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Legal Characterization of the Offence of Forging a Legal Instrument; Pursuant to the Provisions of the Jordanian Criminal Judicature

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Abstract:

This study addresses the rulings of the Jordanian Supreme Court regarding the Legal characterization of the forgery of legal instruments, with comments on such rulings. This is aimed to address a main challenge of the difficulty to distinguish between the felony forgery and the misdemeanour forging false affidavits, when forgery occurs to a legal instrument, especially that such a case is not addressed under the provisions of the Jordanian penal code.

Keywords: legal description; forgery; Jordanian Court of Cassation; legal instrument; forgery felony; misdemeanour of forging a false affidavit.

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1 - Introduction

The Jordanian legislator has incorporated the provisions of the offence of forging legal instruments under articles (260 – 272) of the penal code No. (16) of 1960; under the title: “Crimes in breach of public trust”. Article (260) of the code has defined forgery: “The intentional falsification of truth in the facts and data to be documented in a valid instrument; which has causes or may potentially cause substantial, moral, or social damage”. It is noticeable that the aforementioned penal code has failed to determine a specific and a precise description of the act of forgery when it occurs to legal instruments; whereas the code has failed to illustrate whether such an act constitutes a felony or a misdemeanour.

Based on the forgoing, the main challenge; which this study aims to address, becomes more evident. It can be summarized by stating that: there seems to be a difficulty to distinguish between the felony of forgery as provided under article (262) of the Jordanian penal code and the misdemeanour of forging a false certification, as provided under article (266) of the same code; that is when the forgery occurs in a legal instrument. This of course irrespectively of the forger’s capacity, whether he/she is an ordinary employee or a specialized one, if the purpose of the forgery is to use the forged instrument to attain illicit benefit or interest.

This challenge can be illustrated by the following question: What is the Jordanian Supreme Court approach for characterizing the offence of forging a legal instrument? Does the Court characterize it as a felony, thus subjecting its perpetrator to the penalties provided under article (262) of the Jordanian Penal code, or does it otherwise characterize it as a misdemeanour of forging a false certification, thus subjecting its perpetrator to the penalties provided under article (266) of the same code?

Based on the foregoing, we shall carry-out this study according to an analytical methodology, and shall divide it into two main quests; preceded by a propaedeutic quest “Defining the forgery offence”. The first quest shall be: “The rulings of the Supreme Court in respect of characterizing the offence of forging legal instruments”. The second quest shall be designated for “comments on the rulings of the Supreme Court in respect to characterizing the offence of forging legal instruments”.

2 - Defining the Forgery Offence under the Provisions of the Jordanian Penal Code

The rationale behind the criminalization of forging legal instruments lies in the waste of trust such instruments include, whereas the majority of people rely on written instruments and their contents of data to substantiate the rights and obligations arising there between. In order to define the forgery offence under the provisions of the Jordanian Penal Code, it is incumbent upon us to briefly demonstrate the elements and types thereof in the two following sections.

2.1 Elements of the Forgery Offence under the Jordanian Penal Code.

An act shall constitute a forgery offence only in abundance of two elements; the substantive & Incorporeal Element. We shall briefly touch upon these elements below.

2.1.1. The Substantive Element in the Forgery Offence

The substantive element in the forgery offence is composed of three sub-elements: the criminal act, the criminal result arising therefrom, and the causative relationship that associate them together. The criminal act in the forgery offence manifests in the mean which the offender uses to alter the truth. Alteration of the truth means creating a counter factual of that documented in the instrument,⁽¹⁾ while the alteration in question might be partial or complete⁽²⁾. The Jordanian legislator has identified the means by which the offence of forgery may be committed, for example and limited to article (262, 263) of the Jordanian Penal Code. Pursuant to these two articles, forgery can be characterized as substantial and incorporeal. Substantial forgery was provided under article (262) of the same code, which was defined unequivocally as the sort of forgery that occurs to data under a legal instrument; creating a

(1) For more information please see A. Murad, The Comment on the Penal Code (in Arabic) (Cairo: n.p.), p. 188.

(2) K. Al-Ababneh, The Offence of Forging Legal Instruments under the Jordanian Criminal Legislation, MSc thesis, Faculty of law, Al Al-beit University, Mafraq, 2000, p. 10.

conspicuous impact that an ordinary person can notice with the naked eye or by resorting to an expert eye⁽³⁾.

In respect of incorporeal forgery, on the other hand, it occurs by altering the truth included in the instrument, which is often committed at the time when the instrument is developed and has no clear indications. This type of forgery does not cause an alteration or a falsification of the text, but rather the instrument is made in such a manner to include false information.⁽⁴⁾ This sort of forgery is provided under article (263) of the Jordanian Penal Code.

As a component of the substantive element of the forgery offence, the criminal consequence manifests in altering the truth within the instrument; provided that damage is incurred as a result⁽⁵⁾. Nevertheless, the preponderant opinion from the jurisprudence considers damage as a stand-alone element in the forgery offence⁽⁶⁾.

The subject of the forgery offence manifests in the forged legal instrument. The Jordanian criminal legislator has not provided any definition of the legal instrument. It can however be defined as “every written document that discloses the personality of the person by which the statement is issued; which includes a narration of an incident or an expression of a will that may establish, modify, terminate, or substantiate a legal position”⁽⁷⁾.

The Incorporeal Element in the Forgery Offence

It is postulated that all forgery offences are considered premeditated; in which the legislator requires the abundance of a general mens

(3) For more information on the methods of substantial forgery, see H. Zwain, *The Offences of Forging Instruments and Use thereof*, (in Arabic) (Cairo: n.p., 6th ed., 2006), p. 13 et seq.

(4) For more information on the methods of incorporeal forgery, see M. Al-Khreshah & M. Abdul-Fattah, *Exposition of the UAE's Federal Penal Code, the Special Section, Crimes Harmful to the Public Interest* (in Arabic) (Oman: Al-Afaq Al-Mushreqah, 2014), p. 98 et seq.

(5) Ibid. Al-Ababneh, *supra* note 2, p. 51 et seq.

(6) F. Hlaïel, *Crimes of Forgery and Fraud* (Alexandria: The University Publishing House, 1993), p. 191.

(7) A. Khalil, *The Offences of Forging Legal Instrument* (Alexandria: Modern University Office, 2008), p. 92 et seq.

rea in and the elements of knowledge and will. It is also required that the perpetrator has a special mens rea; which is the intention to fraudulently use the forged instrument⁽⁸⁾.

Types of Forgery Offence

Under the Jordanian penal code, the legislator has made the distinction between legal instruments and personal statements; giving more rigorous diligence to legal instruments; subjecting any manifestations of forgery thereto to criminal penalty. This is due to the importance of legal instruments and the grossness of the damage that may occur as a result of forgery to legal instruments. Therefore, we shall study the types of the forgery offence as follows:

Felony Forgery

Pursuant to the provision of article (262) of the Jordanian penal code, a specialized public servant, if proven to have committed forgery onto a legal instrument, shall be subject to a criminal penalty; being: ‘temporary hard labour sentence between 5 – 15 years’⁽⁹⁾. This criminal penalty shall apply to an ordinary individual if he/she commits forgery to a legal instrument; whereas pursuant to the provision of article (265) of the Jordanian penal code the perpetrator shall be sentenced to ‘temporary hard labour between 3 – 15 years’.

Article (6) of the Jordanian Evidences’ law No. (30) of 1952 defines official statements as: “those statements which competent public servants organize whose capacity requires them to organize according to the legal conditions, or the statements organized by their owners, and certified by the competent public servants whose capacity requires them to certify”.

Furthermore, article (169) of the Jordanian Penal Code has defined public servants as: “any public employee in the administrative or judicial sectors, as well as every officer of the civil or military authority or

(8) M. Nejm, Commentary on the Penal Code, the Special Section, Crimes in Breach of Public Interest and Trust, Crimes Against Monies and Associated Items (in Arabic) (Amman: Dar Al-Thaqafah, 1995), p. 88 et seq

(9) For more details on proving forgery, please see M. Harajah, Procedures for Challenging the Authenticity in the Civil and Criminal Articles (in Arabic) (Alexandria: Dar Al-Fikr Al-Jame’i, 1995), p. 45 et seq.

any member thereof, in addition to every worker or laborer working for the government or for a public department”.

Misdemeanour Forgery

Misdemeanour forgery manifests in several forms under the Jordanian penal code. Perhaps the most significant ones are the misdemeanour forgery of personal documents and the misdemeanour forgery of false affidavits. The misdemeanour forgery of personal documents was provided under article (271), while the misdemeanour forgery of false certification was provided under article 266/1) of the Jordanian penal code. The latter articles provide: “Should an individual, in the course of exercising the duties of a public post, public service, a medical or any other health-related occupation, or any other party whatsoever provides a false certification prepared to be submitted to public authorities, or may gain the individual or the party or anyone else any illicit benefit, or inflicts damages on the interests of others, or who fabricates, by impersonating any of the above mentioned, or forges that certification or uses the same, shall be sentenced to one month to one year of imprisonment”.

It is noticeable that the penalty imposed on the misdemeanour forgery of false affidavits is imprisonment between one month and a year. It is also noticeable that the Jordanian penal code has omitted to define ‘False affidavits’. This flaw was addressed by the Supreme Court in its definition of the term when it said:⁽¹⁰⁾ “False affidavits are the written documents that contain a false statement or notification that is contrary to the truth”. By reading the aforementioned article (266/1), we can identify the persons that could potentially commit a misdemeanour forgery of affidavits. These persons are:

- The public servant, as provided under the aforementioned article (169) of the Jordanian penal code⁽¹¹⁾.
- A person delegated by a competent public servant to provide a public service.

(10) Criminal cassations’ case No. 169/1979, a quintet tribunal. Publications of the Justice Center.

(11) Ibid, K. Al-Sa’eed, Crimes in Breach of Public Interest, p. 162.

- The public servant in the health sector, such as physicians, nurses, lab technicians, pharmacists, and others.⁽¹²⁾
- An ordinary individual, it is envisioned that a false affidavit is fabricated, forged or used by an ordinary person, as expressed under the provision of article (266/1) of the Jordanian penal code.

For the misdemeanour forgery of false affidavits to be constituted, the following criteria must be met:

- The affidavit must be issued by a competent public servant entrusted with providing a public service, who is working in the medical, or health sector, or any other ordinary person.
- The subject of the forgery must alteration of the truth, for the meaning of a false affidavit to be realized.
- The false affidavit must have been prepared with an intention to submit the same to public authorities, or that such an affidavit could potentially bring about an illicit benefit, pursuant to article (266/1) of the Jordanian penal code.

It is helpful at the end of this propaedeutic quest to ask the following question: What is the approach used by the Jordanian Supreme Court for characterizing the offence of forging a legal instrument?

– Does the Court characterize it as a felony, thus subjecting its perpetrator to the penalties provided under article (262) of the Jordanian Penal code, or does it otherwise characterize it as a misdemeanour of forging a false certification, thus subjecting its perpetrator to the penalties provided under article (266) of the same code? To answer this question, we must review the ruling of the Jordanian Supreme Court rendered to this end as a first quest; and we shall comment on these rulings as a secondary quest; as follows:

3 - The Supreme Court's Rulings in Respect of Characterizing the Offence of Forging Legal Instruments

In this section, we shall refer to the rulings rendered by the Jordanian Court of Cassation, which stress that forging a legal instrument

(12) Ibid, K. Al-Ababneh, p. 91.

constitutes a felony forgery. Consequently, a perpetrator of such a felony shall be penalized pursuant to the provisions of article (262) of the Jordanian penal code. We shall also refer to the rulings rendered by the Supreme Court by which the Court confirms in a different matter that forging a legal instrument constitutes misdemeanour forgery of false affidavits; thus, subjecting the perpetrator of which to the penalties provided by article (266) of the penal code. In order to reduce repeating the statement 'The Jordanian Supreme Court has ruled in its ruling' in every point of the following, we shall opt for the expression ruled in its ruling. This is demonstrated as follows below.

3.1 The Rulings of the Supreme Court Confirming that the Forgery of Legal Instruments Constitutes a Felony Forgery, Pursuant to the Provision of Article (262) of the Jordanian Penal Code.

The court has ruled:

False explanation about the condition of goods, written in the space designated for the comments of the warehouse attendant in the custom declaration form, constitutes a felony forgery; as provided under article (265) of the penal code, and not a misdemeanour forgery of false affidavit; as provided under article 266 of the penal code.¹³

Should the defendant copy the information contained in a trailer possession license then changes such information in a manner that is contrary to the truth, then such an act shall be considered a fabrication of an admissible instrument; thus becomes subject to the penalty of felony forgery as provided under article (266) of the penal code. ¹⁴

The work permit which a non-Jordanian worker must obtain shall be considered an official legal instrument according to article (12/b) of the Jordanian labour law No. 8 of 1996. Therefore, fabricating such a permit shall constitute a felony forgery of official legal instruments as provided under articles 265, 265 of the penal code".¹⁵

The court has ruled: "If the university certificate is fully fabricated, then such an act shall constitute a felony forgery of official legal instruments as provided under article (262) of the penal code; not a misdemeanour forgery of false affidavit as provided under article (266) of the same code".¹⁶

The court has ruled:

If the forged health certificate was issued by the Tafelah governorate's health directorate; which was issued by virtue of the Public Health law, then it shall be considered an official legal instrument and shall be subject to the provision of article (265) of the penal code; rather than article (266) of the same code.¹⁷

A transcript issued by the chairman of the examinations committee at the ministry of education shall be considered an official legal instrument, whereas any alteration or falsification of the facts contained therein shall constitute a felony forgery of official legal instrument instead of a misdemeanour forgery of false affidavits.¹⁸

Criminal cassation case No. 51/1987, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 742/2008, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 904/2007, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 362/2004, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 1332/2005, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 386/1996, quintet tribunal. Publications of the Justice Center.

A grade book shall be considered an official legal instrument, whereas any forgery thereto by any person shall constitute a felony forgery of legal instruments as provided under articles (262, 265) of the penal code, not a misdemeanour forgery of false affidavit as provided under article (266) of the same code".¹⁹

3.2 The Rulings of the Jordanian Supreme Court Confirming that Forgery of Legal Instruments Constitutes a Misdemeanour Forgery of False Affidavit, Pursuant to the Provisions of Article (266) of the Jordanian Penal Code

In this section, we shall refer to the Jordanian Court of Cassation's rulings confirming that forgery of legal instruments constitutes a misdemeanour forgery of false affidavit, pursuant to the provision of article (266) of the Jordanian penal code. Examples are as follows. The court has ruled:

if the defendant is a competent public servant and; in the course of exercising the duties of a public post, records false data on the bridge-crossing card with a view to present the card to a public authority, where the traveler was able to invoke as a permit to enter Jordanian territories, such an act; in terms of legal description, shall constitute a misdemeanour forgery of false affidavit in breach of the provisions of article 266/1 of the penal code; not a felony of forging an official legal instrument as provided under article 262 of the same code.²⁰

Forging the letter attributed to the education directorate – testifying that the defendant has sat for the junior secondary certificate examination, and his result was “passed”, such an act shall constitute a misdemeanour forgery of false affidavit by virtue of article 266/3 of the penal code, not a felony of forging an official legal instrument as provided under article 262 of the same code.²¹

The court ruled:

Forging the signature of the Centre's director, and recording false information shall constitute a misdemeanour forgery of false affidavit by virtue of article 266 of the penal code, not a felony of forging an official legal instrument as provided under article 262 of the same code.²²

The defendant action of preparing a report for the process of seizing land plots in a manner contrary to the truth, shall constitute a misdemeanour forgery of false affidavit by virtue of article 266 of the penal code: this is due to the fact that the report was issued by a competent public servant, and due to the alteration of facts by the defendant, and due to the fact that the aforementioned report was prepared with a view to submit the same to the lands and property registration department in order to gain illicit benefits, not a felony of forging an official legal instrument as provided under article 262 of the same code.²³

If the forged document used by the defendant is a signed certificate

attributed to the dean of the faculty contains a statement testifying that the defendant has obtained a bachelor's degree, then such a document shall only be considered a false statement that was prepared with a view to submit the same to a public authority; which with this description constitutes a misdemeanour forgery of false affidavit by virtue of article 266 of the penal code, not a felony of forging an official legal instrument as provided under article 262 of the same code".²⁴

Criminal cassation case No. 107/1981, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 621/1981, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 37/1979, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 246/1996, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 560/2007, quintet tribunal. Publications of the Justice Center.

4 Commenting on the Rulings of the Cassation Court in Respect of Characterizing the Offence of Forging a Legal Instrument

It is noticeable from the aforementioned judicial rulings that the Supreme Court characterizes a forgery that occurs to legal instruments as a misdemeanour forgery of false affidavits at times; despite entailing very dangerous aspects, and as a felony forgery of legal instrument at other times despite the triviality and insignificance of the damages resulting there from. Undoubtedly, this renders justice out-of-balance; given that justice must take into account the severity of the forgery offence and the grossness of the damages arising there from upon enforcing the penalty; whether by aggravating or extenuating the penalty.

The rulings rendered by the Supreme Court make it evident to us that the Court did not underpin its legal characterization of the forgery offence on a precise criterion when the forgery occurs to a legal instrument, whether the act of forgery is committed by a public servant or by an ordinary person. Based on the foregoing, we shall clarify the criteria

on which the Supreme Court has relied in its legal characterization of forging legal instruments as an offence, and we shall comment on them in the two following sections:

Complete Fabrication of the Legal Instrument as a Criterion

Upon reviewing the rulings rendered by the Court of Cassation, it is evident to us that in some of its rulings, the Court has adopted the complete fabrication of the legal instrument as a criterion to distinguish between the felony forgery offence and the misdemeanour forgery of false affidavits when the forgery occurs to an official legal instrument. This criterion revolves around whether the legal instrument was originally fabricated in contrary to the truth, in which case constituting a “misdemeanour forgery of false affidavit”. Nevertheless, if the legal instrument is made properly in its original form then was subject to falsification, and then this shall constitute a “felony forgery of legal instruments”. This is what the Supreme Court has confirmed in its ruling No. (25): “the test paper is not considered a false affidavit, whereas a false affidavit is individual acknowledgments issued by one party which was originally made in contrary to the truth. An examination paper however is an official document that was made properly in its original form but was later-on altered, thus giving rise to the elements of felony forgery in falsifying the examination paper”.²⁵

The Supreme Court has also ruled that:

“For a legal instrument to be considered a false affidavit, it is provided that the instrument was originally organized in contrary to the truth. On the other hand, if the legal instrument was originally organized properly but was later-on falsified, such an action shall then constitute a felony forgery of legal instruments as provided under article (265) of the penal code”.²⁶

The Court has also reinforced this in another ruling:

The instrument fabricated by the defendant and attributed to the director of the social security corporation falls under the concept of false affidavits as provided under article (266) of the penal code. The defendant’s action does not constitute the felony forgery offence provided under article (262) of the penal code”.²⁷

Criminal cassation case No. 169/1979, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 214/1985, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 138/1972, quintet tribunal. Publications of the Justice Center.

With all due respect for the ruling of the Cassation Court, we however disagree with the criteria it used to characterize the offence of forging legal instruments. We are basing our disagreement on the same legal articles pertaining to the forgery offence in both of its forms; the felony forgery and the misdemeanour forgery of false affidavits. We are specifically invoking article (266 & 262) of the Jordanian penal code; whereas article (266) provides that : “The penalty of 5 – 15 years of hard labour imprisonment shall be enforced against an employee who commits a substantial forgery in the course of exercising his/her official duties; whether by misuse of a signature, a seal, a finger print, or generally signing a forged signature, or by fabricating a legal instrument, or for any acts of deletion or addition he/she may cause to the contents of the legal instrument”.

Article (266) provides that: “Should any individual; in the course of exercising the duties of a public post, a public service, a medical or a health-related occupation; or should any party provide a false affidavit or forges that affidavit”.

Based on the provisions of the aforementioned articles, we can conclude that forgery of legal instruments can occur in two forms: the first is the felony forgery; and the second is the misdemeanour forgery of false affidavits. According to the provisions of these articles, the complete fabrication of a legal instrument is a possibility. It is also possible that a legal instrument is made properly and validly in its original form, only to be falsified or altered later-on.

Notwithstanding the fact that the interpretation of the two previous articles (266, 262) does not consist with the criteria established by the Supreme Court as illustrated previously, it is however based on some expressions under article (262), such as: “fabricating the legal

instrument, deletion or alteration of the instrument's content". It is also based on the expression under article (266) which mentions providing a false affidavit, i.e. fabricating a false affidavit, as well as the expression forged that affidavit.

The Strength of the Legal Rule on which Basis the Legal Instrument was Created

This criterion is constant in the Court of Cassation; which consequents that – if the legal instrument which was subjected to forgery has been developed by virtue of a law or a regulation, then any forgery perpetrated thereto shall constitute a felony forgery. However, if the legal instrument is made by virtue of directives, then any forgery perpetrated thereto shall constitute a misdemeanour forgery of a false affidavit. This constancy appears very conspicuously in the Court of Cassation's ruling as follows:

If the instrument attributed to the ministry of interior was issued by virtue of a law, regulation, or directives, then such shall have an effect on determining the legal description of the forgery offence. Whereas, if the legal instrument is created by virtue of a law or a regulation, then any forgery perpetrated thereto shall constitute a felony forgery offence, pursuant to the provision of article 262 of the penal code. However, should the legal instrument be prepared by virtue of directives, then any forgery perpetrated thereto shall constitute a misdemeanour forgery of a false affidavit, pursuant to the provision of article 266 of the same code.²⁸

Whereas the certificate of non-conviction is issued by courts but not by virtue of a law or a regulation, but rather by virtue of directives, therefore forging its contents shall constitute a misdemeanour forgery of a false affidavit, pursuant to the provision of article 266 of the penal code".²⁹

Criminal cassation case No. 114/2004, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 1502/2012, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 1299/2007, quintet tribunal. Publications of the Justice Center.

If the forged form is issued by virtue of the traffic law and the regulations issued by virtue thereof, then the action of the defendant shall constitute a felony use of a forged instrument. However, if the form is issued by virtue of directives, then a falsification therein shall constitute a misdemeanour forgery of a false affidavit, pursuant to the provision of article 266 of the same cod.³⁰

If the legal instrument; being the information card, is forged, then for the purposes of the legal characterization of the offence attributed to the defendant, verification must be carried out regarding whether the information card was issued by virtue of a law, a regulation, or a directive.³¹

The letter addressed to the criminal intelligence department signed on behalf of the general director of the Jordanian customs is not based in its issuance on a law or a regulation. Therefore, forgery of its data shall constitute a misdemeanour forgery of a false affidavit, pursuant to the provision of article 266 of the penal code.³²

The ruling of the Supreme Court has concluded that the legal instrument subject to forgery is issued by virtue of a law or a regulation, and then the forgery perpetrated thereto shall constitute a felony forgery. However, should the legal instrument be issued by virtue of directives, then the falsification has occurred to a false affidavit.³³

The work permit which a non-Jordanian worker must obtain shall be considered an official legal instrument according to article (12/b) of the Jordanian labour law No. 8 of 1996. Therefore, fabricating such a permit shall constitute a felony forgery of official legal instruments as provided under articles 265, 265 of the penal code.³⁴

If the health certificate issued by virtue of the vocations and industries law No. 16 of 1953; which requires workers in restaurants to obtain health certificates issued by the Ministry of Health's physician, then any forgery perpetrated thereto shall constitute a felony forgery offence, pursuant to the provisions of articles 260, 265 of the penal code.³⁵

If the health certificate which the defendant has forged is issued by Tafeleh governorate's health directorate; which was issued by virtue of the Public Health law, the forgery thereof shall constitute a felony forgery offence, pursuant to article 265 of the penal code, not the provision of article 266 of the same code.³⁶

The researchers have two observations on the aforementioned rulings of the court of cassation. There is a conspicuous constancy by the Supreme Court regarding the aforementioned criterion. In our opinion, this constancy entails some concerns; whereas implementing the same in the manner demonstrated previously and absolutely is sometimes contrary to justice, where the damage arisen as a result of felony forgery is sometime trivial but the perpetrator is charged with and punished for felony forgery merely because the legal instrument exists based on a law or a regulation. This also applies the other way around, whereas the damage caused by the act of forgery is gross but the perpetrator of which is charged with and punished for a misdemeanour forgery of a false affidavit, merely because the instrument exists based on administrative directives.

Criminal cassation case No. 470/2006, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 1246/2005, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 835/2008, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 849/2007, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 904/2007, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 61/2007, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 1332/2005, quintet tribunal. Publications of the Justice Center.

To fortify our opinion, we pose the following example: According to the aforementioned criterion adopted by the Court of Cassation, an individual who forges work permits shall be punished with the felony forgery penalty; due to the fact that such permits are issued by virtue of the labour law. This penalty is enforced despite the triviality of the damage resulting from the offence, while an individual who commits forgery of all university certificates is punished with the penalty of a misdemeanour forgery of false affidavits merely because university certificates are usually issued by virtue of the directives made by the university's board of deans. This penalty is enforced despite the grossness of the damage resulting from such an act, and the broadening of the public interest violated; i.e. the gravity of the damage is exacerbated with more damages, rights, and social interests violated as a result of the forgery offence. In our perspective, this approach prejudices the balance of criminal justice.

The Jordanian Supreme Court has characterized the act of forging health certificates as a felony forgery offence due to the fact that such certificates are usually issued by virtue of a law. The court has neglected to notice that a forgery perpetrated within the domain of medical or health-related occupations is expressly considered under article (266) of the penal code of the same type of that of the misdemeanour forgery of false affidavits.

In this context, it is worth noting that the Supreme Court has applied article (266) on the occupation within the medical or health domain in several rulings, stating: "Should an individual forges the report of the supreme medical committee shall be subject to the penalty provided under article 266 of the penal code".³⁷ The court has also ruled: "Falsification or falsification of the ophthalmology report produced by the drivers' licensing authority shall constitute a misdemeanour forgery of false affidavit, pursuant to the provision of article 266 of the penal code".³⁸

For the fullest benefit the only thing left to say is: Steaming from our observations regarding the two criteria as adopted by the court of cassation, we believe that these criteria do not solve the problem of having two legal articles applicable to the incident of forging a legal instrument, the first being a felony imposing and the second being a mis-

demeanour imposing. Whereof, we wish to have article (266), which provides for the false affidavits, repealed. This is due to the broadness and horizontality of articles (262 & 265) of the penal code; rendering such articles enforceable on the various incidents constituting a forgery offence.

We also believe that there is another legal solution to the predicament without having to repeal article (266). This solution manifests in implementing the rule of perceived aggregation of offences; substance of article 57 of the Jordanian penal code, upon legal characterization of the forgery of legal instrument as an offence.

This rule can be invoked if the act encompasses several legal descriptions; all of which are mentioned in the court's ruling pronouncement, where the court would determine the offence of stricter liability in characterization and shall inflict its penalty exclusively. Based on that, the actor of a forgery of legal instruments shall be subject to; according to the provision of article (57), the penalty designated for the stricter characterization; which is the penalty of the felony forgery instead of the misdemeanour forgery of false affidavits.

This due to the fact that the criteria for applying the rule of perceived aggregation of offences against him/her are present, whereas the actor committed one act of forgery of legal instruments and is subject to the penalties provided under both article 262 and 266 of the Jordanian penal code.³⁹

Criminal cassation case No. 6/1984, quintet tribunal. Publications of the Justice Center.

Criminal cassation case No. 709/1997, quintet tribunal. Publications of the Justice Center.

For more information on the concept of perceived aggregation of offences, please see K. Al-Sa'eed, Commentary on General Provisions under the Penal Code,(in Arabic) ,(Amman: Dar Al-Thaqafah, 2009) , P.788 et seq.; M. Mustafa, Commentary on the Penal Code, the General Section,(in Arabic) F 10, (Cairo: Cairo University publishing house,1983) , p. 631 et seq.; R. Bahnam, The General Theory of Criminal Law,(in Arabic) ,(Alexandria: Al-Ma'aref facility, 1995) , p. 967 et seq.;

M. Namur, Studies in the Criminal Law Jurisprudence, F 1, (in Arabic) (Amman: Dar Al-Thaqafah, 2004), p. 145 et seq.; K. Mustafa, The General Theory of Criminal Sanction,(Amman: Al-Afaq, 2012) , p.

5 - Conclusion

In its legal characterization of the forgery of legal instrument as an offence, the Jordanian Supreme Court has adopted a criterion which is: if the legal instrument was created in its original form in contrary to the truth, then such an act constitutes a misdemeanour forgery of false affidavits. On the other hand, if the legal instrument is organized properly and validly in its original form only to be falsified later-on, then such an action shall constitute a felony forgery. We can clearly observe that this criterion is contradictory to the interpretation of articles (266 & 262) of the penal code.

It can be concluded from both provisions that forgery of legal instruments can occur in two forms: the first is the felony forgery and the second is the misdemeanour forgery of false affidavits. According to the provisions of these articles, the complete fabrication of a legal instrument is a possibility. It is also possible that a legal instrument is made properly and validly in its original form, only to be falsified or altered later-on.

It is well established in the Supreme Court ruling to implement the strength of the legal rule on which basis the legal instrument is created as a criterion. This criterion can be summarized as follows: if the legal instrument which was subjected to forgery has been developed by virtue of a law or a regulation, then any forgery perpetrated thereto shall constitute a felony forgery. However, if the legal instrument is made by virtue of directives, then any forgery perpetrated thereto shall constitute a misdemeanour forgery of a false affidavit.

We do not recommend granting this criterion an absolute status upon implementation, where the damage arisen as a result of felony forgery is sometime trivial but the perpetrator is charged with and punished for felony forgery merely because the legal instrument exists based on a law or a regulation. This also applies the other way around, whereas the damage caused by the act of forgery is gross but the perpetrator of which is charged with and punished for a misdemeanour

forgery of a false affidavit, merely because the instrument exists based on administrative directives.

The Jordanian Supreme Court has characterized the act of forging health certificates as a “felony forgery offence” due to the fact that such certificates are usually issued by virtue of a law. The court has neglected to notice that a forgery perpetrated within the domain of medical or health-related occupations is expressly considered under article (266) of the penal code of the same type of that of the misdemeanour forgery of false affidavits.

Recommendations:

Due to the broadness and generality of articles (262 & 265) of the penal code; rendering such articles enforceable on the various incidents constituting the offence of forgery, we believe it is better to have article (266) of the Jordanian penal code repealed.

In practice, and as article (266) remains in force up to date, we beg of the Jordanian Supreme Court as well as lower degree courts; upon characterizing the offence of forgery of legal instruments, to apply the rule of perceived aggregation of offences for the offences provided under article 57 of the Jordanian penal code. This rule can be invoked if the act encompasses several legal descriptions; all of which are mentioned in the court’s ruling pronouncement, where the court would determine the offence of stricter liability in characterization and shall inflict its penalty exclusively.

et seq.; O. Salem, Commentary on the UAE Penal Code, The General Section,(in Arabic) Suite 2,(without a publisher and a year of publication) , p. 202 et seq.; M. Husni, Commentary on the Lebanese Penal Code, F 2,(in Arabic) (Beirut: Dar Al-Naqri, 1975), p. 640 et seq.; M. Al-Fadhel, The General Principles in Criminal Legislation,(in Arabic) (Damascus: Al-Dawoodi publishing house, 1977 – 1978), p. 478 et seq..

Based on that, the actor of a forgery of legal instruments shall be subject to; according to the provision of article (57), the penalty designated for the stricter characterization; which is the penalty of the felony forgery instead of the misdemeanour forgery of false affidavits. This

due to the abundance of the criteria for applying the rule of perceived aggregation of offences against him/her, whereas the actor committed one act of forgery of legal instrument and is subject to the penalties provided under both article 262 and 266 of the Jordanian penal code.

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تكييف جريمة التزوير في المحرر الرسمي وفقاً لأحكام القضاء الجزائي الأردني

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ملخص الدراسة

تتناول هذه الدراسة أحكام محكمة التمييز الأردنية الصادرة بشأن تكييف جريمة التزوير في المحرر الرسمي مع التعليق عليها، وذلك لمعالجة إشكالية رئيسية تتمثل بصعوبة التفرقة بين جناية التزوير وجنحة التزوير في المصدقات الكاذبة، وذلك عندما يقع التزوير في المحرر الرسمي، سيما أن هذه الحالة لم تعالج في ضوء أحكام قانون العقوبات الأردني.

ويمكن توضيح ذلك بصيغة التساؤلات التالية:- ما هو الوصف القانوني الدقيق لفعل التزوير في المحرر الرسمي - فهل يُشكل هذا الفعل جريمة من نوع جناية أم جريمة من نوع جنحة؟- وما هو منهج محكمة التمييز الأردنية في تكييف جريمة التزوير في المحرر الرسمي؟ - فهل تكييفها على أنها جناية، وتبعاً لذلك يعاقب مرتكبها بمقتضى نص المادة (٢٦٢) من قانون العقوبات الأردني، أم تكييفها على أنها جنحة تزوير في مصدقة كاذبة، وتبعاً لذلك يعاقب مرتكبها بمقتضى نص المادة (٢٦٦) من القانون ذاته؟
الكلمات المفتاحية: الوصف القانوني، تكييف جريمة التزوير، محكمة التمييز الأردنية، المحرر الرسمي، جناية التزوير، جنحة التزوير في مصدقة كاذبة..

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