

The Extent of Regulation of Mixed Business in Jordanian Legislation

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Abstract

This paper aims to demonstrate several issues related to mixed business, in regard of Rules of Jurisdiction in Mixed Business, Solidarity in Mixed Business, Interests Due According to Mixed Business, Procedural Rules in Mixed Businesses, Summary Proceedings in Mixed Business, Arbitration Clause in Mixed Business, Rules of Evidence in Mixed Business, Compliance of the Mixed Business' Evidence to a Dual Legal System as a General Rule, Compliance of Mixed Business' Evidence to a Unified legal system as an exception.

Keywords: *Mixed Business, Jurisdiction, Evidence, Solidarity, Interests, Arbitration.*

Introduction

The Jordanian legislator has defined a scope for the Commercial Law, in terms of the status of business. So that the provisions of this law shall not apply, except within the scope prescribed by the Jordanian legislator. However, outside the scope of the Commercial Law, the provisions of the Civil Law shall apply as “General law” applicable to the various relationships of individuals. For some reasons, however, the legislator may see that certain legal relations are regulated by special provisions, so that these special rules are preferable.

The provisions of the Jordanian Commercial Law provides a good example of these special rules, which represent an exception to the provisions of the general rules which are the rules of civil law, since it is legally stipulated that the provisions of the Jordanian Commercial Law shall only apply to the scope prescribed by the Jordanian legislator. Basically, this range is determined by the preference of either personal theory or objective theory. The proponents of personal theory believe that the trader is the basis of Commercial Law. Thus, Commercial Law applies only to traders, i.e. to those who acquire the trait of a merchant for his profession, one of the trades recognized by the Commercial Law. Meanwhile, the objective theory applies to business, and therefore the provisions of the Commercial Law shall apply to business in general, regardless of the status of a person who practice it.

Mixed business is a business that is considered commercial to one party, and civil to the other party, or according to the personal standard is the work that occurs between two parties, one trader and the other is non-merchant. Thus, the work is commercial for the merchant and civil for the non-merchant. Accordingly, mixed businesses are not considered a new category of business, nor are they civil works, but are two-sided

works, one is commercial and the other is civil. However, ordinances varied in terms of applying these two beliefs, while the vast majority of them, including the Jordanian legislation, have followed the principle of mixing both, commercial and civil (Aziz, 2017).

However, the Jordanian legislator did not regulate the provisions of the mixed business in the Jordanian Commercial Law, which led to the failure to submit to a firm legal rule governing mixed business. Consequently, the judgements of the Jordanian Court of Cassation were contradicted in this regard and thus it needs to be discussed and find its position in the Jordanian law.

Rules of Jurisdiction in Mixed Business

Mixed business is called by this name, because it represents a relation between two people, where the first considers it commercial because he/she is a merchant, or because it is related to their business, and for the other it is considered civil, because they are of a civil nature. In short, there is no need for a business, to be called mix business, that it should be established between a merchant and a non-merchant person or entity. As the key point is not in the nature of each party but the nature of its subject to both parties Adnan (1997). For example, a trader may borrow money from another trader for education or tourism. In this case, the borrowing process is not considered a commercial operation or a business, although it was established between two traders. Meanwhile, a civil person may borrow money from another person to carry out commercial operations by nature, which is considered to be mixed even if it is between civil parties. The subject matter is commercial for the borrowing person who borrowed for commercial operations by nature.

The question arises, herein, about the legal system of the rules of jurisdiction in such mixed business, whether Objective or Procedural rules, and to what legal system shall it subject to. Is it civil, commercial or mixed system?

This will be answered in the following two points: -

Objective Rules in Mixed Business

Since mixed business is not considered itself a third category of business, and is no more than a business by nature or by extension, it is therefore an urgent need to determine the provisions of the objective rules which govern such type of business, whether for excuse, solidarity or benefits.

This will be discussed in this section in several points as follows:

Excuse in Mixed Business

The basic rule in the Jordanian Civil Law, according to Articles (246) and (361) of this law, it is stipulated that the breach of contractual obligations is not admitted unless the creditor gives the debtor the excuse from implementing its obligations, so that the creditor shall not request the dissolution of the contract on the basis of this breach, or claim for compensation.

Where Article (246) of the Jordanian Civil Law provides that: (1) In the binding contracts of both parties, if one of the contracting parties fails to fulfill the contract, the other contracting party may, upon his / her excuse, request the debtor to execute or revoke the contract. (2) The court may oblige the debtor to forthwith execute its obligation or to delay it for a specified term and it may also decide to termination and to compensate as applicable. However, Article (361) of the Jordanian Civil Law stipulates that: (The guaranty shall not be entitled unless the debtor is excused. Unless otherwise provided by the law or contract) Articles (157).

The debtor's excuse, according to the basic rule, shall be by obliging him/her to fulfill its obligations by an official document, which is a judicial notice or what otherwise represent it of like means in civil matters.

As for commercial matters, there is no need for notice. Because it is a binding contract for both parties, so it will not need a notice.

It is concluded, herein, that an official document should be provided for excuses, namely a notice, or what is in the place of the notice for civil matters. Whereas, for commercial matters, no official document is required, and only the debtor is required to fulfill its liability.

Solidarity in Mixed Business

Article (412) of the Jordanian Civil Law states that: "Solidarity is not presumed, but is based on an agreement or a provision set forth in the law". Article (412) of the Jordanian Civil Law stipulates that: "Solidarity between creditors and debtors shall not be accepted unless by an agreement or by a provision in law" Article (279). However, this rule shall not apply to the obligations arising from a business, where it shall need an agreement with creditor or a provision in a law provides for solidarity. For example, commercial practice in France was based on the assumption of solidarity between the debtor and creditor with a commercial obligation, where no agreement was required with the creditor or a provision of law establishing solidarity. The civil and commercial regulations, adopted by the French jurisprudence and the judiciary after the promulgation of these regulations, although they do not contain any provision that determines or denies this custom. According to this custom, solidarity in French law is assumed in relation to commercial debt (Mohammed, 2009).

In the Jordanian laws and Egyptian laws, it appears that the assumption of solidarity in commercial issues is not recognized by the jurisprudence or the judiciary. However, there is disagreement on this matter. It is said that "Solidarity is not presumed, and this rule shall apply equally, without distinction, to civil and commercial matters" (Markus, 1980). This view, however, is based on the fact that in particular cases, commercial regulation provides for solidarity, which leads to the fact that solidarity shall not exist unless in such provided cases. Otherwise, the Jordanian Commercial Law would not provide for certain cases in which solidarity applies to.

The presumption of solidarity between the debtors and creditors in the Jordanian Commercial Law exists and is applicable. The two authors, herein, believe that Article (53) of the Jordanian Commercial Law includes a confirmation of this, as it provides that Solidarity applies to both commercial and non-commercial citizens. It states that: "1. Civilians who are abiding together to a commercial obligation shall be deemed to be in solidarity under their obligation. 2. This presumption shall apply to the guarantors of commercial debt".

The authors, herein, added that according to the Jordanian Commercial Law, assured solidarity in certain cases by a special provision, as provided by Article 26 (a) of the Jordanian Companies Law No. 22 of 1997, provided that the partner in the solidarity company is jointly responsible for the debts and liabilities incurred by the company over the sharing period, since he/she is a guarantor of personal funds for those debts and obligations. As well as Article 185 of the Jordanian Commercial Law, which provides for the solidarity between the bill holder, the receiver and the endorser in terms of the fulfillment of the value to its holder. This is to show the importance of solidarity in such cases, although the basic rule, as we have mentioned, is the assumption of solidarity in commercial matters.

Thus, solidarity in commercial issues is accepted, contrary to the basic rule in the Civil Law, where solidarity is not presumed, but is based on an agreement or special provision in the law Article (412) of the Jordanian Civil Law). This means that solidarity applies to debtors together to a commercial debt, whether commercial or non-commercial, which has been established by commercial practice since ancient times, because of the consequent support of credit which trade is useless without it (Article 53/1).

The authors, herein, also indicates that the Jordanian legislator did not merely stipulate this basic principle, of imposing negative solidarity between the two debtors who are liable together to a commercial debt, but reconfirmed this principle, in particular, in some special provisions, for the signatories on commercial documents. As Article (185) of the Commercial Law states that: “1. The holder, receiver, endorser and guarantor of the bond shall be liable to the holder in solidarity. 2. The holder shall be entitled to claim them individually or together without taking into account the order of their respective obligations. 3. This right shall apply to any person sign on a bond fulfilled by value.” This provision applies to both the bill of lading (Article (224)) of the Jordanian Commercial Law) and to the checks (Article 262 of the Jordanian Commercial Law). As well, it has assured this right for the joint partners in joint venture company and in the Commandites (either the simple or Partnership Commendams (Articles 26 and 27 of the Jordanian Companies Law).

The authors have no doubt that if the relationship is commercial to both parties, i.e., the creditor and the debtor, and given the multiple members of that latter party, then they are in solidarity to fulfill their obligations. But the difficulty arises if the relationship is commercial only for one of the parties, while it is civil for the other party. It is, therefore, valid to question about the applicability of the trade rule that assumes solidarity on debtors under this relationship?

Some believe that the commercial rule does not apply to this relationship, whether the debt is commercial for the creditor or for the debtors, since if the debt is commercial to the creditor and civil to the debtors, then solidarity shall not apply to others, because solidarity makes the burden of debt heavier on each of them in view of the fact that it is possible to claim the debt in full. Thus, everything related to the determination of the debt burden should consider the debtor. However, if the debt is commercial for both debtors and civil for the creditor, then it is also not possible for the creditor to adhere to the assumption of solidarity, because it is an uncommon rule for him, which originates from commercial custom. Where this custom shall only govern the relations between merchants (Shanab, 1964).

In one case, the Jordanian Court of Cassation found that: “The credit facility contract whereby the company borrowed from the lender bank to purchase a car from the appellee, which is signed by the appellant as a guarantor, is considered a commercial contract according to the exact meaning of the provisions of the Commercial Law No. 12 of 1966. Where the joint debtors with a commercial obligation are considered in solidarity. And this presumption shall apply to the commercial debt guarantors in accordance with the provisions of Article (53) of the above mentioned Law. As the appellee assign its bank to purchase the mentioned car, and given that the bank recourse at the value of the loan, it shall be deemed a guarantee. However, given that the appellee has paid, in full, the debt to the appellant, she is entitled to have recourse against the company and against her guarantor for the payment (Rights/Cassation No. 699/2006).

The same court also decided that: (If the contract in question is for the sale of a confectionery shop, i.e. a commercial contract between two traders, which means that the obligation is related to a commercial debt. And once there is no evidence to prove the agreement on non-solidarity between both debtors in the contract, then the obligation of solidarity, under this contract, shall apply, and therefore the defendants shall be jointly indebted). Hence, the judgment against the appellant, as a debtor in solidarity with the second defendant for whom the claim was dropped, in full for the payable amount on them, shall be legal. As the creditor shall demand the debt from all debtors, (Article: 428 Civil). Also if one of the debtors is discharged, in the solidarity, of the solidarity, he still may recourse to the rest of the remaining debtors ... (Article 432 Civil).

Despite the notability of this opinion, the authors, herein, believe that the general rules in this regard shall apply. So the presumption of solidarity shall apply if the debt is commercial for the debtors even if it was civil for the creditor. However, if the debt was commercial for the creditor and the civil for debtors, then the civil provisions shall apply, and it is presumed not to assume solidarity, so that the debtors shall not be in solidarity unless under a provision of the law or an agreement between the debtors.

Interests Due According to Mixed Business

The Jordanian Civil Law prohibits the charging of interest. This prohibition is particularly evident in the provision of Article (640) of this, which states: "If the loan contract provides for an additional benefit to the contract, unless for documenting its right, then such condition shall be deemed abolished, and the remaining provisions of the contract shall be valid". However, additional benefit, shall contain interest that the lender obtains because of the loan, except for what is documented (such as the placement real-estate as a mortgage the debt of lender) (Sweilemeyer, 2013).

In addition, the Civil Law does not permit interest to be paid on compound interests, nor is the total interest of the creditor exceeding capital (Article 232 of the Egyptian Civil Law), but this prohibition applies only to civil matters, whereas in commercial matters it is permissible, under the same Article, to charge interests on the compound interests, and that the total interest on capital exceeds the capital itself, as applicable (Shanab, 1964).

Therefore, the authors, herein, find that the Jordanian legislator, in the Jordanian Commercial Law, did not mention any provision regarding the benefits, satisfied with the provisions of the Ottoman *Murabaha* Law of 1303H, which is still valid in Jordan.

Also Article (167/4) of the Jordanian Law of Civil Procedures stipulates that: "Subject to the provisions of any special law, the legal interest shall be calculated at the rate of (9%) annually, and it shall not be agreed to exceed this ratio".

Thus, the Jordanian legislator set the maximum interest rate at Nine percent (9 %) for the ordinary debts (i.e., civil debts) or commercial debts, although this is no longer valid for the interests of licensed banks and specialized Credit Corporations in their credit facilities since the amendment of the first paragraph (A) of Article (43) of the Central Bank of Jordan Law No. 23 of 1971 and its amendments until the amended Law No. 16 of 1992 issued. In addition to paragraph (A) of Article (44) of the Jordanian Banking Law No. 28 of 2000, which enforced the bank to declare the interest rate: "The bank should clearly and prominently declare in its main branch and other branches the interest rates on the deposits of its clients, types of interests, commissions, and its credit rates provided to them."

Interests theory in the civil domain differs substantially from that in the commercial domain, as its rate according to Article (171) of the Iraqi Civil Law and Article (226) of the Egyptian Civil Law is 5% in commercial issues and 4% in civil issues. Given that Article (172) and Article (227) of both laws, respectively, allow the contracting parties to agree on another rate, provided that this rate shall not exceed 7% in both commercial and civil issues (Yamalki, 2010).

Thus, the authors, herein, criticize the position of the Jordanian legislator by not limiting the interest rate in the civil and commercial transactions through a special provision in the commercial law, and only adopted the Ottoman's *Murabaha* system. Therefore, the interest rate is very high compared to the comparative legislation. This, however, does not meet the need for business facilitation, and to mitigate the liabilities of each trade partner, to ensure speeding and spread of business. Thus, in order to avoid the effect of the high interest rate as a barrier to the demand for business, and for all of above, the authors, herein, believe that the Jordanian Commercial Law and the Central Bank of Jordan Law should set the maximum and minimum rate of interest at a low rate to encourage borrowing and investment by traders and civilians, as follows: "The interest rate in the banking transactions, in the Hashemite Kingdom of Jordan, at 5% in commercial issues and 4% in civil issues, unless otherwise different rate is agreed, provided that such alternate rate shall not exceed 7% in both commercial and civil issues".

There is no doubt that the commercial system of interest is applicable if the debt has a commercially payable interest for each of its parties and that the civil system governs the interests payable on a civil debt

against both creditor and debtor. However, what is the ruling if the debt is civil against one party and commercial against the other party?

It is clear to the researcher that it is not possible here too to break the work. Which means to apply civil system on the civil party and the commercial system to the commercial party. Because, it is not conceivable that the interest rate for the debtor is different from its rate for the creditor, as it is not a matter of two different interests. Rather, it is one interest the debtor pays for the creditor. Nor can we say that the creditor is entitled to a compound interest, or an interest with a total exceeding the capital. Whereas the debtor will not commit to paying such interest, so we should apply a uniform system, namely the civil system or the commercial system, and it is impossible to apply both systems at the same time because there is no independent scope for either.

Again we will go back to Article (43 / paragraphs A,E) of the Central Bank of Jordan Law No. 23 of 1971, as amended, which states: “The Central Bank may issue to banks, Specialized Credit Corporations excluding banks and financial institutions to work in the investment in accordance with Islamic law. Such instructions shall be declared in the Official Gazette and other media, in which the following shall be determined:

A - The minimum and maximum interest rates charged by the banks and specialized credit corporations on their credit facilities granted to customers, without being subject to the provisions of any legislation or other system of interest or *Murabaha*.

E. If the Central Bank does not specify interest and commission rates as set out in the paragraphs (a, b and c) of this Article or cancel any order it has issued thereof, then the banks and the financial companies may charge their customers such interests and commissions without the limits stipulated by any law, or a *Murabaha* system, or interest system, in accordance with the regulatory instructions issued by the Central Bank.”

In the opinion of the authors, the previous view is worthy of support. Even, the Jordanian legislator should also add a legal provision to the Jordanian Commercial Law, which states that: “the determination of the legal system to which the interest is subject shall be considered by the obligor, not the creditor. In terms of the determination of interest rate, the interest is determined at the commercial rate if the debt is commercial to the debtor, even if it is civil to the creditor. Then, the civil interest rate shall be considered if the debt is civil against the debtor, even if it is commercial against the creditor, because it is the law that sets two different rates of interest depending on whether the debt is civil or commercial.

Procedural Rules in Mixed Businesses

The legal duplication of the procedural rules of mixed business arises when we talk about the rules of jurisdiction, Summary proceedings and arbitration to define which of civil or commercial systems apply to mixed business in respect of these rules, or to deal separately by an independent legal system?

This is what the authors will answer to through the following points:

Jurisdiction in Mixed Business Cases

The jurisdiction of civil courts in Jordan includes civil and commercial disputes. Therefore, it is not important to distinguish between commercial and non-commercial work in terms of specific jurisdiction, although Article (4) of the Law of Formation of Jordanian Courts requires the establishment of economic chambers inside Amman courts. However, it is important for this distinction in terms of local or spatial jurisdiction, as provided in Article (44) of the Jordanian Civil Procedure Law No. 24 of 1988 and its amendments until the amended Law No. 31 of 2017 which states: “In commercial items, jurisdiction shall be for the court of the defendant or the court which inside its territories the goods were agreed and delivered”. Article (36) of the same law provides for the general rule : “In cases of personal or movable

rights, the jurisdiction shall be for the court under which the territories of defendant is subject". In this case, it allows the plaintiff, in commercial litigation, to bring the suit not only before the defendant' home court, as in the civil cases, but also it could be before the (The Place of Contract Court) or (The Place of Fulfillment Court).

The judicial system in France is based on the existence of two types of courts: Civil courts and Commercial courts. Whereas civil courts have general jurisdiction, i.e. it has the jurisdiction over all other courts in terms of the related litigation, the jurisdiction of commercial courts is a specific jurisdiction, as it shall merely responsible for disputes settlement under Article (631) of the French Business Law, namely Mohammed (2009).

1. Disputes relating to undertakings and transactions of merchants.
2. Disputes between partners in commercial companies.
3. Business disputes between all persons.

However, in Egypt, the judicial system is mainly based on the civil and commercial courts together. So that there is a type of court deals with both civil and commercial disputes. This is evident from the provisions of Article (45) and Article (51) of the Egyptian Law of Procedure, which determine the jurisdiction of County courts or the Courts of First Instance to the hearing in Civil and Commercial Cases (Muhammad, 1987).

Nevertheless, in Egypt, one or more department have been established to deal with commercial cases, within the courts of first instance and the courts of appeal. While, in the Court of Cassation, there is only one department responsible for the adjudication of civil and commercial cases alike. There are also two commercial courts in Cairo and Alexandria, that have been established upon the issuance of a decision by the Minister of Justice in 1940 based on Article (8) of the Civil Courts Order List, which is now replaced by Article (11) of the Judicial Authority Law No. 56 of 1959 (Taha, 1982).

The authors, herein, believe that there is no doubt that disputes over a business between both parties fall under the jurisdiction of commercial courts, but the difficulty arises when determining the competent court to hear the dispute concerning mixed or unilateral business. Such dispute is not purely commercial, nor is it purely civilian to fall under the jurisdiction of civil courts. In applying the general rule that the commercial aspect should subject to commercial rules while the civil aspect should subject to the civil rules, which means that the party to whom the relationship is considered commercial, should claim before the commercial court and the other party should brought before the civil court, according to the rule: "The plaintiff follows the defendant".

However, since the obligation of a civil person is to claim against the other party before the commercial judiciary, which is an exceptional jurisdiction with specific jurisdiction, is not familiar to non-traders because they do not usually resort to it, therefore the decision under the jurisprudence and judiciary in France and Egypt reached another solution, which thereunder a legislator has to look at the nature of the business for the parties, not only for the respondent, so that if the business was commercial for the plaintiff and civil for the defendant, the jurisdiction shall be solely of the civil court, as it was the defendant's court Adnan (1997). However, the non- jurisdiction of commercial courts to hear cases brought against who assumed a business as civil work is not a matter of public order, since such claims are considered civil only for the defendant, whereas for the plaintiff it is commercial. Accordingly, the opinion of the French Court of Cassation on the authorization of the agreement upon the contract to give jurisdiction to the proceedings that arise in connection with the execution of a mixed business to the commercial courts, even if the business considered as civil work for the defendant (Amin, 1964).

However, the judiciary in France and Egypt did not only take care with the right of the civil party to prosecute the commercial party before commercial courts, but also the right to file its case before the civil courts. So that he has the option either to file his case before Commercial courts or to bring it before Civil

courts. This view, however, is based on the fact that Commercial Judgment is unusual jurisdiction for the civil party. Therefore, he/she should be entitled to choose such Judgment or to resort to civil jurisdiction as a general jurisdiction (Amin, 1964). The authors, however, have opposite opinion as the law lack for a provision defining the jurisdiction in disputes concerning Mixed business. Thus, we believe that the general rules of jurisdiction should be the reference and this requires the determination of jurisdiction in accordance with the rule: "the plaintiff follows the defendant". So, if the defendant has a civil business, then he shall not claim except before a civil judiciary. However, if he has done a commercial business, he shall not claim except before a commercial judiciary.

Summary Proceedings in Mixed Business

Summary Proceedings is the execution of the judgment despite its appealability according to ordinary means of appeal, or even if the appeal was actually taken by one of these means Shanab (1964). Although the general rule in the civil and commercial provisions is that they shall not be enforced as long as they are challenged by an objection or appeal, unless the law otherwise provides. Article 317, paragraphs (1,2), of the Jordanian Commercial Law provides that: "1. The bankruptcy shall be governed by a decision of the Court of First Instance in the area of headquarters of a business organization".

The Egyptian legislator cited an exception to this rule in relation to the provisions of the commercial items, through applying Summary Proceedings by force of law, whether appealable or non-appealable, provided that a guarantee is provided (Article (467) of the Egyptian Civil Procedure Law guarantees damage). The Egyptian law provides for this at all, so expedited access is the rule for the provisions of commercial items, due to the speed of the commercial transactions required by the commercial transactions (Taha, 1982).

The Egyptian law provides for this at all, so the Summary Proceedings is the rule for the provisions of commercial items, this is due to the speed required for the commercial transactions *Ibid*. Therefore, it seems important to determine the status of judgments related to a dispute involving a mixed relationship. Is it a Judgment in terms of a commercial item, regardless of the relationship, or is it a Civil Judgment which can not be dealt as Summary Proceeding?

Some argue that if the subject matter of a dispute is mixed, then determining whether the judgment is issued regarding a commercial or a civil matter, depends on the debt type. So, if the relationship is commercial for the debtor, then the judgment was issued in terms of a commercial item and therefore it should be enforceable through Summary Proceeding. However, if the relationship is civil for the debtor, the judgment is considered to be issued in terms of a civil item, and therefore cannot be executed through Summary Proceeding (Shanab, 1964).

The two authors, herein, support the previous view, and believe that it is necessary to reach a unified rule, either to consider the Judgment issued in terms of a commercial item, then the execution should be through Summary Proceeding, or to consider that it was issued in terms of a civil product, then the execution shall not be through the Summary Proceeding unless upon a specific provision.

In this case, the question arises: what is the applicable judgment to be issued in case the defendant (the merchant) proceeds against the civil plaintiff. Shall the court decide through Summary Proceeding in favor of the merchant against the civil person or not?

To answer this question, the authors may argue, herein, that the court may judge through a Summary Proceeding to the other party, based on the debt type. If the basis of the debt is civil, it shall not subject to Summary Proceeding.

In conclusion, the authors, herein, wish the Jordanian legislator to add a special provision in the Jordanian Commercial Law that provides for Summary Proceeding for the business in general, provided that a

Performance Bond is provided. However, the provision should read: "Summary Proceeding shall be adopted by force of law in terms of the provisions of commercial items, whether it was appealable or actually appealed for in this manner, provided that a Performance Bond is provided".

Arbitration Clause in Mixed Business

The Jordanian Commercial Law lack for any clause or provision regarding the possibility for Arbitration in a Mixed Business. Thus, in accordance with the Jordanian Arbitration Law No. 31 of 2001, as amended by Law No. 16 of 2018, which provides in Article (3/1): "Subject to the provisions of the International Conventions in force in the Kingdom, the provisions of this Law shall apply to any Conventional Arbitration, which shall be adopted in the Kingdom, in addition to any arbitration shall be subject to this law, whether in civil or commercial disputes between the parties of public or special law, regardless the nature of the legal relationship of the dispute, contractual or otherwise."

Hence, the authors conclude, from the above provision that the arbitration in business is permissible under the Jordanian law, whether for business by its nature or for business by virtue. As for the mixed businesses, the Jordanian legislator ignored its organization, under the Jordanian arbitration law. Therefore, it was necessary for the researcher to examine the matter in the comparative laws and the Jordanian jurisprudence to see the possibility or not in the arbitration in the mixed business?

Where we found that in the Egyptian law, the arbitration clause is true in both civil and commercial matters, and therefore it would be correct if it has been addressed in a mixed contract Article 818. However, the case is different in the French Commercial Law, which does not permit the contracting parties to agree to resort an arbitration for their disputes settlement, unless the relationship arising from their contract is commercial. As the arbitration condition in the French law is void in civil disputes Article 136.

So we ask a question here: is it permissible for a Mixed Business contract to include a condition for arbitration in French law? The French judiciary has settled the invalidity of the arbitration clause contained in a mixed commercial contract, but such invalidity is irrelative to the public order. It is a relative invalidity, which is solely for the benefit of the civil party. Thus, when the commercial party moved the dispute to the arbitrator, in accordance with this contract, the civil party has the right to hold its void. However, if the civil party adheres to arbitration condition, either if the case brought against him by the commercial party, or if the case brought against him before the arbitrator, then the commercial party shall not hold the nullity of the arbitration condition Shanab (1964).

On the above, the authors see a possibility for the application of the ruling of "arbitration" on the mixed business, the absolute provision shall apply unless otherwise restricted by another provision. In this regard, nothing in the Jordanian legal system restricts this possibility, Nevertheless it was confirmed by the applications in Comparative laws.

Therefore, the authors wish that the Jordanian legislator will adopt in the Jordanian Commercial Law the French position which is the closest to the legal logic by inserting a provision that provides: "it is permissible to resort to arbitration of commercial disputes and exclude civil disputes, unless otherwise a special provision is provided in a mixed commercial contract on the right to arbitration, upon the request or the approval of the civil party".

Rules of Evidence in Mixed Business

The civil law system is based on the principle of limited evidence. Not all means of evidence are given the same weight, and in particular, it does not allow to proof the civil legal conduct by oral evidence or presumptions, if the value of this conduct exceeds one hundred Dinars (Article 28/1/A of the Jordanian

Evidence Law No. 30 of 1952 and its amendments up to the Law No. 22 of 2017), and shall not permit oral testimony even if the value does not exceed one hundred dinars in violation of, or exceeds what included in the written evidence Article 29/1.

However, the commercial law adopts the principle of evidence freedom, and it permits the proof by all means, including evidence, and presumptions, even if the value of the conduct exceeds one hundred Dinars, even if it is intended to prove the contrary or if it exceeds what is proved by a written evidence Article 28/1.

This what is provided by Article (51) of the Jordanian Commercial Law: “The proof of commercial contracts shall not basically subject to the exclusive rules set for civil contracts. The said contracts may be proved by all means of evidence, without prejudice to the exceptions provided in the special legal provisions.”

The freedom of evidence in business is not related to the Public Order, it could therefore be agreed that proof of business shall be in writing, and then proof shall not be considered otherwise. The burden of proof, however, shall be borne by who claims that business is commercial, unless the concerned person is a trader, then the legislator assumes that the business is commercial, unless otherwise proven Muhammad (1987).

However, it was considered by the commercial law elucidators and according to the provisions of ruling, to adopt the dual solution. Where, the provisions of the Commercial Law shall apply to the party who practiced the commercial business as a mixed business, whereas the provisions of the Civil Law shall apply to the party to whom the work is considered civil for him.

However, there is an exception on the general principle that adopts the dual application of the proof means in the Mixed Business, namely, the existence of special legal exigencies which require that hybrid work be generally subject to special legal rules applicable to the merchant and non-merchant in terms of evidence. So we will discuss the general rule, and the exceptions thereof, through the following:

Compliance of the Mixed Business' Evidence to a Dual Legal System as a General Rule

According to the Jordanian jurisprudence and Judiciary, the Mixed Business' Evidence shall subject to a Dual Legal system, where the non-merchant can prove the evidence of work against the merchant by all means, whereas the merchant cannot prove the evidence of work in the face of non-merchant but only by the methods of the Civil law. The rules of evidence in a Mixed Business, should, according to this opinion, be either subject to a dual legal system as a general rule, or has its authority in accordance with the commercial books.

This will be discussed by the authors as follows:

General Rule in Mixed Business' Evidence

The basic rule is that the rules of commercial evidence shall only apply in the relationship between traders, but if the defendant is not a merchant, the plaintiff may not prove his claim unless in accordance with the rules established in civil cases, however the non-merchant party may prove his claim against the merchant party by all means of evidence including personal evidence to prove violations or what exceeding the contents of a written evidence or proof. However, the subject remains permissive subject to the judicial absolute discretion of the court as applicable (Adnan, 1997).

Thus, the prevailing view in jurisprudence and in commercial jurisdiction is that the evidence of mixed business differs according to the status of its debtor. If it is a trader, the rules of evidence applicable in the commercial field are dependent on the “freedom of evidence or absolute evidence” rule. However, if the

debtor is not a merchant, the evidence shall subject to the provisions of Civil Law, which is a restricted evidence, wherever the amount of the obligation exceeds the amount specified by law Hamza (2013).

Evidence in the Jordanian Civil Law is provided by the means set forth in Article (72), which states: "Proof Evidences are the following: 1. The writing 2. Testimony 3. The Evidences 4. The inspection and the experience, and 5. The Oath". Also, Article (2) of the Jordanian Evidence Law No. 30 of 1952 and its amendments up to the amended Law No. 22 of 2017 states: "Evidences shall be divided into: 1. Written evidence 2. Testimony 3. Presumption 4. Admission 5. Oath and 6. Inspection and experience." This evidence can, obviously, be described by a researcher as a restricted evidence by pre-defined means.

Furthermore, the general rule in the Jordanian Civil Law also states that: "Civil Businesses can be proved for the contractual liabilities exceeding One Hundred Dinars or any amount not specified in the contract". Then, witness shall not prove or discharge liability or obligation unless there is agreement or a specific provision otherwise. In contrast to the Jordanian Commercial Law, it adopts the principle of the Freedom of Evidence in business. It is permissible to prove the work by all means of evidence, including evidence, and presumptions, even if the value of the conduct exceeds one hundred Dinars, even if it is intended to prove the contrary or if it exceeds what is proved by a written evidence.

This is what stated in Article (28/1) of the Evidence Law: "In the contractual obligations, the following provisions shall be taken into account for the validity of the evidence in testimony:

1. (A) If the contractual obligation on non-commercial items amount is less than one hundred Dinars or if the amount is not specified, the testimony shall not prove or discharge liability or obligation unless there is agreement or a specific provision otherwise.

(B) Subject to the provisions of any special law, the evidence may be proved by testimony in commercial obligations.

Article (51) of the Jordanian Commercial Law affirmed that: "The proof of commercial contracts shall not initially subject to the exclusive rules set forth for civil contracts. The contracts referred to may be proved by all means of evidence, without prejudice to the exceptions provided in the special legal provisions." Therefore, a civil party can prove its claims by using all means of evidence set by the law to establish rights and obligations, and without any restrictions, in particular writing, that are often complex and has high-cost. Thus, such party can prove any obligation either through testimony, admission, experience or evidence, or any other means specified by the law (Abbas, 2004).

It is necessary, herein, to reaffirm the legislative limitations by the Jordanian legislator as no explicit provision set for specific side in mixed business, which has led to conflicting provisions and trends. Where, in one of the cases, the Jordanian Court of Cassation violated the above mentioned provisions when it decided, for accepting the "Evidence Freedom Principle", on commercial items, that a business should be commercial and between two traders. Where it found that: "According to the first paragraph of Article (28) of the Evidence Act: The acceptance of the Testimony in the commercial items requires the business to be commercial and at the same time to be between two traders" (Rights, Cassation No. 22/1976, dated 11/1/1976, published on page 1574 of the Journal of the Bar Association, 1/1/1976).

Some criticize the above judgment by the Jordanian Court of Cassation. It contradicted the jurisprudence in the case of evidence in mixed business. The court stipulated that it is permissible to accept evidence testimony in commercial items that the business should be commercial and between two traders. It could be concluded from this judgment that if one of the parties to the mixed business was Civil, neither side may benefit of the rule of Evidence Freedom in business, and this is of course contradicts the jurisprudence Ibrahim (2014).

Some also criticize the discretion of the Jordanian Court of Cassation as the Jordanian law adopts a Dual solution, i.e. to apply only the provisions of the Commercial Law to a party who considered the mixed business to be a commercial work, and to apply the provisions of the Civil Law to the party whom the work is considered civil. And this was not followed by the Jordanian Court of Cassation in its judgment (Yamalki, 2010).

Others argue that, as long as the business is mixed, the rules of Commercial Law should apply to the party to whom it is considered a commercial business, in their view according to the Latin theory, i.e. to adopt Dual judgement which has been taken by the French law and the Jordanian law, and this contravenes the cassation decision thereof (Mohammed, 2009).

On the above, it is important to emphasize the importance of the intervention of the Jordanian legislator to address this legislative deficiency, which did not explicitly stipulate a special provision on Mixed Business, which led to contradictory provisions and trends by the distinguished Jordanian Court of Cassation. The authors, therefore, propose that the Jordanian legislator adopt a special provision in the Jordanian Commercial Law or in the Jordanian Evidence Law stating that: "The dual system of Evidence means shall apply to Mixed Business, so that the civil party can prove what is claimed under the provisions of the Commercial Law and all Evidence means. However, the merchant party has to prove what he claims in accordance with the provisions of the Civil Law".

Commercial Books and Mixed Business Evidence

There is a question here about the extent of the authority of the commercial registers or books in the Evidence, and the extent to which the trader can benefit from them in proving the Mixed Business? Article (15) of the Jordanian Evidence Law provides that: "The Trader's Registers shall not be an evidence against non-traders, but the data contained therein shall be valid for the evidence provided by the merchants." Article (16) of the same law states: "the compulsory Trader's Registers shall meet the following:

1. It should be an evidence against its holder, whether it is a legal organized or not, but it is not permissible for anyone who wants to draw a proof for himself, to divide what is stated therein, and to exclude what was contrary to his claim.
2. It is appropriate to be an evidence for its holder in the transactions concerned with his trade if it is organized, and there was disagreement between him and the merchant".

It is clear to the authors, herein, on the above two provisions that commercial books are not considered an evidence unless meeting three conditions, namely: that the dispute was between two traders, that the books are organized, and that the dispute is related to a business. Thus, we believe that the provision of Commercial Registers shall not apply to Mixed Business, Mixed Business is not purely commercial, and it is often not between two traders.

If a dispute occurs between two civilians, or between a merchant and a non-merchant, some conditions of the authority of the Commercial Registers in the evidence are left behind. As the strength of the Commercial Registers in proving evidence is limited to the business of the traders alone without other persons who do not commit to keeping commercial books. The presumption is that the business in question is registered in the commercial books of both parties to the dispute, where the court can then match the evidences of both parties (Sarkhouh, 1991).

In this sense, Article (15) of the Jordanian Evidence Law confirms that: "The books of merchants shall not be an evidence against non-merchants." If one of the adversaries is a merchant and the other is not, it is no longer justified to derogate from the provisions of general rules, as long as the requirements for the application of the authority of such books evidences are not met for Mixed Business. This is confirmed by the fact that the legislator wanted to provide protection to the civil party against the additional and unusual

and unexpected costs and obligations, as a result of allowing his opponent, whose obligation is commercial, to enforce the rules of Commercial Law against him.

It should be noted, however, that although the rule of evidence in a Mixed Business clearly works towards the protection of the party for whom the Business is considered civil. However, the desired purpose may not be achieved, as long as this rule can be limited, either by a special legal provision, or the agreement of the parties, as can be shown from the shortage of paragraph (A) of Article (28/1) the Evidence Act that states: “(A) Unless there is an agreement or a special provision otherwise”. And paragraph (B) of the same Article which provides: “(B) Subject to the provisions of any special law, evidence may be accepted in testimony in commercial obligations”, and due to the shortage of Article (51) of the Jordanian Commercial Law which state: “Notwithstanding the exceptions contained in Special legal provisions”.

On the above, it is clear to the authors that the agreement on the violation of the Dual Evidence in Mixed Business is supported by the general rules. As the Jordanian legislator when organized, in the civil law, the written evidence as a mean of proof, it allows the contracting parties to conclude the contrary. Furthermore, once the Trade Act Having decided the principle of the Freedom of Evidence in commercial items, the parties have the right to agree on the evidence in writing contrary to the general principle.

This has led some to believe that the practice of such an agreement, or the practice of a special legal provision, would lead to the loss of the rights of the civil party in the Mixed Business. It may also result in an imbalance between the parties in the contractual relationship (Abodi, 2004, p. 151). This has led some comparative laws, such as the French law, to provide in the annexes, as of the Article (11132L) of the French Law of Consumption, that any condition leads to the limitation of the consumers' right in choosing the means of evidence shall be deemed an arbitrary condition and considered void (Mahmoud, 2012).

Compliance of Mixed Business' Evidence to a Unified legal system as an exception

The question remains: What are the exceptions inserted by the Jordanian legislator to this principle? the Evidence Act, the Trade Act, or the Special Laws, which make the Evidence of Mixed Business subject to a uniform legal system?

We believe that if the general rules is a Dual application of Evidence means in Mixed Business, then, Pursuant to the exceptions mentioned in Article (28) of the Jordanian Evidence Law and Article (51) of the Jordanian Commercial Law: “in addition to the legality of the agreement on the contrary between the civil party and the commercial party, and obedience of the Mixed Business to a unified legal system in terms of the evidence. Thus, the authors have found, in the Jordanian legal system, special legal provisions and special agreements on Evidence in Mixed Business that should be subject to unified legal rules that equalize between the merchant and non-merchant in the proof of evidence in certain cases, including the exceptions set forth in Articles (28) and (30) of the Evidence Act. As well, in case of evidence of a commercial Lien even though it is concluded between a merchant and a non-merchant, as it is subject to the Evidence Freedom (Article (61), para. 1, of the Trade Act). Also, in the case of the bank proving the indebtedness of its non-merchant client by the statement of account. Where the law of banks decided to provide such statement an evidence authority, although it is evidence by the bank.

Article (74), paragraph (e), of the Banks Law provides that: “The bank' disclosure of all or some of the information of the client's transactions necessary to prove his right in a judicial dispute arose between the bank and its client in terms of these transactions”. However, Paragraphs (b) and (e) of Article (92) of the Jordanian Banks Law provides the following: (b) Notwithstanding the provisions of any other legislation, banking cases may be proved by all means of evidence, including electronic data or information issued by computers or telex machines. (e) All the banking and financial activities shall be deemed commercial by virtue of its nature, regardless of the status of the contracting client of the bank, whether he is civil or

commercial. It shall be also subject to the provisions of the Commercial Law in force but not subject to the provisions of the *Murabaha* system”.

All of the above will be discussed in this section, as follows:

Exceptions in the Evidence Act for Proving Mixed Business Evidence

As an exception of the general rule set forth in terms of proving Mixed Business Evidence, when reading the provisions of (Articles 28 and 30) of the Jordanian Evidence Act, the authors, herein, finds that the legislator has broken this basis in order to subject the proof of Mixed Business Evidence to standard legal rules. Thereby, it allows the merchant party, who considers the business a civil work from his side, to prove the obligation of his opponent, by all means of evidence, including witnesses, in the following cases:

If the Value of the Mixed Business does not exceed one hundred Jordanian Dinars, or if it is not possible to obtain a Written Evidence

According to the authors, a merchant, who is considers a business commercial from his side, can prove the obligation of his opponent, who considers the business a civil work, by all means of proof, in case the disputed amount does not exceed JD100, as provided by Paragraph (1) of Article (28) of the Evidence Law to restrict the proof by written evidence. In this case, the evidence of Mixed Business is subject to a unified legal rules where the merchant and non-merchant can prove the obligation according to the principle of Evidence Freedom, provided that the value of obligation shall not exceed JD100.

The second paragraph of Article (30) of the Jordanian Evidence Law states: “Evidence may be proved in contractual obligations, even if the debt amount exceeds 100 dinars: in the presence of a material or moral impediment to obtaining a written evidence, or if a custom and convention do not need to link it to a legal bond”. The above mentioned paragraph indicated that it was considered to be a material impediment to obtain a written evidence, if no body was able to write the bond, or if the applicant was a third party who was not a party to the contract. The kinship between the spouses, the ascendants and descendants, or collateral kinship up to the third degree, or between one of the spouses and the parents of the other, shall be also considered a moral impediment to obtain a written evidence.

Therefore, if the trader is unable to obtain a written evidence, as a result of the reasons stated in the above paragraph (Material or Moral) (or if custom and convention do not require a legal bond, such as a dentist), he can prove the evidence by hearing of witnesses, against the civil party in the Mixed Business, if the value of a dispute exceeded one hundred dinars (Abbas, 2004).

In Case of the Presence of (The Principle of Permanence in Writing)

Article (30/1) of the Jordanian Evidence Law provides: “Evidence may be proved in contractual obligations even if the required amount exceeds 100 Dinars: 1. In the presence of “The principle of permanence in writing”. Which means each script provided by the adversary makes the presence of the allegation probable.”

The presence of “The principle of permanence in writing” shall be considered when a written letter is provided by the adversary. However, “The principle of permanence in writing” shall not constitute a full written evidence, but merely supports an existing evidence, as long as it would make the existence of the alleged right probable. Since the judge has passed stages in seeking his convictions and there is nothing left to do except to complete this conviction through the testimony or presumptions (Hamza, 2013). Such writing or script may be a document, a letter, a special note, or any other paper, and shall not require to be in a specific form, signed or a statement within an investigation record. Or an interrogation record, in a note submitted by the adversary in the case, or otherwise (Articles 8-11) and (Articles 18-21) of the Jordanian Evidence Act). However, it is necessary, to consider such paper and other Evidence means as a “ principle

of permanence in writing” to be issued by those who it represent an evidence against him, or those who or his deputy has the right to do so ¹Hamza (2013).

In summary, the authors believe that if these conditions are met, and that the writing evidence was issued by those who it present an evidence against, or by those who has the right, or from his deputy, and that the judge has passed stages in seeking his convictions and there is nothing left to do except to complete this conviction through the testimony or presumptions, the trader is exempt from the restriction at the level of proof of mixed business against the civil party, and thus both are subject to unified rules that adopt the “principle of permanence in writing”.

The Case of Loss of Written Bond

As an exception to the merchant in the face of the civil party, evidence by means of testimony and other means of evidence, in the case of loss of the written evidence for a reason beyond his will, shall be permissible. Article (30/3) of the Evidence Law dedicated a special provision exempting the trader from the principle of restricting evidence against non-merchant party: “The Evidence may be proved by testimony in contractual obligations even if the amount exceeds 100 Dinars: if the creditor loses its written document for a reason beyond his will.”

“Even if the required amount is greater than one hundred Dinars: if the creditor lost its written document for a reason beyond his will”. The necessity for the exception, in this case, is clear, since the testimony may replace the written evidence to prove the value of more than one hundred Jordanian Dinars, if the bond is lost without default from the holder, where the legislator took into account the critical situation that may be found by the trader who lost the written evidence after it was existed to maintain his rights (Mahmoud, 2012).

Other cases provided by Article (30) of the Jordanian Evidence Act

Paragraphs (4, 5, 6 and 7) of Article (30) of the Jordanian Evidence Act contain another set of cases which permit, as an exception, the merchant to prove evidence and other means of proof against the civil party. Under this Article, Evidence may be proved in the contractual obligations even if the amount of the value exceeds one hundred Dinars, in the following cases:

- If the contract is challenged as prohibited by law, or contrary to public order or morals (Article 30, paragraph 4, of the Evidence Act).
- To indicate the conditions surrounding the organization of the bond (Art. 30, para. 5).
- To determine the relationship between the bond in question and another bond (Article 30, paragraph 6).
- In case of allegation that the bond was taken by fraud, fraud or coercion, any of these facts shall be clearly defined (Article 30, paragraph 7, of the Evidence Act).

The Case of Evidence of a Commercial Lien in Mixed Business

The Commercial Lien is based on the transfer of the possession of the Real Guarantee to the creditor, where the latter shall hold it until the maturity of the debt. If the debtor fails to pay the due debt to the creditor, the latter shall sell the Real Guarantee in accordance with the legal procedures in order to recover his right (Hadi, 2011).

Article (1372) of the Jordanian Civil Law defines a commercial lien as: “The retention of money in the hands of the creditor, or in the hand of upright person, in order to guarantee a right that may be collected, by all or some, before all other creditors.” The Jordanian legislator, however, organized the commercial lien in Articles (1372-1423) of the Jordanian Civil Law, and organized the Commercial Mortgage in Articles (60-67) of the Jordanian Commercial Law.

The Jordanian legislator considers the Commercial Lien to be a formal contract for third parties. Thus, it does not take place merely as soon as the two parties agree to enter such a contract. Rather, it shall be registered formally in the registration department. In this case, writing is required for the creation of the mortgage, not just for proving it and documentation it in the real estate register. Article (1402) of the Civil Law states: "A Commercial Lien and Commercial mortgage shall not be effective for others unless it is registered in the registration department in addition to the possession of the pledge by a creditor." Article (1405) of the Civil Law stipulates that: "A movable Lien shall not be deemed effective against third parties unless it contains in a fixed paper the date on which the debt, the mortgaged property is determined, as well as the transfer of possession to the mortgagor." Article (1409) of the same law provides: "Any person put a mortgage on his debt, he shall hand over to the mortgagee the proven bond of this debt."

Thus, the authors, herein, believe that if the basic rule in Mixed Business that it should be subject to a Dual legal system that adopts the rules of Civil Law for the party whom the business is civil, and the rules of a commercial law for the party whom the business is commercial, then the Jordanian legislator, upon a special provision in the Law of Trade, made the Commercial Lien as an exception subject to a unified legal system in terms of evidence, namely the "The Commercial Lien Proof System" by all means of evidence. As the civil party may not adhere to ask his adversary to provide a written evidence according to Article (61) of the Commercial Law, which provides: "1- Except the following restrictions, the mortgage shall be deemed legal by all means of evidence. 2- Nominal Bond Mortgage shall be mortgaged by transfer transaction as Insurance, and shall be registered in the place from which the bond was issued and on the bond itself. 3- Order paper shall be mortgaged by endorsement reading (The value deposited as insurance) or any other words having the same meaning. 4- the ordinary debts accrued to a specific person shall be pledged in any way by a written bond with a fixed date noticed to the debtor whom the mortgage put on his debt".

The purpose of this provision by the legislator is to the Commercial Law that prescribes the principle of freedom of proof, although it is a mixed act, is to increase the effectiveness of this guarantee as a mean of commercial credit, and to eliminate its evidence from slow civil restrictions of necessary writing, ratification of signatures, and other customary procedures Hadi (2011).

The case of proving the indebtedness of the non-merchant client by Bank Account Statement in Proving the Evidence of Mixed Business.

The statement of account is one of the most important means adopted by banks to prove that the client failed to perform his contractual obligations. The bank's custom is based on dealing with this document, which is based mainly on the commercial books maintained by the banks and used to prove their indebtedness against customers (Makhlouf, 2011). The bank statement is defined as: "the comprehensive inventory of the various transactions done on the customer's account, recorded in the credit and debit fields, which shows the state of the account and its balance and the transaction that have been made on it. It is usually prepared by banks according to a specific model provided by the Central Bank, And it should clearly show the interest rates, commissions, values, and how should be calculated" (Hamza, 2013).

The account statement is one of the means of evidence in the commercial field, which is stipulated by the legislator in the Jordanian Banking Law No. 28 of 2000 and its amendments in Article (74 / e), which states: "The bank shall disclose all or some of the client's transactions necessary to prove his right in a judicial dispute that arose between him and his client in respect of such transactions". However, Article (92/b) of the same Act, states: "Notwithstanding of the provisions of any other legislation, bank cases may be evidenced by all means of proof, including electronic data, or data produced from computers, or telex communications". Also, Article (92), paragraph (e), provides that: "All banking and financial activities shall be considered commercial by virtue of their own nature, regardless of the status of the contracting client of the bank, whether civil or commercial. The provisions of the Effective Commercial Law shall apply thereof, but not subject to the provisions of the *Murabaha* system".

On the above, it is clear to the authors that the Jordanian legislator authorized the adoption of the Bank's statement of account as a mean of evidence before the courts regarding disputes arising between banks, and its clients of merchants, and non-merchants, and merely if they are provided as written evidence in the lawsuit, without distinction between the civil party and the merchant. Even if such statement was prepared by these banks, as an exception of the adopted rule of Evidence, which provides that the plaintiff may not make evidence for himself.

Regarding the applicability of the provisions of the Commercial Law on Banking activities, which is provided in Article (92/e) of the Jordanian Banking Law, we noticed that the Jordanian Court of Cassation found, in one of its cases, that: "Under Article (6/1/d) of the Banking Law No. 28 of 2000 and Article (92/e) that the transactions of public and private banks are considered commercial transactions by virtue of their own nature, regardless of the client status, and are subject to the provisions of the Commercial Law" (Rights /Cassation No. 2742/2013, Date: 24/12/2013, Adalah Center publications).

However, one believe that to consider the non-merchant client as merchant and then subject to a unified legal system in terms of the authority of the "statement of account" in Evidence, is a retreat from the protection provided by the Mixed Business theory, which adopts the dual application of the means of Evidence to Mixed Business by distinction between the parties, i.e. the civil party and the merchant party Makhlof (2011). Another opinion was added as follow: the merchant client can face the bank and invoke against the bank with its commercial books that should be regularly maintained under the law, and by all means of evidence adopted in the commercial field, which may support his position in a dispute related to the contents of the account statement extracted from the bank's records and commercial books. However, it is difficult for the non-merchant to do so because he does not have the same means. Not even, if it is often impossible, to refute the contents included by the bank in such statements due to the complicated banking techniques and operations as well as the lack of experience by the non-merchant in book keeping contrary to the merchant.

The authors, herein, support the above Juristic positions. Since the legislator was wrong by ignoring the privacy of non-m Mahmoud (2012) erchant client. As its relation with the bank should be organized by independent rules and principles not by that organizing the relationship between traders, and not merely with regard to the account statement and the Evidence means. Rather, it should be concerned with the core of the relationship at all the levels of the contractual process.

Therefore, the authors hope that the Jordanian legislator should distinguish between the merchant client and the non-merchant client. So, the Evidence against merchant client shall be subject to all the means of Evidence, including bank statements. Whereas, the non-merchant client shall not be invoked by such bank statements.

Conclusion

In this study, we find that the scope of Mixed Business is almost the same as the scope of commercial business for both parties. This is important as long as the Jordanian Commercial Law is based primarily on the idea of commercial business. We have found, however, that the determination of this scope was not clear for some businesses, which raised a debate among Jurisprudence and Judiciary thereof. We have also concluded that the general rule set for ruling the Mixed Business is to divide such type of work, by applying Civil system on the civil side of business, and Commercial system on the commercial side. This rule, however, seems at first sight simple and clear and easy to apply. But as soon as this application begins, the difficulties arise, and the problems are complicated, which has led to jurisprudence, and the judiciary to go out in many places.

For example, with respect to the "Rules of Jurisdiction in Mixed Business", an official letter of excuses is used, namely, the Notice, or what is in its place for civil matters. As for Commercial matters, the

commercial practice has been determined not to require any official paper, and only to ask the debtor fulfill an ordinary letter or telegram. The Jordanian legislator, however, was wrong as it did not limit the interest rates within civil and commercial transactions through special provisions in Civil Law, Commercial Law, or even in Mixed Business. Rather, it has just adopted the Ottoman's *Murabaha* system and the Jordanian Civil Procedure Law, where the interest rate was very high compared to with other comparative legislations. This, however, does not meet the need for business facilitation, and the need to mitigate the liabilities of each trade partner, to ensure speeding and spread of business, and so that the high interest rate is not considered an obstacle to the demand for business. On the other hand, if the general rules stipulate the Dual application of the means of Evidence for Mixed Business, pursuant to the exceptions mentioned in Article (28) of the Jordanian Evidence Law and Article (51) of the Jordanian Commercial Law, it is possible to agree on the contrary between the Civil and Commercial parties, by adopting a unified or standard legal system for evidence.

Therefore, the authors, herein, hope that the Jordanian legislator will add a special provision to the Jordanian Commercial Law provides: (The provisions of the Special Legal System shall apply to Mixed Business, namely the Dual system related to the Notice. So that civil means are adopted if the work is civil against the party to be excused, while Commercial means are to be adopted if the business is commercial for whom excuse shall be provided). The authors also hope that the Jordanian legislator will insert an explicit provision to the Commercial Law stipulates the interest rate within the civil and commercial transactions, provided that such commercial interest rate shall meet the needs required to facilitate business and to ensure the speed thereof. The suggested provision should read as follow: "The interest rate in the banking transactions, in the Hashemite Kingdom of Jordan, at 5% in commercial issues and 4% in civil issues, unless otherwise different rate is agreed, provided that such alternate rate shall not exceed 7% in both commercial and civil issues".

Finally, the authors hope that the Jordanian legislator will adopt a special provision in the Commercial Law or in the Evidence Law provides the following: (The Dual system of Evidence means shall apply to Mixed Business, so that the Civil party can prove its claims under the provisions of the Commercial Law and by all means of Evidence. Whereas, the merchant may prove his claim in accordance with the provisions of the Civil Law).

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