

Clearing in the banking business according to the Jordanian law

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Introduction

The rise in commercial transactions between individuals, as well as the complexity and intertwining of these transactions, has created a need to find a method to settle these transactions swiftly and efficiently, in a manner that guarantees each of the parties to these transactions their rights and does not lead - at the same time - to disrupt these transactions and impede their ways on a manner that violates what should be available in the business of speed and credit. In order to achieve the preceding purpose, individuals and businesses turned their focus to checks, which are commercial documents that primary function is to serve as a mechanism of fulfillment by sight that replaces money in circulation. ¹

Since checks are prohibited from being drawn on any non-banking entity according to the Commercial Law No. (12) of (1966)², and the banks have taken upon themselves the matter of collecting commercial papers as a banking service provided by the bank to its customers, the relationships resulting from checks are no longer confined between the parties to the commercial paper and the bank drawn on it only, but another party was added, which is the bank with which the beneficiary of the check or the legitimate holder of the check deals in general, which is known as the presenting bank.³ Obviously, "a check is not presented for payment by clearing except when the transaction is between two different banks and not between two branches of the same bank".⁴

In light of this diversity in relationships, the Central Bank of Jordan - as the responsible and supervisory authority for Jordanian banks - has set out to find a legislative organization that would control the provisions that prevail in these relations and determine the responsibilities arising in the event of a breach by one of the parties, based initially on the Provision of Article (37/b) of Central Bank Law No. (23) of (1971),⁵ on the one hand, with a goal to protect the national payment system and progress it to the ranks of advanced banking countries, on the other side, his determination to find all possible ways to assist

¹Cessation, Rights 817/2011, Quintet Commission, Adalah Publications, 7/19/2011.

² Published on page No. (472) of the Official Newspaper No. (1910) dated 3/30/1966.

³ The second article of the rules and regulations of electronic clearing No. (1) of (2006) defines the presenting bank as the member bank that presents the check through the electronic clearing system for the purposes of collecting it from the withdrawn bank for the account of its customer beneficiary of the check.

⁴ Cessation, Rights 185/1987, Quintet Commission, Adalah Publications, 9/3/1987.

⁵ Published on page No. (807) in the Official newspaper No. (2301) on (25/5/1971).

bank customers, which is reflected positively on the movement of investment and economic progress in the Kingdom,⁶ is referred to as clearing. Thus, the Central Bank and Jordan's legislator organized, defined, and determined the clearing's functioning procedures, as well as its legal adaptation. This study is conducted with the intention of finding and adjusting clearance in compliance with Jordanian law.

problem

Any new legal point must deal with several questions and issues, both theoretical and practical. In our modern period, which has seen tremendous development, particularly in commercial transactions in general and banking in particular, the number of exchange transactions and money deposits with functioning banks has increased dramatically. Recently, business organizations and people have begun to save their money and circulate it through banks rather than manually.

Because clearing is one of the activities performed by banks and financial organizations and has a direct impact on individuals and their financial transactions, it has become necessary to identify the clearing system and its drivers, as well as to suggest its legal adaptation.

Objectives of the study

This study seeks to achieve the following objectives:

1. Defining the concept of clearing according to the legal terminology and definition.
2. Reviewing the forms of clearing in general and in Jordan in particular.
3. identifying the provisions of clearing in banking business in Jordan.
4. Clarify and define clearing's parties in banking business in accordance with Jordanian law.
5. Clarify the legal adaptation of the relationships resulting from the clearing in accordance with Jordanian law.

Study Methodology

This study was conducted using an inductive approach, with the goals of reviewing prior books, references, and studies on the subject of clearing in general, as well as the texts of legal articles on clearing in line with Jordanian law.

Study Structure

This research includes two sections in addition to the introduction, the problem, the study objectives, methodology and limits, as follows:

- Introduction.
- Problem.
- Objectives of the study.
- Study Methodology.
- Study Structure.
- The first topic: What is clearing according to Jordanian law.
- Section one - Definition of clearing.
- Section Two - Clearing Forms.
- The second topic: the provisions of clearing in banking.
- Section one - Clearing Parties in Banking Business.
- Section Two - Legal Adjustment of Relationships Resulting from Clearing.
- Conclusion, which includes:
- Results.
- Recommendations.

First topic

⁶ Al-Lasasmah, Abdulaziz and Al-Humaydat, Abdullah. (2013). The Legal System of Electronic Check Clearing in Jordanian Law, Mutah Journal for Research and Studies, 28(2), p. 188.

What is clearing according to Jordanian law?

Clearing is a method of paying the value of commercial bonds, remittances, bank account balances, or international payments by deducting what is owed to the bank or creditor from its dues and limiting payment to the balance by crediting it to the receivable's account or repaying it in cash or by other means. Clearing is frequently done with independent institutions or one of the Central Bank's divisions called *chambres de compensation*, where banks gather to submit clearing based on their rights and obligations as a result of their banking operations.⁷

Section 1

Clearing

The clearing process is defined as "the procedure by which the value of checks is collected from the account of a client of one bank and transferred to the account of a customer of another bank via a clearing house".⁸ Check clearing also refers to the process by which the value of a check is transferred from the account of one bank's client to the account of another bank's customer via a clearing house.⁹

The Civil Code defines clearing as "a debt-expiration method in which a specific debtor becomes a creditor of another debt, such that the two debts are extinguished by the amount of the lesser of them, so that the debtor does not have to pay what he owes and then seek payment from the other".¹⁰ The clearing process between banks does not depart from its concept contained in the Civil Code as a general principle, as it is prepared in accordance with what is stated in Article (343) of the Civil Code. Clearing, as a tool for fulfilling obligations, is a solid foundation in the banking environment, as it leads to the termination of interlocking obligations among banks without the need to pay cash, but rather the purpose of the matter is to absolve the banks among themselves based on records kept in clearing rooms that handle the settlement of inter-bank claims.¹¹ As a fulfillment simplification tool, clearing achieves many benefits and advantages for its two parties, including avoiding the efforts and expenses of fulfillment and fulfillment, as well as the risks that fulfillment may face when transferring, which makes it compatible with the nature of commercial and banking operations in financial institutions and banks.¹²

Section Two - Clearing Forms

The clearing in effect today was not created at once, but was preceded by multiple stages in which the clearing process took various forms and templates, beginning with manual clearing and progressing to automatic, concluding with electronic clearing.

First: manual clearing

Manual clearing is defined as "the process by which checks submitted by member banks in the clearing office are exchanged daily through their representatives, through manual handling to determine the final result for each bank separately at one time and one place, to reflect the final result on the bank balances with the bank"¹³ this mechanism was in place until July of 1997¹⁴.

⁷ Farajat, Ahmed (2011). The Impact of Using the Electronic Check Clearing System on the Business of Commercial Banks, The Egyptian Journal of Commercial Studies, 35 (1), p. 449.

⁸ Al-Hajj, Suleiman Azza Hamad. (2005). The Legal System of Electronic Banks, Check-Photo, Al-Halabi Human Rights Publications, Beirut, Lebanon, p. 146.

⁹ Morcos, Solomon. (1964). Explanation of the Civil Law in Obligations, International Press, Cairo, Egypt, p. 843.

¹⁰ Qawasmi, Safaa. (2009). Legal responsibilities arising from electronic check clearing operations in Jordanian law, unpublished master's thesis, Middle East University, Amman, Jordan, p. 13.

¹¹ Al-Jubouri, Yassin. (1997). Al-Wajeez in Explanation of the Jordanian Civil Law, Part Two on the Effects of Personal Rights, Provisions of Obligation, First Edition, BD, p. 72.

¹² Lachhab, Asmaa and Melhem, Bassem. (2013). Legal regulation of electronic check clearing and the legal relations arising from it in Jordanian law, Dirasat Journal, University of Jordan, 40 (2), p. 458.

¹³ The Central Bank of Jordan website, www.cbj.gob.jo, general information on electronic clearing, entry date 4/11/2015, two o'clock in the afternoon.

The cash arrows that can affect this mechanism are clear from the previous definition, beginning with the manual clearing process, which requires more time and effort, which negatively affects bank customers, and as a result on commercial operations in general,¹⁵ in addition to the high cost required to conduct the manual clearing process, in terms of employee wages and the cost of transferring checks.

In the face of these obstacles, attention has turned towards resorting to another means of clearing operations that are more modern than the previous one, and as a result the automatic clearing has appeared.

Second: automatic clearing

This process is based on the automatic sorting of checks in banks and in the clearing office, through the use of automatic sorting devices that rely on reading the line encoded in magnetic ink (MICR)¹⁶, checking with files received from banks, conducting control and clearing operations, and extracting results using computer equipment¹⁷. This mechanism continued until July 2007.

In other words, this mechanism is done by passing checks to each bank on the sorting machines, on one end of which there is a site for placing the checks, and on the other end there are sections on the number of member banks in the clearing, and the task of this machine is to read and sort the checks, where each check goes separately to be read on the light of the data previously entered into the system and through the amount and data printed in magnetic ink, to continue its automated process to settle in the section designated for the bank, and in the event that the sorting machine cannot read these checks, they are processed manually¹⁸. Then, at the clearing house, personnel of the Central Bank's clearing office receive checks and electronic files containing check data from bank representatives, and after verifying the integrity of the electronic files, they are uploaded to the Central Bank's main server. After matching the actual check data with the electronic data, electronic files are extracted with the data of the checks written on each bank, and the result is shown in the form of an electronic file that is delivered to the local payments department in it to reflect the result on bank accounts.¹⁹

Although this system has overcome some of the negatives and obstacles faced by manual clearing, it has kept other obstacles, including the process of transferring and circulating checks manually in addition to electronic files, and the high cost required by the automated clearing system, in addition to its application that led to many check fraud crimes, which once again called for the need to find another more advanced system that solves such problems, and increases the effectiveness of the check clearing process through the use of the latest modern technology in this regard, and this is what really happened with the creation of the electronic clearing system.²⁰

Third - electronic clearing

¹⁴ Al-Lasasmah, Abdulaziz and Al-Humaydat, Abdullah. (2013). The Legal System of Electronic Check Clearing in Jordanian Law, *Mutah Journal for Research and Studies*, 28(2), p. 188.

¹⁵ It is an acronym for Magnetic Ink Character Recognition, which means identifying a check by means of magnetic ink written by letters.

¹⁶ The Central Bank of Jordan, (2007), *The Jordanian Implementation of the Electronic Check Clearing System*, published in the *Banks Journal*, Jordan Banks Association, 26 (6), p. 34.

¹⁷ Qandah, Adly, (2011), *The Economic Effects of Electronic Clearing*, *Journal of Banks*, Jordan Banks Association, 27 (5), p. 21.

¹⁸ Alami, Mahdi. (2003). *Banking Operations from a Holistic Perspective*, Institute of Banking Studies, Amman, p. 84.

¹⁹ Al-Lasasmah, Abdulaziz and Al-Humaydat, Abdullah. (2013). *The Legal System for Electronic Check Clearing...*, *Ibid*, pp. 193-194.

²⁰ *Electronic Clearing System - User Training Guide*, issued by Progress Soft.

As a result of the criticism directed at each of the previous two systems, the Central Bank tried hard to find the most appropriate solution to the nature of banking operations, as a contract was made with Progress Soft co²¹, which established the electronic clearing system at the Jordanian level.

The Central Bank has started implementing the electronic check clearing project, after preparing the technical and legislative infrastructure necessary for electronic clearing, which is to modernize the national communications network²², and to rely on high-speed, high-quality, most efficient and secure optical fibers than other means. This system started on July 5, 2007 with the ability to collect (T+2) two days after the check was deposited, and reached the ability to collect on the same day (T+0) on November 4, 2007²³. Electronic clearing (ECC) is a system by which written check data is transferred according to an agreed-upon mechanism to an information program dedicated to this system so that these data are processed and check payments are settled electronically between banks²⁴. Electronic clearing can be defined as "the exchange of information for checks through the clearing center and the determination of the net balances resulting from the clearing process between members and the extraction of reports resulting from this process," according to what was stated in Article 2 of the rules and principles of electronic clearing, However, what is taken on this definition is its omission of the basic element in clearing operations, which is that they are conducted electronically, therefore some defined it as: "The procedure for clearing checks between banks through the Central Bank, according to electronic copies of checks, and without actually exchanging checks between banks"²⁵, and it can be defined as "The electronic process through which check values are collected through member banks in the clearing house, and reports on the flow of outgoing and incoming transactions to the clearing house and the results of clearing in their regard are obtained by purely electronic means". In creating this mechanism, the Central Bank relied on sufficient legal cover to carry this idea and make it legal from a legal point of view.

On the one hand, Article 37/b of the Central Bank Law stipulates that: "The Central Bank shall provide the licensed banks with a clearing service among themselves, the service of exchanging credit information relating to their clients, and the licensed banks shall participate in any arrangements made by the Central Bank for this after consulting with them." Article (92/a) of Banking Law No. 28 for the year (2000)²⁶ stipulates that: "The Central Bank may set up an electronic money transfer system in coordination with the banks, and in this case the Central Bank shall be free to make payment and receipt through this system and inform the concerned banks of that." Also, Article 29 of the Electronic Transactions Law No. 85 for the year (2001)²⁷ stipulates that: "The Central Bank shall issue the necessary instructions to regulate the electronic transfer of funds"²⁸, including the adoption of electronic payment methods, the approval of

²¹ Al-Farajat, Ahmed. (2011). The Impact of Using the Electronic Check Clearing System..., Ibid, p. 450.

²² Lashhab, Asmaa and Melhem, Bassem. (2013). Legal regulation of electronic check clearing..., Ibid, p. 458.

²³ Al-Shurairy, Qais. (2009). The impact of regulating the relationship between banks participating in the electronic check clearing system on the implementation of their obligations with their customers, Irbid Journal of Research and Studies, 31 (1), p. 261.

²⁴ Qandah, Adly, (2011), the economic effects of electronic clearing, Ibid, p. 2.

²⁵ Published on page No. (2950) of the Official newspaper No. (4448) dated 1/8/2000.

²⁶ Published on page No. (6010) of the Official newspaper No. (4524) dated December 31, 2001, and repealed according to the Electronic Transactions Law No. (15) of (2015) published on page No. (5292) of the Official newspaper issue No. (5341) dated 17/5/2015, however, the instructions issued regarding electronic clearing are still valid based on the text of Article (28) of the effective electronic transactions law.

²⁷ The principles and rules of work and instructions for electronic clearing were approved on 27/11/2006 in accordance with the minutes of the clearing board meeting No. (1) of (2006).

²⁸ As stated in the first article of those assets, "These instructions regulate the relationship of member banks among themselves for the purposes of the work mechanism used in electronic clearing and do not include the relationship of banks with their customers except for what is stipulated in these instructions. It is up to each bank to set the legal foundations in the light of which it must He must deal with his clients in all matters resulting from the application of the electronic clearing system.

the entry resulting from an illegal transfer, procedures for correcting errors, disclosing information and any other matters related to electronic banking, including information that financial institutions are obligated to provide it with.²⁹

Based on the previous legal texts, the Central Bank issued the principles and rules of work and instructions for electronic clearing No. (1) of (2006)³⁰. These instructions dealt with the regulation of the relationship of member banks among themselves and the tiring work mechanism among them, but they did not include the integrated legal regulation of the resulting relations between banks and customers on the one hand, and between banks each other in sufficient detail to state the nature of these relations. The instructions left the matter of regulating all of this to a special board under the supervision of the Central Bank called the "Electronic Clearing Board," and left the matter of regulating the relationship of customers with banks to the special instructions set by those banks in accordance with their policies and the legal foundations on which they are based³¹. These instructions have confirmed that electronic clearing services are provided exclusively through the member banks of the Electronic Clearing Center, which is the Central Bank of Jordan, in accordance with the text of Article 3 of those instructions. It is also applied only to checks written in Jordanian dinars³² as a payment instrument payable upon sight, excluding all other commercial papers. It is also required that the checks be encoded in the approved coding for the purposes of electronic clearing, which is meant by coding in this regard; That the checks bear the radical electronic authentication marks as defined by Article 2 of the Electronic Transactions Law³³.

Second topic

Clearing provisions in banking

The introduction of clearing had a significant legal impact because it included the addition of another party to the relationships arising from the fulfillment of the value of the check, which is the presenting bank, and this resulted in the withdrawn bank being exempted from some of its obligations under the Trade Law for the purpose of facilitating and facilitating the circulation of papers commercial including check.³⁴

section one will deal with the clearing parties in the banking business, while in the second section, the legal adaptation of the relationships resulting from electronic clearing will be discussed.

Section One - Clearing Parties in Banking Business

Clearing-up, given the complexity of the relationships that it intended to link with each other and the diversity of those relationships, obviously assumes the existence of several parties, each of whom intends to use this system and in a manner that achieves the goal that each of them aims to achieve by using this system. Perhaps the main party in clearing operations is the clearing center as the basic mind for all

²⁹ This is in accordance with Article (17) of the rules and regulations for electronic clearing, but the practical reality indicates that the system accepts checks issued in a foreign currency as long as they are entered into the system, as is the case with the dollar; This is what was re-approved by Article (17/c) of the assets, Electronic Clearing System - User Training Guide, issued by Progress Soft.

³⁰ Al-Mowajda, Murad Mahmoud. (2010). The Legal System of Electronic Clearing in Jordanian Legislation, The Jordanian Journal of Law and Political Science, (2) 4, p. 171.

³¹ Cessation, Rights 2821/2011, Quintet Commission, Adalah Publications, 11/28/2011.

³² Al-Shuaibi, Fouad. (2008). Clearing in Banking Transactions, Al-Halabi Human Rights Publications, Beirut, p. 341.

³³ Taha, Mustafa Kamal. (1993). Commercial Contracts and Bank Operations, University House, Beirut, Lebanon, p. 141.

³⁴ Al-Sharari, Qais. (2009). The impact of regulating the relationship between participating banks in the clearing system..., Ibid, p. 267.

operations that take place through the clearing system, and then comes the role of the distinguishing party for checks from other commercial papers, and talking here about banks, and then comes the role of the beneficiary party from this transaction, which aims to fulfill the value of the check.

First - The clearing house and its obligations

The clearing house is defined as “a union of banks whose main function is to facilitate the process of exchanging checks and other papers in accordance with the agreement that takes place between the members of this house with the aim of settling accounts between them so that unnecessary transfer of balances can be avoided”³⁵. It becomes clear that the clearing center derives its mandatory power and, consequently, its importance from the fact that it stems from the agreement of the banks operating in Jordan of their free will.

The aforementioned importance lies in the fact that the center is the link between the banks, and without it, each bank would have had to review the rest of the banks operating in Jordan in their various branches to perform the values of the checks drawn on them³⁶. Since the function of the clearing house does not become a function similar to the work of the mediator among the parties to the relationship, the obligations of the clearing center as a public asset should not go beyond the framework of this function. So that it does not exceed sending a copy of the check to the withdrawn bank and sending the latter's response to the presenting bank, while keeping all movements in the central clearing record. However, the clearing board has departed from this principle and has imposed on the clearing house additional obligations mentioned in Article (21) of the rules, according to which the clearing center must refrain from sending checks that were presented and paid for previously, or those that were submitted twice and were returned, or checks made by a bank and previously presented by another bank, as well as the rejection of Central Bank checks if their date is more than six previous months, and the end of rejecting checks drawn on licensed banks if their date is more than five years and a previous month. Had it not been for the previous text, it would not have been possible to hold the clearing house accountable for these errors, and this is due to the clearing house's function represented as an intermediary among the member banks.

However, the clearing board, and in its desire to ensure the control of the clearing process, made the parties to the clearing process jointly responsible for some errors committed by one of them, which did not receive attention from the other party.

Second: The presenting bank, the withdrawing bank, and the beneficiary.

The Jordanian legislator has ensured that a definition of banks is included in Article Two of the Banking Law, which states "The company that is licensed to engage in banking business in accordance with the provisions of this law, including the branch of a foreign bank licensed to operate in Jordan". As it turns out that what distinguishes banks from other financial institutions is their ability to accept deposits, in addition to granting facilities and providing their customers with the credit necessary to carry out their financial operations, and this last matter is shared by banks with other financial institutions. Those who intend to deal with the clearing system in the Kingdom will find that this process includes the presence of two banks, one of which presents the check to the clearing center and the other is the drawee bank.

1. The presenting bank:

The presenting bank is the first party in contact with the clearing center, as this bank receives the check from its beneficiary client or the legal holder of it, and then presents it to the clearing house. It is noted that the presenting bank is the new party with regard to the clearing of checks, because the Commerce

³⁵ Refer to Article (17) of the principles and rules of work and instructions for clearing.

³⁶ This item was added to Article (19) by virtue of the memorandum of the Governor of Licensed Banks No. (17/2010) dated 8/2/2010.

Law has dealt with the provisions for the fulfillment of checks in view of the existence of one bank, which is the withdrawn bank, but the development resulting from the introduction of clearing among Jordanian banks is what created the function of the presenting bank. In clearing, there are preliminary procedures that the bank presenting the check must abide by before entering the check information into the system.³⁷ For this reason, and before the bank makes a photocopy of the check front and back, it must verify that the check is drawn on one of the banks participating in the clearing system or on one of its branches operating in Jordan, and it must verify that the check is written in Jordanian Dinars.

However, a check written in a foreign currency may be presented, provided that this currency is among the approved currencies listed in the system for dealing with it, and that the checks are coded with the approved notation for clearing purposes³⁸.

Among the obligations of the presenting bank is also to ensure the presence of security marks based on the checks through the ultraviolet device before sending them to the clearing system, therefore, the presenting bank must verify the basic legal data that must be available in the form of the check and other legal conditions and technical specifications that must be verified before sending checks through the clearinghouse, otherwise it will be liable.³⁹

2. The withdrawn bank:

Article (228/c) of the Commercial Code stipulated that the drawer mentions the name of the drawee in the body of the check, and Article (229) of the same law arranged for the check to be invalid if it did not include the name of the drawee.

The drawee bank is that bank that has funds owned by the drawer, so the latter directs the payment order to the drawee bank to fulfill the value of the check.

With regard to clearing, what is meant by the withdrawn bank does not differ from the traditional meaning mentioned above, and it is his responsibility to receive the check and verify it from a legal and formal point of view, and match its data with the mandatory data in the check, and by that we mean to ensure that there is an existing and receivable balance of the check. As well as matching the customer's signature on the check with the customer's signature previously with the withdrawn bank, through the signature matching system.⁴⁰

3. The beneficiary

The beneficiary of the check is the owner of the right to the value contained in its body, and the identification of the beneficiary of the check does not depart from one of two ways. Either the check is named by mentioning in its body the name of the beneficiary, in which case this named person is the beneficiary, or if the check was originally written to the bearer or endorsed in blank, so the beneficiary or the legal bearer in this case is the one who holds the check in his hand whenever he proves that he has the right to it by endorsements connected to each other, even if the last of them is a blank endorsement in accordance with Article (146) and in terms of Article (241) of the Commercial Code.

Section Two - Legal Adjustment of Relationships Resulting from Clearing

The relationships arising from the clearing are divided into two main parts; One of them includes the relationship of banks and the clearing house to each other, as follows:

First - the relationship of the banks to the clearing parties with each other

³⁷ Al-Mowajda, Murad Mahmoud. (2010). The Legal System of Electronic Clearing, Ibid, p. 177.

³⁸ Al-Sharari, Qais. (2009). The impact of regulating the relationship between participating banks in the clearing system, Ibid, p. 288 and beyond.

³⁹ Al-Lasasmah, Abdulaziz and Al-Humaydat, Abdullah. (2013). The Legal System for Electronic Check Clearing..., Ibid, p. 212.

⁴⁰ Melhem and Lashhab, Ibid, pg. 462.

Since the clearing process in its simplified form includes three parties in terms of banks, and they are; The presenting bank, the drawee bank and the clearing house, we will deal with the legal adaptation of their relationship to each other. There is no dispute about the emergence of a contractual relationship between the two banks; The presenter and the drawee, however, the legal adaptation of this contract sparked a jurisprudential dispute. Some went to say that it is a purely banking relationship that finds its basis in banking customs and the dictates of cooperation and exchange between banks according to their records and restrictions⁴¹, while another trend sees it as an indefinite contract of a special nature imposed by the reality of clearing as a means of settling accounts between banks⁴², a third party went to say that the contract arising between these banks is a commission agency contract, whereby the presenting bank is an agent for the drawee bank, so that it fulfills the value of the check to the beneficiary in his name but to the account of the withdrawn bank⁴³.

Agency theory deniers rely on a number of justifications: The first is that there is no commission for this agency, because the presenting bank does not charge a commission for recording the value of the check in its client's account. The second is that the presenting bank is considered an agent on behalf of its client, and the same applies to the withdrawn bank in its relationship with the drawer, and the agent does not have the power to delegate another person except with the permission of the principal, and this cannot be done automatically. The third is that the obligation of the presenting bank is an obligation to achieve a result in accordance with the clearing system, so that its role is not limited to recording the value of the check in the beneficiary's account, but rather it must verify the availability of all legal and material conditions in the check.

On the second argument, since the proxy endorsement is the tool used to create a contract for the collection of commercial papers, and since Article (148) of the Commercial Code has permitted the endorser by proxy to endorse the commercial paper again by proxy, adherence to the general rules contained in the Civil Code in the presence of special provisions in the Commercial Code is unjustified, and with regard to the withdrawn bank, since the banks have used to include an item stating that the customer agrees to implement the clearing provisions, this is his permission to the drawee bank to authorize others to complete the clearing process. As for the third argument, it is not consistent with the explicitness of the provisions of the clearing system and the correct understanding of the clearing process. This is because saying that there is a commercial agency entails the presenting bank to fulfill the value of the check on behalf of the drawee based on the orders of the drawee bank to accept or reject the check, an obligation that is not considered an obligation to achieve a result, but rather to exercise care, which is consistent with the provisions of agency commission. The responsibility of the presenting bank of the check will not go beyond taking careful care in examining the check legally and physically. If it is proven that the check is tainted with a defect that is not easy to discover, the responsibility is assigned to the withdrawn bank in accordance with Article (270) of the Commercial Law.

Second - the relationship of customers with banks, the clearing parties

What concerns us in this regard is the relationship of the presenting bank with the legitimate holder of the check as its client, and then we will address the relationship of the withdrawn bank with its withdrawing client.

⁴¹ Cassation of Rights 282/2002, Five-Year Commission, dated 2/6/2002, and Decision No. (3344/2006), (Quinary Commission), dated 3/27/2007, Adalah Publications.

⁴² Zayed, Ahmed Suleiman. (1998). Provisions of the bank's collection contract for commercial papers, unpublished master's thesis, Faculty of Law, University of Jordan, Amman, Jordan, p. 15.

⁴³ It should be noted that these rules are not mandatory, but derive their mandatory if they are included in the contract for the collection of commercial papers, nor do they derive their mandatory as they are a commercial custom, because custom is applied in the absence of the text, but in this case, this is considered a contract for the collection of commercial papers, does not deviate from being one of the named contracts.

1- **The relationship of the beneficiary of the check to the presenting bank**

What is based on banking custom and what is required by the nature of the collection of commercial papers is that the customer entrusts the bank with which he deals to collect his rights with third parties.

The bank that collects this right only performs legal work for the client's account and is considered an agent on his behalf and he has to provide an account to the client who is entrusted with it. The responsibility of the bank remains for the proper implementation of what is required of him, whether the beneficiary wants to record the value of the document deposited in his account or wants to receive it in cash, since depositing commercial papers with The bank for the collection fee does not transfer its ownership to the bank, and the provisions of the agency are applied to such deposits, and what the bank has received is considered as a deposit⁴⁴.

The second article of the Uniform Rules for Collection issued by the International Chamber of Commerce in its publication No. (522) for the year (1995), defines collection as "the circulation of documents by banks, based on instructions received by them, with the aim of: 1- Obtaining payment and/or acceptance. 2- Submission of documents against and/or against acceptance. 3- Delivery of documents with other terms and conditions." Article (2/b) of the rules defines documents as either financial documents, meaning "withdrawals, promissory notes, checks, or other similar instruments used to obtain a payment of money," or commercial documents, meaning "invoices and shipping documents." and ownership documents or any similar documents or any other documents whatsoever other than financial documents⁴⁵ according to the Jordanian legislator's definition of the commercial paper in Article (123) of the Commercial Law, in which the legislator considered the document's enforceability, if it is possible to count a commercial paper, the commercial documents mentioned in the definition of the unified rules can be considered commercial papers if they are endorsable.⁴⁶ The Jordanian legislator was not successful in drafting Article (123) of the Trade Law, as he wasted the main pillar of the commercial paper as it represents a monetary right and enjoys self-sufficiency⁴⁷.

Therefore, the contract for the collection of commercial papers, which is one of the main contracts in the clearing process, the Jordanian legislator did not come up with special provisions for it, but the general rules are sufficient by themselves to create a legal concept for this contract.

Some of the jurisprudence went that the relationship between the bank and the customer in the power of attorney in general and in the contract for the collection of commercial papers in particular is nothing but a relationship between the principal and the agent. Where the customer authorizes the bank for the purpose of collecting the value of the commercial paper and depositing it in his account or delivering it to him, and if the two parties to the relationship choose to resort to proxy endorsement, the Jordanian legislator has dealt with proxy endorsement in commercial papers in general in the text of Article (148) of the Trade Law contained within the section on the bill of exchange and referred to it under Article (224) in relation to the promissory note and Article (241) in connection with checks. Where Article (148) stipulates that "If the endorsement includes the phrase "value for collection" or "value to receive" or "to power of attorney" or any other statement indicating the power of attorney, then the bearer shall exercise all the rights arising from the bill of exchange, but he may not endorse it except by way of assignment."

⁴⁴ Zayed, Ahmed Suleiman. (1998) Provisions of the Bank Collection Contract for Commercial Papers, Ibid, p. 16.

⁴⁵ Qudah, Fayyad. (2012). Explanation of the Jordanian Commercial Law (Commercial Papers), 2nd Edition, Dar Wael for Publishing and Distribution, Amman, Jordan, p. 10.

⁴⁶ Eid, Edward. (1968). Commercial Contracts and Banking Operations, Najwa Press, Beirut, Lebanon, p. 551. Muhammedin, Jalal Wafa. (1988). General Principles in Commercial Contracts and Bank Operations, University House, 1988, p. 93. Dowidar, Hani. (2008). Commercial Law, 1st Edition, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2008, p. 366.

⁴⁷ Ali, Jamal Al-Din Awad, 127, p.

The Jordanian legislator did not address the provisions of the contract for the collection of commercial papers within the provisions of the Jordanian Trade Law, which requires, in many of these provisions, a reference to the Civil Code based on the text of Article 122 of the Trade Law describing this contract as an act of banking. For the validity of the power of attorney from the objective point of view, the availability of the necessary elements for any legal action, including consent, capacity, place and reason, where it is stipulated that the wills of the endorser and the endorser agree to the power of attorney, that the endorser owns the right to dispose of the fixed right in the commercial paper and that the endorser is not prohibited from collecting the value of the commercial paper, and that the subject of this contract is to authorize the endorser to collect the value of the commercial paper and deliver it to the endorser or deposit it in his account, and the validity and legitimacy of the reason for concluding the contract for the collection of commercial papers is assumed, and whoever claims otherwise must prove it, in accordance with the provisions of Articles (87, 99, 158/2 and 166/2). and 834 of the Civil Code.

2- **Relationship of the check drawer to the withdrawn bank:**

Perhaps the best way to find out the proper legal adjustment of the relationship between the drawer and the drawee bank lies in clarifying the two cases in which this responsibility arises. And the talk here about the bank that pays when it becomes clear that the fulfillment did not happen to the holder of the legal right to it, because the check was forged from its origin or it was forged after it was issued, so we look at the presumption of the validity of fulfillment and responsibility for fulfilling the forged check, and whether the beneficiary has the right to claim the account holder to compensate him for Reject the check that the bank refused to honor. The same applies to the bank when it refuses to pay the check without face, and it is a responsibility based on the contract between it and the drawer⁴⁸.

- **Fulfilling a forged check.**

One of the basic duties of the bank before cashing the check is to ensure the accuracy of the data contained in it, and to verify the appearance of the paper, meaning that it is not subject to any scraping or cross-out. After that, the data contained in the body of the check is checked, and the most important of these data is the signature.

Here, it must be noted that the banks require that there be a form for the customer's signature when opening an account in order to be able to compare it with the checks that will be presented to him later⁴⁹.

The responsibility of the bank for refusal to fulfill

The responsibility of the bank arises for the refusal to pay in front of the legitimate bearer of the check, and in front of his customer who is the drawer. Especially since the provisions of the Commercial Code mentioned in relation to the check do not at all suggest the existence of a direct lawsuit between the beneficiary of the check and the drawee bank, which means that the beneficiary of the check has no choice but to refer to the drawer, so that the latter may have a direct claim against the drawee bank as a result of its refusal to pay a valid check, the responsibility of the bank to the drawer for its refusal to pay a check validly drawn on it is based on the contract between them, whether express or implied⁵⁰, which authorizes the customer the right to draw a check on the bank, so the assumption here is that the check is valid and fulfills its elements and has an existing and exchangeable payment, but the withdrawn bank refrains from disbursing its value, and this issue arises in practice often, as it happens that the bank miscalculates the amount of the existing balance He has, or makes a mistake in specifying the account on which he drew the check, or in the name of the drawer, and he refuses to pay, thinking that by doing so he is fulfilling his obligation to maintain clients' deposits. If it turns out that the refusal to pay is

⁴⁸ Fayyad Al-Qudah, Ibid, pg. 404.

⁴⁹ Fayyad Al-Qudah, Ibid, p. 406.

⁵⁰ Mahmoud Al-Kilani, Jordanian Commercial Law, Commercial Papers, a comparative study, p. 359.

unjustified or baseless, the bank is responsible to its customer and must compensate him for the damage he sustained if it fails to prove that the refusal to pay was justified. The reasons that justify the bank's return of the check to its bearer, which are an exception to the general principle, as the principle is that the check is fulfilled immediately after it is presented to the bank, and the exception is the presence of obstacles to fulfillment that lead to the return of each person who fulfilled his right by accepting the check by endorsement on his debtor who endorsed it to him. Thus, the reasons for not honoring the check are:

1. Lack of capacity of the drawer or defect of his consent.
2. The urgent reason for the drawer if it occurred before the issuance of the check.
3. The pleas that can be invoked against the holder.
4. Reservation in return for fulfillment.
5. The opposition in fulfillment.⁵¹

As for compensation, Article (279) of the Commercial Code stipulates that "every bank that, in bad faith, refuses to honor a check for it in return for payment, and that has been properly drawn on its treasury, and has not submitted any objection to its payment, shall be responsible towards the drawer for the damage incurred by him due to non-payment. and the harm suffered by his financial consideration. The elements of compensation that the bank is obliged to pay include the damage caused to the drawer and the harm suffered by his credit or financial consideration. Damage means all direct consequences of the refusal.

Undoubtedly, the refusal to pay the check indicates the meaning that the drawer was unable or failed to pay his debt with a check that he drew to be a tool for immediate fulfillment, which in the future casts doubt on its honesty and ability, and hinders his dealings with those who came to their knowledge of the refusal. Rather, the English commercial custom went to consider the bank's refusal to pay the value of a valid check as defamation against the customer on the grounds that the phrase he writes on the check when he refuses (returns to the drawer, insufficient balance, presented again, and the like) is demeaning from The position of the drawer in the estimation of wise members of society in general.⁵²

It is noted that the compensation in such a case has been expanded to include the financial consideration of the drawer, despite the fact that the liability between him and the bank is a contractual liability in which compensation - as will be mentioned later - is limited to the actual material damage without moral damage and loss of profit.

At the conclusion of this requirement, it is necessary to refer to the legal nature of the relationship between the drawer and the withdrawn bank in all cases, whether the liability of one of them is established or not, it was resolved according to the Decision of the Bureau for the Interpretation of Laws No. (4) of (1990),⁵³ which has force The law is under Article (123/4) of the Jordanian Constitution, as stated in that decision, "And since the drawer is not obligated to state the reason for the opposition to the drawee bank, and the bank has no authority to verify the reason for the opposition. And since the bank's relationship with the drawer revolves between agency and trust, and the rule in them is that both the agent and trustee are bound by the instructions and orders of the principal and trustee".

What is based on this is that the drawer's objection to cashing the check is obligatory with the drawee bank, and the bank is not allowed to act in return for the fulfillment in its possession against the will of the drawer, unless it is notified of a judicial order to the contrary.

⁵¹ Awad, Ali Jamal Al-Din. (1989). Bank operations from the legal point of view, Ibid p. 141.

⁵² Published on page No. (502) of the Official Newspaper No. (3684) dated March 17, 1990.

⁵³ Decision of the Court of Cassation in its capacity as a public body Jurist No. (1091/20069, dated (23/4/2007)

Considering that the reference in settling disputes is the courts only and no other party has the right to interfere in that. Therefore, the bank may return the check and refrain from cashing it due to the drawer's objection, in other than the cases of loss of the check or the bankruptcy of its bearer.

However, the Court of Cassation did not adhere to this approach, as it ruled that "the drawer cannot oppose the drawee in payment except in the cases of the check forfeited and the bearer's bankruptcy, which is stipulated in Article 249/2 of the Commercial Code. This rule is one of the pillars of the check and was decided to enable it to perform its job and to confirm the right of the bearer, and that other than the two cases referred to - loss and bankruptcy of the bearer - it is not permissible to object to the payment even if the objector claims the invalidity of the original debt. But if the drawer objects, despite this ban, for other reasons, the court must order that the objection be filed, even in the event of an original lawsuit, so the cashing of the check value from the drawn bank to the bearer is in its place and in accordance with the provisions of the law.

Conclusion

The legal cover that covers legal set-off consists of several pieces of legislation: Jordanian Trade Law No. (12) of 1966, Temporary Electronic Transactions Law No. (58) of 2001, Central Bank Law No. (23) of 1971, and Banking Law No. (28) of 2000. This research reached a set of results, the most important of which are:

- 1- It requires the availability of three parties for the checks clearing process to take place, namely the presenting bank (the sender), the withdrawn bank (the payer), and the central bank.
- 2- Three legal relationships arise from the operation of the clearing system: the relationship of the presenting bank with the beneficiary (the customer), the relationship of the drawee bank to the drawer, and the relationship of the presenting bank with the drawee bank.
- 3- Clearing has achieved a number of benefits for banks and clients: On the banks side, clearing has led to increased savings by reducing the costs of transporting and storing checks and employees' salaries, which increases banks' revenues and revenues, as well as reducing the risks of fraud and forgery as a result of the system's work on developing check specifications by adding security features and marks,
- 4- on the clients side, the clearing has achieved a number of benefits, as they can collect checks issued to their orders on the same day if it was deposited before one o'clock in the afternoon, in addition to the ability to know the status of the check in terms of acceptance or rejection on the same day in a way that enables them to take the necessary measures to preserve their rights.
- 5- The checks clearing system provides quick and accurate statistical information on the checks submitted for clearing.
- 6- The clearing center derives its mandatory power and importance from the fact that it arises from the agreement of the banks operating in the Kingdom of their free will, and this nature of the agreement of the center is what enables it to perform the functions entrusted to it in accordance with the instructions and principles of clearing.

Recommendations

The researcher hopes that the Jordanian legislator, in light of recent developments, will activate the electronic clearing system in an expanded manner and include legal legislation specialized in this type of clearing.