

Legal Interest's Pivotal Role in Ensuring the Fulfillment of the Obligation

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Abstract

The present study aims to highlight the issue of legal interest within the Jordanian legal framework and the extent of its compatibility with human rights considerations. It explores the various sources of legal interest, including the Jordanian Civil Law, the Ottoman Murabaha system, the Central Bank Law, the Jordanian Code of Procedure, and the Jordanian Trade Law. The study examines the absence of an explicit provision on legal interest in the Jordanian Civil Code and emphasizes the need for its inclusion. The study reveals that while legal interest is allowed in principle, there is no explicit provision in the Jordanian Civil Code. The research findings emphasize the need for an explicit provision in the Civil Code to regulate legal interest, granting discretionary authority to the court while ensuring it does not exceed the maximum limit of 9%. This approach would prevent excessive interest charges, promote fairness, and address potential exploitation. The recommendation seeks to organize legal interest provisions in a detailed and precise manner to ensure clarity and protect the rights of the parties involved. The researcher recommends granting discretionary authority to the court to estimate legal interest within the limit of 9%.

Keywords: legal interest, Jordanian law, Jordanian Civil Code, Ottoman Murabaha system, interest regulation.

Introduction

A popular and significant practical tool for interacting with people and conducting swift, reliable business transactions is the legal interest. It helps ensure that the debtor fulfills their responsibilities on time and without hesitation or delay (Al Halalsha, 2006; Bunch, 1990). In the legal interest, the contracting parties approve the reparation amount. If the debtor delays in fulfilling an obligation, harming the creditor as an outcome of the delay in fulfilling the obligation, or the court imposes it based on the judgment rendered in the case, the debtor shall ensure any breach of the obligation's fulfillment (Jabr, 2009; Clark & Sikkink, 2013). When a debtor is required to make a payment, legal interest is crucial to prevent procrastination and delays in fulfilling his obligations. Besides being a type of reparation, the legal interest is one of the in-kind and indirect fulfillment strategies as well to compel the debtor to make timely payments.

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Alternatively, the legal interest has evolved into a method for people or financial organizations to benefit, which has prompted lawmakers to create restrictions and fixed rates for the interest rate that the parties to the commitment may not approve of deviating from. Here, the legislator's job is to strike a balance between the interests of the creditor and the need for harm reparation.

The role of legal interest in carrying out the obligation—and does the penalty provision in the event of implementation delay serve as a replacement for the claim of legal interest—is the real research challenge. Does the penalty provision conflict with paying the legal interest? Moreover, is it acceptable to combine them?

Literature Review

The Nature of Legal Interest

The law establishes the compensation amount for the hurt party who has suffered damage because of the obligation breach by the debtor. “The compensation occurs when the obligation of the debtor entails the payment of a specific amount within a designated time limit, regardless of whether the obligation arises from a legal agreement, unilateral intention, wrongful act, intentional act, or legal requirement (AL-Hammouri et al., 2023a; Al-Billeh, 2023a).” This type of obligation allows fulfillment through alternative means, as it is not feasible to fulfill the obligation directly with the payment of a specific amount. Consequently, the debtor cannot claim compensation due to the failure to fulfill the obligation. However, the compensation claim is restricted to instances of delay in fulfilling the obligation (Qassim, 2018; Al-Hammouri & Al-Billeh, 2023; Al-Billeh, 2023b; Donnelly, 1982).

Concept of Legal Interest

The matter of legal interest only arises when the debtor delays the fulfillment of their obligation. It specifically pertains to delay interest, as opposed to investment interest (Jabr, 2009; Clark & Sikkink, 2013). Legal interest can be understood as the monetary sum that the debtor is required to pay as a form of compensation for the failure to fulfill their obligation. This compensation is substituted by the payment of a specific sum of money on a predetermined date or in exchange for a designated sum as stipulated in the contractual agreement with the creditor (Saad, 2001; Al-Billeh & Al-Hammouri, 2023).

Delayed interest is regarded as a type of remuneration for the debtor's failure to make timely payments on their outstanding obligations. Due to the debtor's presumptive guilt, the simple act of being late is regarded as sufficient to justify the payment of interest to the creditor. The debtor's failure to pay a

specified amount of money does not have to cause the creditor to show that there was any direct injury as a result (Sultan, 1997; Al-Billeh & Abu Issa, 2023a; AL-KHALAILEH et al., 2023; Al-Khawajah et al., 2023). Therefore, if the debtor fails to settle their debt on the agreed-upon date, it is assumed that they have deprived the creditor of potential interest that would have been accrued had the debt been paid on the specified date (Al-Billeh, 2022a; AL-Hammouri et al., 2023b).

According to the Egyptian Civil Code Article 226, “in cases where the obligation involves a specific sum of money and the debtor delays in fulfilling it, they are obliged to pay the creditor compensation in the form of delay interest. Therefore, the rate of delay interest is set at 5% in commercial issues and 4% in civil issues. Whereas this interest begins to accumulate from the date when the judicial claim is made unless the commercial practice or agreement stipulates a different date for its applicability. It is also important to note that the law may provide exceptions to this provision.”

It is important to emphasize that the accrual of delay interest does not require the creditor to demonstrate any actual harm suffered, and the debtor is not permitted to prove that the creditor was not adversely affected. The mere occurrence of a delay beyond the due date is sufficient for the interest to accumulate. Similarly, the accrual of compensatory interest does not necessitate the creditor proving any specific harm. The deprivation of the creditor's funds and the benefit received by the debtor during this period warrant the imposition of interest (Al-Billeh, 2022b; AL-Hammouri et al., 2023c; Al-Billeh, 2023c; Al-Billeh & Abu Issa, 2022). This principle is outlined in the Egyptian Civil Code Article 228, which states that the accrual of interest, whether stipulated by law or by agreement, does not require the creditor to provide evidence of harm resulting from the delay.

In essence, the connection between interest and in-kind fulfillment arises when the debtor delays in fulfilling their obligation, particularly when the obligation pertains to the payment of a specific sum of money on a predetermined date. In such cases, the debtor becomes liable for the delay in meeting their obligation (Al-Billeh, 2022c; Khashashneh et al., 2023; Al-Billeh & Abu Issa, 2023b; Jones, 2019).

The Legal Interest is a Complementary Obligation

Legal interest is intrinsically tied to the obligation that is original and does not make a separate and independent obligation. It is a supplementary aspect that is subordinated and linked to the primary obligation, serving as an indirect

mechanism to ensure the fulfillment of that obligation (Al-Billeh, 2022d; Verstappen, 1988).

To claim interest, certain circumstances must be met:

1. The delay in payment by the debtor. "Interest serves as compensation for the delay in fulfilling the obligation. The mere act of the debtor delaying the payment of the specified amount is sufficient to warrant the application of interest, either as prescribed by law or agreed upon, provided it does not exceed the legally determined limit."
2. The obligation of the debtor to make a cash payment. The debtor must undertake the payment of a specific sum of money, known in due time, which is subsequently delayed.
3. The claim for interest. The creditor must explicitly request interest from the debtor. The judge cannot rule on the application of legal interest unless it is claimed by the plaintiff in their lawsuit (Al-Billeh, 2022e).

The Differences Between Penalty Clause and Legal Interest

The penalty clause serves as a protective measure for ensuring fulfillment. It involves a mutually agreed-upon evaluation of the compensation that will be due in the case of delay or non-fulfillment. Similar to fulfillment against payment, the penalty clause operates as a preventive mechanism (Alkhseilat et al., 2022; O'Manique, 1992).

Legal interest shares similarities with the penalty clause, particularly concerning the debtor's delay in fulfilling their obligation. Both serve as an indirect way to ensure the timely fulfillment of obligations and intend to motivate the debtor to fulfill their obligation promptly, discouraging any procrastination. Failure to meet the obligation within the specified timeframe results in the debtor having to fulfill the original obligation in addition to paying cash amounts as compensation for the delay in fulfilling their obligation (AL-KHAWAJAH et al., 2022).

In the memorandum of the Egyptian Civil Code's first draft, it is explicitly stated that the penalty clause is essentially an agreement between the parties to determine the amount of compensation to be paid. It is not taken as an independent source for the obligation to provide such compensation. The underlying obligation can originate from a contract or an unlawful act, depending on the circumstances.

In both circumstances, the legislator absolves the creditor of the responsibility of showing the harm that took place, shifting the responsibility of proof onto the debtor. This provision is outlined in the Egyptian Civil Code

Article 228, “It is not required that the creditor proves harm suffered as a result of this delay to accrue interest, whether legal or consensual.”

Indeed, it is important to highlight that the burden of proof regarding harm or damage lies with the creditor or the injured party in most cases, except for specific situations such as delayed interest and penalty clauses in contractual liability. In these instances, the debtor is not required to provide proof of harm, as the existence and calculation of these compensation forms are typically determined by a legal ruling, agreement, or law (Al-Billeh, 2022b; ALMANASRA et al., 2022).

Indeed, there are distinctions between the penalty clause and the legal interest, as outlined below:

1. The penalty clause arises when the parties to a contract agreed ahead on a specific amount, which may go above the anticipated harm. This predetermined amount is typically calculated incrementally for each day the debtor delays in fulfilling their obligation. The penalty clause serves as a form of deterrence, aiming to prompt timely fulfillment rather than solely compensating for harm. It is often expressed as a fixed lump sum. In contrast, legal interest serves as a means of compensating the creditor when the delay in the debtor's fulfillment of his obligation takes place. The amount of legal interest is determined by the court and is subject to a legal limit set by the applicable law. In cases where the interest exceeds the legal permissible limit, the judge has the discretionary authority to reduce it accordingly. The purpose of legal interest is to provide fair compensation to the creditor for the delay suffered, within the boundaries established by law (Al-Billeh & Al-Qheiw, 2023; Guinn, 2016).
2. The compensation stipulated in the penalty clause is typically expressed as a monetary amount. However, no restrictions are preventing the determination of compensation in forms other than money. For instance, if a landlord and tenant agreed that the landlord would provide the agricultural land in a ready-to-cultivate condition at the end of the lease, failure to do so would result in the crops becoming the property of the landlord as compensation for the breach of the agreement. In contrast, legal interest is specifically tied to monetary compensation. The delay in fulfilling the obligation under legal interest leads to the debtor being obligated to pay a monetary amount. Legal interest does not involve compensating in any form other than money (Alshible et al., 2023; Al-Billeh et al., 2023a; Henry, 1991).
3. The birthplace of legal interest is the court's ruling, whereas the birthplace of the penalty clause is the early agreement between the contracting parties to estimate the compensation for the harm that might be suffered

by the creditor. Regarding the authority of the court: In the case of the penalty clause, the judge has the power to reconsider the penalty clause if it is deemed excessively high or unreasonable. The court can exercise discretionary authority to lessen the penalty clause in proportion to the debtor's obligation. In contrast, with legal interest, the court does not have the arbitrary power to decide the interest rate. Instead, it is obliged to adhere to the law that establishes the interest rate by the applicable laws. The court may only deviate from the predetermined interest rate if there is an interest agreement that exceeds the maximum permissible limit set by law (Isa et al., 2022; Al-Billeh et al., 2023b; Gross, 1991).

Legal Interest in Judiciary and Legislation

The Legislative Applications on Legal Interest

The Jordanian Civil Code does not explicitly and firmly prohibit legal interest or the charging of interest. However, it implies compliance with Islamic Sharia principles, which generally discourage the charging of interest. An example of this implication can be seen in Article 640 of the Civil Code, which states the following: "If the loan contract provides an additional benefit to the contract, it is only to document the lender's right to the condition and validity of the contract." The additional benefit may be in the form of legal interest (Jabr, 2009; Clark & Sikkink, 2013). As well as article 480, paragraph 1, of the Jordanian Civil Code, states that: "A sale may be made in a Murabaha, dilutive or subordinated manner if the selling capital is known at the time of the contract. The amount of the profit in Murabaha and the amount of loss in the inferiority is specified." Paragraph (2) of the same article states that: "If it appears that the seller has increased the amount of capital to the buyer to reduce the increase."

Indeed, the Jordanian Civil Code does not explicitly address legal interest in its provisions. However, interest practices in Jordan have been influenced by the Ottoman Murabaha system, which regulated interest rates. The Civil Procedures Code has adopted and utilized this system, and subsequently, the Jordanian judiciary has applied it (Gross, 1991). The Jordanian Code of Procedures delineates the circumstances under which legal interest is applicable. These include situations where the parties to the obligation agree on a specific date for the interest to take effect, the date of judicial notification, or the date of the judicial claim. These provisions provide guidelines for the entitlement to legal interest within the Jordanian legal system.

Article (167) of the Code of Civil Procedure states: "1- If the debtor pledged to pay an amount of money at a specific time and refrained from paying it at maturity, he shall be charged interest without requiring the creditor to prove his

harm from non-payment. 2- If there is a clause regarding the interest in the contract, it shall be governed by what the clause states, and if there is no clause on it, it shall accrue from the date of the judicial notice or the date of the claim in the statement of claim or the claim that occurred after submitting the mentioned statement. 3-The interest accrues in the compensation and guarantees that the court rules for one of the litigants from the date of the final instance. 4- In all of the foregoing, it is stipulated that the interest does not exceed the legal limit.

It is worth noting that the Jordanian legislator has permitted the charging of interest in the Jordanian Trade Law, as Article (110) of the Jordanian Trade Law states the following: "Payments - the text relates to the current account - inevitably result in interest calculated on the legal rate on the receiver to the interest of giver if it is not specified by contract or custom.

Article (113/2) of the same law states the following: "The remaining balance constitutes a net debt due for payment, which generates interest starting from the day of liquidation at the rate specified in the current account if this balance is transferred to a new account, otherwise at the legal rate." Whereas the Egyptian legislator in the Egyptian Civil Code dealt with the legal interest, as Article (226) of the Egyptian Civil Code states the following: If the object of the obligation was a known amount of money at the time, and the debtor delayed in fulfilling it, he was obligated to pay the creditor a compensation for the delay interest of four percent in civil matters and five percent in commercial matters. This interest applies from the date of the judicial claim if the agreement or commercial custom does not specify another date for its validity unless otherwise provided by law."

The Jordanian legislator in the Expropriation Law No. 12 of 1987 and its amendments, based on the text of Article (14) of the same law, accrues 9% annual interest on the amount of compensation due to the owner, after a month from the date of the court's decision of final instance, from the date of agreement, or from the date of ratification of the agreement on the cases in which it shall be ratified, up to the date of its payment or deposit.

Concerning determining the legal interest rate in the transactions of banks and lending institutions, they are subject to the provisions of the Central Bank Law, as Article (43/a) of the Central Bank of Jordan Law and its amendments No. (23 of 1971) states that: (... The Central Bank may issue decisions published in the Official Gazette to specialized lending institutions and banks as follows:

A- The minimum and maximum interest rates charged by specialized lending institutions and banks on their credit facilities are granted to clients, without being bound by the provisions of any other legislation or system of interest or Murabaha.

Paragraph (e) of the same article states that: If the Central Bank does not specify interest rates and commissions in the manner stated in paragraphs (a, b and c) of this article, or if any decision issued by bank is canceled, banks and financial companies may charge its clients interest and commissions, and pay interest to its clients, without being bound by the limits stated in any law or system of Murabaha or interest, under the regulatory instructions issued by the Central Bank.” The issue of interest, including its rate, limitations, and methods of accrual, is subject to discussion and regulation under the Central Bank Law, as well as the accompanying memoranda and instructions (Jabr, 2009; Clark & Sikkink, 2013).

The Judicial Applications on Legal Interest

According to the case law of the Jordanian Court of Cassation, a creditor has the right to demand interest as recompense for the debtor's failure to pay the obligation on time or for failing to use the allotted amount. According to the Court's ruling No. 780/85 of the Public Authority, which was published in Justice Publications, interest is seen as a kind of payment equating to the losses incurred (Gross, 1991).

In this judgment, it was established that if the subject matter of the lawsuit involves a claim for a specific amount, and the defendant deducts that amount from the plaintiff's dues, Article 167 of the Civil Code is applicable. Referring to this article, interest becomes due on the amount without necessitating the creditor to provide proof of harm resulting from non-payment. The Court of Cassation has emphasized that interest is akin to a form of compensation for damages, and its award is permissible when the lawsuit pertains to the payment of a specific amount as pledged by the debtor (Jabr, 2009; Clark & Sikkink, 2013).

According to the Jordanian Court of Cassation, “in cases where a contract or pledge includes a clause regarding interest, the judgment should be based on the stipulations of that clause. When the debtor fails to pay the interest at the specified maturity date, the interest can be charged without requiring the creditor to prove the harm suffered due to non-payment. This is because the contract or pledge explicitly includes a clause about interest”.

However, if there is no clause regarding interest for a subsequent period of delay, and the creditor has not notified the debtor, the claim for compensation (interest) for that period is considered premature. In such cases, the creditor cannot demand interest until the necessary conditions, such as the inclusion of an interest clause or notification, have been met (Henry, 1991).

According to the Jordanian Court of Cassation, in cases involving legal interest based on a promissory note, the interest is typically calculated from the date of maturity. However, if the plaintiff specifically claims legal interest from

the date of the claim in their pleadings and statements, the court may award interest from the date of the claim based on the most recent claims made in the lawsuit (O'Manique, 1992). In the memorandum of the preliminary draft of the Egyptian Civil Code, it is stated that delay interest, whether legal or consensual, is not due from the date of notice, as is the case with general compensation. Instead, it is only applicable from the date of the claim. This approach aligns to oppose and condemn usury. It is important to include the claim for the original obligation in the summons paper, especially when seeking the payment of interest (Al Halalsha, 2006; Bunch, 1990).

Conclusion

The legal interest acts as a critical safeguard for prompt obligation fulfillment, preventing the debtor from postponing or delaying payments. Its main objective is to make up for the damage the debtor's failure to pay the sums owing caused. Legal interest also serves as a tool to address the debtor's noncompliance and inactivity in performing their commitment. In principle, these laws allow for the application of legal interest, although it should be noted that the Jordanian Civil Law does not explicitly address legal interest. The provisions concerning legal interest in Jordanian law are spread across various legislations, including the Jordanian Trade Law, the Ottoman Murabaha system, the Jordanian Civil Law, the Central Bank Law, and the Jordanian Code of Procedure.

The maximum permissible annual legal interest rate is set at 9%. This percentage should not be exceeded, except in specific cases explicitly mentioned in the Central Bank Law, which may allow for interest rates higher or lower than 9% annually. Jordanian law imposes an obligation on the debtor to pay interest by principles of justice, because of the debtor's obstinacy and delay in fulfilling their obligations.

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