

The Role of Legal Interest in Ensuring the Fulfillment of the Obligation

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Introduction

The legal interest is one of the widely used and important practical means in dealing with people and in commercial transactions characterized by speed and trustworthiness. It has a role in the fulfillment of obligations on time without procrastination or delay on the part of the debtor.

The contracting parties in the legal interest agree on the amount of compensation. The debtor shall assure any breach of the fulfillment of an obligation in the event of delay in implementing his obligation, leading to the harm caused to the creditor as a result of the delay in the fulfillment of the obligation, or the court impose it in accordance with the judgment issued in the case.

Research Importance

The importance of legal interest is to avoid the procrastination and delay of debtor in implementing his obligation when he is obligated to pay a sum of money. The legal interest is one of the indirect and in-kind fulfillment methods and one of the means of forcing the debtor to pay compensation on time, in addition to being a kind of reparation.

On the other hand, the legal interest has become a means of making profit by individuals or by banking institutions, leading the legislator to set controls and specific rates for the interest rate that the parties to the commitment may not agree to bypass. This is where the role of the legislator in balancing the interest of the creditor with reparation for harm suffered and preventing him abuse of this right comes in.

Research Problem

The actual research problem is the role of legal interest in the fulfillment of the obligation, does the penalty clause in the event of delay in implementation substitute for the claim of legal interest? Is there a conflict between paying the legal interest and the penalty clause? and Is it permissible to combine them?

Research Plan

This research will deal with two themes. The first theme will discuss the legal interest, the definition of legal interest, and the differences among the legal interest and the penal clause and some other legal systems.

The second theme will discuss the legal interest in legislation and judiciary, the extent of the court authority to rule on legal interest, and legislative and judicial applications on legal interest.

First Theme

What is the Legal Interest?

The law determines the amount of compensation for the injured party and the harm he is exposed to as a result of the debtor's breach of his obligation¹. The amount of compensation is determined if the debtor's obligation provides for the payment of a certain amount of money to the creditor in a specific time, whether the source of this obligation is a legal act, a unilateral will, a wrongful act, a purposeful act or the law.

This type of obligation is characterized by the possibility of fulfilling it in kind, meaning that the fulfillment of the obligation replaced by the payment of a certain amount of money is impossible in kind. Therefore, there is no place for the debtor's claim for compensation for the failure to fulfill the obligation, but the claim for compensation is limited to the delay in fulfilling that obligation.

Accordingly, we discuss the definition of legal interest in the first section, and then the differences and similarities between legal interest and some other legal systems in the second section.

Section One: Definition of Legal Interest

The issue of legal interest is not raised unless the debtor delays the fulfillment of his obligation if it is delay interest unlike the investment interest.

First: The Concept of Legal Interest

Legal interest can be defined as: an amount of money that the debtor is obligated to pay as compensation for his delay in fulfilling his obligation, which is replaced by the payment of a certain amount of money on the specified date or in return for a certain amount of money in a contract with the creditor.

The delay interest is considered as compensation for the debtor's delay in paying the due debt that he owes. His mere delay in this is sufficient to pay the interest to the creditor since the debtor is considered to have committed a presumed fault. It is not required to accrue interest that the creditor proves his suffered harm as a result of the debtor's failure to fulfill his obligation to pay a certain amount of money. Accordingly, if the debtor fails to pay his debt on the agreed date, it is assumed that he has deprived the creditor of earning interest if he had received the amount of the debt on the specified date.

¹ Al Ahwany Husam Al-Din Kamel, The General Theory of Obligation, Part Two, Provisions of Obligation, Cairo, 1996, p. 86

In the Egyptian Civil Code: Article 226 states: “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.

It is worth noting that it is not required the harm to accrue the delay interest, and the debtor is not allowed to prove that the creditor was not harmed. It is sufficient to accrue interest in order for the delay in the payment beyond the due date². It is also not required the harm to accrue the compensatory interest. Depriving the creditor of his money and benefiting the debtor during this period require interest. This is stated in Article (228) of the Egyptian Civil Code, where it states: “It is not required that the creditor proves harm suffered as a result of this delay to accrue interest, whether legal or consensual.

Ultimately, the relationship between in-kind fulfillment and interest represents in the debtor’s delay in fulfilling his obligation when the object of the obligation is the payment of an amount of money on a specific date, which results in the debtor being responsible for delay in fulfilling his obligation.

Second: The Legal Interest is an Accessory Obligation

The legal interest is subject to the original obligation and does not create a new obligation separate from the original obligation, since it is subordinate and linked to this obligation, and the research does not arise in it unless the debtor delays in fulfilling his obligation, as it is an indirect means to ensure the fulfillment of the obligation.

In order to be able to claim interest, the conditions for entitlement to interest shall be met:

First Condition: the debtor’s obligation to pay in cash: It is required that this cash amount that the debtor undertakes to pay the creditor and is delayed to pay on time is known in due time.

Second Condition: the debtor’s delay in payment: the interest is a compensation for the delay in fulfillment, as the mere delay of the debtor in fulfilling his obligation to pay an amount of money is sufficient to award interest prescribed by law or agreement, provided that it does not exceed the legally determined limit.

Third Condition: the claim for interest: the creditor shall claim interest from the debtor, and the judge may not rule on legal interest unless the plaintiff claims it in his lawsuit.

² Al Ahwany Husam Al-Din, *ibid*, p. 97

Section Two: Legal Interest and Penalty Clause

The penalty clause is a precautionary way of fulfillment. It is a consensual assessment of the compensation due in the event of non-fulfillment or delay. The same applies to it as to the fulfillment against payment in terms of being a precautionary way³.

The legal interest is similar to the penalty clause in the part related to the debtor's delay in fulfilling his obligation. Both are indirect means to ensure the fulfillment of the obligation and aim to make the debtor fulfill his obligation on time without procrastination, otherwise he will fulfill his original obligation in addition to the obligation to pay cash amounts as a result of his delay in fulfilling his obligation.

It is stated in the memorandum of the preliminary draft of the Egyptian Civil Code that: (The penalty clause, in its essence, is nothing but a mere consensual assessment of the compensation to be paid. It is not considered in itself a source for the obligation of this compensation, but the obligation has another source that may be the contract in some forms and the illegal act in other forms.

In both cases, the legislator exempts the creditor from proving the harm suffered, and the burden of proof is on the debtor. This is stated in Article (228) of the Egyptian Civil Code, where it states: "It is not required that the creditor proves harm suffered as a result of this delay to accrue interest, whether legal or consensual."

It is worth noting that the proof of harm is the responsibility of the creditor or the injured party, with the exception of the delay interest (*Intérêts Moratoires*)⁴ and the penalty clause (*La Clause Pénale*) in the contractual liability. There is no need for them to be proven by the debtor, as they are proven by a ruling: a law or an agreement.⁵

However, there are differences between the legal interest and the penalty clause, as follows:

1- The penalty clause occurs when the contracting parties agree in advance on an amount that may exceed the harm they expect, and this amount is determined incrementally so that it is paid for each day the debtor delays the fulfillment of his obligation⁶. In this case, the penalty clause has a threatening nature rather than compensation for harm⁷. The penalty clause is often estimated at a lump sum.

Whereas the legal interest is nothing more than compensating the creditor for the debtor's delay in fulfilling his obligation at a legal limit awarded by the court in accordance with the law that

³ Saad Dr. Nabil Ibrahim, *The General Theory of Obligation, Part Two, Provisions of Obligation*, Mansha'at Al-Maaref, Alexandria, 2001, p. 69. Daradkeh Dr. Fouad, *The Penalty Clause in the Jordanian Civil Law*, Amman, 1st Edition, for the year 1998, p. 45.

⁴ Qasim Dr. Muhammad Hassan, *Civil Law (Obligations)*, Volume Two, Beirut, Al Halabi Publications, 2018, p. 216. Dr. Suleiman Marqs, *Al-Wafi in the Explanation of the Civil Law, Part Four, On Obligations*, Volume Four, Provisions of Obligations, Second Edition, Dar Al Nahda, for the year 1992, p. 558.

⁵ Jaber Dr. Saeed, *Sources of Obligation*, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2009, p. 350.

⁶ Dr. Nabil Ibrahim Saad, *The General Theory of Obligation*, *ibid*, p. 66.

⁷ Al Ahwany Dr. Husam Al-Din Kamel, *ibid*, p. 75.

determines the legal interest rate. Otherwise, the judge has the discretionary authority to reduce the interest to the legal permissible limit.

2- The compensation estimated in the penalty clause is often an amount of money, but there is nothing to prevent determining this compensation in any form other than money, as if the landlord agreed with the tenant that he would hand over the agricultural land free of cultivation to the tenant at the end of the lease, otherwise the crops became the property of the landlord in compensation for the breach of this agreement.

Whereas in the legal interest, the delay in the fulfillment of the obligation leads to obligating the debtor to always pay a monetary amount and not compensating in any form other than money.

3- The source of the legal interest is the judgment of the court, while the source of the penalty clause is the prior agreement of the contracting parties to estimate the compensation for the harm suffered by the creditor.

In terms of the authority of the court: In the penalty clause, the judge has the authority to review the penalty clause when he deems that the estimation of the two parties was greatly exaggerated. The court also has the discretionary authority to reduce the penalty clause in proportion to the debtor's obligation⁸.

Whereas in the legal interest, the court cannot arbitrarily determine the legal interest rate, but it is obliged to follow the law that determines the interest rate in accordance with the laws in force, except in the case of an agreement on interest that exceeds the maximum permissible limit.

Second Theme

Legal Interest in Legislation and Judiciary

Section One: Legislative Applications on Legal Interest

The position of the Jordanian Civil code was not explicit and firm in its prohibition of legal interest and the charging of interest, although it had implicitly indicated that in line with Islamic Sharia.

Where we find the text of 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.

As well as article 480, paragraph 1, of the Jordanian Civil Code, which states that: "A sale may be made in a murabaha, dilutive or subordinated manner if the selling capital is known at the

⁸ Al Sanhoury Dr. Abdul Razzaq, Al-Waseet in the Explanation of the New Civil Law, Theory of Obligation, Proof, Effects of Obligation, Volume Two, Dar Al-Nahda Al-Arabiya, No Publication Year, Cairo, p. 851, Al Ahwany Dr. Husam Al-Din Kamel, ibid, p. 83.

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.”

Thus, the Jordanian Civil Code did not deal with legal interest in its texts, but the interest in Jordan came into force based on the Ottoman Murabaha system which regulated the interest rate. The Civil Procedures Code used the interest, and then the Jordanian judiciary practiced it. The Jordanian Code of Procedures defined cases of entitlement to legal interest, whether by agreeing on a date for the interest to take effect between the two parties to the obligation, the date of the judicial notice, or the date of the judicial claim.

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 be accrue from the date of the judicial notice or from the date of the claim in the statement of claim or the claim that occurred after submitting the mentioned statement. 3-The interest accrues on the compensation and guarantees that the court rules for one of the litigants from the date of 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 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.

With regard to 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 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, in accordance with the regulatory instructions issued by the Central Bank.” The matter of interest shall be discussed in terms of its percentage, limits and how to accrue it in accordance with the Central Bank Law and its memoranda and instructions.

Section Two: Judicial Applications on Legal Interest

According to the jurisprudence of the Jordanian Court of Cassation, a creditor has the right to claim interest as compensation for the debtor's delay in paying the debt and for not using its specified amount. It is also considered that interest is tantamount to a harm of abuse, as stated in its judgment No. 780/85 Public Authority, Justice Publications: “If the subject matter of the suit is a claim for a specific amount and the defendant deducts it from the plaintiff's dues, then according to the provisions of Article 167 of the Civil Code, interest is due on the amount without requiring the creditor to prove the harm suffered from the non-payment. It was stated in the decision of Court of Cassation that interest is tantamount to a harm of abuse, and it is not permissible to pass judgment on it if the subject matter of the suit is not based on a pledge to pay a specific amount.

The Jordanian Court of Cassation held in its judgment as follows: “If the contract or pledge includes a clause on interest, it shall be judged according to the stipulation of the clause. Once the debtor refrains from paying interest at maturity, it shall be charged without requiring the creditor to prove his harm suffered from this non-payment as the contract or pledge includes a clause on interest. As long as there is no clause on interest for the second delay period and the creditor did not give notice to the debtor, the claim for compensation (interest) for this period is premature⁹.

The Jordanian Court of Cassation¹⁰ held in its judgment as follows: (The legal interest based on a promissory note is calculated from the date of maturity, but if the plaintiff claims the legal

⁹ Jordanian Court of Cassation Judgment No. 1544/1996, published on p.1687 of the Bar Association Journal, 1998.

¹⁰ Jordanian Court of Cassation Judgment No. 1776/2009, a Five-Member Panel, dated 11/11/2009, Justice Publications.

interest from the date of the claim, in his claims and pleadings, the court shall award interest from the date of the claim according to the last claims in lawsuit).

It was stated in the memorandum of the preliminary draft of the Egyptian Civil Cod that: "The delay interest, whether legal or consensual, are not due from the date of the notice, as in the case of compensation in general, but only from the date of the claim, in line with the tendency to oppose and condemn usury, as it shall be claimed the original obligation in the summons paper in particular).

Conclusion

Legal interest is one of the means that plays an important role in the fulfillment of obligations on time without delay or procrastination on the part of the debtor. It aims to pay the compensation for the harm caused by the delay in paying the amounts owed by the debtor. It is also a legal means to pay the intransigence and inaction of the debtor in fulfilling his obligation.

Results

The texts related to legal interest in Jordanian law are divided between the Ottoman Murabaha system, the Jordanian Trade Law, the Central Bank Law, the Jordanian Civil Law, and the Jordanian Code of Procedure.

The laws allow for legal interest in principle, noting that the Jordanian Civil Law did not expressly provide for legal interest.

The maximum legal interest is 9% annually, as this percentage may not be exceeded except in the cases mentioned exclusively in the Central Bank Law, which may be more or less than 9% annually.

The claim for legal interest shall be mentioned in the statement of claims and in the claims agency, otherwise it is not permissible to accrue it.

The Jordanian law obligated the debtor to pay the interest in accordance with the requirements of justice as a result of the debtor's intransigence and procrastination in the fulfillment of his obligation.

Recommendations

The researcher recommends that an explicit text shall be included in the Jordanian Civil Code, which regulates the legal interest and gives discretionary authority to the court in its estimation, without exceeding the maximum limit of 9%. Therefore, the court monitors the amount of legal interest without exaggeration and in proportion to the harm in each case separately, thereby preventing and reducing the dominance of banks and major merchants, especially since the interest became a means of exploitation by some individuals and banks to make a profit, which necessarily requires organizing its provisions in a detailed and precise manner.

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