

Contracts Law in Jordan and its Application in the Construction Contracts

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Abstract: Jordan is a country which is governed by constitutional monarchy. There are three categories of courts under the Jordanian constitution namely the civil, religious, and special courts. The special courts include a military or state security court, police courts, land settlement courts, an income tax court, and customs courts. The sources of law and legal structure in Jordan varies and depending on the court category. The contracts laws is one the branches of the civil law and thus falls under the jurisdiction of the civil courts. The Jordanian civil legal system has its foundations in the Code Napoléon, a French legal code implemented in Egypt in the early 19th century. The civil courts include Magistrate Courts, Courts of First Instance, Courts of Appeal, High Administrative Courts and the Court of Cassation (Supreme Court). This paper discussed the scope and principles of contracts law in Jordan and to what extent the contract law principles are applied in construction contracts. The research methodologies applied in this paper are the doctrinal and statutory analysis.

Keyword: Contracts, Jordan, Construction

1. Introduction

Exalted God in AL-Mad'idahsura in his holy Book commands "O You Who believe! Fulfil (yours) obligations, Lawful to you (for food) are all the beasts of cattle except that which will be announced to you (herein), game (also) being unlawful when you assume Ihram for Hajj or Umarh (pilgrimage, verily, allah commands that which he wills. (1)

The aim and purpose of arranging obligation in Jordanian legislation is the completion of the will of contracting parties. Therefore, the origin of the legal rules which govern these obligations is to be complete or explanatory rules of the will of contractors in a way that their contradiction may be agreed upon.

However, there may be among these rules obligatory ones whose contradiction cannot be agreed upon this research paper will discuss the rules of obligations and how they can be applied on the obligations of contracts in Jordan >

Definition of the obligation of contract:

The Jordanian legislator has given several definitions of contract obligations in more than one legal statement: definition of contract obligation in Jordanian civil law:

Article (780): contracting is a deal in which one of its two sides is committed to making or performing a job for an exchange committed by the other side.

The law of constructions contractors stated:

Article (2): contracting is the deal of construction, buildings, roads, installation and engineering projects with all its types, operations and maintenance.

Characteristics of contracting deal:

- It is acceptance contract which does not require a certain shape.
- It is a commutative contract.
- It is obligatory for both sides (mutual)

- It is a job contract but it is characterized by the fact that the contractor in the contract performs the assigned job without the supervision and observation of the employer while the worker in the job contract perform his job under the supervision and observation of the employer:-

Elements of contracting deal:

The elements of contract in general are applied on the contract deals which imply consent, place and reason.

A) Consent in contracts deal:

For true consent in contracts deals, it should be accompanied by affirmation and acceptance issued by the two sides of the contract in order to be agreed upon in a way that employer agrees with the contractor about the quality of the deal, the nature of building and the payments received by the contractor from the employer as an exchange for the job he is going to perform for the employer the expression of will in contracts is verbal, written or the know signal from the dump or the actual exchange signifying consent or by taking any other way which undoubtedly means approval this was stated in article (93) of the Jordanian civil law and what was included by the decision number 3391 in 2012 of the Jordanian court of cassation in its capacity as jurist under the head judge Hassan Habboub when the court issued in this decision the legal principle which states:

" the expression of will should be verbal, written or through traditionally know signals or the exchange signifying consent or through any other way which undoubtedly means approval according to what article (93) of the Jordanian civil law stated consent in the contracting deal between the contractor and the employer occurs in different ways and forms:

- Verbal affirmation and acceptance it is like the other consent deals in a way that the deal occurs with the agreements of the employer with the contractor about the job nature, its kind and the period of time needed for its achievement verbally or through dialogue between them. The deal occurs the ***** h the affirmation is accompanied by the utterance of acceptance from the

other side. The verbal formula for the contracting deal to be effective should have the following:

- The words and phrases should be semantically clear in a way that there is no doubt about the type of contract and the obligation of both sides and their knowledge about what they have contracted.
 - Conformity of acceptance and affirmation acceptance should conform with all the affirmation of the first side. if acceptance is about one part of the affirmation, the deal is invalid as a result of the non-correspondence between the first Party and the other one. therefore, the statement of article (99) of the Jordanian civil law included the following:
- 2) Acceptance should confirm with all the affirmation 2) If acceptance exceeds affirmation, restricts or modifies it, it is considered refusal which requires a new affirmation. There also came a judgement number 800 in 2018 issued by the court of cassation in its capacity as jurist the following legal principle:
- “ the juridical judgment, according to article (99) of the Jordanian civil law states that if an affirmation meets acceptance which conforms with it and all the elements of the contract are available, the contract is then valid, and this is also stated in the judicial judgement number 3301 in 2012 “
- Connection of acceptance with affirmation stated by the other side should be from the contract meeting, the non-existence of any objections to affirmation, the person who accepts should not deny affirmation, acceptance should not be hindered by any reasons of civil rights before the act of acceptance or any defect of will such as mistake, cheat or compulsion.
- 3) Affirmation and acceptance through bidding: contracts may not be verbal, but can take other forms such as bidding. It is a way which aims at reaching the contractor who offers the least offer. The mechanism of contracting in contracts obligations:
- The employer or his deputy prepares the specifications and conditions required for the job to be agreed upon.
 - Calling for bidding in an advertisement in daily newspapers or in a commercial on TV. The details of the required job, its specifications, the last date of presenting application, the time of opening envelopes and the remaining information which the contractors who apply for the bidding care about are determined in the advertisement.
 - The applications sealed in red wax are presented before the last day determined in the bidding advertisement.
 - A committee is formed for opening the envelopes consisting of several specialized official, who choose the best offers of applicants in order to assign the bidding, to them.

These ways are the mostly wide spread for contracts deals nowadays in a way that they have been adopted by public departments in order to have deals with contraction in the above mentioned form and way.

However, the arab legal schools have been in dispute in regard to when the contract occurs through bidding, the first attitude:

Biddings and the commission which follows are not to be considered as a contract with the person the bidding went to and he is not to be a contractor but from the date of signing the contract. this has been adopted by Qatar, the united arab emirates and Kuwait. This attitude shows that consent does not happen through bidding but through direct verbal contracting whom the bidding came to.

The other attitude:

The proponents of this attitude believe that biddings and what follows them are considered as a contract with whom it came to. The Saudi legal system has taken this attitude, The Jordanian project has considered the call of bidders to present their offers as affirmation from the first party and the party the bidding went to as acceptance. Therefore, the Jordanian legislator has adopted the other (second) attitude together with Saudi Arabia. The legal principle in the decision of the superior justice court in its judgement number 24 in 1977 under its head Najeeb AL-Rashdan, stating the following legal principle:

“Bidding contracts happen by calling bidders for contracting and Presenting tender is affirmation and assigning bidding is acceptance. The command of the general chief of staff of the armed forces cancels the decision of assigning commission after convening the contract as being one of its two parties. Dispute in this case is legal and not administrative which is to be considered by the courts of rights and is not within the specialization of supreme justice court.

**supreme justice court was abolished and there has come a new court call administrative court and supreme administrative court in a law substituting that of supreme justice court. The Administrative court in Jordan came as a result of the constitutional reforms which happened in Jordan.

Due time of the contract deal:

Contract deal is one of the double contracts where the due time in the contract deal is divided into the contractor's commitments and the employer's ones.

(A) The contractor's commitments in light of the Jordanian law and the Jordanian adjusted FIDIC contract number 2013. The commitments stated in the Jordanian civil law are:

- If there is a condition on the contractor by the employer to offer all or some of the job material, he is obliged to offer according to the contract conditions based on Article 783, item (1) of the Jordanian civil law.
- But if the employer offers the job material, the contractor has to care about, take care of the technical basics and give back what has remained to the employer. if any dispute arises about the job material in case of loss or damage, the contractor guarantees that based on the text of Article 783, item of the Jordanian civil law.
- The contractor has to bring with him all that is needed for the accomplishment of job such as machines and additional instruments at his expense unless the agreement or tradition states a different thing, based on the text of Article 784 of the Jordanian civil law.
- The contractor guarantees the damage or loss that results from his action, whether this happens as a result of his assault of malfunction. there is no guarantee if this results

from an inevitable accident, based on the text of article 786 of the Jordanian civil law.

The contractor's commitments in light of FIDIC contract have been mentioned by the adjusted FIDIC contract by the Jordanian ministry of public works and housing in 2013 as follows:

The contractor has to design, (to the extent stated in the contract) carry out and accomplish the works in accordance with the contract rules based on the engineer's instructions and to fix any defects. The contractor has to offer, the preparations and contractor's documents determined in the contract; all his implementing members and all the supplies and other things and services, whether they are of a temporary or permanent nature, of what is required from him to perform the tasks of design, implementation, accomplishment of jobs or fixing their faults. The contractor is responsible for the competence, stability and safety of all the site's processes and all construction methods.

With the exception of what is stated in the contract, the contractor is:

- 1) Responsible for all the "contractor's documents", temporary works, design of any item of preparations and materials, for this item to be in accordance with the contract's requirements.
- 2) Except for that, the contractor is not responsible for the design and specifications of permanent works. The contractor – when ever asked by the engineer – has to present the details, arrangements and methods of the implementation of works which the contractor should not make a crucial change in these arrangements or methods without previously informing the engineer about his procedure. Therefore, the contract stated the responsibility of the contractor to design part of the permanent works, unless other special conditions are stated:
 - The contractor has to present the contractor's documents to the engineer for this part of works according to the procedures stated in the contract.
 - "the contractors documents" have to be consistent with the specifications and plans and to be formulated in the specified communication language in Article (1/4) and to include the additional information as required by the engineer in order to add to the plans with the purpose of co-ordination between the designs of both groups.
 - The contractor is responsible for this part of works and this part, after its implementation and accomplishment of works, should meet the purpose for which it was established as required in the contract.
 - The contractor – before conducting tests at accomplishment – has to present the construction plans as implemented, and the required manuals of maintenance, and operation according to the contract and in details, in order to enable the job worker to maintain, operate, fix it. This Part of work is not to be considered accomplished without presenting these documents and operation manuals, based on article (1/10).
 - The employer's commitments in light of the Jordanian civil law are the following:

- 3) The employer has to receive what is achieved by the contractor, but if he refuses without any convincing reason, in spite of being called for that, there will be no guarantee of any damage on the part of the contractor, based on the text of Article 792 of the Jordanian civil law.
- 4) The employer has to pay when receiving the accomplished contract unless the deal states another way or tradition, based on the text of Article 793 of the Jordanian civil law.
 - According to the employer's commitments in light of the adjusted FIDIC contract by the Jordanian ministry of public works and Housing in 2013:

The employer (if he is able to do that) offers reasonable assistance to the contractor (when he asks) concerning:

- A) Obtaining the copies of the government's laws relating to the contract which is not normally available.
- B) The contractor's demand of getting permission, licenses and required agreements according to the state's laws:
 - Concerning the requirements of Article (1/13) (abiding by laws)
 - Providing inventory, including customs procedures.
 - For exporting the contractor's machines when removed from the site.

Employer's Personnel:

The employer is responsible for his personnel and other contractor's working members with him in the site concerning:

- a) Co-operation with the contractor in his efforts according to the rules of Article (4/6).
- b) Commitment of providing safety measures as required from the contractor according to items (a, b, c) of Article (4/8) of the measures of protecting the environment according to Article (4/18)

Employer's Financial Arrangement:

The employer, during (28) days after receiving a demand from the contractor, provides reasonable evidence that he has made the necessary financial arrangement to make it possible for providing the contract the rules of the fourteenth chapter. However, if the employer wants to make any essential change on the financial arrangements, he must notify the contractor of the details relating to that.

Differences between contract deals and other deals in light of Jordanian law.

A) Difference between contract deal and rent deal:

- Contract deal comes for personal work, while the rent deal comes for benefiting from the rented thing.
- Some relations, , may causes confusion between contract and rent, These confusions are mostly in the contracts held by public facilities such as telephones, electricity and gas.
- The sound opinion in jurisprudence states that this contract is a deal one and not a rent deal. It is a civilian contract not administrative, however the administrative jurisprudence states that these relations do not have contracting qualities as they are organized legal centers

placed by the administrative contracts, of the administrative authority.

- One of the example in which rent and contract are confused is the deal with transportation companies as the difference is not between contracting and rent in benefit only but also in being independent when benefiting, for example, in the case of the company controlling the car, the contract is a deal one, but if the contractor controls, the contract becomes a rent one.
- The contract signed between movies theatres and playgrounds and spectators the common view statist that it is a deal contract and not aren't one because the purpose o contract is to enable the spectator to enjoy the show, but benefiting from the seat is a mean of achieving the purpose (enjoyment).

B) Difference between deal contract and work contract:

There is a big difference between work contract and deal one. The following are the most important ones:

- Work contract is controlled by work law, while deal contract is controlled by civil law.
- According to work contract, the worker is controlled by the complete supervision and management of the employer according to work system in the concerned establishment, while the contractor is linked with the employer by a civil contract, namely deal contract, which dose not mean being under complete supervision and management by the employer, but he practices his job independently. All that controls him is the implementation of the contract according to the contract signed with the employer.
- In the work contract, a certain job is mentioned according to certain job qualifications, while the deal contract aims at the implementation of a certain namely the deal.
- The worker in the work contract receives a fixed wage weekly, every two weeks or monthly depending on a salary system or according to works contract. This wage is likely to increase depending on the system of the establishment, and the job is likely to promote to a higher one, but the contractor deserves for his work an agreed upon amount of money in the deal contract and it is not likely to increase or decrease unless any kind of damage happens from one of the two parties. In this case, he receives compensation for the damage.
- The period of the work contract may be determined or undetermined in a way that the worker continues his work until retirement while the deal is always fixed in time and finishes by the work agreed upon.
- The worker may be a representative of the employer in some tasks and he always belongs to him in performing his tasks.
- The responsibility of the dependent and the independent in law is applied on him, while the contractor does not follow the employer *** is he his deputy. His responsibility is determined by what arises from his actions in regard to causing damage insolation being original and not dependent or representative. The problem of difference between the work contract and deal one may arise in the case of agreement about performing a certain job, in a case whose decisive action between the two issues is complete supervision and the full management of the employer.

C) The difference between the contract of the agency and the contract of contracting

In the contract of the contract, the contractor and the agency agree that each contract is a contract for the work and this work is performed by the contractor and the agent for the benefit of others, but they differ in that the act in the contract is the agency is a legal act whereas in the contract the contract is a material work, and the Agency is of practical importance, showing that the contract is always paid and not subject to the discretion of the judge, and the agency where the origin is to be unpaid and if the wage was paid to judge discretion, and show that the contractor does not represent the employer, but the agent is acting on behalf of the client if it works by its name.

The contract does not end with the death of the employer or the death of the contractor unless his personality is considered and shows that the agency is originally a non-essential contract. The contract is originally a contract and there are other differences. Many have already been stated when speaking in the enterprise.

We have stated that the Agency may be confused by the contractor, especially in contracts with the self-employed, such as the doctor, lawyer and architect, and pointed out that the shop in these contracts is a material work, although it is characterized as intellectual work, these contracts are contracting contracts, and may be mixed Agency contract, The lawyer is involved in a mixture of material acts and legal acts, in which the agency component prevails. On the contrary, the contract with the architect is that if a mixture of material works and legal acts occurs, the era of entrepreneurship is the predominant.

As for the financier, he is an agent for the bankrupt and the group of creditors. He is not a contractor, and the company's liquidator is the agent of the company during the liquidation, not a contractor. The experts and arbitrators are contractors, not experts, and the transport secretary is a contractor, not an agent, but may be entrusted with Such as insurance on the goods and their deposit in a store and the seizure of their price. In these actions, the agent is not a contractor, and contracting with the businessmen is originally a contractor. Jurisdiction in contract disputes: -

Jurisdiction is due to the courts of law such as the Magistrate's Court and the Court of First Instance. Where the case is based on the value of the dispute, if the value of the dispute is less than 10, 000 JD, it is the jurisdiction of the Magistrates' Courts.

- As the text of Article (3) clarifies the details of the Magistrate's Courts where the following item is mentioned in the same article on the following:

- Article (3)

Magistrate's Judges consider:

- 1) Rights and trade lawsuits related to debt or movable or immovable property provided that the value of the plaintiff does not exceed 10, 000 dinars.

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