LEGISLATIVE EXCEPTIONS ON CIVIL RESPONSIBILITY PROVISIONS

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ABSTRACT

Objectives: These legislative exceptions on civil responsibility provisions are considered a legal stratagem. The term legal stratagem will be used in this article to refer the legislative exceptions on the civil responsibility provisions. The present article is based on the scientific observation of a number of legal theories and their provisions which I believe they are nothing, but a stratagem created by legal regulation violating another legal provisions such as civil responsibility provisions or the binding force of the contract without being provided as an exception over the principle. The concept of stratagem that I am going to discuss is different from fraud, and it does not breach the principle of bad faith. It represents a legal rule that stands by itself, but its provisions break legal principles without being considered an exception to public principle. I found that legal stratagem is a result of legal heritage and a backlog of legal work over all the stages of human life. Before humanity reached the legislation as a source of rule of law, there were various sources and different stages of life in time and place, such as custom and others. Hence, dealings between individuals in society settled on some legal ideas or what could be called legal axes. As a result of this stability, these ideas and axes remained there and moved to legal texts. Despite the progress and development of other responsibility theories and the search for explanations of binding force of the contract in some legal schools, especially the Latin School. In this research, I will present my scientific opinion regarding some legal theories, which I believe they are nothing but a legal stratagem to a question created by legal thought as a legal solution. I will discuss this in both Jordanian and French civil laws in the area of contractual relations.

Method: The present research is based on a descriptive and analytical approach to the texts between the Jordanian Civil Code and the French Civil Code. In addition to study these texts in depth, to relate between the various legal aspects.

Result: We may not find a legal interpretation consistent with the provisions and general rules of the legislation, such hand money that allow contractors not to comply with the binding force of the contract or with the provisions of civil liability. Legal perception is still contradictory to the one issue like the concept of single person's company that does not establish neither partnership nor the concept of limitation that leads to the debtor's clearance of patrimony for the mere passage of time.

Conclusion: We are not faced with a lack of, a contradiction to or a legislative ambiguity. We are faced with images in which we go beyond legislative perception in accordance with the general rules of law, whether in the area of binding force of contracts, civil responsibility or financial responsibility.

Keywords: juristic person, hand money, silence, licit stratagem, prescription.

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EXCEÇÕES LEGISLATIVAS RELATIVAS A DISPOSIÇÕES EM MATÉRIA DE RESPONSABILIDADE CIVIL

RESUMO

Objetivos: Estas exceções legislativas às disposições em matéria de responsabilidade civil são consideradas um estratagema jurídico. O termo estratagema jurídico será utilizado neste artigo para referir as exceções legislativas sobre as disposições relativas à responsabilidade civil. O presente artigo baseia-se na observação científica de uma série de teorias jurídicas e suas disposições que eu acredito que não são nada, mas um estratagema criado por uma regulamentação legal que viola outras disposições legais, como as disposições de responsabilidade civil ou a força vinculativa do contrato, sem ser fornecido como uma exceção sobre o princípio. O conceito de estratagema que vou discutir é diferente da fraude e não viola o princípio da má-fé. Representa uma norma jurídica que se mantém por si só, mas as suas disposições violam princípios jurídicos sem serem consideradas uma exceção ao princípio público. Descobri que o estratagema jurídico é resultado de um patrimônio jurídico e um acúmulo de trabalho jurídico em todas as fases da vida humana. Antes da humanidade chegar à legislação como fonte de Estado de Direito, havia várias fontes e diferentes estágios de vida no tempo e no lugar, como o costume e outros. Assim, as relações entre os indivíduos na sociedade se estabeleceram em algumas ideias legais ou o que poderia ser chamado de eixos legais. Como resultado dessa estabilidade, essas ideias e eixos permaneceram e passaram a ser textos legais. Apesar do progresso e desenvolvimento de outras teorias de responsabilidade e a busca de explicações de força vinculativa do contrato em algumas escolas jurídicas, especialmente a Escola Latina. Nesta pesquisa, apresentarei meu parecer científico sobre algumas teorias jurídicas, que acredito que não passam de um estratagema jurídico para uma questão criada pelo pensamento jurídico como solução legal. Discutirei este assunto tanto na legislação civil jordana como na francesa no domínio das relações contratuais.

Método: A presente pesquisa é baseada em uma abordagem descritiva e analítica dos textos entre o Código Civil Jordaniano e o Código Civil Francês. Além de estudar estes textos em profundidade, para relacionar entre os vários aspectos legais.

Resultado: Talvez não encontremos uma interpretação legal consistente com as disposições e regras gerais da legislação, como o dinheiro de mão que permite que os empreiteiros não cumpram a força vinculativa do contrato ou com as disposições de responsabilidade civil. A percepção jurídica ainda é contraditória com uma questão como o conceito de empresa de uma única pessoa que não estabelece nem a parceria nem o conceito de limitação que leva à liberação do patrimônio pelo devedor pelo mero passar do tempo.

Conclusão: não nos confrontamos com uma falta, uma contradição ou uma ambiguidade legislativa. Somos confrontados com imagens em que ultrapassamos a percepção legislativa de acordo com as regras gerais do direito, seja no domínio da força vinculativa dos contratos, da responsabilidade civil ou da responsabilidade financeira.

Palavras-chave: pessoa jurídica, dinheiro de mão, silêncio, estratagema lícito, prescrição.
1 INTRODUCTION

The term legal stratagem is used with various indications which sometimes mix with legal theories such as fraud and legal assumptions. It is sometimes intended to exploit legal gaps in legal texts, whether due to a problem in legal drafting or a lack of provisions.

(Saqir, 1995) defines legal stratagem as “legitimate legal assumptions created by necessity and for the public interest of society” as the rule of inalienability of apology for ignorance of the law. The aim is to break the deadlock of the legal rule to achieve flexibility in the legal rules in general. For example, regarding the rule of inalienability of apology for ignorance of the law, they consider it a legal stratagem since there are many who are ignorant of the legal rule in practice. I believe that this understanding of the legal stratagem is inaccurate. The rule of inalienability of apology for ignorance of the law is a legal result of the passage of the legal rule through constitutional stages, which has led to the procedural legitimacy of the legal rule where it has become binding to all.

I think what is referred to as a concept of legal stratagem does not achieve the meaning of legal stratagem but rather is judicial jurisprudence, or it is an expansion or narrowing in the interpretation of the text according to requirements and circumstances. To say that the rule of inalienability of apology for ignorance of the law is legal stratagem is also inaccurate which we do not see in this way. It is a rule of law based on the supposed knowledge where everyone can without exception achieve the application of this rule if they wish. Accordingly, where is the legal stratagem in this issue?

According to this sense and meaning, saying that the contract is based on contractual freedom, but the person may or may not conclude a contract, and thus this is considered a violation of the principle of contractual freedom. This principle is, in this sense, a reflection of the legal stratagem which is certainly not.

Some others refer to the concept of legal stratagem as "a hypothesis or something contrary to reality in order to create a change in the rules of the law without any violation of its provisions." Supporters of this view add that it used a judicial rule to protect rights that the law had not established a provision for protecting them and expanding the powers of some courts (Ibrahim, 2020).

Whereas both definitions use the term assumption, they completely differ and contradict in content. The first opinion tends to believe that these are licit legal assumptions, while the second opinion tends to regard them as a contrary of reality and a change in the rule of law.
As for me, I do not agree with saying that they are assumptions, and I do not agree to consider them a contrary of reality and changing the rule of law. Yet, they are valid and legitimate legal rules, but they represent a breach of general legal principles. It is perhaps correct to say that there is no legal system devoid of legal stratagem.

Regarding my comment on the first definition, I think it does not lead to any indication of legal stratagem. To say that it is licit legal assumptions may lead us to say that they are only an expansion in the interpretation of legal texts required by the state of necessity or a public interest in society and subject to controls of legal interpretation.

As for the second definition, I really wonder how can it be said contrary they a contrary of reality and changing the rule of law without reviewing its texts? This cannot be accurate or correct, once the rule of law had been changed, the legal texts had been revised.

In the light of the above, and with my belief of inaccuracy of the definitions of stratagem, I strongly believe that the concept of stratagem must be accurately and correctly defined to express its legal significance. In this research, I do not adopt the concepts referred to stratagem.

There is a difference between stratagem and some other legal theories and concepts. There is also a difference between stratagem and fraud, which can be defined as “using the law against itself” (Vidal 1957; Sobia 2008; Al-Fadhli 1999).

"chaque fois qu’il parvient à se soustraire à l’exécution d’une règle obligatoire par l’emploi à dessein d’un moyen efficace, qui rend ce résultat inattaquable sur le terrain du droit positif”

This can be done by obtaining judicial situation with the intention of bringing benefits that this person would not have had without them. The role of bad faith is evident in fraud (François 2020; RIPERT 1949), while stratagem is regulated by law and using it is not malevolence. It is regulated by the provisions of law, but its effects violate the principles of the law. If it is used with malevolence with intention to obtain legal effects through changing judicial situation, we may be in the face of fraud.

On the other hand, I distinguish between legal stratagem and legal assumption, where legal assumption can be defined as “assumption of something contrary to reality, which entails changing the rule of law without changing its text” (Yaken 1964; Delagado and others 2023; Azemat and others 2023; alubaidi 2023). For example, we might have some legal theories that tried to address certain legal principles to understand them, like
the social contract theory, advocated by Jean-Jacques Rousseau, which tries to explain the relationship between authority and people. This is not the meaning I take in this research. Legal assumption, as I see it, is an attempt to explain the law in one way or another, through realizing or understanding it in a way that might be different. As for legal stratagem, it is a real fact that is regulated by law and has valid legal effects.

As for me, I define the concept of legal stratagem as “when the legislative authority regulates certain theories that entail legal provisions violate general legal principles, and this is not by way of exception”. Thus, it is not a rule to which certain exceptions are made, but a complete picture of a theory or legal principle that leads to judgements contrary to a well-established general principle.

Based on my definition of legal stratagem, the following conditions must be met:

1. It's a legal regulation issued by the legislative authority. It is not just hypotheses or misinterpretation of the law. It is not theories of jurisprudence.
2. legal stratagem arranges legal provisions contrary to general legal principles, such as responsibility provisions, financial patrimony provisions, and binding force of the contract, and so on. In other words, when examine it in abstract terms, there are legal effects that contradict the general principle arranged by law.
3. This does not appear as an exception for a public principle, but we are facing an independent, integrated legal regulation. That is, the legislative authority organized this issue so that it would be self-contained as a legal entity. Therefore, there are conditions that must apply and legal implications.

Regarding the legal consequences of the legal stratagem, as I believe, are:

1. Its application does not violate the principle of good faith.
2. The impact of its application by violating the general principles of law shall not be considered a breach of law and shall not entail compensations.
3. It does not stipulate in the law as an exception. Rather, it is a legal issue that is independent by its own and by its provisions.

In this research, I will examine the legal stratagem according to my understanding, which I presented within the framework of contractual relations. I believe that there are some legal issues that have been regulated in separate legal provisions, but I consider them as deviations from legal provisions related to a fundamental theory. For example, hand money is defined as deposit of a sum of money at the time of the conclusion of a contract for the purpose of confirming or renouncing the contract, accordingly, I believe
that the hand money in this manner is a legal stratagem on the binding force of the contract and the provisions of civil responsibility in compensation for damage. On the other hand, there is silence where the contract is concluded via it. How is it conceivable that will does not declare itself and does not conclude a contract? Other issues within the framework of the contract theory provisions will be presented through this research such as contract of company and provisions of prescription.

I would like to point out that the difference between legal systems in the adoption of different theories does not fall within the concept of legal stratagem but is a matter of state legislative policy. For example, a law may adopt a theory of cause in one state and reformulate it thereon (Bin Khada 2018; Ashraf 2017; Al-Mahasneh 1986; DEIEBECQUE 2000), consideration is in another state and act in a different direction (RIEG 1961; MALAURIE 1953; WEILL 1971). This difference does not imply the application of a theory of legal stratagem.

Through our understanding of the concept of legal stratagem I presented above, I will investigate in this research some legal issues and legal theories that represent a breach on some fundamental legal issues, provisions or legal theories in the law science that are not mentioned as an exception, which leads me to believe that they are images of legal stratagem.

2 METHODS
2.1 RESEARCH TOPIC AND IMPORTANCE

Legislation has organized many legal issues related in its provisions to responsibility, patrimony, or binding force of the contract. However, we find that there are other theories that have come in a different way by circumventing the provisions of these basic legal issues, which are of the principles and bases of the law, including the contract of company, hand money, silence as a means of declaration consent and the provisions of limitations.

Recently, all these issues are related to fundamental legal principles in the science of law. While the jurisprudential debate is at its peak to determine the terms of responsibility and the provisions and source of the binding force of the contract, we find that the legislation itself has been violated or circumvented the provisions of

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2 English legal system is to be taken into account in contracts.
responsibility and the provisions of binding force of the contract through the organization of some legal axes.

Jordan's Civil Code was enacted in 1976, influenced by Islamic jurisprudence and Islamic law (Sharia). The United Arab Emirates, the Sultanate of Oman and the Kuwait Document of the Unified Civil Code of the Gulf Cooperation Council in 2004 were affected by the Jordanian Civil Code. The French Civil Code was promulgated in 1804 and amended in 2016. This study will be conducted in the light of the provisions of these two laws in issues that I consider to be a form of legal stratagem.

In this research, I define legal stratagem as “when the legislative authority regulates certain theories that entail legal provisions violate general legal principles, and this is not by way of exception”.

This research is based on a discussion of the legal stratagem in the contractual relationships. Jordanian and French Civil Codes are at the center of the study.

I believe that there is a difference in understanding the legal stratagem among those who dealt with this issue. The only point they agree on is to say that stratagem is an “assumption” and I do not agree with this belief or opinion; the issue is not based on assumption because legal stratagem is a legal text that guarantees a specific legal provision which leads to results and impacts that clash with legal principles.

2.2 RESEARCH PLAN

This research relied on the analytical descriptive method based on the relevant legal texts in Jordanian and French civil codes, and then analyzed and clarified its provisions in accordance with the following plan:

Hand Money:
1. Stratagem on the Binding Force of the Contract
2. Stratagem on the Civil Responsibility Provisions in Compensation

Silence as a Means of Declaration Consent:
1. Verbal Silence
2. Silence of the Will

Prescription:
2. Stratagem on Payment Provisions

Company Contract:
1. Stratagem on the Provisions of Civil Responsibility
3. Stratagem on One-Person Company

2.3 RESEARCH QUESTIONS

- What is a legal Stratagem?
- What is the relationship between legal Stratagem and the principle of good faith?
- What is the difference between legal stratagem and fraud?
- Why do we need legal stratagem in the regulation by the legislative authority?
- Why does legal stratagem often fall into responsibility provisions?
- Why legal stratagem impacts the binding force of the contract?
- Does understanding legal stratagem lead to a misconception of theories or images of consent declaration?
- How can prescription be remittance for patrimony?
- What are the forms of legal stratagem in contractual relations?

2.4 STATEMENT OF THE PROBLEM

It is obvious that there is a discrepancy in the understanding of the legal stratagem and a contradiction between the ideas presented by doctrines. Whereas the term legal stratagem is used to indicate certain legal provisions that conflate different theories, such as fraud, bad faith or interpretation of the legal texts in different ways. In spite of the lack of legal studies in this field, I find that the predominant trend is the realization of this concept in a manner related to legal assumptions that can be inferred from the text, even though these assumptions are not the purpose of the text.

The existence of legal stratagem regulated by the legislative authority leads us to a question about our understanding of many legal theories correctly.

3 RESULTS AND DISCUSSION

3.1 HAND MONEY

Article 107 of the Jordanian Civil Code\(^3\) stipulates the following:

\(^3\) Jordanian Civil Code No. (43) of 1976.
1. Where a promise to sell was made with an earnest, each contracting party is at liberty to withdraw, unless the agreement stipulates otherwise.

2. The one who has given it, by losing it. And the one who has received it, by returning twice the amount.

The French Civil Code\(^4\) provides the same provision:

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\text{Si la promesse de vendre a été faite avec des arrhes chacun des contractants est maître de s’en départir,} \\
\text{Celui qui les a données, en les perdant,} \\
\text{Et celui qui les a reçues, en restituant le double.}
\]

By reference to the provisions of article 107 of the Jordanian Civil Code and article 1590 of the French Civil Code, we find that hand money is to pay a sum of money when concluding the contract for confirmation or for withdraw the contract. We also find out in these texts, that the one who gives hand money loses it if he/she withdraws, and if the one who receives it withdraws, he/she must pay it in twice\(^5\).

In the context of legal stratagem, I wonder about the legal impacts that arrange on hand money in terms of contractual relations. Giving hand money at the time of conclusion the contract is clearly breach the provisions of the binding force of the contract, so the parties can evade of their commitment of the contract once such amount of money is fulfilled at the time of conclusion of the contract. On the other hand, I believe that there is also another breach of the provisions of civil responsibility, so that there is no responsibility for compensation for the parties of the contractual relationship in case of the hand money, knowing that the contract is breached. Some may say that this is the purpose of hand money, and I say that is true, and I do not deny this legal effect. What I wonder about here is why we are facing two different rulings for the same contract; in case the hand money is paid on it, or it is not paid? How do we explain why the court obliging the party refraining from carrying out the contract to implement it, or ruling of an amount of money as compensation for non-implementation that could be more than the amount of the hand money? How has contractual justice been achieved in the form of the hand money? I may answer that by saying that it is the will of the contracting parties (RIEG 1961). In fact and in many cases, the law does not rely on the will of the parties as is the case with the abusive clauses (GHESTIN 1993; Al-Derini 1982; Saad 1988; Siwar 1960). The judge shall not interfere in the hand money to balance between damage caused

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\(^4\) Amended French Civil Code of 2016.

to one of the parties and the value of the payment of the hand money, as we rely on the agreement of the parties to estimate the value of the hand money.

3.1.1 Stratagem on the Binding Force of the Contract

The interpretation of the binding force of the contract has filled the thinking of jurisprudence for a long time\(^6\). There are many legal theories that have tried to explain this legal principle, including the principle of autonomy of will or independence of will (Nerson 1964; Albiges 2000; Capitant 1927; Flouret and Aupert 1991; Mustafa 1996; Josseran 1984) and theories of Duguit (Al-Zein 1993), Kelsen (Kelsen 1940) and Ghestin (Ghestin 1993; Ghestin 1982). In addition, there is a modern view on this topic, which is to explain the binding force of the contract by discussing the pillar of physical or material existence and the pillar of legal existence of the contract (Malkawi 2020).

Regarding hand money, I wonder how the payment of a sum of money at the time of conclusion the contract could eliminate the provisions of the binding force of the contract?

Can we say that the principle of binding force of the contract is still valid even in the payment of the hand money, on the basis that the source of hand money is the agreement of the parties to accept it in their contractual relationship? Can we say that we have an alternative obligation to the original one? Or is it giving a choice in the object?

I think we are not in front of any replacement of the object (Pineau 2004; Weill 1971; Larroumet 1996; Larroumet 1996) or giving choices in the object (Siwar 2001; Murqus 1992). The party that withdraws hand money does not get anything of giving it up. Contrary to the idea of replacing or giving a choice of the object in contracts.

I believe that we are faced with a legal stratagem organized by the texts of the articles so that the parties in the contractual relationship can avoid the provisions of binding force of the contract by using the elements of contract which is their acceptance of this provision. I see nothing in hand money but a means by which the legislative authority grants to the parties to avoid the legal consequences of the principle of binding force of the contract. It is not an exception to a general principle, but it is a self-standing legal provision that achieves the idea of legal stratagem in accordance with the concept that I have previously presented to it.

\(^6\) This issue is particularly raised in Latin school.
3.1.2 Stratagem on the Civil Responsibility Provisions in Compensation

I tend to define responsibility as “a breach of a legal obligation” (Malkawi 2016). Therefore, a clear understanding of civil responsibility must be achieved in two respects: the existence of a legal obligation, which is one of the sources of the obligation in contract, individual act, damageable act or beneficial act and the law (LARROUMET 1996). On the other hand, a breach of the provisions of one of these sources which establish the obligation is required. Such breach shall be either in the form of negligence, deliberate, infringement or dereliction (Malkawi 2016). In this case, it shall entail compensation for the damage resulting from the breach of either contractual or noncontractual responsibility.

When discussing hand money, we find that the legal provisions resulting from civil responsibility that led to compensation shall not achieve. It would amount to prior compensation performed at the time of the conclusion of the contract not at the time of the damage caused by the breach. We face a breach of the fundamental rule that stipulates compensation is for actual damage or certain one (Malkawi 2013). In addition, it is supposed to be a proportionality between the damage inflicted and the compensation it entails (Malkawi 2013). This difference may not be achieved in the case of the hand money, the value or amount of the hand money may not be commensurate with the extent of the inflicted damage caused by the breach of the contract.

How can we explain this considering the civil responsibility provisions for compensation? Isn't this a legal stratagem against the provisions of civil responsibility, especially we are not facing an image based on an exception to public principle, but rather a legal issue regulated in an independent and integrated manner?

Most laws regulate the penal clause as an accessory obligation (Adawi 1996), so that the judiciary interferes with the penal clause by increasing or decreasing it without the nullity of the penalty ruling (Ahmad 2003; Ahmad 2005; Al Rab 2013), unless the original obligation is null and void by itself, considering the penal clause is dependent which follows the original in existence, non-existence, validity, and nullity (Murqus 1992). In relation to hand money, a question arises: Why did the issue of estimating the value of the paid hand money result in the provisions of the penal clause, considering that the principle in hand money in case that one of the parties withdraws it due to non-implementing the provisions of the contract? Yet it has not been said to estimate the actual

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7 The sources of obligation in Jordanian civil code are the same in French civil code.
damage to increase the amount of the hand money or quite the opposite that if it is less, hand money may be reduced or if there is no damage, why does the hand money is not returned to the party who has performed it?

Based on the above, if the purpose of hand money is not to confirm the binding force of the contract, and it is not to claim compensation for the damage resulting from the breach of contract due to withdraw of the contract, what is the legal purpose of payment hand money at the time of conclusion of the contract?

Accordingly, we can understand the significance of hand money, we are facing a legal stratagem in order to evade the provisions of binding force of the contract and the provisions of civil responsibility that are necessary for compensation in contractual relations. In this regard, I believe that legal rule does not differ regarding the significance of hand money, whether its purpose is confirmation of approval or withdraw. This means that hand money significance does not reflect the will of the contractors upon the terms of the contract. This can be clarified if one party performed hand money to confirm his/her approval, and then he/she withdraws it. In this case, legal rule of hand money does not change whether its purpose is confirmation of approval or withdraw. Therefore, what is the legal meaning of hand money and what is the benefit of discussing the significance of hand money.

Hand money constitutes a breach of the principle of binding force of the contract and the provisions of civil responsibility which are necessary for compensation if it realizes through contractual relations. There is no legal justification other than to say that it is a legal stratagem contained in legal texts as an independent entity and not as an exception.

We can imagine that the paying of hand money among the parties of the contract indicates that their will do not want to face the binding force of the contract and do not want to bear contractual civil responsibility. In addition, parties of the contract want to break away from the contract if its implementation is not complete, through an amount that has been identified as hand money. This amount may not be commensurate with the damage actually caused or certain damage by which compensation shall be assessed. On the other hand, this would breach the binding nature of the contract for the parties through a legitimate and valid legal instrument regulated by the legislative authority. According to the legal concept I have defined for hand money, I think it is a legal stratagem against the binding force of contract and the provisions of responsibility.
3.2 SILENCE AS A MEANS OF DECLARATION CONSENT

Article 95 of the Jordanian civil code stipulates that:

a. “A statement shall not be attributed to the silent one, but silence in the face of need is a statement and is considered acceptance.

b. Silence shall be considered particularly acceptance if there was a previous transaction between the parties and the offer was related to this transaction, or if the offer resulted in the benefit of the one to whom it was addressed.”

As for the French civil code, article 1120 stipulates:

“le silence ne vaut pas acceptation à moi qu’il n’en résulte autrement de la loi des usages des relations d'affaires ou des circonstances particulières”

“Silence does not count as acceptance except where so provided by legislation, usage, business dealings or other particular circumstances”.

Jordanian and French legislative authorities have been considering silence as a declaration of will. Some of the situations in which the above texts are adopted differ, but the substance for us does not change according to the problem of this legal research. What is the silence through which the will can declare itself?

The Islamic jurisprudence (Abu Al-Basal 1999; Al-Qura Daghi 1985; Al-Zarqa 1968; Al Hakim 1993; Swar 2001; Sultan 1987; Abu Zahra 1996) refers to cases in which silence has been observed and considers it acceptable as an application of the texts referred above. These cases are the acceptance of the marriage of the virgin (this is a special case in Islam where the virgin is asked for her permission and the one who is not virgin marries herself), prior dealings between the parties, silence at the expiration of the lease contract where the lessee did not quit the immovable and the landlord did not ask him/her to leave, and the silence of the bank’s client upon receipt of the statement of his account and he/she does not challenge it.

I believe that jurisprudence that examines this issue mixes between verbal silence and will silence. In this section, I will discuss verbal and silence of will to understand these images, comment on them, and check their accuracy and validity in the context of silence as a means of declaration of will. Then, I will address the cases of verbal silence that have been mentioned above and to verify the truth of the statement that the images of silence achieve the state of declaration of will via consent.
3.2.1 Verbal Silence

It should be borne in mind that this jurisprudence is an attempt to explain the manifestations of silence. However, the text in the Jordanian civil code, is not accurate in its context, as the first paragraph states, "Silence in the face of need is a statement", that the statement in Arabic is the highest degree of disclosure.

I will address the cases that doctrine considers them as silence that declares will, and I will assess them legally:

1. The case of the girl's silence in the marriage contract (Faraj 1980; Siwar 1998). I do not believe that the state of silence exists or applies, and I distinguish between two situations. First, when the guardian is delegated in the marriage of the girl\(^8\) (Badr Al-Zamanan 2017; Shqeirat 2019), and the delegation, may be an agreement or a legal one. In both cases, the delegated one declares the will of the minor, in other words the delegated person acts as the guardian by nature in expressing will, and this is not silence at all. The second case is expected to be in the absence of the delegation, and I recall the text of Article 93 of the Jordanian civil code which considers any action that does not raise doubts about the circumstances of the situation as it indicates consent. The girl is capable to refuse in a manner that is more apparent than when showing her acceptance, and that is due to the particular situation of the marriage contract. If the girl renunciates her right of refusal, in other words, her rejection is not manifested, that indicates her acceptance. Therefore, this is not a silence due to the particular situation of this contract; it is an act of will carries the meaning of acceptance, particularly, that the implementation of the contract indicates tacit acceptance.

2. Existence of a previous dealings, as some jurisprudence suggests (Abu Al Basal 1999; Al- Hakim 1993). For example, when a merchant receives goods and he/she remains silent, this constitutes silence which indicates acceptance. I believe that this is not the case, and I refer again to the text of article 93 of the Jordanian civil code which is used as a sign of acceptance and consent. The merchant transports goods, stores them, and offers them for sale which cannot be considered a silence of will but is a course from will indicates its consent and acceptance. It is believed that the merchant could have refused and returned the goods if he so desired.

\(^8\) It is a situation contained in Islamic jurisprudence.
3. The case of expiration of the lease contract when the both the landlord and the lessee remain silence (Faraj 1993; Al-Sanhouri 1952; Al-Jubouri 2002; Al-Sarhan 2002; Al-Far 2004). Some jurisprudence considers it silence. I believe that violates an explicit provision of Jordanian civil law; article 707/2 which stipulates that: “If the lease is terminated and the lessee continues to benefit from the lease with the explicit or tacit consent of the lessor, the contract is deemed renewed in its old terms”. Accordingly, the legislative authority has distinguished the tacit acceptance from the silence of the will.

With the existence of an earlier contract between the parties, in which the termination date is realized without renewing it or that the will tends to declare the desire to continue implementing the contract. The second case may be declared either explicitly or implicitly. Tacit acceptance will be by the parties’ acceptance and consent of the situation, while the will does not declare its desire to terminate the previous contractual relationship. This is not a silence of will; it is an act taken by the will in which its significance of acceptance is beyond question where implementation of the contract is considered a tacit acceptance.

4. The silence of the bank’s client upon receipt of the statement of his account and he/she does not challenge it and keep silent (Abu Al-Basal 1999). The silence here is not at the stage of the conclusion the contract, but it is at the stage of its execution which its indication is completely different. Rather, silence at the time of the conclusion the contract must be sought as a means of declaration of the will to be accepted as the result of the conclusion of the contract.

All the images I have discussed show that they are nothing but manifestations of silence which is opposite of speech not opposite of the declaration of will. They are, in most cases, means of tacit expression even if they are mentioned in the texts of some jurisprudence and the commentary of doctrines as images of silence.

3.2.2 Silence of the Will

It is not conceivable to rely on the silence of will to declare the will depending on the indication of consent.

The potential assumption of silence of will does not lead us in any way to assume a case of silence to declare consent in this sense.
Discussing cases of assumed silence in jurisprudence is only a tacit expression which means that silence of will is an inconceivable form of declaration of will (Malkawi 2006). I cannot imagine that there is silence of will that may be considered a means of declaration of will.

Based on the above, I wonder about the idea of silence contained in the legal text referred to in the Jordanian civil code or French civil code and how much it is needed. Can silence be a means of declaration of will? Are legislators confused between the meaning of tacit declaration and the significance of silence of will? Therefore, I think there is nothing called silence to conclude the contract, and it is just the manifestation of tacit declaration of will. As a result, I conclude that there is no legal need to include the text related of silence neither in the Jordanian civil code nor the French civil code.

If the source of this legal rule is the legal legacy, we shall amend the legal provisions to bring them into line with the evolution and modern understanding of legal theories. Being a legal legacy, we are not forced to remain it as a legal rule despite its ineffectiveness and productivity.

3.3 PRESCRIPTION

Article 449 of the Jordanian civil law stipulates that “the right does not expire over time, but the case cannot be heard against the deniers when completing fifteen years without licit justification, taking into account the provisions contained therein.”

l'article 1245 16 l'action en réparation fondée sur les dispositions du présent chapitre se prescrit dans un délai de 3 ans à compter de la date à laquelle le demandeur a eu ou aurait dû avoir connaissance du dommage de défaut et de l' identité de producteur.

l'article 1100 du Code civil français “les obligations naissent d'actes juridiques,de faits juridiques ou de l'autorite seule de la lo. Elles peuvent naitre de l'exécution volontaire ou de la promesse d'execution d'un devoir de connaissance envers d'autrui”.

Some French jurisprudence and doctrines define prescription as:

“la prescription est un moyen d'acquérir ou de se libérer par certain laps de temps et sur les conditions de terminer par la loi” (François 1992).

Some jurisprudence and doctrine believe that prescription leads to the stability of transactions and reduces the pressure on courts regarding actions that have passed through time (Husni 1988; Al-Jandoubi and Bin Salima 2001; Nammur 2016; Al-Kilani 2006; Shoshari 2010). However, I do not agree with this view and believe that it is not legal.
language; it is only composing. There are possibilities that there will be different aspects lead to add pressure on the work of courts, so will there be any justification for laying down legal rules that impact the principle of these actions or the solution will be by increasing the number of judges who consider these actions? As for the issue of the stability of transactions, it is an ambiguous idea for me. I do not understand how there is stability in transactions over justice and over stability of rights. Therefore, I do not recognize the validity of such an opinion. The stability of transactions is achieved through proper legal regulation and through the achievement of procedural justice before the courts which is its main duty. Some problems of an administrative nature must be addressed without breaching the rights and financial patrimony of people in society.

3.3.1 Stratagem on the Civil Responsibility Provisions

The financial right shall consist of two elements: responsibility and indebtedness (Al-Far 2016). For legal systems that arrange extinction of obligation on prescription, the prescription shall be considered effective or productive on the entire debt, and obligation shall be terminated without fulfilling it (Nadira 2011). Regarding Jordanian civil law and the text of article 449 referred above, the prescription shall impact only the element of responsibility without the element of indebtedness. In other words, it prevents hearing the action, and it is not part of the public order. Accordingly, it should be invoked before the competent court to be able to apply its provisions. As for the provisions of prescription itself, they are part of the public order, whether those related to periods, jurisdiction, or others. The question is, is it true saying that prescription lead to the extinction of obligation without fulfillment? How can we rely on prescription to be remittance for patrimony and at the same time it is actually preoccupied with debt? In addition, what is the period set in the prescription? Why should it be considered three years, ten years, or fifteen years? What is basis these periods have been approved to regulate the extinction of obligation? Why do we distinguish between labor rights, commercial and civil rights, and on what legal basis this assumption is built? How can we establish justice having these different periods of prescription?

9 French civil code and those who affected by it in the Latin trend such as Egypt, Morocco, Tunisia, Syria, Lebanon, Bahrain, and others.
I think that there are no legal grounds for these questions and all the justifications we find - if any - are only answers of rhetorical nature that do not provide any well-grounded legal justification.

3.3.2 Stratagem on Payment Provisions

The justifications that the jurisprudence presents in the past and recently about prescription on the stability of transactions are not convincing to me and are not legally justified, and priority at the first place is to settle rights in order to achieve justice rather than seeking the stability of transactions. Is it a problem for the courts to file many lawsuits? Isn’t this their job? Can we stabilize transactions or dealings in a different way than the way in which the western legal systems were based, especially as stated in articles 1100 and 1245 of the French civil code? How do we discuss natural obligation in the case of payment of a debt that is actually stuck in the patrimony? Is it enough to justify it by passing of time? And how does the payment become valid and not a natural debt if the one performs it one day before the expiration of term and the description changes the next day?

In the field of international contracts, how can we justify this contract since it has become subject to a specific rule of law to which the parties agree, where prescription may be longer or lesser than the period stated in national laws? Therefore, how can we justify the idea that prescription is an image of remittance of patrimony that leads to the extinction of the obligation.

In conclusion, there is nothing called prescription, but an element related to legal protection that is directly related to the element of responsibility in the right, and thus to decide that the case will not be heard, and not the obligation has expired by prescription. Moreover, it is not part of public order (CAPITAN 1994; G. CORNU 1998; TERRE 1993) and must be presented as a defense in the action at the first hearing. If it is not submitted, it is no longer invoked, and the court does not issue a rule on it by itself. As for the legal periods, they must have a reasonable legal, logical, and acceptable explanation to consider such periods.

Prescription is not connected to patrimony and does not lead to extinction of obligation. It is an impediment to hearing the action. It is not part of the public order, and it must be invoked as a primary argument in the action. Otherwise, the action must be
heard by the competent court because it is related to the responsibility element of the financial right not to indebtedness element.

3.4 COMPANY CONTRACT

Article 582 of the Jordanian civil code stipulates that “the company is a contract under which two or more people are agreed to have a share in a financial project by providing their share of money or duty to invest that project and share any profit or loss that may result from”.

And article 1832 of the French civil code stipulated it: “l'article 1832 du Code civil français "la société est instituée par deux ou plusieurs personnes qui conviennent par un contrat d'affecter a une entreprise commune des biens ou de leur industrie en vue de partager le bénéfice ou de profiter de l'économie qui pourra en resulted. Elle peut-être instituee dans les cas prevus par la loi par l'acte de volonté d'une seule personne. les associés s'engagent à contribuer aux pertes.”

The company shall have judicial personality (Al-Amrussi 2014; Al-Khuli 2008). One of the most important principles to which a Juristic Person is subject is the principle of appropriation, (Al-Daoudi 1988; Sultan 1984; Abu Al-Saud 1983; Al-Saddah 1998) which means the independence of juristic person from the people who established it and the independence of patrimony of the juristic person from the patrimony of the persons who established it.

In fact, this principle is not applied in an absolute manner; in some of its forms and legal provisions, such as the liquidation where profits and revenues of this company are distributed to partners. Even in pre-liquidation stages, if there are returns and profits, they are also distributed among partners.

In addition, the company is defined as a contract between two or more people, but does this definition suit the one–person company? (Al-Khashrom 2008; Mohamed 2011; Hamza 2017; Sami 2019) Therefore, there is a need to review the definition of the company contract. Perhaps we need also to review the company concept itself and review the concept of appropriation. I think we need a new definition for the company contract that is different in its legal significance. In this study, we will first look into the deception over the liability provisions and, secondly, the deception over the financial liability provisions. Third, the trick in the one-person company.
3.4.1 Stratagem on the Provisions of Civil Responsibility

As I referred earlier to the definition of responsibility as “a breach of a legal obligation” (Malkawi 2016) and as we know there is a physical person who runs and represents the company. However, the works and acts carried out by this person thereof shall be for the company in the effects and provisions.

In fact, when a company is sued for an issue such as breach of a contract or for its damageable act, the compensation shall be directed to the company’s patrimony and not the patrimony of the people who are responsible for it. Knowing that, it is difficult to separate between the people responsible and the company itself as an independent juristic person. These people who have breached the legal obligation in the contractual relationship, or they are the source of the damageable act; it is not conceivable that the company itself and by its own personal action has breached the contractual obligation, or that it has caused the damageable act. It is for granted and legally recognized by law that there is someone who runs and judicially represents the company, but eventually it-the company- is the party who is punished.

But who is it? How can we draw a border between it and those who administer and represent it? It is true that the company has a judicial personality, but in fact, there is a physical person in the company who breaches the obligations of this company. However, the company is the one who punished, not that physical person. I believe it constitutes a legal stratagem against the provisions of civil responsibility.

There are cases where the people in charge of the company are punished, but they are responsible for the personal act of malevolence by fraud causing damage to the partners or creditors (Abu Jaafer 2018). Our discussion is not about this, but about the state of the company's responsibility for its business. These acts, which were actually done by a physical person, who legally represents the company.

The idea of juristic person is legally wonderful. But I do not believe that its independence from the people who established it represents a legal independence; it is only material independence represented by its existence. Legal stratagem is achieved through the company's image with the concept of its legal independence.

3.4.2 Stratagem on the Patrimony Provisions

The profits of the company shall be distributed to partners, but the damages and losses shall be borne by the company. How can this be a valid effect over the principle of
appropriation? How can we recognize the validity of the claim that the patrimony of the people who established the company is independent from the patrimony of the company (Al-Ruwais 2017). In the case of returns and financial profits, partners receive their shares, and in the event of damages in most of the companies except for the one-person companies, we stop at the borders of the company's patrimony, and we do not return to the patrimony of partners.

Damage caused by the company returns to it. This considers a legal stratagem over patrimony of the juristic person in the form of a company. When applying the principle of independence of partners’ patrimony from the patrimony of the company, the profits will be distributed to the partners in case of liquidation of the company. Therefore, is the patrimony of the company independent from that of the partners? Independence is achieved as a principle in the company only in the negative aspect of patrimonies, that is, debt. Here lies the legal stratagem in this matter.

3.4.3 Stratagem in One-Person Company

The aforementioned laws regulate the provisions of a one-person company, but a question arises: is it possible for a person to create a juristic person that is independent in its patrimony and legal existence?

On the other hand, how do we consider it a company, knowing that the definition of the company shows that it consists of two or more people. This exception- without recognizing the validity of the legal aspects referred above- shall be presented in this section of the one-person company which represents a legal stratagem on the company contract itself (Al-Muhaysin 2009; Abu Zina 2012), on the provisions of responsibility (Al-Jarrah 2015; Al-Aqrabawi 2019; Abu Salloum 2006) and provisions patrimony (Al-Fatlawi 2010; Al-Khuli 2009).

I will not discuss the one-person company or examine its legal provisions, (Al-Haidari 2009; Al-Qudah 1998; Hamza 2017; Al wasmi and Al-Shari’an 2017; Hilal 2016; Shuraibit 2019) but we’re up against the notion that I adopt in this article which is legal stratagem. This concept is defined as a legal act that is recognized and regulated by the legislative authority. However, it violates the legal principles and bases without any exception. It is a special case that has arisen out of public principle.

The Jordanian legislative authority regulates the provisions of one-person company, as he/she authorizes the Minister of Industry and Trade to assign a justification
from the general supervisor of companies to approve the registration of a one-person limited company.

The idea of establishing a one-person company is based on the idea of the German Companies Law issued in 1980, after that the French law was affected by it. The aim of this law was to stay away from the provisions of personal responsibility of traders in the face of debts due to their personal obligations. On the other hand, legal regulation of one-person company allows for limiting of the simulation in contracts (Al-Qudah 1998).

There is no legal justification for the one-person company, but it is based on one goal and purpose which is to separate the provisions of civil responsibility of a merchant in business from physical personality. However, the reality is quite different, as this person is benefiting from the profit returns of a one-person company, and they are returning to his/her patrimony as a physical personality. As for the company's losses, they will refer to the company as a judicial person without any effects on the patrimony of the physical person.

The company is a contract, which requires two wills. A judicial person is either a group of people or funds. The one-person company breaches the concept of the company and the concept of the judicial personality via a legal regulation, which is not included as an exception to a public principle.

Finally, I believe that there may be a need to change some legal concepts, starting with some of the principles of the law. For example, judicial personality is a legal need, but there is not any legal justification achieves justice when patrimony is separated and divided from the people who make up it.

There is no legal problem with the judicial personality that is recognized by law and recognized to practice various legal activities and acts, but what is the legal justification for separating its patrimony from the people who set up it?

4 CONCLUSION

In this paper, I present a new legal concept, which is the legal stratagem, by the fact that we are facing a legal regulation for an issue without being stipulated as an exception. However, it is a breach of the general principles and bases of law, which relate, in particular, to the provisions of civil responsibility and patrimony.
In this paper, I discussed the contractual relations and examined its axes; hand money, prescription, the provisions of the company contract and silence as a means to declaration of will.

I believe that these legal axes are essential in the contract, but we cannot say that they constitute an exception to public principles. Rather, they are regulated, and their provisions are stated by the legislative authority as independent forms. In this research, I do not discuss hand money, silence, the company, and other contractual relations axes themselves. I only discussed the role of these forms in the legal system and their relationship with two principles, which are responsibility and patrimony. In this research, I do not discuss hand money, silence, the company, and other contractual relations axes themselves. I only discussed the role of these forms in the legal system and their relationship with two principles, which are responsibility and patrimony. In the end, this paper came up with two results. First, is that we are in front of a stratagem on the provisions of civil responsibility or a stratagem on the provisions of patrimony. Second, there are no provisions that require special terms to regulate silence. In addition, there is no silence of will that can lead to conclude of a contract and the rest of the cases and images are only declaration of tacit will.

Legal stratagem is a cumulative legacy for legal systems in their various stages of development. And since the images of legal stratagem have proved their flexibility and success in life, they have been proved without being reviewed and reassessed in terms of their relation to the legal principles that the legal work with its various sources including jurisprudence, judiciary, and legislation has come up with.

There may be other legal aspects in other fields, such as insurance and responsibility for the damageable act and other legal matters to which this legal idea may apply.

We should not confuse the understanding of some legal theories or legal provisions with the idea of legal stratagem. The fault as a basis for civil responsibility in French civil code faced many legal obstacles, as several judicial decisions were issued by the French court of cassation to assess the responsibility without fault. In this case, we are not in front of legal stratagem, but it is a legal problem in understanding some theories and getting them right and accurate. Here, we find the difference between legal development in seeking justifications or obtaining a new explanation for some theories, and the transfer of an old legal legacy through modern theories and continuing to rely on them despite violations of legal principles or breaching legal principles according to modern legal thought.
Therefore, I do not say that legal stratagem is a negative image in the law, but we must be particularly aware and understand of this image. In other words, we are facing a special form of legal aspects that represents a breach of some legal principles. It does not carry malevolence and does not constitute a legal danger, as much as it is a stratagem invented by legal thought or it has transferred from legal heritage over time.

The assumption that legal stratagem is transferred from legal legacy does not justify the necessity of upholding it in contravention with modern legal provisions and theories. I believe that legal theories adopted by the laws should be reviewed and make them consistent with modern legal thought.

If we want to shift our thinking into another direction, the problem will become more complex than it appears. For example, there is a fundamental principle in the science of law that the principle is the clearance of patrimony and thus, can we say that hand money is a confirmation of this principle, and the exception is the contract obligation? Such an idea would make a noticeably significant difference, so that we will see hand money is not a legal stratagem, but rather a reservation on the public principle, which is clearance of patrimony and other than that is an exception to it. In other words, the binding force of the contract and the provision of civil responsibility constitute a breach of that principle. This assumption may be valid on hand money, but it is not true in the interpretation of the other cases referred to in this research.
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