for the duration of the lease, as I

[1] Dr. Mohammed Wahid Al-Din Sawar - Explanation of Civil Law - Auxiliary Real Estate Rights, Dar Al-Thaqafa, 2006.

have said, and every other right of the lessor under the lease shall have a preference over what is present in the rented property and owned by the lessee in terms of rentable movable property or an agricultural crop."

The preference of these sums is applied upon the movables owned by the tenant or his wife, and present in the property, or the agricultural crop, but on the condition that they must be bookable and material possessions. Does this preference include movable property belonging to others? This preference applies to the movable property belonging to third parties if it is found in leased premises and the lessor is unaware of its revenues to others at the time it is placed in the rented property, on the basis that everything that exists in the property is included in the fare (Article 1438).

The preference is not limited to the movable property of the lessee and his or her spouse, but includes the movable property of the second lessee (the subtenant), if the lease prevents the first tenant from subletting. If the contract does not prevent him or her from subletting, the amounts due to the lessor shall not have a preference over what the lessee places in the leased premises.[1]

[1] Jamil Cherkaoui, Personal and Property Insurance, 429.

The lessor shall have the right to trace the funds in the event of transfer from the leased premises without his knowledge. The rights of bona fide third parties shall be observed and the preference shall continue to be applied on the funds transferred, even if they harmed the rights of third parties for a period of three years from the day of transfer. If the funds are sold to a buyer of goodwill or at an auction, the lessor must return the price to the buyer.[1]

The question that arises is a judgement on what happens if the movables are transferred from the rented property to another place or if they come into the possession of another person? It must be differentiated following the assumptions:

1. If the movables have been transferred to another place or person with the knowledge and consent of the lessor and without opposition thereto, he shall be deemed to have waived a right to the preference.[2]
2. If the lessee acted freely with the movables in the premises that were rented to others, for instance selling them without

[1]Mahmood Jamal Al-Din Zaki, Personal and Property Insurance, p. 457

[2] Hamam Mohammed Mahmoud Zahran, p. 683, Mahmoud Jamal al-Din Zaki, p. 461 p 324.

transferring them from the rented premises, the preferential right is still applied. Even the lessor knew about it, he or she does not lose his right.[1] That is because the survival of the movables reassures him or her of his or her ability to collect what is owed to him or her.

3. If movables are transferred or exported to another place or to another person without the knowledge and consent of the lessor, or in spite of his or her opposition.[2]

This leads us to two possibilities:

The first possibility is that if the lessor does not enter into an entitlement reserve or leave it outside the legal period of 30 days from the date of transfer or remain silent for a period of more than three years, then these movables come out of the leased property to the buyer free of the preference that burdens them.[3]

[1] Al-Sanhuri 10a, p. 707, p978

[2] Ali Hadi Al - Obeidi p442

[3] Bayan Yousef Rajeeb, Explanation of Civil Law, Preferential Law.

The second possibility is that the lessor has signed the entitlement bond and in this case he or she gains the right to trace these movables under the following conditions:[1]

1- The tenant removed these movables without the knowledge and consent of the lessor.

2. The lessor has made an entitlement bond within 30 days from the date of transfer.

3. The wage remains insufficient to pay the lessor's right arising from the lease.

4- The lessor shall exercise the right to trace the movables within 3 years from the date of transfer.

5. The person who bought it should not have good faith, and if so the lessor has to pay the price.

Fourth: Dues of the hotel owner in obligation to the guest.[2]

Article 1442 stipulates that the amounts due:

[1] Dr. Tawfiq Hassan Faraj, Dr. Nabil Ibrahim, Dr. Ibrahim El-Desouki Abou El-Lail

[2] Saieddin Mubarak, Summary of the provisions of the Civil Code, in-kind rights, p. 317.

1. The owner of the hotel, who is in obligation to the guest for the cost of accommodation and for the expenses of his account, has a preference over the luggage brought by the guest in the hotel or its outbuildings.

The preference is on the luggage, even if it is not owned by the guest, if it is not proved that the owner of the hotel knew at the time of entry into it to the third party, provided that the baggage is not stolen or lost.

Do the owners of furnished and unfurnished apartments and apartments benefit from the concession? No, because these are covered by the preferential right due to the lessor as they do not provide hotel services, because their work is limited to short-term use.[1]

The preference includes the fees for the guest's stay, fees for provisions and what he or she spent on his or her account, in terms of the cost of food, car-parking, and what the hotel offers to his or her spouse and children in terms of services. This includes the preference of compensation that the owner of the hotel is owed for the guest's entitlement to the contents of the hotel. The preference is limited to guaranteeing these amounts at the last time they were

[1] Wahid al-Din, Auxiliary Property Rrights, p. 352.

lodged, and for a period of two years. According to Article 452, the due date is the date of expiry of residence.[1]

The rights of the owner of the hotel shall be on a par with the preferential rights of the lessor. In the case of the two cases coinciding, the priority goes to the older one.

What does "the older one" mean? It is the precedence of the placement of money transferred in the leased property or the hotel, if this material fact can be fixed by all means of proof.

Does the loan taken by the guest from the owner of the hotel fall within the scope of the preference? Jurisprudence considers that it comes within it if it is related to hotel services.[2]

The question that arises is: if the guest removes the luggage from the hotel without the owner's knowledge, such as if the guest sells it to someone of good will, does he have the right to recover it? The jurisprudence said that the owner of the hotel should be deprived of his right to recover the movable property which leaves the hotel.[3]

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[1] Mahmoud Jamal Al-Din Zaki Personal and in-kind insurance p.459

[2] Hammam Mohammed Mahmoud Zahran, Personal and Property Insurance p. 213.

[3] Dr. Abdul Moneim Al-Badrawi, Dr Shams al-Din al-Wakil, p. 694.

That is because the legislator did not grant the hotel owner the right that was granted to the lessor in the period of the entitlement bond (retroactive) within 30 days from the date of his or her learning of this taking out from his rented property. And no later than three years from the date of transfer of the material movable property to someone else.

However, if we return to Article 1190 of the Jordanian Civil Code, the movable owner may have the preferential right if he or she has lost it, stolen it, or is liable to recover it from the person who acquired it in good faith and within three years from the date of his or her loss, theft or coercion.

And because this holder of good faith may ask for an expedited payment, he is asked to recover it.[1]

Fifth: preference of the movable's seller:

The movable's seller has a preference on the price and its accessories as expenses, and this concession remains valid for the duration of its retention period (Article 1444).

The question that arises is what if the movable is incorporated in the real estate and has become real estate by nature,

[1] Bayan Yousuf Rajib, Preferential Rights, p. 298.

like building materials, does it continue to hold a **preference or not?** For example, in turning wood into furniture or transferring the movable to a property by privatization, it does not lose its self-interest and it remains the preference of the movable seller to keep it despite the change that occurred to it.

The preference for the seller of the movable: the movable ranks after the preference of the lessor and the preference of the owner of the hotel. That is to say, it is in the seventh rank. That is, except when it takes precedence against them, if the lessor or the owner of the hotel knows the preference of the seller at the time of placing the sale in the leased property, Article 1444 Jordanian civil.

Sixth: shared preference on movables.

The Jordanian legislator organized this privilege in the text of the first paragraph of Article 1445 of the Jordanian Civil Code.

"For the partners in the movable, if they share a guaranteed preference, it is the right of each of them to claim from others because of the division, and to collect what has been decided for them from the settlement." The beneficiary of this preference is the shared partner who received less than his share, or the partner

who claims the ownership of the third party and a claim is filed against him, and claims against his partners to secure what he lost.

This preference, just like the preference of the movable seller, is based on the fact that the shareholder has contributed to finding something in the joint interest with him. Therefore, preference should be ruled for him. That is, he has preference against other creditors when he returns his rights arising from the division and ensures that the partner who has not fully collected his share from the division receives it in full. But if he took less, then the partners will be entitled to a rate equal to the amount obtained in addition to the sum with the other partners in the joint money, to get the equivalent of his share.

If there is a residual interest in the property after a common share is due, the remainder shall be redistributed among the partners, unless the distribution was impossible to achieve. The remaining partners shall hold the share of the partner and he or she shall have a divided preference.

If the share of one of the partners came upon an amount of money as a result of the apportionment, then he has to return this obligation to the partners who have committed to pay the rate. The rights of such a partner have a preference that shall be based on the separated share that has occurred in the portion of each partner.

The divided preference is deemed to be the same as that of the movable seller. In the event of their coinciding, the priority is given to earlier one by date. If the division is obtained after the sale, the preference of the seller takes priority.[1] And if the sale happened after the division, the divided preference takes priority.

Conclusion

In this humble research, we have shown the preferential rights stated for movable property, and the provisions of Jordanian civil law for each different type, and have explained the problems that may arise and how to deal with them. In this research we have reached several recommendations:

• Replacement of the term "buildings" with the term "real estate" mentioned in Article 1437. This is because the provisions relating to the preferential rights of the lessor of agricultural land are not different from the preferential rights arising from the leases of buildings.

• Taking the reverse order of the rights of the spenders on the expenses of the movable: repair, maintenance and restoration in succession, which is what other Arab legislators have done.

[1] Saeed Mubarak, p317-318

• The Jordanian legislator should add to the text of Article 1439 the phrase "of the time foreseen by the lessor", which was added by the Egyptian, Syrian and Iraqi legislator to determine the scope of the fee that the subtenant must not fulfill for the original tenant.

• Specifying the type of reservation that is required in the text of Article 1440 of Jordanian civil - is it a preservation or recovery?

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JOURNAL OF LAW AND POLITICAL SCIENCES

THE ROLE OF CRIMINAL LEGISLATIONS IN FIGHTING AGAINST THE E-SIGNATURE RELATED CRIMES (A COMPARATIVE STUDY)

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Abstract

The present study aimed to shed a light on the e-signature-related crimes under the Egyptian, Saudi, and Jordanian laws. The researcher selected this subject because the e-signature has become essential for conducting legal transactions and exchanging data and information between people. If the e-signature is considered a secure and reliable from people's perspective, the problems associated with it shall decrease. Penal protection for

one's e-signature related rights can be provided through criminalizing the acts that may reduce the reliability and admissibility of the e-signature as a mean of proof. Providing such protection shall make the parties who use e-signature feel that this signature is a reliable method for concluding transactions regardless of the space separating them. For instance, enforcing the Jordanian electronic transactions law has facilitated the use of electronic means for concluding transactions. However, the latter law doesn't criminalize the crimes related to e-transactions in general nor the ones related to e-signature in particular. Similar to the Egyptian and Saudi legislators, the Jordanian legislator should provide special penal protection for the rights related to e-transactions and e-signatures through the Jordanian electronic transactions law. For instance, the Egyptian and Saudi legislators have criminalized some acts that are considered e-signature-related crimes.

Keywords: E-signature, penal protection, signature-related crime.

INTRODUCTION:

Due to the information & communication revolution, the world has been witnessing rapid developments in social and economic aspects of life. These developments were reflected on the way individuals and institutions perform their work. For instance, people started to perform their transactions electronically. Today, the general management of most institutions do their work through using e-documents instead of paper-based documents.

E-transactions are concluded in an electronic environment without having the parties materially present. Thus, it's difficult to prove the identities of the parties, certify the documents and prove that the e-transactions were concluded. Hence, e-signature emerged. This emergence made several legislators adjust the legislations that govern e-transaction-related issues.

E-signature refers to a signature that's placed on an e-document. It may be represented in letters, numbers, symbols, signs, or etc.. It has a distinguished and unique pattern that enables people to identify the signatory's identity.

In order to consider the e-signature as an admissible mean of proof, several conditions must be met. First, the e-signature must be linked only to the signatory. Second, the signatory must have full control over the e-signature. Third, the e-signature mustn't be liable to change nor alteration. It should be noted that all national

and international legislators consider the e-signature an admissible mean of proof like the conventional signature is.

The ability to conclude e-transactions electronically has several merits. However, it has some demerits. Such demerits shall make some people perceive the electronical environment as being unsafe and unreliable. The concerns about the environment of the e-transactions has been increasing due to the increasing number of the crimes of electronic piracy and forgery. Thus, legislators had to enact criminal laws that include protection methods for fighting against e-signature-related crimes.

The Study's Significance:

Many criminals feel motivated to commit e-signature-related crimes and forge e-signatures due to many reasons: First, the use of e-signature for concluding transactions has been increasing. Second, there aren't legislations that ensure that one's e-signature related rights are protected. Third, e-signature-related crimes are hard to detect. Fourth, it's hard to conduct investigations about such crimes. That's attributed to the nature of the electronic environment and the nature of such crimes. For instance, the proofs used in the e-signature related lawsuits are usually electronic proofs. It's hard to conduct investigations about e-signature related crimes because committing such crimes occurs

through a very short period of time relative to the conventional signature related crimes.

In the light of the aforementioned information, the present study aimed to shed a light on e-signature related crimes. E-signature is a modern mean for concluding transactions. The researcher believes that it's necessary to protect one's e-signature related rights. He also believes that it's necessary to criminalize all the acts that may infringe such rights or negatively affect people's perceptions for the reliability of e-signature which is a legitimate mean for concluding e-transactions.

The Study's Objectives:

The present study aimed to shed a light on e-signature-related crimes. These crimes include: the unauthorized access to an e-signature-related database and obtaining an e-signature through using fraudulent means. These crimes also include: the destruction of an e-signature and making a defect in it. These crimes also include: forging an e-signature and obtaining the e-signature under coercion. These crimes are explored under the Egyptian, Saudi, and Jordanian laws. The e-signature has become essential for concluding transactions and exchanging data and information between people. If the e-signature is considered a reliable and

secure mean of proof, the problems associated with it shall decrease. Penal protection for one's e-signature related rights should be provided by legislators through criminalizing the acts that may negatively affect people's perceptions for the admissibility of e-signature. Providing such protection shall make the parties who use e-signature feel that this signature is a reliable method for concluding transactions regardless of the space separating those parties.

Reasons for choosing the subject of the present study:

The subject of the present study was chosen because penal protection has been recently provided for e-signature related rights. Therefore, researchers must explore how consistent the e-signature related legislations with latest changes. The subject of the present study was chosen due to the significance of e-signature and certifying it to make it an admissible mean of proof. The subject of the present study was chosen due to the significance of identifying the means of penal protection that the legislator uses for fighting against the e-signature-related crimes.

Statement of the Problem:

The e-signature-related crimes have emerged recently. In the light of that, many e-signature-related debates have been spreading locally and internationally. For instance, there's a debate over the following questions: (Are the existent conventional legislations adequate for fighting against the e-signature-related crimes? Is there a need to enact new legislations for addressing such crimes?). The problem of the present study is represented in the following questions:

1- What does the term (e-signature) mean? Does the e-signature perform the same functions that the conventional signature performs?

2- How adequate the existent criminal legislations are for fighting against the e-signature-related crimes?

3- Are the existent e-signature related criminal legislations consistent with the current e-signature related crimes?

4- Does the e-signature related crimes require special criminal legislations?

The Study's Approach:

The present study adopts an analytical comparative approach and an inductive approach. For instance, the researcher aimed to shed

a light on several theoretical grounds. He aimed to shed a light on each type of e-signature related crimes and identify the elements that constitute each crime. He also aimed to shed a light on each type of crime in the light of the general rules of the criminal law. He also aimed to shed a light on e-signature-related crimes under Foreign and Arab laws (i.e. the Egyptian, Saudi, and Jordanian laws).

The Study's Structure:

In order the meet the goals of the present study, the present study is divided as follows:

FIRST- THE MEANING OF THE TERM (E-SIGNATURE)

Due to the emergence of the term (electronic documents), e-signature today plays an essential role in certifying these documents and providing them with legal protection. In order for the e-signature to perform the same functions performed by the conventional signature, international and national legislators aimed to identify the meaning, conditions and types of e-signature. These things are identified through the present part.

1-THE DEFINITION OF E-SIGNATURE

Jurists provided several definitions for the term (e-signature). For instance, according to some jurists, (the e-signature refers to a group of signs, symbols or letters. It is attached with the e-document being signed. Its use is authorized by the concerned agency. The e-signature can uniquely identify the signatory. It indicates that the signatory has approved the signed document)[1]. The latter definition focuses on form-related aspects of the e-signature.

According to other jurists, the s-signature refers to a measure carried out by the one intending to sign an e-document. This measure is represented in the use of an electronic number, sign or code. One shall keep the number or the code in a classified safe place and prevent others from using it. One can use this number or code as a mean for verifying his identity when approving an e-document[2].

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[1] Abdul Hameed, Tharwat (2007). The admissibility of the e-signature as a mean of proof under the conventional rules of proof. Al-Jame'a Al-Jadidah Publishing and Distribution House. p.28.

[2] Abu Haybeh, Najwa (2003). The e-signature: Definition, and admissibility as a mean of proof. A study presented at a conference titled: (The e-banking

The term (e-signature) was used for the first time in legislation when it was used in the UNCITRAL Model Law on Electronic Commerce of 1996[1]. The latter law didn't provide a definition for the term (e-signature). Later on, the UNCITRAL model law on electronic signatures was issued. The latter law provides a definition for the term (e-signature). Based on article 2 of the latter law, the e-signature, refers to "data in *electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to*

transactions under Shariah and law). It is sponsored by the faculty of Shariah of the United Arab Emirates University in cooperation with the Chamber of Commerce and Industry of Dubai. It was held during the period 10-12 may, part1, p.442 .

[1] UNCITRAL is an abbreviation for (the United Nation Commission for International Tread Law). This commission was established in 1966 under a decision made by the United Nations. The latter decision holds No. 2205 (XXI) on 17th, December, 1966. It was made based on a suggestion made by the representative of the Hungarian government before the United Nation. The Hungarian government was assigned to develop the rules governing international trade and enact new model laws in this regard. Please look at www.unictral.org

indicate the signatory's approval of the information contained in the data message" [1].

Based on article 106/ paragraph 5 of a US act issued in 2000, the e-signature is an:

"*Electronic sound, symbol or process attached or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record*"[2].

It can be noticed that the American legislator expanded the scope of the definition. For instance, the latte definition may include various types of e-signatures[3].

Article 1316/ paragraph 4 of the French civil law of 2000 defines the e-signature as the (signature that identifies the signatory's identity and indicates that the signatory's approves the content of

[1] This law was issued in 2001. It includes 12 articles that concern e-signature and its description.

[2] The articles included in this law are available on http://www.legal_text.ec/text/en/x3008/k3.htm

[3] Loundy, David(1998). Computer information systems, Law of system operator Liability, The Seattle University, Law Review, Vol.21, No.4, Summer, p.16.

the e-document that the e-signature is attached with and the obligations mentioned in it).

The French legislator's definition is consistent with the directives issued by the European Council and the development of e-commerce. Through the latter article (i.e. article 1316), the French legislator suggests that the e-signature is (the signature made through using any accepted reliable mean for identifying the signatory's identity. It is attached with the document being signed)[1].

The Egyptian e-signature law No. 15 of 2004 defines the e-signature as (an item placed on an e-document. It's represented in letters, numbers, signs, symbols or etc.. It has a unique pattern and can be used for identifying the signatory's identity and distinguishing it from others' identities).

The Egyptian electronic trade law defines the e- signature as (a group of letters, numbers, signs, or symbols which has a unique

[1] According to the European Council's directives No. 93 of 1999, the e-signature refers to "*data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication".*

pattern allowing one to identify the signatory's identity and distinguish it from others' identities).

When comparing the latter definitions, it can be noticed that the definition of the Egyptian electronic trade law is considered better and more accurate than the definition of the Egyptian e-signature law. That is because the e-signature is not placed on an e-document. In fact, it may attached or associated with a legal document. It may be sent in a separate message. The definition of the Egyptian electronic trade law is better than the definition of the Egyptian e-signature law because the latter law limits the e-signature to an item being placed on an e-document only).

Article 2 of the Jordanian electronic transactions law No. 15 of 2015 defines the e-signature as (data that's in the form of letters, numbers, symbols, signs or etc. It's inserted in an e-document in an electronic manner or in another similar manner. It may be added to the e- document or attached with it. It's used for identifying the signatory's identity and linked to one signatory only).

Article 1 of the Saudi e-transactions law defines the e-signature as (electric data inserted in an e-document or added to it or logically associated with it. It's used to verify the signatory's identity and approval to the content of the e-document. It's also used for detecting any change made to the e-document after signing it).

It can be noticed that the definitions provided by laws and jurists for the term (e-signature) are similar to each other. However, the choice of words differ from one definition to another. Based on the aforementioned definitions, the e-signature is a measure or a set of measures that are in the form of number, sign, letter or sound. This measures enables people to uniquely distinguish the signatory's identity. It indicates that the signatory approves the content of the e-document. The e-signature is recognized by public and private bodies as a legitimate method of proof. The e- signature can be only made through using a number, sign, letter or sound.

Based on the aforementioned definitions, the characteristics of the e-signature include the following:

1- The e-signature is represented in data or information that's in the form of signs, symbols, letters, numbers or sounds

2- The e-signature can uniquely identify the signatory's identity

3- The e-signature represents the signatory's will

4- The e-signature is inserted in an e-document or attached with it

Similar to the conventional signature, the e-signature is a significant mean for verifying one's identity. The conventional

and electronic signatures are considered legal means for proving one's approval to the content of an e-document.

2-THE CONDITIONS OF E-SIGNATURE

Several legislations include conditions for considering the e-signature legally binding. According to jurists, there are three conditions that must be met for considering the e-signature as an admissible mean of verification[1]. These conditions are: 1- It must be uniquely linked to the signatory's identity. 2)- The signatory must have full control over the e-signature. 3)- The e-signature mustn't be liable to change nor alteration**.**

The first condition: The e-signature must be uniquely linked to the signatory's identity

That means that the e-signature must be uniquely linked to the signatory. It must enable people to identify the identity of the

[1] Al-Hayyan, Abdullah, and Abbas, Hassan (2003). E-signature: Critical analysis for a project launched by the Kuwait Ministry of Industry and Commerce. The Journal of Economic and Administrative Sciences. Vol. 17. Issue.1,p.20.

signatory and distinguish him/her from others[1]. In case the e-signature doesn't enable people to identify the signatory's identity, it shall not be considered binding nor admissible as a mean of proof.

This condition is set by jurists and most of the national and international legislations[2].

Article 7 of the UNCITRAL model law on electronic commerce of 1996 states the following:

"Where the law requires a signature of a person, that requirement is met in relation to a data message if: (a) a method is used to identify that person and to indicate that person's approval of the information contained in the data message; and (b) that method is as reliable as was appropriate for the purpose for which the data

[1] Al-Haj Ali, Ala' Ahmad (2013). The legal legislations governing the work of the parties responsible for certifying the signature. MA thesis. Al-Najah National University. Palestine. p.49

[2] Sulaiman, Mohammad Ma'moun (2011). Electronic arbitration. Al-Jame'a Al-Jadida publishing and distribution house. Alexandria. p.230.

message was generated or communicated, in the light of all the circumstances, including any relevant agreement"[1].

Based on the European Council's directives No. 93 of 1999, the e-signature must be uniquely linked to the signatory's identity. That's stated through paragraph 2 of article 2 of the latter[2].

Based on article 15 of the Jordanian electronic transactions law of 2015, (The e-signature shall be protected under the law, provided that all of the following conditions are met: a)- The e-signature must be linked to the signatory only. It must enable people to distinguish the signatory from others. b)- The e-signature must enable people to identify the signatory. c)- The codes must be under the control of the signatory only at the time of making the signature. d)- The e-signature must be attached with the e-document in a manner that makes adjusting the document after signing it impossible without having the signature adjusted).

[1] Me'wan, Mustafa (2010). Verification in e-transactions under international legislations: electronic signatures and fingerprints. Al-Ketab Al-Hadith publishing and distribution house. Algeria. p.79-80.

[2] The European Council's directives No. 93 of 1999 issued on 13/12/1999 (cited in Me'wan, Mustafa, op cit., p.351-352).

Article 18 of the Egyptian e-signature law states: (The electronic signature, writings, and documents shall be considered admissible as a mean of proof, if all of the following conditions are met:

- The e-signature must be linked to the signatory only
- The signatory must be the only one having control over the electronic medium.
- One must be capable to detect any change or alteration that may occur to the e-document or the e-signature.

The executive regulations of the present law includes the relevant technical controls)[1]

The researcher reviewed the aforementioned national and international legislations that include the conditions of the e-signature. Through this review, the researcher concluded that these legislations state that the e-signature must be uniquely linked to the signatory. Under such legislations, the e-signature must serve as a sign that enables people to identify the signatory's identity in an accurate and specific manner.

[1] Al-Odon, Samir Abdul Samie' (2005). E-contract. Al-M'aref Jame'y publishing and distribution house. Egypt. p.187.

The second condition: The signatory must have full control over the e-signature.

In order to consider the e-signature as an admissible mean of proof, the signatory must have full control over the e-signature at the time of creating and using it. Thus, no one should be capable of forge the codes of the signature other than the signatory himself. No one should be able to make the same signature on behalf of the signatory. The e-signature must be made through an electronic medium that is under the full control of the signatory[1].

The UNCITRAL model law on electronic signatures of 2001 states that signatory must have full control over the e-signature. For instance, article 6/paragraph 3 of the latter law states the following:

"An electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in paragraph 1 if:

(a) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;

[1] Hijazi, Abdul Fattah Bayomi (2003) Introduction to Arab E-commerce: The UAE E-commerce law. Al-Feker Al-Jame'y publishing and distribution house. Alexandria.p.217

(b) b) The signature creation data were, at the time of signing, under the control of the signatory and of no other person;

(c) Any alteration to the electronic signature, made after the time of signing, is detectable; and

(d) *Where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable*"[1].

In addition, the signatory must be possessing the data related to the creation of his e-signature. He must have full control over the e-signature. He must preserve the e-signature and prevent others from having an access to it. That should be done to prevent people from forging and adjusting the e-signature. That shall make people perceive the e-signature as a reliable mean of proof[2]. Article 15/ paragraph c of the Jordanian electronic transactions law of 2015 states that signatory must have full control over the e-signature.

[1] The UNCITRAL model law on electronic signatures of 2001 (cited from Me'wan, Mustafa, op cit., p.91).

[2] Al-Rabie', Ibrahim; and Naly, Ala' (2012). E-certification. Decisions of arbitrators in e-signature related issues: A comparative study. mouhakiq al-hilly journal for legal and political science. Babel. Iraq. Issue No.1, p.170.

The same is stated through article 18/ paragraph 2 of the Egyptian e-signature law.

It should be noted that the French law doesn't identify the conditions of the e-signature explicitly. The latter law states the e-signature serves as a reliable item used for identifying the signatory's identity. It states that through making the e-signature, the singed e-document shall be linked to the signatory. It also states that the e-document must be considered valid through meeting the conditions set by the regulations issued by the State's Council[1].

After issuing the French law No. 230 of 2000, the first court judgment that concern the e-signature was issued by the court of appeal on 20, October, 2000. The latter judgment confirmed that the medium of making the e-signature must be under the full control of the signatory only. Otherwise, the signature shall be used as a mean of proof against the signatory, rather than being for his benefit. The latter judgment was issued in a case titled (Sarl Chalets Boision C/Bernard G.). In the latter case, the signatory's lawyer filed an appeal claiming that his client made an e-signature. Through the statement, the latter lawyer provided the classified

[1] Al-Rabie' and Naly, op cit., p.161.

data related to the e-signature. Such data must be known by the client only. However, the employees who were working at the lawyer's office knew such data. Through the judgment, the court refused to consider the e-signature an admissible mean of proof because its function in terms of verifying the signatory's identity has become doubted. It's also because the e-signature-related data is known by people other than the client (i.e. the employees working at the lawyer's office). Based on the latter judgment, the e-signature shall have legal effect if the electronic medium used for making it is under the control of signatory only. The e-signature must be linked to the e-document that the signature is attached with. In addition, the e-document must be valid. If any of these conditions hasn't been met, the e-signature shall not have a legal effect and shall not be considered admissible as a mean of proof. That's because the e-signature shall not be capable to verify the signatory's identity in such a case. The French Court of Cassation confirmed that through a recent judgment issued by it. The court of appeal approved the latter judgment on 13, April, 2003[1]

[1] Cited in: Salim, Ayman Sa'd (2004). E-signature: A comparative study. Dar Al-Nahda Al-Arabia publishing and distribution house. p.30.

The third condition: The e-signature mustn't be liable to change nor alteration

That means that people shouldn't be capable of changing the data included in the signed document without damaging the document or leaving a trace. That shall make it easy for one to detect any adjustment made to the signed document whether it's examined by an ordinary person or an expert[1].

The same must apply to signature, whether the signature is a conventional or electronic signature.

In order to ensure that the e-signature is reliable, the e-document must be written and singed through using a system or a medium that can ensure the validity of the e-document that includes the e-signature. Such a system or a medium must enable people to detect

[1] Fayed, Abdul Fattah (2004). Electronic documentation under the civil law: The development of laws, and technical security: A study about electronic documentation and their functions under the civil law from a legal perspective. Al-Jame'a Al-Jadida publishing and distribution house. Alexandria. p.65.

any adjustment that may be made to the data of the e-document after singing it[1].

The e-signature is connected with electronic documentation. Thus, it's associated with threats (e.g. being adjusted by people). To avoid such threats, there are several advanced technical conditions that must be met in the e-signature. Meeting such conditions shall make the process of forging or adjusting the e-signature impossible without leaving any trace. Due to the existence of such conditions, the e-signature is considered better and more reliable than the conventional signature.[2].

The third condition is mentioned in article (6-3-c) of the UNCITRAL model law on electronic signatures of 2001. The latter article states the following:

"*An electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in paragraph 1 if: Any alteration to the electronic signature, made after the time of signing, is detectable*". Article 15/D of the Jordanian electronic

[1] Al-Obaidy, Osamah bin Ghanim (2012). The admissibility of e-signature as a mean of proof. The Arab Journal for Security and Training Studies. Naif Arab University for Security Sciences. Vol. 28. Issue.(56). p.166.

[2] Sulaiman, op cit., p.237.

transactions law states the following: (The e-signature must be attached with the electronic record in a manner that makes adjusting the record after signing it impossible without having the signature adjusted). Article 18/3 of the Egyptian e-signature law states the following: (One must be capable to detect any change or alteration that may be made to the e-record or the e-signature).

3-THE TYPES OF E-SIGNATURE

The e-signature has several types. The types of e-signature are classified based on the method of making the e-signature. The types of e-signature differ from one another in terms of how secure and reliable they are. Such types include: the signature made through an electronic pen, biometric signature, code signature and digital signature.

1)- The signature made through an electronic signature pen

This signature is made through an electronic signature pen. The signatory writes the signature on the screen of a computer through using a specific program[1]. When making the signature, the device shall perform 2 main functions. The first one is represented in capturing an image of the client's signature. That is done through signing through on the screen of a computer or on any other mean after the client enters his password through scanning his card through a device to read it. This card includes the client's data.

The second function is represented in checking the validity of the client's signature through comparing it with the stored signature.

[1] Abu Haibi, op cit. p.51.

It may be stored on a website or on the computer's memory. Such a comparison is based on biological characteristics, such as: the way the pen is placed on the surface, the speed in making the signature, the overall time needed for making the signature, and the way the hand moves while singing[1]. The devices and software need for making this type of signature is considered relatively costly. That hinders the spread of the use of this type of signature. Making this type of signature requires having a special type of computer. It also requires having an electronic signature pen. It also requires having a special program for capturing signature and comparing it with the stored one[2] .

2)- The biometric signature

Through making the biometric signature, the device shall verify one's identity through one's natural, behavioral and physical characteristics. Each human has attributes and features that

[1] Al-Mari, Ayed Rashed (1998). The admissibility of the modern technological means in proving business contracts. PhD dissertation. Cairo University. 1998. p.112.

[2] Al-Tuhami, Sameh Abed Al-Wahad (2008). Concluding transactions online. Al-Kutub Al-Qanuneye publishing and distribution house. 1st edition. p.379.

characterize him/her from others. Such features include: fingerprint, lip print, voice, tooth print, face, iris, retina and pinna[1]

When using any feature of those for verifying one's identity, the device shall scan the body part and save a photo it in order to retrieve it when needed. The data that is stored about one's characteristics can't be accessed, nor altered by anyone from the public, unless hackers hacked into the database and altered the data. In case the database is hacked, a person may impersonate someone's identity to procure a personal benefit. This type of signature is a highly reliable and secure method of verification. That's because it relies on one's unique characteristics. Hence, this signature is used much for signing e-contracts. However, the reliability and security of this method depends on how advanced the technological device is[2].

Today, most of the manufacturing companies add biometric features to the devices they manufacture, such as: mouse, keyboard, data entry devices and etc.. When scanning the retina,

[1] Jumai'y, Hasan Abed Al-Basit (2000). Proving legal transactions that are concluded online. Dar Al-Nahda Al-Arabia publishing and distribution house. p.39.

[2] Jumai'y, op cit., p.41.

fingerprint, or the palm of a hand, a photo shall be taken. This photo shall be stored in an encoded manner in the computer's compact memory.

There are several problems faced when using a biometric system, such as:

1. The photo of the biometric signature is stored on a computer's hard disc. Thus, it can be copied or altered by hackers
2. This system can't be operated through using any type of computers. That is because computers differ from one to another in terms of the operating system, storage method and software.
3. Most of the companies that develop biometric systems suggest that the accuracy of such systems is high. They also state that the accuracy rate of such system ranges between (99-99.99%). However, the researcher of the present study believes that there's an exaggeration in such a range. That's because there are cases of forgery through using fake fingerprints. Such fake fingerprints include the ones made from plastic and the ones made from rubber.
4. Using biometric devices is considered very costly, because they require having a security system. This problem hindered the

spread of the use of biometric devices[1]. Today, such devices are used mainly for ensuring the security of nuclear facilities and intelligence agencies.

3)- Code Singing (Magnetic Card):

Technology has been increasingly developing. E-commerce has been increasingly practiced. Therefore, smart magnetic cards emerged, such as: the ATM card. For instance, banks today issue credit cards. Each credit card has a specific ceiling. Credit card enables one to purchase products and services from stores without paying in cash. That is done through scanning these cards by a special device. These cards also enable one to purchase things online. That's done through entering the user name, ID number, expiry date of the card and personal identification number. The memory of the credit card is connected to a security system (i.e. brute force attack). For instance, when entering a wrong pin number for several times, one shall not be able to use the card. The same applies to the ATM card. For instance, when the ATM card holder enters a wrong password several times, the ATM shall hold the card[2].

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[1] Abdul Hamid, op cit., p.61.

[2] Fekri, Ayman Abdullah (2007). Cybercrimes. Al-Jame'a Al-Jadida publishing and distribution house. p.373.

Cash can be withdrawn from an automated teller machine (ATM) through using an ATM card. That's done through entering the card into the ATM. Then, a password must be entered. However, the password must be correct and the card holder must adhere to the procedures. It can be said that code signing has substituted conventional signature.

If the withdrawal operation is carried out successfully, the ATM shall issue a paper that includes that amount of money that has been withdrawn, the amount of money that remained in the account, and the date and time of making the withdrawal. These procedures substituted the conventional signature due the security and reliability of the code signature devices. It's because these devices distinguish one based on a password[1].

However, is the code signature made through a password considered equivalent to a paper-based admissible proof? There's a debate among jurists on this matter. Some jurists believe that the code signature can't be considered equivalent to a paper-based proof due to two (2) reasons[2]:

[1] Al-Tuhami, op cit., p.393.

[2]Jumai'y, op cit., p.36-37.

First, any person who holds card and knows the password shall be able to the use the card even if he's not the account holder. Second, the code signature is not attached with the bank documents.

Regarding the first reason, opponents could argue that it's not likely to have the card used by others in case the account holder keeps his card in a safe place. In addition, in case one lost his card, he can immediately notify the bank and request for inactivating the card. Regarding the second reason, opponents state that many banks conclude a contract with the account holder for recognizing the code signature as a proof that's fully admissible and official.

Since a long time ago, the French judiciary recognized the code signature as an admissible proof that's equivalent to the conventional signature. The French judiciary bases its recognition on the contract concluded between the bank and the account holder. Through such contract, the bank and the account holder explicitly recognizes the code signature as an admissible proof.

In 1989, the French Court of Cassation issued a judgment in the case of Credicas. The latter judgment states that using the ATM card by its holder with entering the correct password shall serve as an admissible proof. That's because there is an agreement concluded between the bank and the account holder which states that the code signature shall serve as an admissible proof. The

researcher of the present study believes that the code signature must serve as an admissible proof. That should be done to avoid any act of fraud which may be committed by the bank account holder. In addition, the researcher believes that concluding such an agreement shall make the account holder keen to keeping his/her card in a safe place away from others.

4)- The digital signature

It refers to data or information that is connected with a message. Such data or information is sent in an encoded manner. It shall enable the recipient to verify the sender's identity and the authenticity of the digital messages. It shall enable the recipient to verify that the message wasn't altered. That's done through using encryption keys and algorithms. Through using the algorithms, the message shall be transformed from an ordinary readable message into an equation or digital message that is unreadable, unless it's decoded by the one who knows the encryption keys and the relevant equations[1].

The authenticity of the digital signature can be verified through using the encryption method. If the signatory wants to send an email message, he shall type the message through a special

[1] Abdul Hamid, Ibrahim, op cit., p.61.

program for encrypting the message. That shall be done through using private keys. Then, the encoded message shall be sent the recipient. The recipient shall use public keys to decode the message. Through using asymmetric cryptography, the recipient can make sure that the received message hasn't been altered nor changed.

There are 2 types of keys; public and private keys. Through using the public keys, one shall be able to read the message or data. However, he won't be able to adjust the data, unless he possess the private keys. If there is a third party who wants to sign the e-agreement, he must access the account through using his own private key to add his digital signature. Then, the third party must send the contract again to its source. The first party shall not be able to adjust the second message after being adjusted[1].

The digital signature provides the highest security and reliability. It can identify the signatory's identity accurately. It's used for indicating that the parties agree to the e-contract explicitly and clearly. However, the e-contract must meet all the conditions

[1] Ibrahim, Khalid Mamdouh (2008). The significance of e-mail as a mean of proof: Comparative studies. Al-Feker Al-Arabi publishing and distribution house. Alexandria. p.214.

stipulated in the law. Otherwise, the e- contract won't serve as an admissible proof. The digital signature is considered more reliable than the conventional signature. Hence, the decision to wage a nuclear war in USA can be declared through using a digital signature. The president is the only one who knows the keys. That ensures having high security and confidentiality levels.

SECOND -THE E-SIGNATURE RELATED CRIMES

The e-signature is a set of electronic data. Thus, there is a risk associated with the use of e-signature. This risk is represented in failing a victim for an e-signature related crime. Such crimes are classified into several types. Therefore, national and international legislations include legislations for providing penal protection for one's e-signature related rights. This part is divided into four parts. Each part sheds a light on a specific type of crime.

1-THE UNAUTHORIZED ACCESS TO AN E-SIGNATURE-RELATED DATABASE

It should be noted that there's a difference between the unauthorized access to a database and keeping the database connection open without having an authorization. The unauthorized access to a database occurs when hacking into a database that includes e-signature related information. However, keeping the database connection open without having an authorization may occur as a result of accessing a database in an authorized or unauthorized manner. That occurs when keeping the database connection open for a duration that exceeds the duration

that has been determined. The latter act is considered an illegal act -i.e. a crime- even if one accessed the database in a legal manner[1]

A-THE PHYSICAL ELEMENT OF THE CRIME

The physical element of the crime is represented in the act of accessing the system of automatic information processing or any part of it without having an authorization. It's represented in the act of keeping the database connection open without being authorized[2]. In this regard, the following question should be answered: (How can one determine whether the committed act is illegal or not?)[3]

- The act of accessing

The comparative legislations didn't identify what's meant by (the unauthorized access to the system of automatic information

[1] Al-Shenraqi, Hussam Mohammad Nabil (2013). Cybercrimes: An empirical study targeting the e-signature related crimes. Al-Kutub Al-Qanuneye publishing and distribution house, and Shatat publishing and distribution house. Egypt and UAE. p.137.

[2] Shanin, Saleh (2013). The penal protection of e-commerce: A comparative study. PhD dissertation. Telmesan University. p.74.

[3] Al-Shenraqi. op cit. p141.

processing). This act refers to hacking into a computer system without getting the authorization of the ones in authority[1].

Under the US legislations, the unauthorized access is represented in accessing the system without an authorization even if there isn't any damage resulting from such an access. Thus, the crime of the unauthorized access consists of two elements: a)- a spatial element: It's represented in hacking into the system; and b)- a temporal element: It's represented in the amount of time needed to access the database[2].

There's a debate among jurists about the way of determining whether the access that is considered legal or not. For instance, some jurists believe that accessing an e-signature related database is legal, but keeping the database connection open for a duration that exceeds the determined one shall make the act illegal.

Article 2 of Budapest Convention states the following*: "Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the*

[1] Shanin, op cit., p.69.

[2] Al-Shenraqi. op cit. p.145.

offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system"[1].

Under the Budapest Convention, in order to consider the act of accessing the database illegal, one must be infringing the security measures in the aim of obtaining computer data or with having any other illegitimate intent. Under the Budapest Convention, if the database is hacked due to its connection with another one, the act shall be considered illegal[2].

The illegitimate access to a database involves accessing a database of a government agency and accessing information that should remain classified. Such an act shall be considered illegitimate whether the information is revealed before a person who's not authorized to access or possess it or not[3].

The US judiciary condemned a person on an unauthorized access to the e-records of federal courts. Such records include judgments,

[1] Barahmi, Hanan (2015). The crime of forging the official administrative e-document. PhD dissertation. Faculty of law. Baskarah University. p.46 .

[2] Barahmi, op cit., p. 46.

[3] Al-Shenraqi. op cit. p.144.

decisions, documents that concern lawsuits heard by the judiciary and lawsuits that were settled through a judgment. The records are available for public. However, copying or downloading the records requires paying specific amount of fees. However, the criminal was capable of copying millions of pages through using a special program in order to avoid paying the required fees[1]

- Unauthorized access

Article 23 of the Egyptian e-signature law No. 15 of 2004 states the following: (Without violating any article that may include an aggravated punishment which may be listed in the criminal law or any other law, the one who illegitimately uses any mean to take over an electronic signature, medium, or document or hacks into, intercepts or damages this medium while it was performing its functions shall be prisoned and/or obliged to pay a fine that's not less than 10,000 EGP and doesn't exceed 100,000 EGP).

Thus, under the Egyptian legislations, the access to an e-signature database shall be considered illegitimate when it occurs without an authorization. Thus, the criteria adopted for classifying the access to a system as being legal or not is represented in the

[1] Barahmi, op cit., p.48.

absence of an authorization with being aware of such absence. Thus, one's access to the database shall be considered illegal:

a- If one accesses the e-signature related database without having an authorization from the ones in authority.

b- If one accesses any page of an e-signature related database that he's not authorized to access[1].

When reviewing a US federal law that concerns computer crimes of 1996, it can be noticed chapter 1030 includes articles that condemns the ones who infringe someone's computer related rights. For instance, the latter law condemns the ones who "*having knowingly accessed a computer without authorization or exceeding authorized access, and by means of such conduct having obtained information that has been determined by the United States Government pursuant to an Executive order or statute to require protection against unauthorized disclosure".*[2]

To sum up the aforementioned information, to consider the access to an e-signature related database illegal, the physical element of

[1] Al-Shenraqi. op cit., p.151.

[2] Shanin, op cit., p. 165.

the crime must be existent. This element is represented in an illegitimate access itself[1].

This doer of this crime is punished due to the threat he causes. The one committing this crime shall be condemned even if there aren't damages resulting from his act. However, the damage to an aggrieved party is considered one of the physical elements of other crimes to hold the doer liable[2].

B-THE MORAL ELEMENT OF THE CRIME

The unauthorized access to an e-signature-related information database is considered an intent crime. The moral element in this crime is represented in the general criminal intent. Thus, the moral element of this crime includes: knowledge and free will. This crime doesn't require having a specific criminal intent. That's because the doer of this crime is punished due to the threat he causes. In other words, the doer of this crime shall be punished, when there's proof indicating that he did the act intentionally even

[1] Hijazi, Abed Al-Fattah Bayomi. (2004). E-commerce and its penal protection. Al-Feker Al-Jame'y publishing and distribution house. Alexandria. p.302.

[2] Al-Ghafiri, Hussain Saeed (2006). The e-commerce related crimes. Al-Menshawi Website for Studies and Research. The sultanate of Oman. p.18.

if he didn't intended to cause the result of his act. Under most legislations, the existence of the general criminal intent element is sufficient to hold the doer liable. However, few legislations requested having the specific criminal intent too in this crime to hold the doer liable [1]

- The general criminal intent

The French legislator requires having a general intent in the unauthorized access to an e-signature-related database and keeping the database connection open without having an authorization. For instance, the latter legislator requires accessing the database through deception to be punished. Thus, under the French law, to hold the doer liable, the doer must have knowledge –at the time of doing the act- that he's not authorized to access the database. However, the US law only requires accessing the database without an authorization to punish the doer[2]

Under the Egyptian law No. 15 of 2004, the Egyptian legislator doesn't require having the intent element in the crime of the unauthorized access to an e-signature-related database. Under the

[1] Al-Shenraqi. op cit., p.167.

[2] Al-Shenraqi. op cit., p. 169.

Egyptian law, the general rules that concern the criminal intent apply to this crime[1].

To sum up the aforementioned information, the unauthorized access to an e-signature-related database requires having a general criminal intent. That means that the doer must be aware about his acts at the time of doing the act. It also means that the doer must have knowledge - at the time of doing the act- that the act is illegal and criminalized and doing it shall make him liable for punishment.

- Specific criminal intent

Under most legislations, it's not required to have the specific criminal intent in this crime. Under the Norwegian law, the punishment shall be aggravated if the doer accessed a database without an authorization in the aim of gaining illegitimate profit for him or others or causing harm to others through reviewing the information stored on the database[2]

The Jordanian legislator adopted this approach. For instance, article (3/a) of the Jordanian cybercrimes law No. 27 of 2015

[1] Hijazi, op cit. p.569.

[2] Al-Shenraqi. op cit., p.173.

criminalized the unauthorized access to a database in an abstract manner. Under article 3/B of the latter law, the punishment shall be aggravated if one accessed database without an authorization in the aim of doing any of the acts mentioned through this article (Further information shall be mentioned about that along with the punishments in other sections).

C-THE PUNISHMENT FOR COMMITTING THIS CRIME

The punishment for an illegitimate access to an e-signature-related database differs from one legislation to another. That is because the description of this crime differs from one legislation to another in terms of the damage caused to the database or the data owner.

Article (462/2:9) of the old French criminal law identifies the punishment for committing this crime. The same punishment is mentioned again in article (323/1:7) in the third chapter of the second part of the new French criminal law. The latter article states the following: (The one who accesses all/or part of database or keeps the database connection open without having an authorization shall be prisoned for a period that's not less than two months and/or obliged to pay a fine of 50 Euros.

If such an act led to the elimination or adjustment of data stored on the database, one shall be prisoned for a period that's not less than 2 months and doesn't exceed 2 years and obliged to pay a fine that's not less than 10,000 Euros, and doesn't exceed 100,000 Euros).[1]

The same approach is adopted by the Jordanian cyber-crimes law No. 27 of 2015. For instance, article (3/a) of the latter law criminalized the unauthorized access to a database in an abstract manner. Under the latter article, the doer of this crime shall be prisoned for a period that's not less than two weeks and doesn't exceed 3 months and/or obliged to pay a fine that's not less than 100 JDs and doesn't exceed 200 JDs. Under article 3/B of the latter law, the punishment shall be aggravated if one accessed database without an authorization in the aim of doing any of the acts mentioned through this article. To be specific, the article3/b states the following: "B- *Where the access stipulated in paragraph (a) of this Article is for the purpose of cancelling, deleting, adding, destroying, disclosing, extinguishing, blocking, altering, changing, transferring or copying data or information or stopping or disabling the operation of an information system, changing a*

[1] Al-Shenraqi. op cit., p 175.

website or cancelling, destroying or altering its content or assuming its identity or the identity of its owner, the perpetrator shall be punished by imprisonment for a term not less than three months and not exceeding one year or by a fine of not less than (200) two hundred Dinars and not exceeding(1000) one thousand Dinars, or both punishments."[1]

Article 23/ paragraph 8 of the Saudi e-transactions law criminalized such an unauthorized access. For instance, it states the following: (The one who violates the provisions of this law through accessing someone's e-signature related database without a valid authorization, copying or adjusting information from such a database, or taking over such a database shall….). Article 24 of the latter law identifies the punishment. Under the latter article, the doer shall be obliged to pay a fine that doesn't exceed 5 million Saudi riyal and/or prisoned for a period that doesn't exceed 5 years. Under the latter article, the judge is entitled to seize the devices, systems and programs used for committing the infringement.[2]

[1] Al-Nawayseh, Abdullah (2017). Cybercrimes. Wa'el publishing and distribution house. Amman. Jordan. 1st edition. p.223.

[2] Article 23 and 24 of the Saudi electronic transactions law of 1428 .

Based on the aforementioned information, all legislations criminalize the unauthorized access to an e-signature-related database and keeping the database connection open without having an authorization. All legislations enforce punishments on the doers of any act of those. For instance, such an access may lead to the destruction or alteration of data stored on the database or copying it. That may lead to hindering the system from performing its functions or cause damage to the data owner. That applies whether the owner is a moral or natural person

2-OBTAINING THE E-SIGNATURE THROUGH USING FRAUDULENT MEANS

There is another crime that's not less dangerous than the unauthorized access to an e-signature-related database. It's represented in obtaining the e-signature through using fraudulent means. It should be noted that using fraud to get an e-signature is considered one of the major concerns. Such a crime can lead to incurring major economic losses. Such a crime can be committed due to the major developments that have occurred in terms of the methods of storing e-signature on networks.

A-THE DEFINITION OF CONVENTIONAL FRAUD AND E-FRAUD

- Conventional fraud

It refers to taking over funds that are owned by others through deception. Through deception, the fund owner shall hand over the funds to the fraudulent willingly[1]. Thus, fraud is a type of infringement of others' property rights through using deception. A

[1] Husny, Mahmoud Najib (1984). The funds-related crimes under the Lebanese criminal law. Dar Al-Nahda Al-Arabia publishing and distribution house. Beirut. p. 211 .

fraudulent uses deception-based methods and lies. That shall make the aggrieved party commit a mistake represented in delivering funds to the fraudulent who doesn't intend to return it. Therefore, due to the use of deceptive methods, the aggrieved party's free will shall be considered defected[1]

- E-fraud

Article (8f/b) of the Explanatory Report of Budapest Convention on Cybercrime of 2011 states the following: "*The computer fraud manipulations are criminalized if they produce a direct economic or possessory loss of another person's property and the perpetrator acted with the intent of procuring an unlawful economic gain for himself or for another person. The term "loss of property", being a broad notion, includes loss of money, tangibles and intangibles with an economic value*"[2].

The e-fraud is defined as the intentional alteration of data or information that represents a financial value and stored on a computer system. It may be defined as an unauthorized access to valid data or information in the aim of gaining illegitimate profit

[1] Namour. Hamad Saeed (2018). The funds-related crimes. Al-Thaqafa publishing and distribution house. p.234.

[2] Al-Shenraqi. op cit., p.186.

and causing damage to others. It may be defined as the alteration of the regulations that govern the programing process or the alteration of anything that may affect the way the computer system shall perform its operations in the aim of gaining illegitimate profit and causing damage to others[1].

The e-fraud may be defined as: inducing the computer to change the facts through using any mean in the aim of gaining illegitimate profit with causing damage to others. In this regard, the criminal uses the computer to carry out the fraudulent act[2].

B-THE PHYSICAL ELEMENT OF THE CRIME

The physical element of the e-fraud crime is represented in the act of altering the data or information that represents a financial value through using fraudulent means. The cybercrime is considered an advanced type of crime. The methods for committing this crime is constantly developing because technology is always developing[3].

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[1] Barahmi, op cit., p.57.

[2] Ghannam, Mohammad Ghannam (2013). The role of the criminal law in fighting against computer and internet crimes. Al-Feker and Al-Qanun publishing and distribution house. Al-Mansourah. 1st edition. p.81.

[3] Barahmi, op cit., p. 58.

In order to explore the physical act of fraud crime related to the use of e-signature-related database, the researcher identified the acts that are criminalized by law. Such acts include the use of fraud to deceive the aggrieved party. The aggrieved party may be a computer or data owner.

1- Fraudulent means

There's a debate on the applicability of the legislations that concern conventional fraud crimes on e-fraud crimes. There's a debate on the ability to consider the computer system a victim of fraud. That's because most laws and jurists consider the victim of fraud a natural person. There are various methods that can be used for committing e-fraud due to the developments of computer systems. According to the legislator, the conventional fraud crime must consist from the following elements:

- The fraudulent means
- Disposing a property or funds that the criminal doesn't own nor entitled to dispose.
- Using a false name or claiming to be someone else

However, the e-fraud crime is committed through using electronic means instead of conventional tangible means. Therefore, if the

law limits the fraud methods to conventional methods only, it won't be capable of fighting against e-fraud crimes

Some jurists believe that if a criminal deceived device through using fraudulent means, this act shall be considered an e-fraud crime. The latter jurists are influenced by the French judiciary and jurists[1]. For instance, the French judiciary and jurists claim that deceiving a computer system to take over funds shall be considered an e-fraud crime. That's identified through article 405 of the French criminal law. The latter article also requires providing proof of the false information administered into the system[2]

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[1] The French court of Cassation issued a judgment that condemns a person who used a currency that doesn't have any value. The latter person inserted the currency in the machine of the car park. Thus, he was able to avoid paying for parking his car in a specific place.

In Paris, a Court of Appeal issued a judgment on 1990 indicating that the elements of the concerned crime are existent. That's because it was proved that the accused person entered false data in the system in order to carry out operations later that involve transferring funds to the account of someone else that he's not entitled to get these funds (cited in Ghanam, op cit., p.83).

Bordeaux, 25 mars 1987, D87 juris. P.424.

[2] Ghanam op cit., p.81.

The e-fraud crime may be committed through using a false name or claiming to be someone else. That includes accessing the e-signature related system through using user names and passwords of others' authorized users in the aim of taking over signatures to get funds[1].

2- Handing over e-signature related information (crime result)

When defrauding a computer system, the system shall hand over information. Handing over information is considered an actual act that's equivalent to the physical act of handing over. When doing this act, the aggrieved party's will is defected[2].

Abed Al-Ghani Shayma'. (2013). Penal protection of e-transactions. p.61.

Ahmad, Hilali Abdullah (2013). Conventional and modern cybercrimes and their applications in Bahraini code, p.183.

[1] Al-Shenraqi. op cit., p.184.

[2] Abed Al-Fattah, Mohammad Hisham Saleh (2008). The crime of forgery- a comparative study. MA thesis. Faculty of post-graduate studies. Al-Najah National University. Palestine. p.58.

Thus, the e-fraud is considered equivalent to the conventional fraud. That's because the aggrieved party's will is defected in both type of fraud. For instance, in both types of fraud, the aggrieved party hands over an item that he owns to the fraudster because the fraudster used fraudulent means.

3)- The causal relationship between the use of fraudulent means and handing over information

To consider that a fraud crime has occurred, it is not enough to prove that the aggrieved party has handed over an item that he owns to the fraudster and the fraudster used fraudulent means. In fact, there must be also a causal relationship between the use of fraudulent means and handing over the item owned by the aggrieved party. The latter act must be the result of the former act.

That applies to conventional fraud in general. As for the e-fraud, there must be a causal relationship between taking over an e-signature and using fraudulent means. This relationship is one of the physical elements of e-fraud crimes. The French legislator requires proving the existence of this relationship in e-fraud crimes. He also requires proving that the fraudster used fraudulent means. It also requires proving that the fraudulent obtained or

altered information or entered information in the aim of taking over funds. That can be proved through submitting document. That applies to e-fraud crimes whether the aggrieved party is a natural person or a system[1].

C-The moral element of the crime

The e-signature related fraud is an intent crime. It requires the existence of the following types of criminal intent:

- The general criminal intent

The general criminal intent is represented in the doer's knowledge and free will. That means that the fraudulent must have knowledge –at the time of doing the act- that the e-signature he's taking over is owned by someone.

Based on article (8/b) of the Explanatory Report of Budapest Convention on Cybercrime, the "*offence has to be committed "intentionally". The general intent element refers to the computer manipulation or interference causing loss of property to another*"[2].

[1] Al-Shenraqi. op cit., p.214.

[2] Abed Al-Fattah, op cit., p.68.

- The specific criminal intent

The specific criminal intent is represented in the fraudster's intent to take over and possess the item that he received from the aggrieved party and deprive the aggrieved party from disposing it. In theft crimes, the intent to possess the item must be proved. In case the intent isn't proved, the specific criminal intent shall not be considered existent.

Defrauding an e-signature related system is an intent crime. In this crime, the fraudster's free will - at the time of doing the act- must be existent. He must have knowledge - at the time of doing the act- that the act is illegal with doing it intentionally. Thus, the fraudster must realize that his act is criminalized at the time of manipulating the e-signature related system or administering information into the system through manipulation to get specific information[1].

Based on the Explanatory Report of Budapest Convention on Cybercrime singed on 21/11/2001, in the cybercrime fraud, the specific intent and the general one must be existent. The specific intent is represented in the intent to deceive or having any

[1] Al-Obaidy, Osamah, op cit., p. 364.

illegitimate intent to procure an economic benefit, whether the benefit is for the benefit of the fraudster or others.[1]

D-THE PUNISHMENT

Article 22/e of the Egyptian e-signature law No. 15 of 2004 states the following: (Without violating any article that may include an aggravated punishment which may be listed in the criminal law or any other law, the one who illegitimately uses any mean to take over an electronic signature, medium, or document…….shall be prisoned and/or obliged to pay a fine that's not less than 10,000 EGP and doesn't exceed 100,000 EGP).

The Saudi law of 1428 AH includes a punishment for committing e-signature related crimes, including the crime of defrauding an e-signature related system. The latter law states the following: (Without violating any article that may include an aggravated punishment that may be listed in another law, any one who commits any of the acts stipulated in article 23[2] of this law shall

[1] Al-Shenraqi. op cit., p. 214.

[2] Article 23/ paragraph 5 of the Saudi e-transaction law of 1428 AH states the following:

(The e-signature related crimes include (establishing a digital certificate, e-signature, and electronic certificate) for meeting a fraudulent goal).

be obliged to pay a fine that doesn't exceed 5 million Saudi riyal and/or prisoned for a period that doesn't exceed 5 years. The judge is entitled to seize the devices, systems and programs used for committing the infringement)[1]

3-FORGING AN E-SIGNATURE

This section includes a definition for the forgery of a conventional signature and the forgery of an e-signature. It also identifies the physical and moral elements of the crime of e-signature forgery along with its punishment.

A-DEFINITION OF THE FORGERY OF AN E-SIGNATURE

Forgery refers to any alteration of a truth stated in a record in the aim of deceiving someone and leading to cause damage to others. That's done through using any of the means mentioned in the law[2].

Based on article 8 of the latter law, the e-signature related crimes include: (accessing, copying, or altering someone's e-signature related database without having a valid authorization or taking over it).

[1] Al-Obaidy, Osamah, op cit., p 365.

[2] Mustafa, Mahmoud Mahmoud (1984). Elaboration of criminal law- special, Dar Al-Nahda Al-Arabia publishing and distribution house. 8th edition. p.136.

Others define forgery as adjusting the truth mentioned in a record subjected to legal protection in the aim of deceiving someone through using any of the means mentioned in the law[1].

The number of e-transactions –including the ones in the field of business and others- has been increasing. The developments of modern communication means have been rapidly increasing. Therefore, a new type of crime emerged (i.e. the forgery of an e-signature). The emergence of this crime has negatively affected people's trust of e-transactions[2].

E-forgery is defined as the alteration of data stored on a computer linked to a network. It can be defined as the interception of information in the aim of altering it[3].

The Egyptian e-signature law No. 15 of 2004 defines e-forgery as alteration of a truth mentioned in an electronic record, signature,

[1] Soror, Ahmad Fathi (1996). Al-Waseet: Criminal law- special, Dar Al-Nahda Al-Arabia publishing and distribution house. p.402.

[2] Al-Saghir, Jamil Abdul Baqi (2012). Internet and criminal law, Dar Al-Nahda Al-Arabia publishing and distribution house. Cairo, P.7.

[3] Al-Shenraqi. op cit., p. 253.

or medium through using any of the mean stipulated in the criminal law with causing damage to others[1].

The 15th Conference of the International Association of the Brazilian Criminal law of 1994 defines e-forgery as an alteration made to data through using a computer.

E-forgery may be defined as changing the truth through altering data or information through using a computer, provided that this written data or information represents tangible things[2].

It's easy to detect the forgery of conventional signature. However, forgery of an e-signature doesn't leave any trace. That's because doing this crime requires having expertise in the IT field.

B-THE PHYSICAL ELEMENT OF THE E-SIGNATURE FORGERY CRIME

The physical element of the e-signature forgery is represented in the criminal's act (i.e. the act of forging the e-signature). This act can be performed through using a special program or a system.

1)- Alteration of truth

[1] Hijazi, The e-signature under the comparative legal codes. op cit., p.294

[2] Barahmi, op cit., p.189.

Alteration of truth refers to replacing truth with wrong information. It refers to making a change to a document in a way that changes the document's form or content, but doesn't destroy the document. Forgery can be made to an official or non-official document. It can be made to an e-document (i.e. e-forgery). Through the e-forgery act, the data or information produced by a computer shall be altered[1].

The e-forgery is represented in altering the information listed in the records that are produced through a computer through changing the data saved on the computer. The new French criminal law states that forgery is represented in the alteration of facts for deceiving someone. Due to the emergence of e-forgery, legislators today enact legislations that address conventional forgery and the forgery of e-documents[2]

2)- Object of the crime

The object of the crime is represented in the object that the criminal act has occurred to. In conventional forgery, the object of

[1] Al- Obaidy, Khalid Abdullalh (2009). The penal protection of e-transactions under the Kingdom of Saudi Arabia law. MA thesis. Naif Arab University for Security Sciences. Reyad. p.177.

[2] Al-Obaidy, Osamah, op cit., p.360.

the crime is represented in the paper-based documents. In e-forgery, the object of the crime is represented in the signature placed on an e-message or e-transaction that may be in the form of numbers, letters, signs, symbols, or etc.. This signature is unique and enables people to distinguish the signatory's identity. This object may be an electronic medium (e.g. a program or a system of a computer or any other electronic device). This medium may be used to perform a measure or respond to a measure in order to make, send or use information without having a person interfering. The object of the crime may be represented in an e-document. This document may be a contract, record, or message which has been created, stored, retrieved, copied, sent, delivered, or received through using a tangible medium or any other medium. This message is considered readable when it's delivered[1]. To hold the criminal liable for forging a non-official document, it's sufficient to prove that someone's right has been infringed[2].

[1] That is stated through article 23 of the Egyptian e-signature law No. 15 of 2004. Under the latter law, the object that the criminal act occurred to may be represented in the electronic document, signature or medium.

[2] Al-Balushi, Rashed Mohammad (2018). E-signature and its penal protection. 1st edition. Al-Halabi publications in the field of law, Beirut, 2018, p.93.

3)- Methods and means for committing forgery:

The most prominent method used for committing e-forgery crime is represented in illegitimate computer programs or systems which are designed for committing such a crime. The doer of this crime may decode an encryption to get private numbers related to the e-signature. These numbers are copied to be used again later[1].

An e-signature may be forged by the ones who have expertise in the field of IT and knowledge about computer programs. Such people are capable to access the e-signature related system through using special programs. Through such programs, the criminals shall decode an e-signature related encryption in order to copy the e-signature and use it again later for fraudulent related purposes or forging it and putting it on a forged document[2].

The forgery of an e-signature goes through three stages[3]:

Stage 1: Manipulation of data and e-signature when they're administered in the e-system:

[1] Shanin, op cit., p.360.

[2] Barahmi, op cit., p.248.

[3] Al-Shenraqi. op cit., p.269.

The criminal shall manipulate the signature administered into the system without making changes to the program. Such manipulation shall lead to the production of invalid forged data that doesn't match the data that should be stored on the system

Stage 2: Forgery of e-signature and data during the electronic processing:

The criminal shall not alter the data nor the e-signature. He shall make changes to the program of automatic information processing or replace this program with another program that can meet his goals.

Stage 3: The stage of electronic manipulation of the system's outcomes (e.g. documents and e-signatures).

Although the system produced valid information and e-signatures, the criminal shall alter them.

There are numerous methods for forging an e-signature. That's because technology is always developing and changing. Hence, legislators can't restrict the methods of committing e-forgery to specific methods only.

4)- The result of the crime (the damage):

Damage is considered an essential element of the crime of e-forgery. The damage must be an actual damage that has occurred

or is very likely to occur. In case there isn't any damage resulting from the act, the forgery crime shall be considered missing elements. Therefore, there must be a proof of damage displayed before the judge. If the judge condemned the doer without proving that a damage has occurred, an appeal must be filed against the judgment[1]

C-THE MORAL ELEMENT OF THE E-SIGNATURE FORGERY CRIME

Similar to other crimes, the crimes of e-signature and e-documents forgery have moral and physical elements which must be existent. The latter crimes are considered intent crimes.

The moral elements of the e-forger crime are represented in the general and specific criminal intents. In this context, the general criminal intent means that the doer –at the time of doing the act- must be aware that he's changing the truth mentioned in an e-document through using any of the means stipulated by the law. The doer must be aware –at the time of doing the act- that his act is illegal and may cause damage. He must be aware –at the time of doing the act- that his act shall make him liable for punishment. He must be enjoying his free will when doing the act with

[1] Husny, op cit., p.250.

accepting the results of his act. In other words, he must be enjoying his free will when altering the truth and accepts the result of his act. The result is represented in having an e-document that includes false information[1].

The specific criminal intent must be present in the crime of e-signature forgery. It's represented in the criminal's intent to achieve a specific goal (i.e. using the forged e-signature to do specific things). The judge is responsible for identifying this intent. That's done through using proofs and identifying the circumstances surrounding the criminal at the time of committing the act. However, proving the criminal's intent in e-signature forgery is harder than proving the criminal's intent in a conventional e-signature forgery, because the latter forgery leaves a trace[2]

The Egyptian legislator addressed the e-signature forgery, and the destruction of the e-signature and making a defect in it in one article. Based on article 23 of the Egyptian e-signature law, the one who damages, or makes a defect in an electronic signature, medium, or document or forges any of those through addition,

[1] Husny, op cit., p.271.

[2] Al-Obaidi, Khalid, op cit., p.190.

alteration, editing, or any other mean shall be punished. The Egyptian legislator considers the e-forgery a specific intent crime. He considers the destruction of e e-signature and making a defect in it as general intent crimes. Based on the Egyptian legislations, the one who commits the crime of e-signature forgery crime shall be prisoned and/or obliged to pay a fine[1].

D-THE PUNISHMENT FOR COMMITTING THIS CRIME

Article 23 of the Egyptian e-signature law No. 15 of 2004 states the following: (Without violating any article that may include an aggravated punishment which may be listed in the criminal law or any other law, the one who damages, or makes a defect in an electronic signature, medium, or document or forges any of those through addition, alteration, editing, or any other mean shall be prisoned and/or obliged to pay a fine that's not less than 10,000 EGP and doesn't exceed 100,000 EGP).

Article 23/ paragraph 6 of the Saudi e-transactions law states the following: (Violating the provisions of this law includes forging an e-signature, e-record, or digital verification certificate or using any of those with knowing that it has been forged).

[1] Hijazi, op cit., p.544.

Article 24 of the latter law identifies the punishment for committing any of the crimes mentioned in article 23. The latter article states the following: (Without violating any article that may include an aggravated punishment that may be listed in another law, anyone who commits any of the acts stipulated in article 23 of this law shall be obliged to pay a fine that doesn't exceed 5 million Saudi riyal and/or prisoned for a period that doesn't exceed 5 years. The judge is entitled to seize the devices, systems and programs used for committing the infringement)[1]

4-THE DESTRUCTION OF THE E-SIGNATURE AND MAKING A DEFECT IN IT

This part identifies the physical and moral elements of the crime of destroying an e-signature. It identifies the definition of this crime.

A- THE DEFINITION OF THE DESTRUCTION OF THE E-SIGNATURE

Destruction in general refers to ruining an item or making it less valuable in a manner that makes it unusable or not capable to

[1] The Saudi electronic transactions law of 1428 AH.

function. Destruction may refer to the full or partial termination of an item[1].

The crimes of electronic destruction is represented mainly in the destruction of computer software (e.g. data, information and programs). The destruction of computer hardware is considered a conventional crime and conventional legislations shall apply to the one commits such a crime. Some jurists define electronic destruction as: erasing, or damaging information or programs electronically. Some jurists define electronic destruction as deforming information or program in a manner that makes it unusable[2].

The destruction of an e-signature may be defined as the use of any technological mean or program to adjust, erase, or damage e-signature related information system or any of its constituents in order to make this system unusable in the aim of causing damages to an institution or owner of the e-signature[3].

[1] Barahmi, op cit., p.54.

[2] Hijazi, op cit., p. 547.

[3] Al-Shenraqi. op cit., p.296.

B-THE PHYSICAL ELEMENT OF THE CRIME

The physical element of this crime is represented in the actual acts that constitute this crime. These acts are represented in the act of destroying the e-signature or making a defect in it. The physical element shall be considered existent if the e-signature related information system or the e-signature itself lost its capability to function. That can be done through sending an e-virus or pouring a liquid on the e-mediator that the system operates through. The destruction of the e-signature can be performed through using the same methods to make the e-signature incapable to perform its intended function or make it partially invalid. That's done through making the e-signature unclear or deformed[1]

The elements of this crime includes damage. Damage in law is the result of a crime that involves infringing someone's right. In case all the elements of this crime are existent, there must be a causal relationship between the act and the damage. The damage may be a moral or physical damage[2].

[1] Hijazi, op cit., p.542.

[2] Shanin, op cit., p.174.

The punishment for committing this crime is enforced for committing the act and having a criminal intent. It's not based on the severity of the damage[1]

C-THE MORAL ELEMENT

This crime is an intent crime. The moral element of this crime is represented in the general criminal intent. The latter intent must be present in this crime (i.e. knowledge and free will). That means that the doer must have knowledge - at the time of destroying the e-signature or making a defect in it- that his act is illegal and shall make him liable for punishment. The doer must be doing the act intentionally. In case the destruction of an e-signature or making a defect in it occurred by accident, the elements of the crime shall be considered missing. That can be seen when something falls from the hand of an employee by accident leading to the destruction of the device. It should be noted that the law doesn't require having a specific criminal intent in this crime. This doer of this crime shall be held liable if the physical elements and the general criminal intent are existent[2].

[1] Al-Shenraqi. op cit., p.323.

[2] Shanin, op cit. p. 174.

D-THE PUNISHMENT FOR COMMITTING THIS CRIME

Based on article 232/3 of the new French criminal law, the fraudulent who enters data into an automated data processing system or delete or alter the data stored on a system shall be prisoned for a period of five years and obliged to pay a fine of 300,000 French Frank[1].

Article 23/b of the Egyptian e-signature law No. 15 of 2004 states the following: (Without violating any article that may include an aggravated punishment which may be listed in the criminal law or any other law, the one who damages, or makes a defect in an electronic signature, medium, or document or forges any of those through addition, alteration, editing, or any other mean shall be prisoned and/or obliged to pay a fine that's not less than 10,000 EGP and doesn't exceed 100,000 EGP).

[1] Hijazi, op cit. p. 542.

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E-OBTAINING THE E-SIGNATURE UNDER COERCION

Enforcing the Jordanian electronic transactions law No. 15 of 2015 has facilitated the way of using electronic means for concluding transactions. However, the latter law doesn't criminalize the crimes related to e-transactions in general nor the ones related to e-signature in particular. Similar to the Egyptian and Saudi legislators, the Jordanian legislator should provide special penal protection for the rights related to e-transactions and e-signatures through the Jordanian electronic transactions law. For instance, the French, Egyptian and Saudi legislators have criminalized some acts that represent e-signature-related crimes.

Article 414 of the Jordanian criminal law criminalizes the act of obtaining a signature under coercion, whether it's done through making threats, or using violence in order to procure an illegitimate gain for the benefit of the criminal himself or others[1].

[1] Article 414 of the Jordanian criminal law states the following: (The one who uses violence or makes threats for procuring an illegitimate benefit for him or others shall be prisoned for a period that's not less than 3 months and obliged to pay a fine of 10 JDs. This punishment applies to the following cases:

However, does this article apply to the one who obtains an e-signature under coercion?

The Jordanian legislator recognizes the e-signature as a legal mean of proof. For instance, article 2 of the Jordanian electronic transactions law No. 15 of 2015 defines e-signature as: (data that's in the form of letters, numbers, symbols, signs or etc. It's inserted in an e-document in an electronic manner or through any other similar manner. It may be added to the e- document or attached with it. It's used for identifying the signatory's identity and linked to one signatory only).

The e-signature has the same legal effects that the conventional signature has[1]. There isn't any restriction that hinders one from

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1)- Using coercion for obtaining a signature or a document that includes a pledge, acquaintance, or transfer, altering, or damaging such a document, 2)- Drafting a paper, or putting a signature, fingerprint, stamp, or any other item of verification on a document in the aim of altering or changing it later or using it later for procuring a benefit. In case the doer used a weapon for threating the aggrieved party, the punishment of imprisonment with hard labor shall be enforced on doer).

[1] Article 17 of the Jordanian electronic transactions law No. 15 of 2015 states the following: (A)-The e-document attached with an admissible e-signature shall be considered equivalent to a signed conventional document. The

applying article 414 of the Jordanian criminal law to the crime of obtaining an e-signature under coercion. However, the conditions mentioned in latter article must be met.

The crime of obtaining the e-signature under coercion is represented in each case that involves the use of violence or making threats. If it was proved that the doer used force or made threats to obtain an e-signature, he shall be held liable even if he

concerned parties can use such an e-document as an admissible mean of proof. B)- The e-document attached with an admissible e-signature shall be considered equivalent to a signed conventional document. The concerned parties and others can use such an e-document as an admissible mean of proof. C)- In a case other than the ones mentioned in articles (a) and (b), the e-document attached with an admissible e-signature shall be considered equivalent to a signed conventional document. Such an e-document can be used as a proof against any of the concerned parties. In case one of the concerned parties denied something, the judge shall base his judgment on the e-document which serves as an admissible proof. D)- The e-document that's not attached with an e-signature shall be considered equivalent to a conventional document that is not singed in terms of admissibility as a mean of proof. E)- One can issue or certify an official bond through using electronic means, provided that the e-record of this bond is attached with a certified e-signature).

didn't get the benefit he wanted to gain[1]. Under article 414 of the Jordanian criminal law, to hold the doer liable, he must have made threats or used violence through using physical or moral means of coercion to force the aggrieved party to use his own e-signature or the e-signature of a natural or moral person that is under his authority in a manner determined by the doer. Under article 414 of the Jordanian criminal law, to hold the doer liable, he must have made threats or used violence through using physical or moral means of coercion to force the aggrieved party to reveal the password of an e-signature and using the e-signature after that by the criminal.

To hold criminal liable, there are several conditions that must be met. First, the coercion or violence must be severe. Second, the signature must be obtained through using force or making threats. Third, the use of coercion or violence must be concurrent with the act of obtaining the e-signature under coercion[2].

[1] Al-Saeed, Kamel (2009). Elaboration of the Jordanian criminal law: The funds-related crimes. Al-Thaqafa publishing and distribution house. Jordan. p.160.

[2] Namour. op cit. p.215.

The crime of obtaining an e-signature under coercion is an intent crime (i.e. the criminal commits the act intentionally). To hold the criminal liable, the elements of knowledge and free will must be existent. Thus, the doer-at the time of doing the act- must be aware that he's threatening the aggrieved party or using coercion against him. He must be enjoying his free will when he used coercion or made threats.

In the crime of obtaining the e-signature under coercion, it's not enough to have the general criminal intent only. In fact, there must be a specific criminal intent too. That latter intent is represented in having the intention-at the time of committing the act- to procure a specific illegitimate benefit for the benefit of the doer or others. If the criminal lacks this intention or the benefit is legitimate, the specific criminal intent shall not be considered existent[1].

[1] The Jordanian court of cassation stated the following: (Article 414 of the Jordanian criminal law criminalizes the act of making threats, or using violence to make someone draft a paper to procure an illegitimate gain for the benefit of the criminal himself or others. However, the crime in this case doesn't fall under the crime mentioned in article (414/1 &2) of the Jordanian criminal law. That's because the latter article requires the procurement of illegitimate gain for the criminal himself or others. If the doer didn't have the intent to procure such a gain, the specific criminal intent element required for holding the doer liable shall not be considered existent). This is judgment No.

Obtaining the e-signature under coercion is considered a misdemeanor. The doer of this misdemeanor shall be prisoned for a period that's within the range of (three months-three years) and obliged to pay a fine of 10 JDs[1]. If the criminal was holding a weapon to threat the aggrieved party, his punishment shall be imprisonment with temporal hard labor.

505/2000 issued on 25/7/2000 by the court of cassation upon a judgment issued by the criminal court/ The Judicial Journal. Issue No. 7/2000/p.339.

[1] In this case, the legislator shall not punish the one who attempts to commit this misdemeanor. That's because the law doesn't punish the one who attempts to commit this misdemeanor, unless there's an article that states otherwise. Look at article 71 of the Jordanian criminal law.

Conclusion:

After reviewing the relevant literature, the following results are concluded:

1. The technologies used for concluding e-transactions have been rapidly developing. They have many merits. However, they have demerits too. Such demerits hinder the concerned people from establishing a safe, reliable and secure environment for concluding e-transactions. The concerns about the environment of e-transactions has been increasing due to the increasing number of the crimes of electronic piracy and forgery. Thus, legislators had to enact criminal laws that include protection methods for fighting against e-signature-related crimes.
2. The nature of e-signature related crimes are different from the nature of conventional crimes. That's because e-signature is made in an e-environment that's not tangible. In such an environment, it's difficult to prove the identities of the concerned parties except through using specific electronic methods.
3. National and international legislators agree that that the e-signature has the same admissibility that the conventional signature has.
4. After eliminating the temporal Jordanian electronic transactions law No. 85 of 2001, the Jordanian legislator enacted

the Jordanian electronic transactions law No. 15 of 2015. The latter law sheds a light on e-signature because the Jordanian legislator was influenced by The French, American, Egyptian and Saudi legislators.

5. Enacting the Jordanian electronic transactions law No. 15 of 2015 has facilitated the use of electronic means for concluding transactions. However, the latter law doesn't criminalize the crimes related to e-transactions in general nor the ones related to e-signature in particular. Similar to the Egyptian and Saudi legislators, the Jordanian legislator should provide special penal protection for the rights related to e-transactions in general and e-signatures in particular through the Jordanian electronic transactions law. For instance, the French, Egyptian and Saudi legislators has criminalized some acts that represent e-signature-related crimes. Such crimes may include: obtaining the e-signature through using fraudulent means, forging an e-signature, and unauthorized access to an e-signature related database. Such crimes may include keeping the database connection open without having an authorization.

Recommendations:

The researcher recommends:

1. Similar to the Egyptian and Saudi legislators, the Jordanian legislator should provide special penal protection for the rights related to e-transactions and e-signatures through the Jordanian electronic transactions law. That's because the general rules of the criminal law aren't sufficient for criminalizing the acts of forgery, theft, misuse of trust and fraud that are related to e-signature.
2. Providing penal protection methods by legislators for fighting against the e-signature related crimes. That should be done with taking into consideration the fact that methods used for concluding e- transactions are constantly developing
3. Ensuring that the legislations regulating e-signature related issues are flexible. That shall enable legislators to fight against the crimes related to e-transactions in general and e-signature in particular.

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THE COMPETENT COURT TO HEAR THE DISPUTES OF ADMINISTRATIVE CONTRACTS

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Abstract

This study aims to examine the jurisdiction over the disputes arising out of the administrative contracts, explain position of the legislator and the Jordanian administrative court on such jurisdiction and compare it with the position of comparative legislator and judiciary.

In light of failure to include looking into the disputes arising out of the within jurisdiction of the Jordanian administrative court, the study shows that the Jordanian administrative judiciary argues that looking into such disputes is beyond its jurisdiction. This means that looking into such disputes is attributed to the civil court which results in prejudice to privacy of such contracts which are concluded by the State with the aim of managing the public utilities steadily and regularly.

Keywords: administrative contracts, administrative judiciary, competent courts, disputes of administrative contracts.

Introduction

The expansion of the functions of the state and the diversion of its responsibilities and its transformation from a custodial state to an intervening state in order to secure the life requirements of

individuals and to manage public utilities played a major role in the state's conclusion of contracts to achieve these objectives.

However, contracts entered into by the administration with a contacting party may take the form of private contracts where the State becomes of par with the other contracting party, so that such contracts become subject the private courts. Yet, sometimes the State may contract with the other party as a public authority, where it stipulates conditions in the contract that are unusual in private law, with the aims of achieving the public interest and running the public utility regularly and steadily, which necessitates that these contracts are subject to the administrative judiciary.

This has been adopted by the comparative countries in France and Egypt. However, the Jordanian administrative legislator did not refer to the jurisdiction of administrative courts over these contracts. This method has been adopted by the Jordanian administrative judiciary, namely the former High Court of Justice and the current administrative court.

In many decisions, the administrative judiciary stressed that it is not competent to look into the disputes arising out of administrative contracts, and the problem of the study lies in this. This study is significant since it highlights the effectiveness of subjecting the disputes arising out of the administrative contracts

to the administrative judiciary that is most knowledgeable in resolving these disputes. This is because such contracts have their own privacy that distinguishes them from private contracts, in terms of their connection to the public utility and targeting the public interest.

Significance of the Study and Research Methodology

The question that arises here is why has not the Jordanian administrative legislator required jurisdiction of the administrative judiciary over the disputes arising out of the administrative contracts? And why has not he adopted approach of the comparative countries that expanded jurisdiction of the administrative courts over disputes of the administrative contracts after it has been clear that such contracts are a kind of administrative works in nature? Hence, the administrative judiciary must have jurisdiction over the disputes arising out of the administrative contracts.

This study, therefore, aims to explain effectiveness of expansion of jurisdiction of the administrative contracts to include looking into the disputes arising out of the administrative contracts concluded by the State to manage the public utilities regularly and steadily, which are different from the private contracts.

To achieve the aims of the current study, the study uses the comparative analytical approach that is based on analyzing the provisions governing the administrative contracts and comparing between them with the guidance of the decisions of the administrative judiciary concerning administrative contracts in Jordan and the comparative countries.

To realize the desired findings, nature of this study requires use of a certain approach that combines the descriptive approach to define the concepts contained in the study and the analytical approach to analyze the provisions in connection with the administrative contracts in Jordan and the comparative countries.

In order to achieve objectives of the study, this study is divided into two topics. The first one explains nature of administrative contracts and the standards that distinguish them from the private contacts. The second topic examines the competent body to look into the disputes of administrative contacts in France, Egypt and Jordan.

FIRST PART

NATURE AND STANDARDS OF ADMINISTRATIVE CONTRACTS

Theory of Administrative Contracts is relatively new in the administrative Law; it emerged the early twentieth century. The idea of administrative contracts is that a State concludes contracts with subjects of the private or public law to regularly and steadily manage a public utility. What do administrative contracts mean? What are the standards that distinguish them from the private contracts? This will be discussed in two requirements as follows:

First: Definition of Administrative Contracts

The administration tends to enter into contracts with the individuals to achieve its objectives, so that a contract that defines rights and obligations of both parties is concluded.

However, contracts made between the administration and individuals are neither of the same nature nor are they subject to the same legal system. Such contracts are divided into two categories: category 1: civil contracts which are called administration contracts. Such contracts are made by the administration with individuals where both parties have equal rights and obligations, and dispositions of both parties are dealt

with on the same footing. Hence, the disputes that may arise of such contracts are resolved by the ordinary courts. Category 2: administrative contracts made by the administration with individuals, entities or other managements, where the administration has preferential status. Such contracts contain conditions that are different from those contained in the private law contracts, where the administration under which has privileges that are not found in the private contracts. In such contracts, the administration can impose its conditions on the other party. Hence, the principle of equality between the contracting parties, which is known in the private law, does not apply to these contracts.[1]

A contract is generally defined as "an agreement between two wills to create a certain legal effect by establishment, transfer, amendment or removal of an obligation".[2]

As to the administrative contract, it is defined as "a contract made by a public legal person with the aim of managing or regulating of

[1] Sarayrah, Mesleh. (1996), Provisions of Private Administrative Contracts of the Public Works Regulation No. (71) of 1986, p.3, Mutah Journal for Research and Studies, vol 11, issue 1, Mutah University, Jordan.

[2] Sultan, Anwar. (1987), Sources of Obligation in the Jordanian Civil Code, a comparative study with the Islamic jurisprudence, edition 1, Publications of the University of Jordan, Jordan, p.10,

a public utility, and in which the administration intends to apply the provisions of the public law. To this end, such contract contains exceptional conditions that are not found in the private law, or under which the other party is authorized to directly participate in managing the public utility".[1]

According to the Egyptian Supreme Administrative Court, the administrative contract is "a contract made by a legal person with subjects of the public law with a view to managing or facilitating a public utility, where such person demonstrates its intent to adopt style of the public law by including conditions in the contract that are uncommon to be listed in contracts of the private law".[2]

Moreover, with the emergence of e-government, the so-called electronic administrative contracts have emerged. Such contracts are defined by the Jordanian Electronic Transactions Law No. 15 of 2015 as "an agreement that is concluded wholly or partially by electronic means ".

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[1] Tammawi, Sulaiman. (1984), General Principles of Administrative Contracts, no edition, Dar Fekr Arabi, Cairo, p.74,

[2] A decision issued on 30.12.1967, The Set of Legal Principles Established by the Egyptian Supreme Administrative Court, part 2, edition 1983, Egyptian Authority.

Hence, these contracts, as shown in the abovementioned definition, are administrative contracts in the usual sense, but the difference is in the means of contracting where the modern technological means are used instead of paper and documents.

Upon the foregoing definitions of the administrative contracts, it seems that it is established in both administrative jurisprudence and judiciary that there are a number of standards to differentiate between the administrative and private contracts, which will be discussed in Requirement 2.

Second: Standards for Distinction of the Administrative Contract

It is established in both administrative jurisprudence and judiciary that what distinguishes the administrative contracts from the private law contracts is a formal standard that a subject of the public law is party to such contract, and two other necessary standards that the contract is for a public utility and that the administration uses means of the public law concerning the contract.[1]

[1]Abbadi, Mohammad. (2001), Jurisdiction over Disputes of Administrative Contracts, a comparative study, Manarah Journal for Research and Studies, vol.7, issue 3, Jordan, p.13.

I. a party to the contact is a subject of the public law

A contact is considered an administrative contract only if a party to such contact is a subject of the public law, whether it relates to the central administration or to a decentralized public legal person, regional or local.

Concept of the public figure has expended to include the organizations that organize economic or professional activities such as the trade associations and chambers of industry and commerce.

This trend was adopted by the repealed Law of the High Court of Justice No. 12 of 1992, where Article (9/a) of the said Law provides for decisions of such entities are governed by jurisdiction of the High Court of Justice. This approach has been adopted by the Jordanian Administrative Judiciary Law No. 27 of 2014, where Article (5/a/1) provides for the exclusive jurisdiction of the administrative court over the challenges to results of elections of councils of chambers of industry and commerce, unions, associations and clubs registered in the Kingdom…."

It should be mentioned that this legal principle has been established for a number of decades in the French and Egyptian administrative jurisprudence and judiciary in accordance with the French and Egyptian Councils of the State.

As to the other party to the contract, it may be either a public legal person like another administration or a private legal person like a company- which is mostly seen- and it may be a natural person.

Further, it should be noted that an administrative contract is still valid if it is made by a natural person or a private company as long as such person works for the management. An example of this is the contracts made for distribution of goods and basic needs performed by private entities on behalf of the administration in times of crisis, since such entities seek to fulfill needs of individuals on behalf of the administration to ensure smooth functioning of the public utilities.[1]

This has been adopted by the French and Egyptian administrative judiciary, where the Egyptian Supreme Administrative Court ruled that "it goes without saying that a contract to which the administration is not a party will not be deemed to be an administrative contract, where rules of the public law has been developed to control activity of the administration not activity of individuals or private entities….. However, if it is discovered that an individual or a private entity has indeed entered into a contract

[1] Jabouri, Mahmoud. (2007), Administrative Contracts, edition 2, Dar Thaqafa for Publication and Distribution, Amman, Jordan, p.40.

for the administration and its interest, then such contract is deemed to be an administrative contract if it contains the other elements under which the standard for distinction of an administrative contact is built".[1]

Moreover, it is to be noticed that the fact that the administration is a party to the contract does not necessarily mean that the contract is administrative. The administration may make a contract as a private individual, where it behaves in this case as an individual without capacity of the public authority where this, in certain circumstances, would be in its own interest that is required by nature and type of the activity it exercises. In this case, the contract made by the administration will be governed by rules of the private law.[2]

II. The contract is for activity of the public utility

[1] A decision issued by the Egyptian Supreme Administrative Court, referred to in Dr. Khalaileh, Mohammad Ali (2017), the Administrative Law, 2nd book, edition 3, Dar Thaqafa for Publication and Distribution, Amman, p.266, taken from Dr. Mousa Shehadeh, the Administrative Law, publications of Al-Quds Open University (1996) p.154.

[2] Alhelo, Majed. (2004), Administrative Contracts and Arbitration, no edition, Dar Jama Jadida, Alexandria, Egypt, p.18.

Theory of public utility is the cornerstone in the administrative law and a basis for most of its principles and theories that are based on the idea that the public utility and requirements of its regular and steady proper functioning, and realization of the public interest of society is the only basis for existence of a legal system that justifies contents of the administrative contract that are deemed to be anomaly in the private law.[1]

The Jordanian High Court of Justice defines the public utility as "a collective need whose necessity requires intervention of the government to provide it to others using means of the public law. In other words, the essential element of the public utility is existence of a necessary service the legislator requires to be provided directly by the government". [2]

Thus, the subject matter of the contract must be associated with a public utility whether in terms of regulation, running, administration or utilization of such public utility, or in terms of aiding in or contribution to it, or achievement of one of the public

[1] Tammawi, Sulaiman. (1984), General Principles of Administrative Contracts, ibid, p.73.

[2]High Court of Justice, a decision issued on 30.4.1969, Bar Association Journal, 1969, p.321.

utilities, to be deemed an administrative contract. A contract that is not associated with one of the following principles that govern the public utilities will not be an administrative contract:

1. Principle of regular and steady functioning of the public utility,
2. Principle of equal access to the public utility, and
3. Principle of changeability of the public utility according to circumstances.[1]

Association of the contract with the public utility is decided by the court. If a contract ceases to be associated with the public utility, it will be determined by the court as a private contract. Hence, if a public authority enters into a contract that is not associated with running of a public utility, then such contract is not administrative but private.

III. Use of the public law methods in the contract

Selection of the public law methods by the administration is the precondition in distinguishing the administrative contracts from the private ones, which is sufficient to infer the administrative nature of the contact. Though it is a prerequisite for the contract

[1] Jabouri, Mahmoud. (2017), Administrative Contracts, ibid, p.43 and beyond.

to be administrative, association of the contract made by the administration with the public utility is not sufficient alone for the contract to be considered administrative.

Indeed, use of the public law methods is one of the most important elements for distinction between the administrative contract and other contracts. If the administration assumes capacity of individuals and enters into contracts as they do, then such contracts shall be deemed to be private.

On the contrary, if the State acts in its public capacity and requires conditions that are uncommon in the private law with a view to realizing the public interest, then the contract is question is administrative.

An example of this is what decided by the Egyptian Supreme Administrative Court where it states "….. The administrative contract is characterized by the fact that the administration acts, when concluding it, in its capacity as a public authority with rights and privileges that are not available to the other contracting party with the aim of realizing a public interest or interest of a public utility. It also differs from the civil contract in that the public legal

person depends, when concluding and executing it, on the public law methods and means…."[1]

In the decision above, it is found that the Egyptian administrative court required that the contract should contain exceptional conditions that are uncommon to be contained in the private law in order to be considered an administrative contract, and that the objective of such contract is the public interest or the public utility's interest.

According to the administrative jurisprudence, the uncommon condition is "a condition that is not usually found in the private law contracts and under which rights and obligations of contracting parties are different from the rights and obligations that may be accepted by a contracting party under the civil or commercial law….". [2]

An example of the exceptional and uncommon conditions is the management's rights to unilaterally amend some conditions of the

[1] Decision of the Egyptian Supreme Administrative Court in case No. (1963/1059) dated 25.5.1963.

[2] Khalaileh, Mohammad. (2017), The Administrative law, 2nd book, ibid taken by Jabouri, Mahmoud (1998), Administrative Contracts, p.42, Dar Thaqafa for Publication and Distribution, Amman, p.269.

contract, give orders and instructions to the other party during execution of the contract, and impose penalties on the other contracting party for breaching the contract or delay in execution of the same.

It should be noted that no certain number of uncommon conditions is required in order for the contract to be administrative; rather one condition is enough to show the management's intent to adopt the public law method and provisions in concluding or executing the contract.[1]

Importance of distinction between the administrative and private contracts lies in determination of the jurisdiction that looks into disputes of the administrative contracts, which will be discussed in the next topic.

SECOND PART

THE COMPETENT COURT IN ADMINISTRATIVE COURT

The competent authority to look into disputes of administrative contracts in Topic I, the standards that distinguish the

[1] Kanan, Nawwaf. (2010), the Administrative law, 2nd book, edition 1, Dar Thaqafa for Publication and Distribution, Amman, p.321.

administrative contracts from the private contracts are discussed, where a contract is not considered administrative if any of such standards is absent. Importance of distinction between the administrative and private contracts lies in determination of the competent court that looks into disputes of the administrative contracts. The competent court is determined based on nature of the contract. If the contract is administrative, the disputes arising out of such contract shall be tried by the administrative court, while if it is a private law contract, then the disputes related to such contract will be looked into by the ordinary courts. This is only applied in the countries that adopt the dual jurisdiction system, which have ordinary courts to look into the disputes related to the private law contracts, and administrative courts to look into all administrative disputes, including disputes of administrative contracts as in France and Egypt.

The question that arises here is: do the Jordanian administrative courts look into disputes of administrative contracts, as in the above countries, or not?

First: Disputes of administrative contracts in France

The theory of administrative contracts in France is relatively new where it was developed early the twentieth century, though the French Council of State had been established many years before.

The standard of public authority was the standard used for the distribution of jurisdiction between the ordinary and administrative courts, while other ordinary dispositions performed by the State, including disputes of administrative contracts, are governed by the ordinary courts.

However, the French administrative judiciary retracted this approach and began to expand its jurisdiction to include contracts concluded by the State or one of its organs which were considered as a normal disposition of management. This happened in 1903, specifically in its judgment in the Terry's case where it stated "jurisdiction of administrative court covers all matters in connection with regulating and running the public utilities, whether regional or local… the contracts concluded by the administration in this regard are of administrative nature, and the administrative court shall have jurisdiction to settle all disputes arising out of such contracts". [1]

The Council of the State continued to use theory of administrative contracts in its decisions, like the decision issued in the Granite

[1] Referred to in Ubada, Ahmad Uthman (1973), Manifestations of Public Authority in Administrative Contracts, edition n1, DarNahda Arabia for Publication and Distribution, Egypt, p.14.

Company's case in 1912, where it confirmed that a contract is deemed to be administrative only if it contains uncommon conditions.

Second: Disputes of administrative contracts in Egypt

Before establishment of the Egyptian Council of State in 1946, the Egyptian administrative judiciary did not have jurisdiction over disputes of administrative contracts, rather the ordinary courts had jurisdiction over the disputes arising out of the contracts concluded by the State.

Despite the establishment of the Egyptian Council of State in accordance with Law No. 112 of 1946, the ordinary judiciary continued to have jurisdiction over these disputes. The said Law specified powers of the Council of State, where it did not grant such Council the jurisdiction to look into various types of disputes of administrative contracts.

The situation continued to exist where the Law No. 9 of 1949 was issued, where it provides in Article 5 that "the administrative court shall look into the disputes arising out of the contracts of obligation and public works as well as administrative procurement contracts between the government and the other party, and if such

disputes are instituted before the ordinary courts, they may not be instituted before the administrative courts".[1]

Having verified the said Article, it is found that the Egyptian legislator confines jurisdiction of the administrative judiciary to three types of administrative contracts namely, obligation contracts, public works contracts, and administrative procurement contract. Though jurisdiction of the Council of State was limited to these three types of contracts, the Egyptian administrative judiciary has expanded its jurisdiction over the administrative contracts to include other contracts based on their association with any of these three contracts.[2]

The drawback of this text is that it stipulates that jurisdiction over these administrative contracts will be shared by the ordinary courts and the administrative courts, where it indicates that institution of a case before either court will prevent institution of the same case before the other court.

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[1] Helmi, Mahmoud. (1977), Administrative Judiciary, edition 2, Dar Fekr Arabi, Egypt, p.299.

[2] Khalaileh, Mohammad. (2017), the Administrative Law, 2nd book, ibid, p.261 referred in Jabouri, Mahmoud (1998) Administrative Contracts, Dar Thaqafa for Publication and Distribution, Amman, Jordan, p.16.

This situation continued to exist until the issuance of the Law No. 165 of 1955 which superseded the former law, where Article 10 thereof provides that "the Council of State shall solely look into the disputes arising out of contracts of obligation, public works and procurement or any other administrative contracts".

The same provision was included in the Egyptian Council of State Law No. 47 of 1972. Under these provisions, the Egyptian administrative judiciary has had an absolute and exclusive jurisdiction over all disputes arising out of all administrative contracts in all phases of contracting from formation of a contract until its expiration, and the Egyptian Council of State has become the only competent body to look into the disputes arising out of the administrative contract.

Third: Disputes of administrative contracts in Jordan

Before its amendment, Article 100 of the Jordanian Constitution of 1952 provides for establishment of a higher court of justice. In accordance with this constitutional provision, the Law on Formation of Civil Courts No. 26 of 1952 was issued, which superseded the Law on Formation of Civil Courts No. 71 of 1951. The Law defines the civil courts as follows: magistrate courts, courts of first instance, courts of appeal and court of cassation,

provided that the court of cassation enjoys three capacities: criminal, civil and administrative capacities.

The imperative constitutional provision in Article 100 was not established, where "establishment" means to establish an independent high court of justice with specialized judges who are independent of the civil courts to look into the administrative disputes. This did not happen, where the court of cassation was granted an exclusive jurisdiction over some administrative appeals, provided that such jurisdiction is confined to only overruling the decision without delivering a judgment for compensation. These appeals include: appeals against election of municipal and local councils, appeals and disputes against the public officials, and appeals against individuals and administrative entities. This situation has led to the intensification of debate and disagreement between Jordanian jurists over the nature of the judiciary in Jordan, whether it is uniform or dual. Some jurists argue that the Jordanian judiciary was still uniform in this phase,[1]

1 Before its amendment, Article 100 of the Jordanian Constitution of 1952 provides that "The establishment of the various courts, their categories, their divisions, their jurisdiction and their administration shall be by virtue of a special law, provided that such law provides for the establishment of a High Court of Justice".

while other jurists, whom we support, argue that the judiciary was dual in this phase,[1] However, part of jurists argue that the Jordanian judiciary was mixed in this phase.[2]

The situation continued until issuance of the Interim Law of High Court of Justice No. 11 of 1989, where the previous dispute and debate were resolved, and Jordan became has become one of the dual judiciary States. Article (9/a) exclusively defines jurisdictions of the court, where disputes of administrative contracts do not exist. After that, this Law was repealed and superseded by the Law of High Court of Justice No. 12 of 1992. The new Law adopted approach of the previous law where powers of the court are defined in Article 9 thereof without mentioning disputes of the administrative contracts. Therefore, the High Court of Justice was not competent to look into administrative contracts related disputes. This has been confirmed in many decisions issued by the said Court.

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[1] Hafez, Mahmoud. (1987), Administrative Judiciary in Jordan, Publications of the University of Jordan, p.37.

[2] Shatnawi, Ali. (1993), Principles of Administrative Law, Arab Center for Student Services, Amman, pp.68-73. referred to in Qbeilat, Hamdi (2018) A Brief in the Administrative Judiciary, Dar Wael for Publishing and Distribution, Amman. P 113.

In one of its decisions, the High Court of Justice decided that "the decision issued by the administration according to its powers under the contract is beyond jurisdiction of the High Court of Justice. Further, the case for appealing against the contract in terms of its contractual scope but not of its administrative one is beyond jurisdiction of the High Court of Justice, rather it should be heard by the ordinary civil courts".[1]

The High Court of Justice has confirmed this in another decision where it decides that "dispute on rights is heard by the ordinary courts even if it relates to administrative contracts, since competences of the High Court of Justice were exclusively defined and they do not include disputes of contracts, regardless of their types…"[2]

It also decided that "where it is established in the administrative jurisprudence and judiciary that in the scope of the abolition judiciary it is impermissible to rely on breach by the administration of its contractual obligations as a ground that permits a request for

[1] High Court of Justice, decision No. (1954/26) dated 1.1.1954, administrative body, Journal of Jordan Bar Association, issue 1, p.684.

[2] High Court of Justice, decision NO. (77/106), Journal of Jordan Bar Association of 1978, p.956.

abolition of the administrative decision, where abolition action is a result of the principle of legality, while the obligations of the administrative contracts are personal on the one hand, and the abolition action is not directed to contracts since it is a condition that it is directed to an administrative decision issued unilaterally by the administration depending on its authority under the laws and regulations, while a contract is coupling of two wills….".[1]

Further, the High Court of Justice decided that "any dispute between parties to an administrative contract in the execution phase is indeed a dispute over rights, and where there is no doubt that such disputes are right-based disputes and not over legality of an administrative decision, and whereas the Higher Court of Justice has jurisdiction over the matters set out in Article 9 of its Law No. 12 of 1992 and looking into disputes of administrative rights is not contained therein…. Hence, looking into the case falls in jurisdiction of the civil courts and beyond jurisdiction of the High Court of Justice…".[2]

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[1] High Court of Justice, decision No. (1999/352) dated 19.1.200, published on Bar Association website, system.jba.org.jo.

[2] High Court of Justice, decision No. (2009/159) dated 23.6.2009, Adalah Center Publications,

It also decided that "examination of conditions of the contract and application of its provisions and any consequent dispute are beyond jurisdiction of the High Court of Justice, rather looking into such dispute is within jurisdiction of the civil courts".[1]

Having reviewed all decisions above, it is found that the High Court of Justice has always asserted that the administrative contracts are like the private contracts, where looking into disputes arising out of such contracts is beyond its jurisdiction and falls within jurisdiction of the ordinary judiciary.

Afterwards, the Jordanian Administrative Judiciary No. 27 of 2014 was issued. We hoped that it would provide for jurisdiction of the administrative court over the administrative contracts like the case of the French and Egyptian legislation and judiciary that have jurisdiction over disputes of the administrative contracts, as explained above. Yet, nothing of this happened, where the Jordanian Administrative Judiciary Law has not indicated to jurisdiction of the administrative courts over the disputes arising out of the administrative contracts, and it has confined such jurisdiction to the ordinary judiciary neglecting the privacy that

[1] High Court of Justice, decision No. (2010/55), five-judge board, dated 13.10.2010, Qistas.

distinguishes the administrative contracts from the private ones. It can be said here that the said Law has adopted the approach adopted by the repealed Court of High Justice Law.

In this context, Article 5/a of the Administrative Judiciary, law provides that "the administrative court shall solely have jurisdiction over all appeals filed against the final administrative decisions…"The said Law, therefore, did not provide for jurisdiction of the administrative courts over the disputes arising out of the administrative contracts. Accordingly, the administrative court has issued several decisions asserting its lack of jurisdiction over the administrative contracts , where it ruled that "since subject of the case relates to the contact between the plaintiff and the Jordan Valley Authority and application of its provisions and any consequent disputes, and since the issued and appealed decisions are associated with the contract and its execution as well as its legal consequent effects pursuant to the conditions of the contract, especially that the plaintiff acknowledged, as explained earlier, that the relationship between the plaintiff and the Authority is a contractual relationship but not a legal relationship.

In other words, subject of dispute arises from the contract and its amendment and its consequent effects and executive procedures.

Hence, In this case not appeal may be filed against cancellation or termination of the contact before the administrative court, since the appeal in this case is based on the personal rights created by the contact itself that are subject to the provisions of the law in connection thereof… and since disputes of administrative contracts are beyond jurisdiction of our court pursuant to the provisions of Article 5/a of the Administrative Judiciary Law, then the defense is permissible and the case shall be dismissed in form for lack of jurisdiction".[1]

Upon the foregoing, it is found that the Jordanian administrative legislator did not include disputes of administrative contracts within jurisdiction of the administrative courts, which means jurisdiction over such disputes is given to the ordinary courts which have the general mandate on looking into the judicial disputes.

We believe that non-inclusion of administrative contracts related disputes within jurisdiction of the administrative judiciary is a criticized and reprehensible matter and prevents development of rules and provisions of the administrative contracts. The

[1] The Administrative Court, decision No. 267 of 2015, dated 28.10.2015, Qistas.

administrative judges have the expertise and knowledge that make them better able to look into administrative contracts related disputes where such contracts have a distinct quality that distinguishes them from the private contracts, since they are associated with the public utilities and public interest. The contacts concluded by the administration are sort of administrative works in nature, under which the administration has an authority and privileges that are not available to the other contracting party. Thus, the administrative judiciary is required to look into the disputes arising out of such kind of contracts.

It is, therefore, hoped that the Jordanian legislator will reconsider competences of the administrative court by amending the Jordanian Administrative Judiciary Law No. 27 of 2014 and include hearing of disputes of administrative courts within its jurisdiction, following the example of the comparative countries that successfully re-included disputes of administrative contracts within jurisdiction of the administrative judiciary, as explained above, after it has been asserted that it is the most familiar body with such disputes due to their administrative nature that distinguishes them from the private contracts, and to which the State is a party as a pubic authority that have the rights and

privileges not available for the other contracting party with a view to realization of the public benefit and public interest.

It should be noted, however, that the administrative jurisprudence and judiciary have always analyzed contractual process of the administrative contracts and differentiated between the decisions issued by the management, which can be separate from the administrative contract in order to prepare for conclusion of the contract, on the one hand and the process of contracting itself on the other hand. Such decisions are apart from the administrative contracts, which make it permissible to appeal them for abolition before the administrative court since they are administrative decisions over which the administrative judiciary have jurisdiction as set out in Article 5/a of the Jordanian Administrative Judiciary Law, which provides that "the administrative court shall solely have jurisdiction over all appeals filed against the final administrative decisions…".

These decisions include, a decision issued for placing the work in a tender, a decision issued for removal of a certain bidder, and a decision issued for cancellation of the tender or awarding it to a certain person. These are final administrative decisions like any other final administrative decision, where they are subject to all provisions applicable to the final administrative decisions.

It is established in the Jordanian judiciary that such administrative decisions may be independently appealable before the administrative judiciary if they can be separated from the contractual process upon availability of elements of the administrative decision.

In this regard, the High Court of Justice decided" It is agreed that if the administrative decision is integrated into a complex process, the rules of ordinary jurisdiction will allow the High Court of Justice to separate the administrative decision from this complex process and an make it subject to the abolition judiciary, provided the rest of the process in connection with the civil right is governed by the competent court".[1]

It also decided that "The administrative contract passes through a complex process required by its preliminary nature, where the administration, in its capacity as a public authority, unilaterally issues administrative decisions under which it determines the legal positions before awarding the tender. In this phase, these decisions take the form of administrative decisions in the meaning placed for this. In the second phase, the procedures become independent and

[1] High Court of Justice, 81/53, Journal of Bar Association, 1982, 2nd issue, p.178.

any dispute is governed by an amnesty and the subsequent legal rules. The administration becomes a party to the contract and the dispute over the right and the interpretation of the contract and the rights of its parties becomes a dispute governed by the contract and right-based dispute that is heard by the ordinary courts".[1]

Conclusion

Subject of administrative contracts is very important due to distinction between the administrative and private contracts. The administration is a party to the administrative contract and association of the contract with the public utilities, where such contract is aimed at managing the public utility regularly and steadily. Further, the administration uses the public law methods in the contract, where the State in the contract has a public authority that imposes conditions on the other contracting party that are unusual in the private law, in order to achieve the public interest. Due to the distinction between the administrative and private contracts, some dual judiciary States, like France and Egypt, grant the administrative judiciary the jurisdiction over

[1] High Court of Justice, 97/270, dated 18.11.1997, Journal of Bar Association, 1988, p.412. See also, decision of High Court of Justice, No. 2009/159, dated 23.6.2009, publications of Adalah Center.

disputes arising out of the administrative contracts since it is the best body to look into these disputes.

However, the Jordanian legislator unfortunately did not grant the administrative judiciary the jurisdiction over these disputes, rather he granted it to the ordinary judiciary, the repealed Law of High Court of Justice No. 12 of 1992 did not provide for jurisdiction of the court, that has specific competence, over the disputes arising out of the administrative contracts.

The Jordanian Administrative Judiciary Law No. 27 of 2014 has adopted the same approach where it does not provide for jurisdiction of the administrative courts over these disputes.

When he enacted this relatively new law, we hoped that he had adopted the approach adopted by the dual judiciary comparative countries where they grant the administrative judiciary the jurisdiction over the disputes arising out of the administrative contracts due to their privacy that distinguishes them from the private contracts; a party to such contracts is a subject of the public law, they are associated with activity of the public utility, and the administration uses the public law methods in such contracts.

Upon above, the study concludes a set of findings as follows:

1. Not all contracts made by the administration are administrative. The administration may make contracts as the individuals do where they are equal in this case and such contracts considered private and governed by the ordinary judiciary.
2. A contract is not administrative unless it has standards that distinguish it from the private contract.
3. In principle, the administrative judiciary looks into the disputes arising out of the administrative contracts. This is adopted by the comparative judiciary, France and Egypt. However, the Jordanian legislator did not require jurisdiction of the administrative courts over such disputes rather he granted such jurisdiction to the ordinary judiciary.
4. Non-inclusion of administrative contracts related disputes within jurisdiction of the administrative judiciary is a criticized matter and prevents development of provisions of the administrative contracts.
5. Due their experience and knowledge, the administrative judges are the best ones to look into the disputes to which the administration is a party as it has a public authority.
6. It is established in the administrative jurisprudence and judiciary that the process of making the administrative contracts is to be analyzed, where the appeal against the

decisions that can be separated from the administrative contract must be lodged with the administrative judiciary since they are administrative decisions that are issued unilaterally by the administration.

To conclude, the researchers put in forward the legislator a set of recommendations as follows

1. The administrative legislator is kindly requested to expand jurisdiction of the administrative courts to include all administrative disputes not only the administrative decisions by amending Article 5/a of the Administrative Judiciary Law No. 27 of 2014 to become "the administrative court shall solely have jurisdiction over all appeals against administrative disputes".. instead of the existing Article which provides that "the administrative court shall solely have jurisdiction over all appeals against the final administrative decisions, including…". This amendment is very important since it gives the administrative judiciary the jurisdiction over all appeals in connection with the administrative contracts.
2. We hope that the administrative legislator will benefit from the experience of comparative countries that adopt

dual judiciary in the area of administrative contracts like Egypt and France, which preceded us very much in this field.

3. We hope that the Jordanian legislator will pay a great attention to the administrative judge by expanding his competence since he could better understand nature of administrative disputes faced by the administration, which in turn ensures running of the public utility regularly and steadily.

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