

INTRODUCTION TO COMMERCIAL DISPUTES IN JORDANIAN COURTS

UNDER JORDANIAN COMMERCE ACT 12 OF 1966 AND ITS AMENDMENTS

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In Jordan, the Commerce Act 12 of 1966 and its amendments, applies to commercial activities or transactions, such as exporting, transport, agency, insurance, buying and selling for profit, general or activities carried out by merchants whether a person whose profession is commerce, or a company whose main objective is commercial.¹ However, any dispute arising from the above transactions which main objective is commercial could be considered a commercial dispute.²

In general, the Jordanian judge should apply the Jordanian Commerce law if any commercial dispute will arise regarding to the abovementioned commercial activities. Nevertheless, Jordanian Commerce law did not address all commercial disputes. It has a shortage in a provision for addressing a particular commercial dispute; as a result the judge will turn to the other sources of a commercial rule such as, Civil Law Act 43 of 1976 and the judicial practice.

The aim of this paper is to point out to the existing legislative situation of the role of jurisprudence in addressing commercial dispute in Jordanian courts under Jordanian Commerce Law by clarifying the nature of commercial dispute in Jordanian courts and the role of jurisprudence in addressing commercial dispute.

The Nature of Commercial Dispute in Jordanian Courts

The Jordanian Commerce Law regulates the legal commercial transactions³ falling under articles (6), (7) and (8).

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¹ Article 6 of Jordanian Commerce law No. 12 for the year 1966 and its amendments.

² Al-Khashroom, Abdullah: The Sources of a Commercial Rule under the Jordanian Commercial Law No. 12 for the Year 1966, *Muta Magazine for Researchs and Studies*, Volume XV (2000) No. 4, 3.

³ The Jordanian Commerce Law does not regulate all commercial activities, therefore, there are other commercial laws regulating different areas of business life in Jordan, see the following list:

Commercial and Industrial Chambers Law No. 41 of 1949.

Trademark Law No. 33 of 1952 and its amendments.

Patents Act No. 32 of 1999.



Article (6) of Jordanian Commerce Law states the activities (by virtue of their inherent nature) which should be considered as land business activities. Moreover, it should be mentioned here that the same article is considered as source of commercial activities⁴ by virtue of being similar to the characteristics and objectives of the abovementioned activities.⁵

Article (8) of Jordanian Commerce Law states the following: “all work carried out by the trader for commercial purposes is also considered as commercial activity by the virtue of the law. When the suspicion arises with regard to the activity of the merchant then it should be considered that activity as a commercial activity for this purpose, unless the contrary is proved.”

In other words, the commercial activities from commercial disputes may fall under these two categories.⁶ (1) Certain actions are considered to be commercial by definition, which means that the identity of the person(s) performing these actions do not matter

Trade Names Law No. 3 for the year 1953 and its amendments.

Banks Law No. 4 for the year 1971.

Maritime Trade Law No. 12 for the year 1972.

Auditing Profession Law No. (22) for the year 1985.

Agents and Brokers Trading law No. (44) for the year 1985 .

Companies Law No. (22) for the year 1997 .

Temporary Securities Law No. (23) for the year 1997 .

In addition to these laws, there is a set of regulations, instructions and decisions governing the various commercial issues, such as:

Ottoman Murabaha (profits) system for the year 1303 *Hijra*, which determines the amount of interest on civil and commercial debt.

Trademark Regulation No. 1 of its amendments.

Record brand names Resolution No. 1 for the year 1953.

Record Trade Regulation No. 13 of 1966.

⁴ It should be mentioned here that Jordan is a member of the World Trade Organization (WTO), Free Trade Agreement with the United States and is member of the Euro-Mediterranean Association Agreement. It is party to the Agadir Agreement of February 2004 with the EU. By signing of the mentioned agreement Egypt, Jordan, Morocco, and Tunisia may pool their value added inputs for preferential access to EU markets. For more information see: Hammouri, Tariq – Khleifat, Dima – Mahafzah, Qais: Arbitration and Mediation in the Southern Mediterranean Countries: Jordan. *Kluwer Law International*, Vol. 2 (2007) No. 1, 1.

⁵ Furthermore, Article (7) of Jordanian Law of Commerce states that the following acts should be considered as maritime commercial acts:

- all the constructions or purchase of vessels intended for internal or external navigation for the intention to invest commercially or sold and every sale of the purchased vessels in this manner.
- all marine missionaries and all the process related thereto such as buying or selling of ropes and sails and supplies.
- leasing vessels or transported commitment and maritime lending and other relevant maritime trade contracts such as entrepreneur, contracts which determines the wages of sailors and rent the sailors to work on the trading ships.

⁶ Hammouri-Khleifat-Mahafzah: *op. cit.* 74.

for the purposes of classifying the dispute as commercial or civil. A person or company, whose status does not qualify them to be traders (by the legal definition) may carry out a commercial transaction if the transaction was one of the commercial activities defined by the law, and such activity does not label the person performing it to be a trader. In this case the transaction itself falls under the provisions of the Commercial Law, and thus any dispute arising from or related to such transaction may be considered commercial. (2) All actions committed by a trader for commercial purposes are considered as commercial. According to the law, the definition of a trader includes people whose profession is trade and companies whose main objective is commercial.

However, the commercial disputes might be a payment default on delivery of goods or could be a dispute relating to the payment and/or finalization of commitments according to the contract. In general, a dispute settlement clause drafted in a commercial contract in order to state in which way the future dispute should be settled. This can be a national court through litigation according to the agreed applicable law or an arbitration panel upon the agreed arbitration rules.⁷

Regarding the courts, it will be discussed below in details but it should be mentioned here that the Jordanian Constitution divides the courts into four main types:⁸ i) civil, ii) religious, constitutional⁹ and special courts. None of Jordan's courts are specialized in settling commercial disputes but the civil judges will examine the commercial disputes. In other words, the 'Specialization of Courts principle' does not exist under the Jordanian judicial system. For example, according to the Commerce Law, the bankruptcy case is considered as a commercial dispute while the labor case is not

⁷ It should be mentioned here that in the absence of such dispute settlement clause the international private law will decide in which jurisdiction and at which forum a claim should be brought.

⁸ Jordanian Courts are divided into four kinds of courts:

- Civil courts: the civil, criminal and administration jurisdiction is exercised under the title of civil courts as a following:
 - the civil and criminal and Magistrates' court/the courts of First Instance,
 - the civil and criminal Court of Appeal, and
 - the civil and criminal Court of Cassation (Supreme Court).
- administrative courts.
- Religious courts, divided into Shari'a courts for Muslims and tribunals of other religious communities.
- Constitutional Court.
- Special courts: such as, military and state security courts. (For more information, see article 99 of the Jordanian Constitution for the year 1952 and its amendments.)

⁹ In 2011, some vital amendments made to the Constitution of the Hashemite Kingdom of Jordan. The main amendments aimed to establish a Constitutional Court to be located in Amman. The main role for the Constitutional Court shall be to monitor the constitutionality of laws and regulations. For more information, see Articles 58-61 of the Jordanian Constitution for the year 1952 and its amendments.

considered as a commercial dispute. Nevertheless, the same civil judge may examine the two cases.¹⁰

The Role of Jordanian Civil Law

In Jordan, any dispute arising from transactions (made by people whose profession is trade or companies whose main objective is commercial) could be considered a commercial dispute, provided that these transactions have been made for a commercial purpose.

Generally, the Jordanian civil judge should apply and interpret the Jordanian Commerce law if any commercial dispute arises. Nevertheless, Jordanian Commerce law did not address the whole commercial disputes. It has a shortage in a provision for addressing a particular commercial dispute; as a result the judge will turn to the other sources of a commercial rule.

Article (2) and (3) of the Jordanian Commerce Law clarified the following:

- If the commerce law has a shortage in a provision for addressing particular commercial disputes, then the judge will turn to the provisions of the Jordanian Civil Law No. 43 for the year 1976 and its amendments.
- If no legal applicable provision is to be found in the Civil law, the judge can then seek guidance in judicial precedents, jurisprudence, justice rules, and commercial custom, respectively.¹¹

However, this section will state the sources of a commercial rule to settle the commercial dispute under the Jordanian Commercial Act but it should be focused the role of jurisprudence in addressing commercial dispute.

Jordanian Civil Law Act 43 of 1976

Jordan enacted its' first civil law in 1976 under the name Provisional Jordanian Civil Code 43 of 1976 (in effect since 1 January 1977). The Jordanian Civil law are divided into an introductory chapter and four books with 1449 Articles, as follows:

1. The introductory chapter (Articles 1-86) contains general provisions regulating the application of the law, its' sources, and certain provision related to legal personality and most importantly provisions related to Private International Law.
2. The first book of the Jordanian Civil law (Articles 87-464) deals with contract,

¹⁰ Hammouri-Khleifat-Mahafzah: *op. cit.* 76.

¹¹ In other words, the sources of the commercial rule are divided into the following:

- Basic principal sources: which are considered as commercial legislations: Jordanian Commerce Law.
- Basic alternative sources: which are represented with the Jordanian Civil Act of 1976 and its amendments.
- The guiding sources: include judicial precedents, jurisprudence, rules of equity and commercial customs, respectively.

unilateral disposition, tort, beneficial acts, law as well as rules organizing obligations' effects.

3. The second book of the Jordanian Civil law (Articles 465-1017) contains rules regulating numerous contracts, such as sale, lease, labour, insurance, surety.
4. The third book of the Jordanian Civil law (Articles 1018-1321) includes property rules and other rules related to many rights.
5. The fourth book (Articles 1322-1447) deals with securities, such as mortgage and privileges.

Commercial Custom

In general, the traders refer to the national legal systems in the dispute. They believe that custom cannot regulate questions to which a commercial transaction may appear and they welcome the backing of the national law when the law fails to give clear and satisfying answering.¹²

However, commercial custom defines as business rules which shall be followed by the traders for a long time in doing business for their commercial transactions. Commercial custom is very important in the business life, due to the lack of legislative texts and their inability to prosecute the rapid business life. For instance, marine sales and letters of credit are still governed by customary rules. Commercial custom is more flexible than legislation, due to the fact that it is considered to be a method to settle the commercial disputes.¹³ The requirements of commercial custom will be guidance for the judge to issue a decision regarding for the commercial dispute.

Conclusion

The Jordanian Commerce Act 12 of 1966 and its amendments shall be applied to all commercial activities or transactions carried out by merchants whether a person whose profession is commerce, or a company whose main objective is commercial.¹⁴ However, any dispute arising from the above transactions could be considered a commercial dispute.¹⁵

Nevertheless, as it put before, Jordanian commerce law did not address the whole scope of commercial disputes. It has a shortage in a provision for addressing a particular commercial dispute; as a result the judge will turn to the other sources of a commercial rule such as, Civil Law Act 43 of 1976.

¹² Sarcevic, Petar – Volken, Paul: *The International Sale of Goods Revisited*. Kluwer Law International, Boston. 2001. 248.

¹³ Kamal Taha, Mustafa: *The Principles of Commercial Law*. University of Cultural Foundation, 1979. 26.

¹⁴ Article 6 of Jordanian Commerce Act.

¹⁵ Al-Khashroom: *op. cit.* 3.