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The Reality of Electronic Payment in Achieving Clearing by Means of Electronic Cheques- Jordanian Legislation

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Abstract

In contracts, a payment is a law-imposed obligation. The expansion of e-commerce resulting from technological development has created electronic payment. Similarly, the electronic payment mechanism needs to be cleared through legal regulation via a service provider, including electronic clearing as a form of banking compliance. This descriptive study examined the stance of the Jordanian legislator in electronic payment regulation through electronic Cheque clearing. Applicable laws including the British law were elaborated and compared, to facilitate the Jordanian legislation in the development of electronic payment systems via electronic clearing of Cheque. The study found insufficiency of the Electronic Transactions Law 2015 (ETL) in regulating electronic payment. This study recommended adding some legal provisions on the electronic payment methods and definitions of civil liability in the Jordanian Electronic Transactions Law. Also, the Jordanian Trade law 1966 needs to be amended to accommodate the data on the electronic Cheque as an electronic payment mode via electronic clearing.

Keywords: Electronic Payment, Jordanian Electronic Transactions, Service Provider, Electronic Clearing, Electronic Cheque

1. Introduction

The emergence of electronic commerce (e-commerce) in the business domain globally has led to the birth of electronic payments as replacement for the traditional paper payments such as cheques or cash. With the advancement of the internet, payment can be made using credit cards, digital cash or online banking - all of these modes of payment are convenient and hence are popular among customers globally. Indeed, electronic payments, even though risky to a certain degree, are being used extensively among merchants. Such mode of payments facilitates in meeting the needs of consumer while also promoting economic prosperity.

Despite their efficiency, the instruments of electronic payment have been known to fail and are highly exposed to fraudulent activities. In fact, fraudulent cases associated with electronic payments have cost billions in damages to the entire economy because owing to these frauds, participants have to incur more cost of payments for their transactions, draining their private banking accounts (Mazitova, Maria. 2015).

Worldwide, bank cards are one major form of electronic payment, and majority of banks offer bank cards to their customers. Through bank card, customers could make purchases of goods and services. They can also use their bank card to withdraw cash from ATMs that operate at all hours. In addition, having a bank card saves customers from having to carry cash with them, which can be risky. The card also allows them to make online transactions without having to travel (Khater, Mohammad. 2024).

Banks provide customers with various banking services, such as cheques. Cheques come in various forms such as the electronic Cheques. Banks would purchase electronic Cheques for customers or banks would sell Cheques for banks or international financial institutions and receive commission of certain amount (Khwaileh, Alsharu, 2023).

Relevant to the International Commercial Law, Article 6 of the Model Law on Electronic Commerce issued by the United Nations Commission on electronic Cheque, states: "When the law requires that the information must be in writing, the data message complies with that requirement if the data contained therein can be accessed in such a way that it can be used for subsequent reference." In other words, UNCITRAL Act recognizes the electronic Cheque as a reliable and legally accepted electronically authenticated data message. Consequently, the concept of electronic clearing, which is a method of settling payment through electronic means, has been introduced. Within the domain of banking, electronic clearing is regarded as a qualitative leap because it optimally employs the information technology. Electronic clearing also eases the money transfer process between banks. In fact, electronic money transfer and electronic payment both require electronic clearing (Hind Faleh Mahmoud, and Eng. 2018).

Electronic payment cards have demonstrated their effectiveness aside from offering security and ease of use. These cards are commonly used among dealers in their local and global trade, and using these cards, dealers do not have to carry with them large amounts of cash. The use of electronic payment cards is also common within the commercial setting, and in fact, among banks and financial institutions, electronic payments are among their key activities (Rachavelias, Michail G., 2019). In the developing countries, the internet is expanding. Such development has allowed online entrepreneurs to increase their digital contributions. Similarly, online consumers in Jordan are currently involved in e-commerce transactions to a certain degree, involving various platforms including the platform of social media. Still, in Jordan, the implementation of e-commerce is still very rudimentary.

Jordan sees potential success in e-commerce providing that Jordan adequately understand the needs and objectives of the consumers (Alyoubi, Adel A, 2015). Notably, in developing countries, e-commerce is still not optimally implemented despite the various opportunities it offers (Al-Husban, Mohammed, Amal Al-Husban, and Husam Yaseen, 2018). Accordingly, the factors that have impact on the adoption of e-commerce have been explored in previous studies and among the reported factors include (among others) the lack of trust, the lack of government role, the lack of legal framework, and the lack of payment systems (Al-Husban, Mohammed, Amal Al-Husban, and Husam Yaseen, 2018).

1.1. Problem of Study

In Jordan, electronic cheques are not regulated. Additionally, Section 18 of the Electronic Transactions Law 2015 requires that the negotiable electronic record be attached with just a notarized electronic signature. This study is of the view that the Jordanian electronic payment and transfer system 2017 infringes the provisions of the Jordanian Transactions Law for requiring that the electronic record, including the electronic check, be negotiable if the record is supplemented by a protected or documented signature.

Additionally, this study attempted to elaborate on the legal nature of electronic payment systems, ascertain the civil liability of the electronic payment parties, the implications of such relationship, in addition to means of proof.

1.2. Research Objectives

This research had four main objectives to be accomplished as follows:

1. To comprehend the legality of the concept of payment in the Jordanian legislation.
2. To demonstrate the conditions that authentication bodies must meet in electronic payment.
3. To understand the stance of the Jordanian legislator on electronic Cheques and electronic clearing.
4. To reveal the potential legal problems in the application of payment and liability of certification bodies for damages.

1.3. Research Significance

Jordanian banking system needs to be reformed to keep abreast with the modern era but the process is not without challenges associated with the global development of e-commerce particularly when dealing with matters like electronic banking, electronic checks, electronic payment, and clearing (just to name a few). Within the context of Jordanian legal system, the prospect of using and approving electronic payment and clearing needs to be carefully scrutinized in all aspects associated with the actuality of different sectors existing in Jordan. Accordingly, the Jordanian legislator needs to come up with special regulation to address the matters of electronic payment and clearing owing to their importance in today's affairs.

1.4. Materials and Methods

Relevant provisions in the Jordanian Civil law 1976, Electronic Transactions Law 2015, Electronic Payment & Transfer System 2017, and Trade law 1966 were scrutinized and analysed in this study through descriptive analytical approach, and the findings were compared with relevant UK laws.

2. Electronic transactions

Jordan had realized that the internet customers need protection from the internet related threats of frauds and mistakes, and so, following the expansion of the internet usage, Jordan was the first Middle Eastern country that introduced laws on ICT related transactions. The said law was called Electronic Transaction Law (ETL) to regulate electronic transactions (Al-Ibraheem, Marwan, and Hisham Tahat, 2006). First drafted in 2001/no.85 before being amended in 2015/no.15, ETL which is a model online transaction law, was based on the United Nations Commission on International Trade Law (UNCITRAL) 1996. The main purpose of ETL was to acknowledge the transactions that occur electronically with legal value that is similar to that of the traditional environment.

ETL covers a vast domain of internet transactions namely: general sale of goods and services through the internet, transactions of computer information, and other inter-party transactions that are executed online. It also covers all business-related transactions and all government or official institution approved transactions. As stipulated by ETL, both parties must be in agreement that they are going to perform their transactions online (Alyoubi, A.A., 2015). Also, it should be noted that ETL did not nullify other existing laws, rather, the shortcomings of ETL are covered by the traditional contracting laws. Notably, Article 102 of Jordanian Civil law states that transactions or contracts can be executed by phone, fax, and other electronic means (e.g., the Internet) (Al-Husban, Mohammed, Amal Al-Husban, and Husam Yaseen, 2018).

The issue surrounding ETL is that, unlike the existing law, it does not really provide better protection, and neither does it provide a legal basis to address legal issues; it does not protect consumers in internet-based transactions like those in any other offline transactions (Shamraev, Andrey, 2019). Comparatively, the existing model law has provisions to include any new evolving technology, like the technology of the internet and the internet-related businesses, within its jurisdiction. In other words, through some adjustments to the articles in the law, the new technology (e.g., the internet and the internet-related businesses) could be accommodated under the existing law.

Another point worth noting is that ETL is mainly focusing on the legality of electronic businesses legislation. As a comparison, the UK e-commerce law 2002, the French e-commerce law and the European e-commerce directive law were focusing on the customers. Nonetheless, for any country, the e-commerce law will ease and intensify the development of e-commerce implementation and adoption. Hence, a model online transaction law has been introduced by the UNCITRAL law. Considering that e-commerce is international and borderless, this model online transaction law can be referred to by all countries to prevent conflict of laws (Al-Husban, Mohammed, Amal Al-Husban, and Husam Yaseen, 2018).

Agreement of laws concerning e-commerce governance is important in order to achieve harmony. In Jordan, ETL is the law that recognizes e-commerce but this law has some shortcomings, for instance, it does not adequately clarify the relationship between the contracting parties (Khater, Mohammad Nasr, 2024). Subsequently, the general rules in civil law will be referred. Jordanian laws on internet businesses were adopted from established laws of other countries like the USA and UK. In the USA and UK, consumers are amply protected via regulations that oversee the establishment of online stores and the operation of internet service providers. Online transactions distinctly differ from other transactions, (Al-Husban, Mohammed, Amal Al-Husban, and Husam Yaseen, 2018), and perusing the models from other established countries allows Jordan to come up with adequate and appropriate laws to cater to its unique situation with fairly less efforts.

3. Electronic payment

Many countries have accordingly developed special laws to regulate electronic payment. Some of these laws are as described below:

3.1 European Directive

In Europe, electronic payment regulation started after the implementation of the Single Euro Payments Area (SEPA). Here, electronic payment market for consumers and businesses in the entire euro region is to have efficiency and security just like in their home countries. (Mentioned Member States constitute the Single Euro Payments Area (SEPA) which was created by the EU for the simplification of bank transfers and for making all electronic payments in the euro area as easy as cash payments and under the same basic conditions, rights and obligations, regardless of their location).

Following SEPA, the Eurozone payments infrastructure was consolidated and modernized while the cross-border payment products were established. (Mercado-Kierkegaard, Sylvia, 2007). However, e-commerce expansion within the SEPA has been impeded by the diverse national legislations (Janczuk, Agnieszka, 2009).

Consequently, a non-binding recommendation has been issued by the Commission to harmonize these diverse national rules (European Commission, Recommendation 97/489/EC of 30 July 1997 concerning transactions carried out by electronic payment instrument and in particular the relationship between issuer and holder, OJ.L. 208, 02.08.1997, 52).

This recommendation is applicable to all transactions that employ instruments that enable remote access to the account of holder. Among these instruments include transfers of funds and cash withdrawals – these instruments are effected by electronic payment instrument and the loading and unloading of an electronic money instrument. The non-binding recommendation requires only minimum information requirements and obligations of the issuer and holder while also protecting the customers' payment cards (Mazitova, Maria, 2015).

However, the switch to the Recommendations provisions into national legislation was far from sufficient, and (European Commission, "Communication from the Commission to the Council and the European Parliament concerning a New Legal Framework for Payments in the Internal Market", 9), actually, Belgium was the only country that had formally transposed the provisions of the Recommendations into its national law. Furthermore, other legal provisions from some European directives on the implementation of the business of credit institutions

seemed to be fragmented and/or overlapping and in certain cases, clashing with the regulation of electronic payments (Mercado-Kierkegaard, Sylvia, 2007).

In 2007, the Commission proposed the European Directive on payment services (PSD), with the main aim to increase consumer confidence and promote trade (European Commission, Directive 2007/64/EC of the European Parliament and the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, OJ.L. 319).

Unlike the Recommendation, PSD was to be incorporated by all Member States, and this has resulted in a dramatic change to the situation. In particular, under PSD, holders of electronic payment instruments are provided with more protection and more legal clarity as the rules are standardized. Also, through the Directive, a balance between consumer protection and payments market liberalization can be achieved. Following the issuance of the directive, the payment transactions value in the EU had increased to €240.24 trillion in 2012 from €594.5 billion in 2010 (Mazitova, Maria, 2015). Clearly, the Directive had a positive impact. Still, constant development of technology and business models means that the acting rules need to be regularly revised. Hence, the EU Commission had begun to revise the current legislation starting July 2013 in order that more secure and convenient electronic payments in Europe could be assured, while facilitating a new generation of payment companies.

3.2 UK Legislation

In the UK, the provisions of the Second EU E-Money Directive have been implemented by the Electronic Money Regulations 2011 mainly to encourage more firms to establish electronic money schemes while also assuring the customers more protections. Under this directive, organizations must receive approval by the Financial Services Authority (FSA) or must register with FSA as a “small e-money issuer.” However, bank, building society, and certain organizations were exempted from the jurisdiction of the Directive.

In order to boost new market competitors, the new revised law allows issuers of e-money to engage in other activities as well (not just issuing e-money), and this new revised law requires that the fully authorized e-money issuer to possess initial and ongoing capital of greater than €350,000, or, an amount computed based on one of four methods which consider a number of factors like payment volume and whether the firm is involved in other activities aside from issuing e-money. The amount of initial and ongoing capital that an authorized e-money issuer needs to maintain is €1 million, thus far (Fung, B., M. Molico, and G. Stuber, 2014).

For issuers of e-money, partaking in other business activities will make them subject to more prudential requirements. For small e-money issuers, they are required to keep the initial and ongoing capital at 2% (at minimum) of the average outstanding e-money of the firm, but with a condition that their business activities would generate an outstanding e-money of €500,000 or more, on average. It is necessary to safely keep the cash invested in funds in secure, liquid low-risk assets safeguarded by a custodian, or, the cash should be kept in a different account, or, the firm may obtain an insurance policy or bank guarantee as protection to the funds. Furthermore, should the e-money issuer become insolvent; the customers now rank above other creditors in terms of access – this is an additional measure of safeguard (Fung, B., M. Molico, and G. Stuber, 2014).

The new regulations also require issuers of e-money to issue the e-money to customers on receipt of funds at face value and right away. In addition, e-money issuers are to refund any outstanding balance at face value, upon request of customer, at any time.

The terms and conditions of the e-money issuer must also specifically include the refund conditions such as redemption fees (should they be applicable), and prior to entering into the contract, it is important that the customer is sufficiently informed. It is equally necessary for firms to determine how the dormant funds will be dealt with – dormant funds are unredeemed e-money – but, a new six-year limitation period has been introduced, and so, the e-money issuer does not need to refund the customer after six years has passed following the contract termination date (Fung, B., M. Molico, and G. Stuber, 2014).

Notably, the legal e-money framework is theoretically ambiguous in terms of applicability. Nonetheless, employing the UK Financial Services Authority (FSA), Google became an Authorized Electronic Money Institution – Google Payments Limited - in accordance with the national implementation of the E-money Directive (Fung, B., M. Molico, and G. Stuber, 2014). The e-money services by Google (through Google Payments Limited) can potentially be offered in other EU Member States (Vandezande, Niels, 2013).

Based on this overview, it can be observed that evaluating with absolute certainty on whether any of the mobile wallet schemes that offer some type of virtual currency can be regarded as e-money based on the provisions of the E-money Directive in all cases. In fact, there are arguments supporting and opposing the use of this legal framework. Furthermore, absolute certainty exists only in rare cases in which the service provider has resolved the issue by becoming a registered e-money institution as can be exemplified by the establishment of Google Payments Limited (Vandezande, Niels, 2013)

3.3 Jordanian legislation

Jordan issued the electronic funds transfer payment system in 2017 as an effort to keep abreast with the modern electronic developments, bound by Articles 21 and 22 of the Jordanian Electronic Transactions Law. The Jordanian electronic funds transfer payment system introduced in 2017 was the first system addressing the system of electronic payment at both local and international levels. The definition of electronic payment and transfer system is provided in Article 2 as follows: a set of Central Bank-approved programs or tools created to electronically pay, transfer, clear or settle funds. Based on this definition, it can be understood that the Jordanian electronic payment and transfer system comprises programs and tools (e.g., electronic cards), and tangible tools are not required, just an electronic device, in the execution of electronic payment and transfer.

However, it should be noted that there is no definition of the electronic payment cards. In addition, these electronic payment cards are developing at a rapid rate that legislator could not keep up with the development. Concerning this matter, there are those advocating legislator intervention to the regulation of its provisions, but there are also those who think otherwise (Abu Issa, H, 2019). These cards have been defined by jurists utilizing various criteria like material of manufacture, thickness, function, and length. The electronic payment cards are issued by various issuers and the cards would differ in terms of types, credit limits, and function. (Khater, Mohammad Nasr, 2024). Some of the common types of cards are as elaborated below:

➤ **Credit Card**

Credit cards have been majorly used as e-payment or fulfillment cards. Holder of credit card has a special contract with the card issuer, and the card becomes a tool for credit and fulfillment. Hence, holder of card could get goods and services without having to pay immediately for them. Also, holder of credit card does not need to have a balance in his account with the issuing bank, but the due amounts are debited from the account (Al-Anazi, M. 2015).

➤ **ATM Card (Automated Teller Machine Card)**

An ATM card is a card that allows card holder to withdraw cash from his account, and the amount withdrawn is subject to certain set limit per day. In other words, ATM withdrawals are capped. The amount cash withdrawn is directly recorded as a debit to the card holder account. ATM cards do not perform a credit function, which means that card holder can only withdraw cash from his balance (Khater, Mohammad Nasr, 2024).

➤ **Debit Card**

A debit card is a card that card holder uses in paying for the goods and services purchased from shops that accept debit cards as a payment instrument. In the process, the card issuer agrees to transfer the price from the account of card holder to the account of the merchant. In other words, a debit card is used to buy goods and services with the card holder's money (Alhiti, M. 2009). A debit card is used as a replacement for Cheque in goods and services payment at the premises of the merchant (Kalou, H. 2015). Most debit cards today also have the function of ATM withdrawals and fulfillment, and so, card

holder could withdraw cash from the bank's outlets, whether internal or external, and the amount used will be subtracted immediately from the card holder's account.

There are many types of cards that carry out functions similar to the previously mentioned types in varied ways. However, with recent developments, the functions and advantages of these cards have changed while the old functions remain, as can be exemplified by online shopping cards or smart cards (Khater, Mohammad Nasr, 2024).

Crimes do occur involving information and data of electronic payment cards. Concerning the crimes committed on information and data of electronic payment cards, the Jordanian Electronic Crimes Law No. 17 of 2023 in Article (8) states that the perpetrator is punishable by imprisonment for a duration of at least one year and at most three years and a fine of at least Two thousand five hundred (2500) dinars and at most ten thousand (10,000) dinars for each of the following crimes:

1. The perpetrator purposely attained data or information on electronic payment methods or in the execution of financial or electronic banking transactions via the computer network, information technology, or information system, or utilized or broadcasted any of the data.
2. The perpetrator invented, produced, developed, or designed any information technology methods, information program, or programing command to ease the attainment of data as mentioned above.

One thus needs to understand the illegality aspect before getting involved in bogus, imitated, or copied cards or other electronic payment methods, or illegally held data on electronic payment methods.

Notably, if the use of the data and information for the purpose of getting others' money or for gaining the benefit from the services does not lead to a result, the perpetrator shall still be punished by imprisonment of at least two years and at most three years, and a fine of at least five thousand (5,000) dinars and at most fifteen thousand (15,000) dinars. On the other hand, if the actions described in paragraphs (a) and (b) lead to results (the perpetrator gains the sought-after properties or benefits from certain providers), then, the punishment shall be a three-year imprisonment in addition to a fine of at least ten thousand (10,000) dinars and at most twenty thousand (20,000) dinars.

Clearly, Jordanian legislator have been making efforts to protect electronic payment cards and the cybercrime law in Jordan which is in line with the international standards, however, there were no provisions on the subject of card forgery (Khater, Mohammad Nasr, 2024).

4. Electronic Cheque and clearing

This section discusses the position of the Jordanian legislator on the electronic checks regulation and the mechanisms of check clearing, focusing on the provisions of clearing particularly on electronic clearing.

4.1 Regulating electronic Cheque in Jordan

Article 6 on electronic Cheque in the Model Law on Electronic Commerce issued by the United Nations Commission on the International Commercial Law states that: "When the law requires that the information must be in writing, the data message complies with that requirement if the data contained therein can be accessed in such a way that it can be used for subsequent reference." Clearly, the article mentions that the UNCITRAL Act states that the electronic Cheque is considered as a reliable and lawfully accepted electronically authenticated data message (Model Law on Electronic Signatures of the United Nations Commission on International Trade Law UNCITRAL 2001).

Furthermore, the Model Law on Electronic Commerce in its Article 7 paragraph (1) states the following: “When the law requires a person signature, that requirement shall be met in respect of the data message if: (A) A method was used to identify that person and demonstrate that person’s consent to the information contained in the data message. (B) That method was to be relied upon to the extent appropriate for the purpose for which it was created or for which the data message was notified in the light of all circumstances, including any related agreement” (Tubaishat, Bassam Mostafa,2019).

As such, as proof of signatory identity and commitment to what was signed, a signature is included in electronic cheque. A signed electronic cheque is a cheque with legal proof. Accordingly, the Model Law on Electronic Commerce Article 10 specifically requires the inclusion of the information on evidence argument in data message form, and this data message needs be evaluated in terms of the method used in the creation, storage and communication of the data, to assure information integrity and to determine the identity of the data source, for any relevant factor (Khwaileh& Alsharu, 2023).

Within the context of Jordan, the electronic Cheque is not regulated in terms of its special texts. In fact, this matter is left to the trade law’s general rules that are rather inadequate (unlike in some other countries). The Electronic Transactions Law 2015 in section 18 requires that the negotiable electronic record be supplemented with just an authenticated electronic signature. Hence, this study finds that the Jordanian electronic payment and transfer system 2017 encroaches upon the Electronic Transactions Law and consequently the provisions of the Jordanian Transactions Law, by requiring the inclusion of a protected or documented signature to the electronic record such as the electronic Cheque in the electronic payment and transfer system.

For the reason above, Jordan needs to have uniformed laws to achieve harmony in the rules that govern e-commerce. The Electronic Transactions Law in Jordan is the law that recognizes e-commerce, but this law is far from perfect. For instance, the law does not have specific provisions to govern the relationship between contracting parties in electronic medium. Eventually, the general rules in civil law will be referred to in governing the contract.

The Jordanian Trade Act provides a definition of the term Cheque (see item 123/c) as the Cheque written based on the law provisions with the inclusion of the order of the party as the drawer to another party (e.g., a bank) to compensate a third party as the Cheque holder (a beneficiary) certain amount of money upon the presentation of the Cheque (This law published on the page (472), Official Gazette No. (1910), issued on 30/3/1966 Act has addressed the provisions in articles (228-281). Meanwhile, in the context of Algeria, in its trade law, the definition on the term Cheque and the determination of its required statements are provided in Article 472 (This law was passed by Ordinance No. 75-59 of 20 Ramadan 1395 26 March 1975 containing the prepared and Complementary trade law).

In Egypt, the definition of Cheque is not available in the Egyptian Trade Law 1999 and the subject is under the jurisprudence and judicial rulings. On the other hand, the French law 1865 offered a definition of the term Cheque as a written document in agency form to allow drawer to draw for himself or benefit others with certain amount of the available money subject to his command, at the drawn from – this definition was the first definition of Cheque (Al-Masa’deh, Ahmed Mahmoud, 2014).

The Shariah law also offers a definition of Cheque as follows: a document written following some legally defined formal constraints, including an order from the cheque issuer (i.e., the drawer or assigner) to the respondent (i.e., the bank) to pay money of certain amount to the beneficiary (Ahmad Abu Al-Rous, 2002). Notably, in the Islamic jurisprudence, a Cheque, in terms of its elements and function is not differentiated. Within the Islamic jurisprudence, a Cheque is essentially the transfer of the right (Saleh Al-Ali, Abdul-Razzaq, 2017).

For the case of Jordan, Article 143 of the Jordanian Commercial Law No. (12) 1966 states that an endorsement on the back of the Cheque is not required, and therefore, endorsee’s name is not written. However, as the signature is placed on the right part of the Cheque (on the recto), the endorsement on the back of the Cheque is

probably for reference purposes. As such, in Jordan, there is no holder endorsement in the electronic Cheque – or the space is left blank – since the name of the beneficiary has to be mentioned and signed as the necessitated data. In other words, electronic Cheques in Jordan do not need a back part (Samer Sulaiman, 2013).

The legal nature of traveller's Cheque is still vague, especially on whether it can be considered as a Cheque as provided by commercial legislation (Khwaileh & Alsharu, 2023). The French Court of Cassation had made a ruling in 1955 stating the impossibility of legally classing a traveller's Cheque as a cheque notwithstanding its physical appearance. Furthermore, a traveller's Cheque does not include performance activity, but only the activity to fulfil by the issuing bank. It was affirmed as impossible, because traveller's Cheques are Cheques as in a judgment dated January 20, 1960 (Fawzi Sami, 2009).

The majority of Arab countries including Jordan have no special law to regulate traveller's Cheques especially the electronic traveller's cheques, because there has been no agreement on what constitutes a traveller's Cheque. Traveller's Cheques and credit or ATM cards are comparable with regards to commercial contractual relationship that involves the drawer, the bank and the beneficiary. The Jordanian Trade Law 1966 in Article 228 (para 3) requires the name of the drawee to be included in the Cheque. Similarly, on credit or debit cards, the name of the drawee is provided to allow the card holder to go to the ATM or bank or and withdraw an amount of money – this is also the case with traveller's Cheques (Khwaileh & Alsharu, 2023).

In the USA and UK, the available regulations provide sufficient protection to the consumers in their use of electronic payment and electronic Cheques in addition to providing regulations on the operations of service providers. Jordan could indeed adopt the laws from these established countries. These models, could facilitate Jordan in forming sufficient and applicable laws with minimal efforts in research.

Online transactions are distinct from other transactions in a number of ways. In online transactions, each involved party is in different location, while in other types of transactions, all the involved parties are in one place. Clearly, online transactions lack physical presence, and this means that regulation is necessary to protect the involved parties in their use of electronic payment and electronic Cheques. Another difference of online transactions is that they are riskier for the buyer. For instance, buyer in traditional transactions would be at the store physically to inspect the product prior to buying (unlike the online transaction). Hence, legislation to protect the buyer should be in place, to prevent the seller from taking advantage from the contract to cheat on the buyer, or vice-versa. In the context of Jordan, having a legislation that adequately protects both businesses and customers will encourage e-commerce (Al-Husban, Mohammed, Amal Al-Husban, and Husam Yaseen, 2018).

Legislation comprises various elements of law and each of these elements has certain objective to achieve. It is important to note that e-commerce law on its own could not achieve the said objective, but rather, certain set of laws need be sanctioned to be complete. For Jordanian legislator, issuing an electronic protection law without the law of electronic commerce or electronic exchanges and contracts is not advisable. The Tunisian law in the traditional environment is a good example; it allows customer to trust the traditional market and have confidence to switch to the electronic market.

Meanwhile, e-Bay has been adopting a Self-Regulation model as a measure to assure consumer protection and has been successful. This model should also be adopted by online businesses to increase consumer protection. Based on the model, consumers are protected through refund policies and varied payment options, and the use of Self-Regulation model will counter the limitations of ETL (Al-Husban, Mohammed, Amal Al-Husban, and Husam Yaseen, 2018).

4.2 Electronic clearing

The electronic clearing is an electronic mode of funds transfer from one bank account to another bank account, and institutions have been employing electronic clearing to make payments like dividend distribution. The electronic clearing system (ESC) or electronic fund transfer or wire transfer is an electronic banking feature. It allows funds transfer from one account to another through electronic devices (e.g., scanners and computers) - in

other words, there is no physical transfer of cash. Funds transfer occurs at national and international levels with the objective of freeing the customers from the stress and hassle of traditional payment method (Stewart, Jenny, and Russell Ayres, 2001).

The business environment today has high complexity and competitiveness owing to technological advancements and such development has affected all sectors including the banking sector. In order to effectively serve the clients in today's environment, the banking sector has adopted some new mechanisms in their operations. In this regard, clearing is the process of purchases and sales reconciliation involving varied options, futures or securities, in addition to direct funds transfer from one financial institution to another financial institution. Clearing authenticates the readiness of the funds, documents the transfer, and assures delivery to buyer (for security case) (Mohammed, Zayyanu, Umar Abbas Ibrahim, and Taiwo Adewale Muritala, 2022).

Before bank computerization, financial transactions and debt resolution were difficult tasks because the process of each had to be manually performed. The daily transactions of bank involve many cheques drawn on them and payments orders made by customers, and handling all these manually can very taxing, costly, and time consuming. However, with computerized banking system, the inter-bank clearing system, mostly through tele-clearing, needed computerization as well to decrease operational cost. Tele-clearing is essentially a value exchange mechanism between banks (involving cheques) to resolve reciprocal debt bond from transactions by customers. Electronic clearing clears cheques using electronic devices (e.g., computers and scanners) and the internet between banks (Bambot, Clinton, 2018).

In the USA, cheques and other interbank debt are cleared using the automated Clearing House (ACH) at the federal reserve bank of America. ACH is responsible for handling and settling the interbank financial discrepancies for regional banks and correspondent banks. Banks in the USA that participate in automated clearing system would have a financial transaction server. For regional banks, their financial transaction server performs settlement and transaction that forward for the correspondent banks that they (the regional banks) service. The correspondent bank's financial transaction server sends and receives electronic financial transactions to and from the financial transaction server for its regional bank. The regional bank's financial transaction server includes a first interface to accept electronic financial transactions from clients, a second interface to transmit electronic financial transactions to and from other regional banks' electronic financial transaction servers, in addition to a third interface transfers electronic financial transactions to the regional bank's electronic financial transaction server (Bambot, Clinton, 2018).

Provisions of clearing are provided in Jordanian Civil Law No. 43 of 1976 specifically in Article 343 and according to the article, set-off is the repayment of a debt required from its creditor with a debt required from it to its debtor. Clearly, Jordanian legislator did not properly define set-off because set-off does not lead to fulfillment in the strict sense. Still, set-off is applied to implement obligation without fulfilling it itself. This allows the creditor to recover his debt with a corresponding debt owed to the debtor.

In 2006, the Central Bank of Jordan issued the instructions for electronic clearing. Specifically, Section 2 of the Electronic Clearing instruction describes electronic clearing as an instrument exchange via the clearing center, ascertaining the net balances created by the clearing process between members, and obtaining the resulting reports. Section 2 illustrates the execution of the process of electronic clearing. However, it does not provide differentiation between electronic clearing and traditional clearing, that is, how the clearing is performed (i.e., exchanging information for instruments) because it is electronically performed. Still, the section provides a new definition of the term electronic: the technique of employing electrical, magnetic, optical, electromagnetic, or any similar means for information exchange and storage. Based on the article, electronic clearing must be executed electronically, and the article also addresses the problem with the previously used definition (Al-Rubai, Ibraheem Ismael, and Kassam Hassan Shany, 2018).

5. Limitation of liability

Provider of the electronic payment service provides the customer or merchant with the electronic payment service and completes the work stipulated in exchange for certain amount of money or wage. In this regard, the duty of the service provider (in electronic payment) follows the contractual duty between the two parties stipulated by the contract between the supplier and the merchant or customer. Meanwhile, the liability for the electronic payment service provider's injurious act results from the service provider's negligence which damages another party outside of the contractual relationship (Al-Zoubi, Ali Moh'D. Farhan, 2022).

Provider of electronic payment service is responsible for the implementation of contract they have with the customer, and if the provider fails in providing the service or delays in providing the service, then, civil liability occurs. With the occurrence of civil liability on the provider's side, customer can demand compensation for damages from the provider. Article 2 in the Jordanian electronic transfer states the obligation of the electronic payment service provider to perform the electronic payment order as ordered by the customer, or be liable to the damages caused to the customer, e.g., return the value of the amounts to the customer, the subject of the payment order and the associated deductions.

Notably, the Jordanian legislator did not specify if provider of electronic payment service should inform the customer should there be any additional taxes upon payment. However, it is important to inform the customer should there be fees or deduction (e.g., taxes or commission). Additionally, Article 167 of the Jordanian Civil Code states that the contract to provide electronic payment is considered unnecessary, and so, each party is free to terminate the contract without seeking consent in accordance with the rule that legal permissibility is not in agreement with the guarantee (Falah, Nusrat, 2021).

With respect to the harm caused by the act of the provider of the electronic payment service to party not in the contractual relationship with the service provider (the third party), the Jordanian Civil Law Article 256 states that each harm inflicted on others obligate the perpetrator, even if he is not eminent.

It should be noted that the Jordanian legislator provides no clarification on the age of the customer in getting involved in the electronic payment and electronic transfer system. Still, a minor cannot make payment, and the service provider faces tort liability for opening an account for a minor who applied for the account through the Internet, irrespective of whether or not the service provider is aware that the person applying to open the account is a minor. Also, the contract involving a minor is considered invalid, and the representative of the minor can seek compensation from the service provider for the damage caused to the minor.

The Jordanian law provides no special tort rules for unfair competition, but general provisions are provided by the Civil Code for all forms of illegal conduct damaging another person or another person's property. Hence, these provisions are applicable for the damages resulting from an unfair competition. Furthermore, evading unfair competition legislation through the application of flexible mechanism of injurious acts and tort law is justifiable. The general rules and principles of tort law and injurious acts are provided in chapter 3 of the Jordanian Civil Code under the Jordanian legal system. According to the Jordanian legislature, all injurious acts shall render the actor liable for damages even if the actor is a non-discerning individual (Haloush, Haitham A, 2009). In this situation, the compensation, not only should cover the actual losses faced by the victim, but also should cover any potential losses or actual or probably profits, as long as the damages are caused by the act or lack thereof of the person causing it, but subject to the trial judge's discretion.

Clearly, modern means of communication, that is, communication made available electronically via the internet, has created a new form of responsibility, namely the electronic responsibility or responsibility resulting from the process of electronic transaction. Today, the internet is the most important modern tool to meet the needs of individuals particularly within the developed world. In the domain of e-commerce, the internet is instrumental, particularly in the implementation of contractual obligations, including the delivery, electronic payment, electronic clearing and other contracts existing in the digital environment, all of which, could result in legal problems from failure of implementation.

The electronic clearing framework demonstrates the accountability of bank following contractual liability or harmful action, because it is considered as a personal liability, considering that the bank is regarded as a legal person (Section 402 of Syrian Trade Law 2007 & Section 279 of Jordanian Trade law 1966). There are legislations stating the accountability of the bank that rejects in bad faith in fulfilling its commitment to recompense the check value if there is fulfilment. However, the bank is not held accountable for forged signature in the electronic clearing.

Nonetheless, forged signature in the electronic clearing house is a problem, and liability is ascertained if it is difficult to detect the forgery. As previously mentioned, the electronic payment and transfer system needs a protected, not merely a notarized signature, as stipulated in the Electronic Transactions Law 2015. Hence, advocating the Electronic Transactions Law, this study recommends that the electronic record is supplemented with a certificate of authentication by accredited or licensed authentication bodies or indorsed by the Central Bank.

6. Conclusion

The developing countries, including Jordan, are currently experiencing the internet expansion. Such development has resulted in an increase in digital contributions among online entrepreneurs, as can be seen occurring in Jordan. In Jordan, online consumers have been involved in ecommerce transactions through various platforms including the social media. Nonetheless, in Jordan still falls behind in the implementation of e-commerce.

The success of e-commerce is primarily driven by technology. However, knowledge of the various processes associated with e-commerce is equally important. In the process of electronic payment, the clients are the weaker party as they could become victims to perpetrators, especially when the payment not unauthorized. As a result, the use of electronic clearing of Cheque becomes a means of electronic payment, to assure safe and quick collection of Cheque value.

In a nutshell, the electronic payment clearing through the use of electronic Cheques in the context of Jordan was discussed in this study. Accordingly, several findings and recommendations from the discussion are as provided in the ensuing sections.

6.1. Findings

- Clearly, the Jordanian Electronic Transaction Law 2015 provides no protection to consumers in their online transaction – this situation is similar to consumers who perform offline transactions. Additionally, the law lacks clarification on the relationship between contracting parties within the electronic medium. In other words, the current law is limited in this matter.
- The electronic record and Cheque both need a signature, and the signature is considered as the most vital data. Notably, as stipulated by the Jordanian system 2017 electronic payment and electronic transfer, the electronic record must be linked to a protected electronic signature. In other words, certification by competent authorities is no longer required.
- The Electronic Crimes Law No. 17 of 2023 specifically deals with attacks on information and data of electronic payment cards. However, matters associated with civil liability are subject to the general rules of the civil law that are regarded as rather discordant with the electronic contracts.
- In Jordanian legislation, there are still no specific definitions on electronic payment cards including the electronic cheque. Also, electronic cheques are not specifically regulated in Jordan. In fact, all matters pertaining to the regulation of the electronic cheque are under the jurisdiction of the Jordanian trade law, that is, the electronic cheques are treated similarly as regular cheques. This demonstrates the lack of specific law in Jordan in the governance of electronic cheques as one mode of electronic payment.

6.2. Recommendations

Based on the findings discussed in this study, several recommendations are presented as follows:

- E-commerce should be encouraged in Jordan, and for this purpose, the Jordanian legislature needs to provide sufficient protection to both businesses and customers in their e-payment, and these businesses and customers should be made aware of such protection as well.
- Article 23 of the electronic payment and transfer system needs to be reviewed and amended in a manner that it would be compatible with the Electronic Transactions Law of 2015, in providing customer with sound security and reliability of online transactions. The revised system would require all electronic records including the electronic Cheques to be supplemented by an electronic signature endorsed by accredited or licensed bodies.
- Some mechanisms should be in place, specifically in the ascertainment of civil liability to compensate the damages caused by electronic payment. An electronic payment is also a form of contract, and owing to the inadequacy of the Jordanian Civil Law, there need to be legal provisions specifically addressing the electronic contracts.
- In the Jordanian banking system, procedures for handling the electronic checks are still non-existent. Hence, the Jordanian Trade Law need to be reviewed and amended to accordingly regulate the electronic checks.
- The Jordanian Trade Law should provide a clear definition for electronic clearing.

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