

LEGAL CONTROLS FOR DISCOUNTING COMMERCIAL PAPERS IN JORDANIAN LEGISLATION AND ITS JUDICIAL APPLICATIONS LEGISLATION

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Abstract

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The article analyzes the importance of defining the process of discounting commercial papers and its legal nature in Jordanian legislation and the comparative French and Egyptian legislation. This will be done by discussing the provisions contained in the aforementioned laws and the relevant judicial rulings and their adequacy in clarifying the nature of this process and its legal adaptation in light of the absence of adequate legal regulation in the Jordanian Trade Law. The study required relying on the analytical approach to analyze the legal texts, they contained to determine their effectiveness and shortcomings in discounting commercial papers and their role in providing legal protection for them. It also concluded with a set of results and recommendations, the most prominent of which is the process of discounting commercial papers, which is banking and has its own legal system, which is usually subject to the provisions of banking custom and the provisions of general rules. The Jordanian legislator did not adequately address the issue of discounting commercial papers and did not organize it in a comprehensive legal manner. This contradicts the position of the comparative legislation mentioned in this study, which included this process in its relevant laws.

Keywords: Discount, Commercial Papers, Endorsement, Payment Consideration, Bill of Exchange, Courtesy Bond, Check

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1. INTRODUCTION

Commercial papers, particularly withdrawal bonds, were developed as a legal mechanism for traders to settle debts resulting from their transactions. However, the exact date of their origin remains

uncertain, despite the extensive research conducted by legal historians (Zangila & Madi, 2020). The reason for this is that the achievements of each individual still require backing and verification, as there is a lack of reliable historical documents in this regard (Al-Khalaf, 2017).

Formalism holds significant significance in the realm of commercial papers, particularly in the context of checks. The legislator Jordanian has established that a cheque that is empty from the date of its issuance is considered invalid. Nevertheless, the check may contain discretionary details that are consistent with its essence and do not violate any mandatory regulations or public standards of conduct (Al-Satawi, 2015).

Various international and Arab laws have extensively and comprehensively dealt with the procedure of discounting business papers, including legislation from France and Egypt. In contrast, the Jordanian Trade Law No. (12) of 1966 took a more cautious approach to regulating this significant economic process. It addressed the process indirectly rather than expressly in its many legal sections (Al-Khatib, 2011).

The study focused on examining judicial applications and jurisprudential opinions in both Jordanian legislation and comparative legislation. The aim was to clarify the legal nature of this process and identify any potential problems that may arise. The ultimate goal was to produce specialized and accurate research in this field (Kohansal et al., 2017).

The objective of this study was to ascertain the precise definition of the process of discounting commercial papers and their legal status in Jordanian legislation, as well as in comparable French and Egyptian legislation.

This will involve examining the requirements outlined in the aforementioned laws and the corresponding judicial decisions, as well as assessing their effectiveness in explaining the procedure for discounting commercial papers and its legal adaptation in the absence of sufficient legal control in the Jordanian Trade Law.

Therefore, the rest of the paper is structured as follows. Section 2 reviews the literature relevant to the subject matter of the study by reference to several recent studies relating to the discount of commercial papers. Section 3 analyses the methodology used to conduct the study by using the analytical curriculum and analyzing legal texts and jurisprudence relating to discounting commercial papers. It also uses the comparative approach by reviewing some of the legal texts and jurisprudence in some countries of the world and comparing them with Jordan's legislative trends. Section 4 provides and discusses the research results. Section 5 concludes the paper.

2. LITERATURE REVIEW

The subject of this study is a new and rare topic because it specializes in the discounting of commercial papers in Jordanian legislation and its judicial applications legislation; several studies will be referred to. The study by Al-Batoosh (2021) shows that formalism holds significant value in the realm of commercial papers, particularly in the context of checks. The lawmaker has established that an empty check is invalid from the date it is issued. Nevertheless, the check may encompass discretionary data that is compatible with its essence and does not oppose any mandatory regulations or societal norms. If the check does not specify the name of the drawee, it is classified as

a bond for an order if it was issued to the beneficiary's order. This is because it contains the drawer's commitment to the beneficiary, and the bond is for an order that involves two individuals — one being a creditor and the other a debtor. A check is classified as a standard bond if it is issued to a non-bank entity, if the instructions given to the bank are on hold or invalidated, or if the check relates to external information that causes it to lose its inherent guarantee (Al-Batoosh, 2021).

In addition, Rjoub's (2024) research paper aims to illustrate the process of commercial paper trading through endorsement and emphasizes the need to meet the necessary objectives and formal criteria for effective and accurate trading. One of the specific requirements for endorsement is that it must be on the complete and unchangeable right in the commercial paper. However, there have been differing opinions from legal scholars and the judiciary, who argue that partial endorsement is valid and effective. This study aims to explore the reasons behind the general invalidity of endorsement and specifically examine partial endorsement. The goal is to understand the justifications put forth by legal scholars for considering partial endorsement as invalid and to provide a balanced response that takes into account both the acceptance and rejection of endorsement. Ultimately, the addition of a new exemption to the regulations regarding endorsement will not be considered out of the ordinary (Rjoub, 2024).

Also, Alokashi (2020) reviewed commercial papers, particularly the bill of exchange, which originated as a response to the need for a legal method of settling debts arising from commercial transactions. However, the exact date of its emergence remains unknown, despite the diligent efforts of legal historians. Each of their achievements still requires backing and verification, as there is a lack of reliable historical sources in this respect. The objective is to comprehend the rationales presented by legal experts for deeming partial endorsement as invalid and to offer an equitable response that considers both the acceptance and rejection of endorsement. In conclusion, the inclusion of a new exemption to the regulations concerning endorsement will not be deemed unusual (Alokashi, 2020).

3. RESEARCH METHODOLOGY

The study required relying on the analytical approach to analyze the legal texts. They contained to determine their effectiveness and shortcomings in discounting commercial papers and their role in providing legal protection.

The descriptive approach was also relied upon to clarify some concepts related to the subject in a way that helps understand and define it, in addition to using the comparative approach as required.

The purpose of this study is to analyze the Jordanian legislation that governs the discounting of commercial papers and compare it with similar legislation in other countries. The aim is to assess the key similarities and differences between these legal frameworks and draw insights from the experiences of other countries in addressing this legal issue.

To get the most relevant conclusions, the study presented and analyzed the financial accounts using descriptive and analytical methodologies. The study's approach is based on all specialized secondary data, whether published as a single time series or following the study's key factors. In addition to earlier study messages.

This study analyzes legal documents, jurist views, and judicial cases to determine endorsement invalidity. This question's practical results are expected to benefit all those who handle business papers, and the Jordanian legislator will consider it to address the prior economic issues.

Therefore, the study will be limited to analyzing and addressing the jurisprudence, legislation, and judiciary aspects of legal controls for the deduction of legislative papers, particularly in Jordanian legislation, and comparing them with French and Egyptian legislation, focusing through this study on some judicial aspects of commercial papers, and shortcomings in Jordanian legislation.

According to the preceding, and to clarify the discounting commercial papers, the research will address legal controls for discounting commercial papers in Jordanian legislation and its judicial applications legislation.

4. RESULTS AND DISCUSSION

4.1. Nature of the commercial paper discount

First, the importance of clarifying the nature of discounting commercial papers is that it leads to knowledge of the provisions of this process and its implications. But on the other hand, defining this process is not easy (Dawson, 2009). The definitions provided by the legislation have varied. Legal jurisprudence also faced many difficulties in determining a clear and precise definition of this process, due to the difference in defining its legal nature, as we will see later (Al-Batoosh, 2021; Al-Khalidi, 2016).

4.1.1. Concept of commercial paper discount

To study the concept of discounting commercial papers, we must address the definition of discount from a jurisprudential perspective, and then define it from a legislative perspective (Balderrama et al., 2021).

Jurisprudential definition of discounting commercial papers

From a jurisprudential perspective, comparing the opinions regarding discounting commercial papers, they differed and varied due to their differences regarding the nature of the process and its legal basis (Chvojka, 1996). Part of legal jurisprudence has defined the discount as the endorsement of a commercial paper whose due date has not yet arrived after it has been endorsed to transfer ownership to a bank, where it pays its value to the endorser after reducing an amount representing the interest on the amount for the period between the discount date and the due date, in addition to the commission (Taha, 2006; Rjoub, 2024).

"An agreement by which the bank advances to the discount holder the value of a commercial paper, a negotiable instrument, or just another right, deducting from it an amount proportional to the remaining period, until the value of the right is fulfilled when the maturity of the paper, bond, or right arrives" (Al-Khalidi, 2016, p. 126).

"This is in exchange for the person requesting the discount transferring this right to the bank as ownership, and guaranteeing its fulfillment when the deadline comes" (Zangila & Madi, 2020, p. 405).

Another trend of legal jurisprudence defined this process as:

"A contract whereby the bank undertakes to pay the commercial paper to its holder before its maturity date, in exchange for deducting a portion of its value, representing the bank's commission, interest, and collection expenses. This is in exchange for the holder committing to transfer ownership of the fixed right to it, which is an amount of money, to the bank and return its nominal value to it if the original debtor does not pay on the due date" (Al-Aqili, 2013, p. 146).

We find from the previously mentioned jurisprudential opinions that they differed in terms of the legal conditioning of the process of discounting commercial papers. Some opinions viewed it as a contract at one time, while others viewed it as an agreement on the other hand. This will be explained in detail when talking about the legal adaptation of the process of discounting commercial papers (Al-Khalidi, 2016). However, through the previous jurisprudential definitions, a discount can be defined as a process represented by the customer submitting to the bank a commercial paper before its due date to obtain its value immediately, less the interest and commissions charged by the bank according to the existing agreement between them (Frederick, 2015).

Legislative definition of commercial paper discount

Many legislations address the concept of discounting commercial papers (Abbas, 2023). The French legislator defined the process of discounting commercial papers as:

"A credit process represented by the bank or any financial institution agreeing to grant the customer a financial advance, deducting interest, commission and collection expenses, and the advance amount is proportional to the value of the fixed right in the commercial paper presented by the customer in favor of the bank" (French Commercial Code, 2000, Article L228-1).

It is clear from the previous legal text that the French legislator has considered discounting commercial papers among the credit operations that the bank grants to its customers (Balderrama et al., 2021). Accordingly, the beneficiary is given a sum of money as per the established right in the commercial paper, provided that the commission, interest, and collection expenses are deducted, in addition to the latter's obligation to transfer ownership of the commercial paper in favor of the bank. Here we see that the French legislator was wrong when he considered that the amount paid to the beneficiary was equal to the value stated in the commercial paper because initially, he assumed that the amount paid to the beneficiary was deducted from specific and pre-determined

expenses in agreement with the beneficiary. However, he then went on to say otherwise, and in doing so he contradicted himself (Al-Baroudi, 2001).

The Egyptian legislator defined it in Article (351/1) of the Egyptian Trade Law No. 17 of 1999 as:

“An agreement whereby the bank undertakes to pay in advance the value of a negotiable instrument to the beneficiary, in exchange for transferring its ownership to the bank, with the beneficiary’s obligation to return the nominal value to the bank if the original debtor does not pay it”.

We note here that the Egyptian legislator was not sufficiently successful in stating this definition, because it did not indicate the commission that the bank is supposed to charge in exchange for providing this service in which profit is usually supposed to be achieved, especially for the bank.

As for the UAE legislator, in Commercial Transactions Law No. 18 of 1993, he defined the discount process in Article (440) as:

“An agreement or contract whereby the bank undertakes to pay in advance the value of a commercial paper to the beneficiary of that paper in exchange for transferring its ownership to the bank. The bank is entitled to interest on the amount of the paper in addition to the commission, and it is permissible to agree to make a discount in exchange for a total amount”.

Referring to Jordanian legislation, we find that it does not regulate the provisions for discounting commercial papers as a banking operation, as there is no law or system that addresses this issue independently and specifically. All that exists in Jordanian legislation regarding this process are scattered legal texts. The Jordanian Trade Law No. 12 of 1966 provided an implicit definition of it, as Article (109) of it stipulated in its first and second paragraphs the following:

“1-Payment by means of a commercial instrument is not deemed to have been made except on the condition that its value is received, unless there is a contrary agreement. 2-If the value of the bond is not paid on its due date, the recipient has the right, while keeping it as insurance and using the rights assigned to him, to debit its value to the deliverer’s account”.

In addition to Article (39/A) of the Central Bank Law, in which the legislator allowed the Central Bank to discount or re-discount, as well as Article (13/D) of the Money Exchange Business Law, in which money changers were prohibited from carrying out this operation. We also find that the Jordanian legislator, in accordance with Article (122) of the Trade Law, referred all banking operations that were not covered by this law to the Civil Code.

This comes in contrast to the position of the Jordanian judiciary, which was more precise and clearer in its definition of the process of discounting commercial papers. This is evident from Judgment No. 6024 of 2018 issued by the Jordanian Court of Cassation, which stated:

“The holder of a commercial paper transfers ownership of this paper to the bank, which is obligated to advance its value to him after deducting what represents the interest on the amount until the maturity date”.

In light of the previous definitions of the commercial paper discounting process, it can be defined as a banking process represented by

the customer transferring ownership of the commercial papers to the bank in exchange for the latter paying their value to the customer before their due date to obtain a certain interest as a result of carrying out this process.

4.1.2. Discountable commercial papers and the legal problems related to them

Reviewing the theories and definitions mentioned above, we find that most of the comparative legislation under study, including Jordanian legislation, in addition to jurisprudential opinions, have stated that the process of discounting commercial papers applies to negotiable commercial papers (Al-Batoosh, 2021).

Empirical evidence has demonstrated that the bill of exchange is the most commonly discounted commercial paper due to its inherent characteristics. It functions as a form of credit where the predetermined amount can only be recovered upon reaching its maturity date (Balderrama et al., 2021). The discount serves as a method to collect the amount owed before the due date, while also providing the bank with guarantees and reducing its risks. Regarding the cheque, its discounting activities are seldom because it becomes mature as soon as it is issued. This allows the recipient to withdraw its value directly by presenting it to the bank that issued it (Frederick, 2015). However, under certain situations, a cheque can be discounted, allowing the bearer to promptly get the whole amount from a private financial institution. However, the institution will charge a specific fee from the total amount as compensation for the discounting process (Kent, 2014). This typically happens when there is a delay in collecting the cheque amount due to the holder being located far away from the bank where the cheque is being processed, and the holder requires the funds urgently. It is important to mention that the bill, being the focus of the discounting process, should not contain any statement indicating that it is not negotiable, such as a declaration explicitly declaring that the bill cannot be endorsed (Jenkel, 2003; Rjoub, 2024).

Discounting the order bond (bill of exchange)

The order bond (bill of exchange) is considered one of the most famous commercial papers on which discounts are made. The Jordanian legislator has defined it in Article 123 of the Jordanian Trade Law No. 12 of 1966 as:

“A written document in accordance with conditions mentioned in the law that includes a pledge to pay a certain amount of money at a specific time and place to the order of another person, who is the beneficiary or holder of the paper”.

This commercial paper is distinguished by the fact that it includes a performance pledge by its issuer and contains only two parties, namely the issuer and the beneficiary. Its issuance must also be in fulfillment of a real debt to the beneficiary owed by the issuer of the ordered bond (bill of exchange); otherwise, it is invalid and not legally binding (Azua & Dhaimi, 2019).

The issuer of an order bond (bill of exchange) is bound by law in the same way as the acceptor of a withdrawal bond is bound, that is, he does not need to present the bill of exchange for acceptance (Dawson, 2009). Therefore, the bill of exchange is subject to the rules of *suftaja* to the extent that it does not conflict with the nature of the order bond (Al-Khalidi, 2016). This is what gives the creditor under the bill of exchange (the endorsee or the beneficiary) to obtain its value at the place and time specified for its maturity (Frederick, 2015). However, before the due date, it is possible to obtain its value, minus interest, commission, and collection expenses through discount. This is done by a title endorsement to the discount bank, which will have the right to demand its full value from the issuer of the order bond on the due date (Balderrama et al., 2021). If it is not possible to collect it, the discount bank has the right to claim the value of this commercial paper from all the signatories of the bill of exchange, jointly or individually, without them having the right to protest against the discount bank for defenses based on their personal relationships, as long as the discount bank did not obtain the discounted bill of exchange to harm them following the rule of purging of defenses. In addition to the above, the discount bank has the right to file a lawsuit against the customer for whom the discount was made arising from the discount contract (Al-Satawi, 2015).

Check discount

What is meant by a check, as one of the commercial papers, is:

“A written instrument in accordance with conditions mentioned in the law and includes an order issued by a person, who is the drawer, to another person, who is a banker, who is the drawee, to pay a third person, or to his order, or to a bearer, a specific amount, and he is the beneficiary, as soon as he sees the check” (Al-Aqili, 2013, p. 218).

This commercial paper has the function of performance upon sight, which has made it difficult for a long time to imagine using the check as a means of carrying out a credit transaction such as debiting. It also made it a subject of disagreement among jurists, as one trend in jurisprudence held that the check is suitable to be the subject of the process of discounting commercial papers (Sharibat, 2018). They justified their opinion on the basis that, in practice, the discount can be applied to a check whenever the beneficiary's location is far from the drawee bank, such that receiving its value takes a long time. This prompts the beneficiary to go to a bank close to him or the bank he deals with to discount the check. Large projects often resort to discounting the check at the bank to provide cash liquidity and bypass the wait to collect the value of the checks in exchange for a certain commission and interest (Masabih, 2020).

The French jurist M. Cabrillac went in the same direction, as he asserted that discounting checks was excluded under the pretext of the incompatibility between the function of the check as an instrument that must be paid upon sight and the credit process of the discount. In fact, this is not the case, as the discounting process supports

the nature of the role of the check-in payment upon request, as discounting erases the time necessary to initiate entitlement (Akhvlediani & Śledziowska, 2017; Rjoub, 2024).

Referring to the French judiciary, and by extrapolating many of the rulings and decisions issued by the French courts, we see that the French courts have approved discounting of checks for a long period of time. The French Court of Cassation ruled in one of its decisions to permit check discounting, and then several decisions were issued by this court confirming the validity of check discounting.

The Paris Court of Appeal also confirmed in one of its decisions that discounting checks is an application in use. The legal basis for this development is derived from a decision issued by the French Court of Cassation on 1/30/1996. The jurist M. Cabrillac described this decision as “a great principled decision” (Al-Batoosh, 2021). Rives-Lange described it as a decision of great practical importance. The facts of this decision are summarized in the fact that a bank received multiple checks from its beneficiary under a title endorsement. However, the aforementioned bank did not succeed in collecting its value from the drawee due to the absence of a consideration for payment. Despite the bank's failure to take the necessary protest action in a timely manner, it asked the beneficiary to refund the full value of the checks (Balderrama et al., 2021).

In light of the above, the question arises as to whether the bank has the right to recourse against the indorsing beneficiary to recover the full value of the aforementioned checks pursuant to a lawsuit arising from the discount contract, or whether it is subject to Article (52-3) of the French Check Law, which entitles only the negligent bearer to recourse against endorsers according to the rules of unjust enrichment, that is, recovering the lesser of the two alternatives between enrichment and lack and not recovering the full value of the endorsed checks (Raine, 2009a).

We can answer the aforementioned question by referring to one of the decisions issued by the French Court of Cassation (2018) through the Commercial Chamber, which ruled that:

“Independent of any recourse based on the rules of the check, the bank has the right to recover from the beneficiary of the checks, which were found not to be covered by the payment consideration, the amount of sums it gave him upon receiving them for the purpose of collecting them”.

It is clear to us from this decision that the French Court of Cassation recognized the validity of the disputed check discount contract on the one hand, which is the contract that justified the endorsement of the checks by title, and also arranged the application of its provisions and results on the other hand.

It is also noted that the previous decision of the Court of Cassation did not verbally specify the nature of the process at issue. All that was mentioned in the decision was the bank's right to recover what it granted to its indorsing client. That is, there are two legal processes, one of which can be imagined as a source of the aforementioned dispute, and they are as follows:

“The bank’s receipt of the check pursuant to a power of attorney endorsement for the purpose of collecting the value of the check from the drawee for the benefit of the endorsing client. Or the bank receives it pursuant to an endorsement of ownership, considering the bank as a recipient of the check from the endorsing customer” (Abbas, 2023, p. 66).

It is clear from the aforementioned decision that it did not adopt the issue of power of attorney endorsement because the endorsing client did not authorize the endorsee bank to recourse to the endorser of the check to claim its value. However, the endorsing bank is required to return the dishonored check to the endorsee bank, given that the latter is the owner of the endorsed check. Rather, it is noted that the aforementioned decision adopted the bank as endorsed by virtue of a title endorsement based on a banking transaction linking the two parties (the bank and its client), which was the reason for conducting the title endorsement. This is the “discounting” process that gives the discounting bank the right of recourse against the customer to whom the discount is made for the value of the discounted paper if it is not possible to collect the value of this endorsed paper subject to the discount. Thus, the decision of the French Court of Cassation is based on the will of both parties for the bank to own the endorsed check in the implementation of a credit transaction represented by the discount (Raine, 2009b).

We can also note that the French Court of Cassation took into account the failure of the endorsee bank of the title endorsement to file a non-fulfillment protest when the drawee refused to pay the value of the check. This is what led to the bank being considered a negligent holder who does not have the right of recourse under the exchange lawsuit. In addition to that, it also becomes clear to us that the Court of Cassation did not apply Article 52-3 of the Check Law, which includes acknowledging the right of the negligent bearer to have recourse against the signatories of the paper endorsed by title (other than the drawer who can be recourse to under a claim against payment) following the rules of unjust enrichment (Kent, 2014). This is because this article applies to the relationship of the last negligent bearer with the previous signatories with whom the aforementioned bearer is not directly linked. As for the last position in the endorsement, i.e., the last endorser of the commercial paper, which is (the endorser to home the discount is made), it is linked to the negligent holder by a direct bond that represents the reason for a title endorsement and authorizes this negligent holder to have recourse against the aforementioned endorser with a lawsuit stemming from the original relationship that binds them, i.e., the discount. Because the forfeiture of the right to recourse based on a formal claim does not entail the forfeiture of the lawsuit arising from the original relationship that was the reason for the title endorsement. For this reason, the Court of Cassation decided that the bank has the right to recover the full value of the check from the customer due to the impossibility of collecting its value from the drawee (Balderrama et al., 2021).

It is the same provision contained in the UAE Federal Commercial Transactions Law (1993, Article 442), which stipulates that:

“... the bank exercises this right (to recover the amounts it placed at the disposal of the discounting customer) within the limits of the unpaid papers, whatever the reason for refraining from paying the discounted papers”.

Based on the above, we can say that a check is a commercial paper due upon sight. However, to make it easier for discounting, it is appropriate for the check to be subject to the discounting to expedite the payment of its value to overcome obstacles delaying payment, such as geographical distance, banking and official holidays, and other things that hinder the immediate payment of this commercial paper. This results in a shortage of cash flow that the check holder needs, and then the check is a valid exception for discount operations, just like *suftaja* and order paper (Al-Batoosh, 2021).

As for the Jordanian judiciary, the Court of Cassation confirmed in many of its decisions that the check, as a commercial paper, is not suitable to be an object of discount, as it is a commercial paper payable upon sight. It also confirmed that the check paper is not included in the content of courtesy bonds, given that it is only a fulfillment tool and there is no place for courtesy except in papers that perform the credit function, which are *suftajas* and order bonds. Judgment No. 5112 of 2018 of the Jordanian Court of Cassation approved this in another cassation decision that included the following:

“If the courtesy bonds are commercial that contain all the formal requirements necessary for their validity, then, one of its signatories appears as a real debtor, even though in reality he intended through his work to help another person obtain the credit necessary for him to support a precarious financial situation. The check as an instrument of fulfillment, not of credit, is excluded from such copies. If the opposition to its fulfillment is not acceptable in light of what is stipulated in Article 174 of the Commercial Law, and if the check is not a courtesy bond, then payment in its form is not legally permissible”.

Courtesy bond discount

A courtesy bond is a bond that is based on an agreement between two people to draw a bill of exchange according to which the drafter pledges a (fictitious) debt owed by him for the benefit of the other person at a specific time and place. All of this is done in a written paper that collects the formal data of the bill of exchange, but it is completely removed from the connection between the existence of a real debt between the writer of this (forged) bill of exchange and its beneficiary (Yamliki, 2010). That is, it represents a fictitious debt with the appearance of a real debt in the form of a fictitious bill of exchange to deceive others and present the beneficiary of this paper with a financial appearance with a strong credit standing, while this appearance is false and not real. Therefore, this fictitious bill of exchange does not exist legally and is not valid between its two parties. This is the rule of law following the principle of the power of the will because the two parties did not want to commit to this paper between them, but they wanted to mislead others and deceive them with this fictitious bill of exchange that is based on fraud. Therefore, it is considered invalid (Kent, 2014; Musa, 2018).

We note that both jurisprudence and judiciary have settled and unanimously agreed that courtesy bonds between merchants are considered invalid because they are based on an invalid reason and violate public order by affecting the elements of honesty and trust that must be available in commercial transactions on the basis that the purpose of their establishment is to introduce deception to others and make them believe that they have a strong financial position. This may lead to turmoil and destabilization of business activities that are based on honesty and mutual trust. Consequently, the rights of people who deal in these bonds are exposed to loss.

It should be noted that this ruling was repeated in more than one decision issued by the Jordanian Court of Cassation and the Amman Court of Appeal, to confirm the invalidity of courtesy bonds. Judgment No. 5497 of 2018 of the Jordanian Court of Cassation ruled that:

“The court of first instance erred in obligating the appealing party to pay the amount claimed based on the fact that the document is not considered a courtesy bond because the bond is not a commercial paper”.

It also stated in another cassation decision:

“The bonds of courtesy are considered absolutely invalid if their signer, who lent his signature, proves that the merchant to whose order the instrument was issued was insolvent at the time of creating the instrument and that he resorted to borrowing the signature to make others believe that the instrument carries an actual commitment to a valid transaction while this transaction did not happen and he only intended to enable him to obtain the money he needed” (Judgment No. 4654 of 2017 of the Jordanian Court of Cassation).

Judgment No. 9864 of 2019 of the Amman Court of Appeal recently stated:

“What is meant by formality is that the document is created collecting the obligatory data and assuming the validity of these data, including the validity of the obligation. If the maker debtor claims that it does not exist or is illegal, he must prove it and provide evidence of that by all means of proof. The court has the right to evaluate this evidence and what it concludes from it. If the maker is able to prove that the reason for the document is fictitious, then the creditor beneficiary must prove the existence of another legitimate reason, given that the burden of proof shifts to him”.

It is clear to us from the above that the courtesy bill is considered invalid and is not suitable to be the subject of the discount process, which must be based on a valid commercial paper. This means that it is not permissible for a bank to accept a discount on a courtesy bill as long as it knows its formal nature, as it is considered a partner in an illegal and invalid transaction. However, if the discounting bank was unaware of the formal nature of the instrument that it discounted, and did not prove its knowledge of that, i.e., it was in good faith, the discount will be considered valid (Al-Batoosh, 2021).

Based on this concept, which considers the bill of exchange to be a courtesy bond due to the loss of reliance on a real and legitimate reason for the debt included in the bond, the Jordanian courts decide to accept personal evidence to prove the appeal that

the bond issued is a courtesy bond in accordance with Article (30/5) of the Evidence Law because this appeal relates to the circumstances surrounding the organization of the document as a material fact. This is what was ruled by Judgment No. 4914 of 2018 of the Jordanian Court of Cassation, which decided:

“Personal evidence is acceptable to prove that the exhibited bill of exchange is a courtesy bond between merchants, because the courtesy bond between merchants, as established by jurisprudence and the judiciary, is considered invalid because of its effect on public credit and its violation of the trust that must be available in transactions. It is also acceptable evidence to prove the circumstances surrounding the preparation of those bills of exchange”.

Note that Judgment No. 1848 of 2018 of the Jordanian Court of Cassation decided that:

“Assuming that bills of exchange are courtesy bonds is something that the trial court is independent of regarding understanding the reality in the case, and it has full authority to extract the elements of courtesy from the facts of the case, and to evaluate what is proven by it and what is not proven without its oversight in this regard from the Court of Cassation”.

Therefore, in light of the above, it must be noted that the courtesy bill is a source of danger that the bank must refrain from dealing with.

4.2. Legal nature of the commercial paper discount

We have previously defined the process of discounting commercial papers as a banking process in which the bank pays the value of a commercial paper to its holder before its maturity date in exchange for deducting a portion of its value, representing the bank's commission, interest, and collection expenses, provided that the beneficiary party commits to transferring ownership of the established right in it to the bank (Balderrama et al., 2021; Dawson, 2009).

However, the question that arises here is about the legal nature of the process of discounting commercial papers, and what is the position of legal jurisprudence on adapting this process, because this is of great importance in determining the legal rules that must be applied to it and resolving the legal problems that may revolve around it (Al-Quda, 2012).

4.2.1. Loan theory

According to the supporters of this theory, the process of discounting commercial papers is considered a loan granted by the discount bank in its capacity as a lender to its client with the guarantee of the commercial paper itself (Awad, 2000). They based their opinion on the fact that the customer should not resort to the bank to discount the commercial papers in which he appears as a beneficiary unless he needs cash. If the bank finances him with the money he needs, it does so as a loan (Al-Batoosh, 2021). This leads to the result that the bank only assumes the status of a mortgage creditor in the discount process, i.e., a holder of the commercial paper as security for the loan it granted to the customer. Therefore, this status does not give him the ability to collect the value of that

paper unless the customer refuses to repay that loan. This is inconsistent with what is legally established that the bank owns the commercial paper by virtue of an endorsement transferring ownership (Sachs et al., 1987).

It can be said that it is not correct to condition the discount process as a loan. In the process of endorsing the commercial paper in favor of the bank by the customer, he will be the owner of this paper and not its guarantor. The commercial paper endorsed by insurance is not suitable to be the subject of the commercial paper discounting process, because the bank does not own it, but is considered to have it as a guarantee.

4.2.2. Theory of transfer of right

The proponents of this theory argued that discounting commercial papers is nothing but a transfer of rights. That is, it is the contract under which the transferring creditor agrees with a foreigner to transfer to him the right he has in his debtor's debt, so the foreigner replaces the creditor himself. However, this theory was not widely accepted, as many jurisprudential criticisms were directed at it. The most prominent of these criticisms is that it does not reflect the reality of the process of discounting commercial papers. This process, even if it is a contract, is not a transfer because the transfer of ownership of the commercial paper to the bank does not require, as is the case with the transfer, that the debtor be officially notified of it or that he accepts that in a document with a fixed date (Alghuwairi et al., 2024; Yunus, 2005).

It can be said that embracing this theory has negative effects. The most prominent of which is the reluctance of many banks and financial institutions to discount the commercial papers submitted to them for this purpose. This is because the guarantees established to recover what you paid to the beneficiary of the discount may be weakened if the discount is considered a transfer of the right. This is because the debtor of the paper can assert against the bank all the defenses that he could have asserted against the creditor. This may lead to not adopting this theory (Frederick, 2015).

4.2.3. Selling theory

The supporters of this theory, who are a part of French jurisprudence, led by jurists Jean Pierre le Gall and Pierre Verminmen, argued that the discount on commercial papers is nothing but a contract of sale in which the subject is an established right to the commercial paper. The parties to the contract are the beneficiary of the commercial paper, who acts as the seller, and the discounting bank, who acts as the buyer (Dawson, 2009).

This theory resonated with the French judiciary because it succeeded in interpreting some of the provisions of the discount process in terms of considering the bank's hand on the commercial paper as the hand of the owner and not the hand of the mortgagee. This enables the bank to demand that the obligors pay its amount when it becomes due. In addition, adopting it makes the nature of

the discount contracts a binding contract for both sides (Al-Adawi, 2013). However, what may be flawed with this theory is its neglect of the fact that discounting is a bank contract, and then its attempt to establish the idea that the bank's goal in discounting commercial papers is to speculate in them by purchasing the commercial paper at a lower price and selling it at a higher price. However, conditioning the process of discounting commercial papers as a sales contract necessarily requires applying the provisions of this latest contract. This is unacceptable because the provisions of the sales contract are not compatible with the commercial paper discount contract (Chvojka, 1996).

4.2.4. Dependence theory

In the face of many criticisms directed at traditional theories in adapting the process of discounting commercial papers, a new jurisprudential trend emerged headed by jurist Jean Clause Grosliere (Chvojka, 1996). This jurisprudence believes that discounting is an independent banking business with its own objectives and system, and therefore it should not be sought to be attached to a specific legal framework, like many different banking operations. Accordingly, discounting is a credit process based on the bank's confidence in recovering what it has deposited for its client, a trust that exists in all credit operations (Balderrama et al., 2021).

According to those who advocate this theory, the holder of the commercial paper seeks to discount it to obtain a cash sum from the bank. The customer's goal will not be achieved unless he obtains approval from the discounting bank by endorsing the commercial paper to the bank as an endorsement transferring ownership (Hrdý, 2018).

Therefore, the debit process is certified as a combined banking process consisting of two parts that cannot be separated (Al-Batoosh, 2021). They are both the approval process, which is a consensual process based on the agreement of both parties, in which the bank provides a credit service to the customer when it advances the value of the customer's commercial paper, and the process of endorsing transfer of ownership, where the bank does not provide this service to the customer except by endorsing the commercial paper to him as an endorsement transferring ownership (Awawda, 2009).

After analyzing and studying the legal jurisprudential theories discussed earlier, it can be concluded that the last opinion is the most probable one, as it aligns closely with the practical reality of the process of discounting commercial papers. It considered both the subject of the discount operation and the way by which it was carried out. It is imperative to examine the fundamental nature of the discounting process without being constrained beforehand, as earlier theories were, by a particular legal framework, since discounting is regarded as a distinct banking activity with its own set of circumstances and goals. Hence, there is no necessity to delineate or articulate it inside a particular legal framework, such as civil or commercial law, akin to numerous other banking transactions.

5. CONCLUSION

The Jordanian legislator did not adequately regulate the legal controls for discounting commercial papers in the Jordanian trade law and did not provide a specific definition for them or indicate their legal nature. Rather, he merely referred to it in some miscellaneous articles of the Jordanian Trade Law and the Central Bank Law, as is the case with many banking operations that the legislator left to the general rules and banking customs. Moreover, the Jordanian judiciary did not refer to it in its decisions except a fairly short period ago, despite the increasing dealing with it by various people, especially among merchants who sell their goods in installments.

The discount process is considered a banking process whose name is associated with a commercial paper because it assumes the presence of a negotiable commercial paper in the hands of the customer that is due for payment after a certain period, as the discount process is reflected on orders and withdrawal bonds. As for checks, by their nature, they are not suitable for discount, because they are due for payment upon sight as they are an instrument of loyalty and not credit.

Formalism holds significant significance in the realm of commercial papers, particularly in the context of checks. The lawmaker has established that an empty cheque is invalid from the date it is issued. Nevertheless, the cheque may contain non-compulsory details that are in line with its essence and do not oppose any mandatory regulations or societal norms.

Therefore, it is necessary to include rules in the Jordanian trade law that define the process of discounting commercial papers accurately and clearly and determine its legal nature, similar to the comparative laws under study, such as French and Egyptian legislation. This is to put an end to the conflicting jurisprudence in this area, especially since there are many debit operations conducted by Jordanian banks daily. This makes it necessary to organize it and provide its own legal rules.

In this study, we dealt with the legal controls for discounting commercial papers in Jordanian legislation and its judicial applications, with a comparative study in French and Egyptian legislation, where the concept of discounting commercial papers and discountable commercial papers was addressed.

We suggest that Jordan's legislation should be reviewed in the future through the establishment of a clear regulation of the commercial paper discount mechanism in trade law by drawing on the experiences of the legislation of certain countries, such as France and Egypt, which have regulated the commercial paper discount mechanism while strengthening the legal safeguards of those commercial papers.

Finally, we recommend that the Jordanian legislator ensure that banks operating in Jordan include some guarantees that are unknown to them in their discount contracts. Such as asking their customers who wish to discount their commercial papers to obtain insurance contracts that guarantee fulfillment of the value of the commercial papers required to be discounted on their due date, especially when the value of the commercial papers is very large.

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