

Contracting Liability on Credit Card Issue in the Bahraini Civil Law "Comparison Study"

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Credit card is considered one of the modern payment methods which is very widely used in our present time, for several reasons, the most prominent of which are the huge technological revolutions and that the banks assumed the mission of opening credits. However, and in spite of this, we found that the Bahrain legislator has not regulated the dealing process in credit card in special provisions nor in a separate law as done by the French legislator in the Monetary Law issued on 12/14/2000 and its amendments. This study reached several purposes and recommendations.

Introduction:

The banking facilities including credit cards, are deemed one of the most significant services in our present time because it satisfy the desires of its parties, contributes in increasing bank profits and solve the customers problem in getting the necessary cash liquidity. This card is considered a modern fulfillment means which has settled out in the commercial environment as a result of cooperation among banks and customers to guarantee commercial dealings and repayment.

In spite of the common use and negotiation of credit cards, but we found that the Arabic legislations, including the Bahraini legislations, do not have special provisions regulating the relation among the credit card parties (issuer – merchant – customer), unlike the French legislator position who in the sixteenth chapter of the Monetary Law issued on 14/12/2000, regulated the credit card parties liabilities, rights and extent of responsibilities.

This study is a contribution in shedding light on the contracting liability on the credit card issued in the Bahraini Civil Law (Comparison Study). The following is the significance of the study subject matter, reason of selection, objectives, research problematic and plan.

Research Significance and Reasons for Subject Matter Selection:

The research significance originates out in demonstrating the civil liability and in particular (the contracting liability) of the credit card issuer in the Bahraini Civil Law and also in pointing out to the bank obligation to evaluate the security position of customer prior to granting the credit card unlike the previous studies which have not pointed out to this point.

The lack of researches in this subject, made me selecting the subject matter of this study, because the researches lack provides fertile material to who desires to make legal scientific studies in the Bahrain Law, especially we find that many of the Bahrain Law commentators did not tackle this subject deeply.

Study Objectives:

This study aims to explore the contracting liability of the credit card issuer in the Bahrain Civil Law along with pointing out to some of the other laws. The most significant objections could be summarized as follows:

1. Investigate the issuer obligations by making enquiry upon studying credit card application.
2. Investigate the contracting liability of the credit card issuer.

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Study Problematic:

The research problematic is that there are no special legal provisions regulating the illegal usage of the credit card, where this study came out to show the possibility of applying the general rules in the contracting liability of credit card issuer in the Bahraini Civil Law.

Study Methodology:

In this study we followed the comparison criticism analysis approach by referring to the principal books and legal sources related to the civil liability in general and contracting liability in particular.

Study Plan:

This study includes an introduction, two sections and conclusion, as follows:

Introduction: Includes the subject matter, significance, selection reasons and followed methodology of the subject matter of the research and showing the study problematic.

First Section: Obligations of the issuer to Make Inquiry upon examining the credit card application.

Second Section: Contracting liabilities of the issuer of the credit card.

Conclusion: We show the most significant conclusions, recommendations and proposals reached through this study.

Section I**Obligations of the issuer to Make Inquiry upon examining the credit card application**

A Credit Card Application usually contains many information about the applicant, Some of this information is purely personal information such as place of residence, social status and the eligibility, Other information related to his financial position such as sources of income and the rate of monthly income and monthly obligations, this information in general is called the criteria for granting credit.

To illustrate that, this section is divided into two chapters: the first chapter deals with the issuer's obligation to inquire about the personal information of the applicant's credit card, while the second chapter deals with the issuer's obligation to inquire about that person's financial information.

Chapter One**Issuer's obligation to inquire about customer's personal information**

One of the most personal information regarding the applicant for a credit card of which the issuer is interested in, is information about the conduct, reputation and eligibility of the customer as follows:

First: the obligation of the issuer to inquire about the ethical side of the customer:

The customer's character is the primary ground of the credit decision, which is the most influential ground in the risks to which the issuer is exposed. Therefore, the most important endeavor of the issuer is in carrying out the credit analysis that is to accurately identify the customer's personality⁽³⁾, whenever the customer has honest, fair and good reputation character, committed to all his obligations, and is keen to perform his obligations as it was better able to persuade the issuer to grant the required credit⁽⁴⁾ We have not to be confused between the customer moral aspect and behavior, where the consumer or customer behavior means the mental processes and material activities of the individuals when selecting, purchase and usage of services or products which satisfies specific needs and desires⁽⁵⁾.

The personality of the customer has several elements, but in its entirety revolves around the individual's moral and moral characteristics that affect the extent of his commitment to perform and his undertakings, the honesty, sincerity, high ideals and positive behavior; all of them point to the extent to which the customer feels responsible and thus to the extent of his obligation to pay his financial obligations.

⁽³⁾Dr. Hamza Mahmoud Al-Zubaidi, Department of Banking Credit and Financial Analysis, Al-Warraq Publishing and Distribution, Amman, First Edition, 2002, p 143.

⁽⁴⁾Rasha Essam Al-Majali, The Impact of the development of payment systems by cards on the failure of credit cardholders, A Practical Study of the reasons behind the stumbling of Visa Credit Cards in Jordan, unpublished PhD thesis, Arab Academy for Banking and Financial Sciences, Amman, 2009, p. 49.

⁽⁵⁾Dr. Ahmad Mahmoud Al-Zamel and others, Banking Services Marketing, Ithraa for Publication and Distributions, First Edition, Amman, 2012 p 212

Therefore, the risks of this element are called the moral or human risks⁽⁶⁾.

As for the customer's character as a business company, that means the management which reflect the extent to which the company is able to perform its obligations towards the creditors, through its ability to complete the business and achieve the objectives. For this reason, the study of the personality of the company requires the knowledge of the personality of the managers of the company in order to inform the ethics of these managers and their ability and willingness to pay the company's financial obligations⁽⁷⁾.

Second: The Customer's Eligibility:

The issuer must confirm the eligibility of the applicant for the credit card, whether it is a natural person or legal person, where the Bahrain Legislator made the legal age is (21 years), as provided in article (13) of the Jurisdiction on Capital Law No. (7) for the year 1986: (legal age is complete twenty one calendar years) and which further was confirmed by the Bahrain Court of Cassation⁽⁸⁾. The issuer, like any other contracting party concerned with the eligibility of the other contracting party to ensure the validity of this contracting, and thus this deal has been avoided for invalidity due to the defects of eligibility, the verification of eligibility is not limited to the natural person, but it also includes the legal person. The issuer must verify its acquiring the legal personality by registering it in the commercial register⁽⁹⁾.

Chapter Two

Issuer's obligation to inquire about the customer's financial position and property

The integrity of the customer's financial position plays a pivotal role in influencing the issuer's decision to grant the credit to the customer by issuing a credit card to that customer. The following elements is the most important elements of the financial position that helps the issuer to determine the true position of the credit card applicant.

I: Financial Ability & Legality of Business

The ability means the customer's capability to earn income and thus the capacity to perform his financial obligations, including loans (original loan, expenses and commissions)⁽¹⁰⁾, the ability is also meant for the extent to which the company can be managed efficiently and professionally by its operators, its capacity to compete in the market, and the ability to solve the production problems without bearing additional burdens, the market share of the activity, the extent to which it is able to maintain it, and the efficiency of the marketing system of the company to bring new outlets⁽¹¹⁾.

In accordance with this concept, the capacity is called professional eligibility, which is the technical efficiency of the applicant, which ensures that the issuer can recover its credit to the cardholder, therefore, the credit cardholder must be keen on their customer if he is an employee, and be keen to succeed in managing his project if he depends upon his income on that project, the continuation of the cardholder in his work is a guarantee for the issuer to fulfill his rights⁽¹²⁾.

As for the legitimacy of the activity of applicant for credit, it is intended that such activity is not illegal, such as its subject being illegal⁽¹³⁾, and in this case the issuer will reject the application for a credit card due to illegality of the business activity.

⁽⁶⁾Dr. Hamza Mahmoud Al-Zubaidi, Banking Credit Department, op. Cit., P. 144.

⁽⁷⁾See close to this meaning,, Dr. Abdulmuti Reza Ershid and Mahfouz Ahmed Joudeh, Credit Management, Dar Wael Publishing, Amman, First Edition, 1999, p. 216, see also: Hamza Mahmoud Al-Zubaidi, Department of Banking Credit and Financial Analysis, op. Cit., P. 145.

⁽⁸⁾Bahrain Court of Cassation- No 120- 13 SESSION – 2014 – and Bahrain Court of Cassation NO 113 – 18 session - 2013.

⁽⁹⁾Dr. Ahmed Awad Youssef Awadin, the responsibility of the bank for error in opening the current account and its closing in the Egyptian Commercial Law, comparative Study of French law, without publishing house, 2007, p. 68 et seq.

⁽¹⁰⁾Rasha Essam Al-Majali, the Impact of the Development of Payment Systems by Cards on the failure of Credit Card Holders, op. Cit., P. 50.

⁽¹¹⁾Salah Ibrahim Shehata Attallah, Regulations for granting banking credit, PhD thesis, Cairo University, 2008, p. 222.

⁽¹²⁾See close to this meaning, Dr. Ahmed Awad Youssef Awadin, the Bank's Responsibility for the wrong Opening and Closing of the Current Account in the Egyptian Commercial Law, Comparative Study of French Law, op. Cit., P. 70.

⁽¹³⁾Gamal Abdel Mohsen Ahmed, the Bank's tort Liability for Granting Accreditation, PhD Thesis, Assiut University, 1993, p. 78.

II: Capital:

The customer's capital is an important element impacting the credit decision. The Credit Department accordingly analyzes the customer's capital to determine the degree of risk to which the credit card issuer may be exposed⁽¹⁴⁾. Capital plays a key role in protecting creditors from serious losses; it protects against the arrival of losses to creditors' rights⁽¹⁵⁾.

The customer's capital means the amount of wealth he owns, or his movable assets such as shares, bonds or other immovable property such as real estate; this means that the capital includes all movable and immovable assets owned by the customer less the liabilities he owns, which is called the customer's financial position provided by the financial statements ⁽¹⁶⁾of customers who hold contra accounts.

The ability of a Customer to pay its liabilities in general largely depends on the value of the capital it owns. The greater the capital, the lower the credit risk⁽¹⁷⁾ and vice versa. The relationship between capital and credit risk is an inverse relationship⁽¹⁸⁾.

III: Guarantee

Guarantees provide a type of protection or insurance to the issuer for the risk of default in payment⁽¹⁹⁾. The guarantees are certain assets owned by the Customer and placed at the disposal of the issuer in order to obtain credit⁽²⁰⁾. Guarantees are the most important considerations that must be taken into consideration when making a credit decision, which constitute sufficient protection for the issuer in the event that the holder is unable to pay⁽²¹⁾.

Guarantees should not be the main motive in making a credit decision, in the sense that credit cannot be granted once the issuer has obtained guarantees that it deems sufficient. The warrant must be the result of objective and logical reasons reflected in the credit card application study.

For example, the decision-maker believes that there are anticipated or existed loopholes-salary fluctuation, for example, can be avoided by providing real or personal security; this means that the purpose of the warrant is to reduce the credit risk associated with the decision of only granting credit without neglecting the debtor's ability to repay its financial obligations from its own sources⁽²²⁾.

However, and due to the fact that banks in our present time are a pioneer in credit, we find that banks sometimes ask the customer to place their real estate as surety for the debt so that the banks could get rid from the equality rule which governs the relation between creditors ⁽²³⁾. The Bahraini legislator regulated the surety mortgage in article (942-997) of the Bahraini Civil Law ⁽²⁴⁾ where the mortgage contract is considered as accessory contract of the debt contract in existence and non-existence. This has been indicated in article (954) of the Bahraini Law and confirmed by the Bahrain Court of Cassation.

⁽¹⁴⁾Dr. Hamza Mahmoud Al-Zubaidi, Department of Banking Credit and Financial Analysis, previous reference (PR), P, 146.

⁽¹⁵⁾ Dr. Abdullallah

⁽¹⁶⁾Dr. Mounir Ibrahim Heneidy, Financial Department, Contemporary Analytical Introduction, Modern Arab Office - Alexandria, 3rd ed., 1997, P. 256.

⁽¹⁷⁾Credit risk is the risk of personal credit as a credit card is one of those forms of credit. The most important of these risks is the lack of control by the issuer on the entity in which the credit is granted, the borrower itself being the main source of payment accompanied by a change of the behavior of the holder, which may therefore increase the risk of Faltering credit. Dr. Mohamed Abdel-Fattah Mohamed Turki, establish a Personal Credit Risk Assessment System, Ph.D., Amman Arab University, Amman, 2006, p. 84. For more about credit risks, see: Abdul MutiRedaErshid and Mahfouz Ahmed Joudeh, Credit Department, o.p.cit. P. 213 et seq., Dr. Salah Ibrahim ShehataAttallah, Rules for Granting Bank Credit, o.p.cit.P.125 et seq.

⁽¹⁸⁾RashaEssam Al-Majali, The Impact of Card Payment Systems on Credit Card Holders' faltering, o.p.cit.P. 50.

⁽¹⁹⁾Dr. Abdul MutiRedaErshid and Mahfouz Ahmed Joudeh, Credit Department, o.p.cit.P. 217.

⁽²⁰⁾To the close to this meaning, see Dr. Mounir Ibrahim Heneidy, Financial Department, Contemporary Analytical Introduction, o.p.cit. P. 256.

⁽²¹⁾Dr. Adnan Tayeh Al-Nuaimi, Credit Department, Comprehensive Perspective, Dar Al-Masirah Publishing and Distribution, Amman, First Edition, 2010, P. 53.

⁽²²⁾RashaEssam Al-Majali, The Impact of Card Payment Systems on Credit Card Holders' faltering, o.p.cit.P. 51.

⁽²³⁾Dr. Khaled Jamal Wed ShehadehGharib, Mediator in original and accessory in kind rights, Applied University Sciences Publications, First edition, Bahrain, 2016 –p 259.

⁽²⁴⁾Articles 942-997 of the Bahrain Civil code – Date of law No 19-2001- Bahrain Court of Cassation- No 513 - 28 SESSION – 2014.

IV: Surrounding Economic Conditions

Surrounding economic conditions refer to the impact of the prevailing economic directions on the holder ability to pay⁽²⁵⁾. The factors affecting the credit decision are the prevailing economic conditions of the sector in which the holder works, the Customer ability to keep pace with the evolution and the operational technical efficiency⁽²⁶⁾. The surrounding economic conditions may be general conditions associated with the overall economic climate as well as the legislative frameworks within which the card holder operates, in particular those related to monetary and customs legislation and the legislations governing the organization of foreign trade activities, which affect the various sectors of economic activity⁽²⁷⁾.

There are particular economic contentions involve the changes which the Customer face in the form of competition, demand for goods, and conditions of sale and distribution. According to this definition; it certainly has an impact on the formulation of the credit decision⁽²⁸⁾.

There are many sources which the issuer can draw information from when studying the application for a credit card. There are three types of these sources. Some of which depend on the Customer itself, whether the source is personally known by the issuer or unknown, and some depend on external sources of inquiries some of which originating from official organs established with a goal to collecting information about credit and its risks⁽²⁹⁾.

Section II

Issuer's Contractual Obligation

The Issuer will contractually responsible toward the holder or the Trader when failed to comply with any obligations set forth in the supplier or holder contract; some of these obligations are related to the fulfillment and some are related to limit the unlawful use of the credit card whether provided in the contract or considered as its requirements⁽³⁰⁾. This is confirmed by article (216) of the Bahraini Civil Law which provided: (if it is not possible to execute the obligation in kind or the debtor delayed in execution, he has to pay compensation for the damages caused to the creditor because of that unless the creditor proves that the non-execution or delay in execution was for foreign reason out of his control).

In order for this to be illustrated, this chapter focuses on three requirements; the first of which is the general obligations of the issuer, the second deals with the particular obligations of the issuer limiting the unlawful use of the credit card, and the three requirement refers to or define the necessary requirements under which the issuer is exempted from the liability *ex contractu*.

Chapter One

Issuer's General Obligations

The first branch of this requirement focuses on the issuer liability towards the holder; while the second branch presents the issuer obligations towards the Trader.

⁽²⁵⁾Dr. Mounir Ibrahim Heneidy, Financial Department, Contemporary Analytical Introduction, o.p.cit.P. 256.

⁽²⁶⁾Salah Ibrahim ShehataAttallah, Rules for Granting Bank Credit, o.p.cit. P. 222.

⁽²⁷⁾RashaEssam Al-Majali, The Impact of Card Payment Systems on Credit Card Holders' faltering, o.p.cit., P. 51.

⁽²⁸⁾Dr. Hamza Mahmoud Al-Zubaidi, Credit and Credit Analysis Department, o.p. cit., P. 149.

⁽²⁹⁾Gamal Abdel Mohsen Ahmed, The Bank's tort liability in the Granting of Credit, op. Cit., P. 79). For more inquiry sources, see Dr. Ahmed Awad Youssef Awadin, the responsibility of the bank for the error in opening and closing the current account and in the Egyptian commercial law, comparative study with the French law, o.p. cit., p. 71 and et seq, Dr. Abdul MutiRedaErshid and Mahfouz Ahmed Joudeh, Credit Department, o.p.cit., P. 218 et seq.

⁽³⁰⁾The concept of the contract requirements is vague and relative; it varies from place to place and from time to time. It is therefore difficult to rely upon as a criteria for determining the scope of the contract, especially in cases where the contractor citizens are different and the customs and values by which they are governed. The differences of customs and values result in differences between the viewpoints of the contactors on the requirements of the contract. This concept gives the judge a dangerous authority under which It can increase the obligations of the contractors. This is a waste of the rule of The Contracting is the governing law of the contracting parties. It is therefore better to limit the scope of the contract in its clauses, then we can unleash any other obligations imposed by the general rules as the tort liability shall be applied as a result of its violation. Dr. Mohamed Abdel-Zaher Hussein, The Tort Liability of the Contractor, Juristic Judicial Study in the Interrelationships between the Two Types of Responsibility, Without Publishing House, 2004, p. 170.

Subsection One

Issuer's Obligations towards the Cardholder

A cardholder contract is a contract of personal consideration which arranges many obligations of the card issuer, which at the same time represent the rights of the card holder; the most important of these obligations are:

I: The issuer's obligation to deliver to the holder the card and the PIN code.

The card issuer will deliver the Customer the card as well as the PIN soon after signing the contract⁽³¹⁾, so that the Customer can use the card in cash withdrawals, the goods and services purchase from the Trader, where the conditions and terms of the credit cards and loans permitted banks to handover the card in bank branches or by mail⁽³²⁾. The issuer will be responsible for PIN as long as it is possessed by him and keep the PIN secret with no disclosure⁽³³⁾. The issuer accordingly will deliver the card and PIN to only the legal holder thereof.

The delivery of the credit card does not cause any legal problems, as long as the delivery was done within the issuer's headquarters or branch after confirming the identity of the recipient and its signature of the receipt of credit card and the PIN code. However, the parties may agree that the issuer sends the card as well as the PIN with registered letter. In this case, some Jurists ⁽³⁴⁾ argue that the issuer will assume the risks and liability that may arise as a result of loss or theft of the card based on the theory of risk. This is what was ruled by the French Court of Cassation in its judgment issued on 13/05/1986 in a Lawsuit, the facts of which summarized as follows: La Caisserégional de credit Agricole sent the check book by a regular letter to one of its Customers, but the book did not reach the addressee (CRCA). However, the beneficiary of these checks, a shoe company, submitted the check to the said bank to fulfill it, yet the bank refused to comply due to the opposition submitted by the Customer. The shoe company accordingly initiated a lawsuit against the issuer bank. The Paris Criminal Court of ruled through its unpublished judgment issued on 08/11/1984 that the bank be held the liable therefor and that the beneficiary be compensated for the license granted to the Customer to receive the check book at his home is a service provided by the banking institutions. This service should not be awarded in a way that causes damage to the account holder or non-beneficiary of the check. Therefore, the negligence of the bank caused damage to the shoe company⁽³⁵⁾.

The issuer bank challenged the Judgment in the Court of cassation which, in return, refused to challenge its judgment published on 13/03/1986 supporting the Judgment issued by the Criminal Court. The Court did not prove that the bank made a mistake when refused to pay the check in question. The bank, in return, had taken the risk of theft of the check book, and the service of the delivering check books to Customers must not be prejudicial to the third party who accepts the check as a mean of payment. The Court therefore had shown the causal relationship between the mistake committed by the bank and the damage incurred by the shoe company⁽³⁶⁾.

⁽³¹⁾Jean Colais – Anloyetet Frank Steinmetz, *Droit de la Consomation*, o.p.cit., p.366-367.

To issue credit card, it takes a period of time, which often ranges from (10-15) days from the date the issuer approves the customer's request. The card PIN in the custody of an employee of the issuer who is different from that in whose custody the credit cards are. This is a banking custom required by the requirements of safety and caution. This PIN is kept in a special envelope which is usually painted black so that no one can know that PIN which is usually made up of four boxes, even using auxiliary means such as light. At the end of the working day, the PIN stored in different private places different from that of the credit cards. This is called "safe custody". We disagree with the findings of researcher NahalYousef Mohammed Rawabi, when she states that the issuer shall inform the holder the PIN while the issuer is unaware of it; however, the issuer can enable the holder to know the PIN code by delivering it in a sealed envelope. For more information about the opinion of the researcher.NehalRawabi, see her thesis: *Legal Provisions of Credit Cards*, Master Thesis, Yarmouk University, Jordan, 2010, p. 18.

⁽³²⁾See the terms and conditions for the credit card and loans issued by Citibank Bahrain – 2-1.

⁽³³⁾Dr. Jameel Abdel Baqi Al Saghir, *Criminal and Civil Protection of Magnetic Credit Cards*, Applied Study in the French and Egyptian Judiciary, Dar Al-Nahda Al Arabiya, 2003, p. 207.

⁽³⁴⁾See, in this regard: KellaniAbd al-Radi Mahmoud, *The Legal System of the Debit and Debit cards*, Ph.D., Faculty of Law, Ain Shams University, 1996, p. 578. He believes that the issuer should avoid sending credit cards to customers by mail. The issuer shall chose one of two options: the first is to obtain from the customer a written letter exempting the issuer from liability arising from the risk of theft or loss in the event of sending it by mail; Second is to deliver the card within the issuer's headquarters or one of its branches and duly delivery it to the customer.

⁽³⁵⁾Referred to at: Kilani Abdul Radi Mahmoud, *The legal system of Debit and Debit Cards*, op. cit., P. 578.

⁽³⁶⁾Cass. Com.13 mai 1986. R. Dr. Banc. Et Bour 1987. No.2. P53- C.A. Aix 27. Mai. 1986. Bull. Aix. 1980.

II: The Issuer's obligation to pay the holder the debts arising from the use of the card:

The issuer will pay the value of the purchases and services to the Trader, which was carried out by the holder using the credit card⁽³⁷⁾. Although this is considered as an obligation arises from the contract of the Trader. However, in order for the principle of independence of legal relations of the credit card legal system parties to be applied, the contract of the holder must include this obligation as a personal obligation of the issuer against the Trader⁽³⁸⁾.

A part of the jurisprudence states that if the issuer fulfills the debts of the holder arising from the use of the "debit" card within the amount agreed upon with the holder, it will be in the position of guarantor to the creditor Traders. If such amount exceeds the amount agreed upon, the issuer will be an agent of the holder to fulfill it⁽³⁹⁾.

However, we disagree with this view for two reasons⁽⁴⁰⁾:

First is a practical reason. If this assumption perceived as for the " the debit or payment cards" system, it is therefore difficult to be applied on credit cards due to the credit card system allows the holder to make cash withdrawals and purchases within the credit limit agreed upon with the issuer; it can only be exceeded by an exception, because the card system itself will not allow the withdrawal or payment of purchases to the Trader to be completed.

Second, even if cash withdrawals or purchases beyond the allowable credit limit using the credit card is possible, the issuer cannot be regarded as, when repaying the holder's debt, as an agent of the holder for the same reasons cited in criticizing the agency theory as a legal basis for the credit cards system.

In our opinion, the issuer claims back from the cardholder beyond the allowable amount, which is rare, on the basis of the idea of enrichment without cause and not on the basis of the agency; because the issuer, in this case, preform the fulfillment on its own without referring to the holder.

However, in our present time and especially in the Bahraini banks, such problems are not raised out because there is direct electronic link between the card issued and payment outlets post to the technological development in the banking sector⁽⁴¹⁾.

III: The issuer's obligations to send Account Statements to cardholder:

The issuer will send a statement to the holder from time to time to provide the financial operations carried out by the holder in a certain period; those statements are often monthly⁽⁴²⁾. This statement will include the credit and debit balances in details, the date and value of the withdrawals and purchases. It will also contain the interest payable, the amount utilized from the credit limit and the remaining amount available from that credit limit. The statement be usually sent by the regular mail to the holder address provided to the issuer. The issuer often requires that, in the event of an objection to the statement, the holder must initiate this within thirty days, otherwise the statement would be considered correct⁽⁴³⁾; this requirement usually expressly stated at the end of the statement. The failure of the holder to receive the statement will not affect its obligation to pay the issuer, i.e that the failure to receive the statement will not preclude the holder from being obliged to pay the issuer the financial obligations owned thereby⁽⁴⁴⁾.

⁽³⁷⁾FrançoisGrua, Contrats Bancaires, T.I, Econiomoca, 1990 ; P.179.

⁽³⁸⁾Dr. MoatazNazih Mohamed Sadiq Al-Mahdi, The Legal Nature of Electronic Credit Cards and the Civil Responsibility arises therefrom, Dar Al-Nahda Al-Arabiya, Cairo, p. 84

Also see: AlianBénabent, Droit Civil Les obligations, p.525

⁽³⁹⁾See in this regard: Dr. Ali Jamal AldinAwad, Legal Operations of Banks, Dar al-Nahda al-Arabiya, Cairo, Third Edition, 2000, p. 541, p. 163. Kilani Abdel Rady Mahmoud, The Legal System of the Debit and Debit Cards, op. Cit., P. 580. Khalid Abdel Tawab Abdel Hamid Ahmed, Electronic Payment Card System in Legally, PhD thesis, Faculty of Law, Helwan University, 2006, P. 149 et seq.

⁽⁴⁰⁾See the same opinion: Dr. MoatazNazih Mohammed Al-Sadiq Al-Mahdi, The Legal Nature of Electronic Credit Cards and the Civil Liability arising therefrom, op. cit, p. 85.

⁽⁴¹⁾Dr. Ahmad Mahmoud Al-Zamel and others,op. cit.p 303.

⁽⁴²⁾See clause (21) of the Visa Card Protection Agreement, Cairo Amman Bank.

⁽⁴³⁾Dr. EssamHanafi Mahmoud Morsi, The Legal Nature of Credit Cards, Electronic Banking Conference between Sharia and Law, United Arab Emirates University, 2003, p. 892.

⁽⁴⁴⁾See clause 3.3 of the Arab Bank Association Visa Card Agreement, which stats as follows: "Failure to receive the Statement of Account shall not be construed by the Cardholder as a justification for non-payment of amounts payable on due date."

IV: The issuer's obligation to open an account for the benefit of the holder:

The credit card issuer will open a private account for the card under the name of the holder once the credit card is delivered, so that the issuer can record the financial transactions executed by the card⁽⁴⁵⁾, whether in the form of cash withdrawals or purchases on that account. This raises the question as to the nature of this account, is it a letter of credit, a current debit account or an account special?

Some Jurists argue ⁽⁴⁶⁾that the account of the credit card is a L/C in the favor of the holder; it is a promise of lending a loan or other credit mean in which the issuer will be the lender of the holder in the amount of debit balance utilized under the credit limit.

Others sees ⁽⁴⁷⁾that the nature of the card account is a current debit account that is a contract under which two parties agree that they to be credited in an account by mutual payments overlapping all debts arising from transactions between them such as the delivery of cash, money, trade securities qualified to possess or any other, and that to replace the settlement of these debts, each payment separately, by a final settlement resulting in the balance of the account when locked⁽⁴⁸⁾, and this view is supported by his opinion under the following reasons:

1. No current account holder will be required to be a bank, while the L/C will always be issued by a bank. This is the reason allowing non-bank companies to issue credit cards; they open a current debit account for the cardholder.
2. In the agreement of the letter of credit L/C, the applicant thereof will deposit sums of money at the disposal of the authorized party. In the regard of the current account opening agreement, the customer will deposit the money in it. He is entitled to withdraw all or part thereof or more than that; he will be the creditor or debtor of the issuer according to the circumstances or withdrawals. This will apply to the card agreement under which the issuer will require that the holder will deposit sufficient credit covers the card limit.
3. However, we disagree with the previous two views, whether with the opinion that considered the card account is a L/C, or with the opinion that considered the card account is a current debit account, for the following reasons:
 1. The L/C agreement is a banking act⁽⁴⁹⁾. Therefore, only banks have the right to open such an account. Unlike the credit card account, the non-bank licensed financial company is entitled to open that account for the holder.
 2. That the issuer does not require the holder to deposit an amount of money in the card account; on the contrary, the issuer is the party that will deposit the amount of the credit limit in the holder's account. The card account accordingly cannot be considered as a current debit account.
 3. The current debit account accepts cash deposits as well as deposits in the form of trade securities, while the credit card account only accepts cash deposits, and exceptionally if the purpose of the cash deposit is to settle the private account in the card between the issuer and the holder. Therefore, we see that the credit card account is a special account created under the need of dealing with credit card; the goal of which is to settle both sides of the account - creditor and debtor - between the issuer and the holder.

V: The issuer's obligation to keep confidential the information related to the card account:

Although the card account has a special nature, the issuer will continue to maintain the confidentiality. This obligation of confidentiality was a mere moral obligation, but it has become the subject of general legislative regulation. The different political systems, in accordance with their political and economic circumstances and conditions required special legislations to be established, especially in the banking sector in order to collect savings and funds for that sector⁽⁵⁰⁾.

⁽⁴⁵⁾Christian Gavalda et Jean Stouffet, *Droit Bancaire* ., P. 386

⁽⁴⁶⁾Dr. Samiha Al-Qalioubi, *Modern Payment Methods, New in the Works of Banks from the Legal and Economic Aspects*, Part I, Al Halabi Publications, Beirut, First Edition, 2000, p. 73. Dr. Fayez Naeem Radwan, *Debit Cards*, Al-Jalaa Library, Mansoura, 1990, p. 164. Dr. Ali Jamal Aldin Awad, *Banking Operations from a Legal Perspective*, op. Cit., P. 580. Dr. Essam Hanafi Mahmoud Morsi, *The Legal Nature of Credit Cards*, o.p. Cit., P. 847.

⁽⁴⁷⁾Amjad Hamdan Askar Al-Juhani, *Civil Liability for the Illegal Use of the Debit Card and the Development of Controls*, PhD Thesis, Amman Arab University, Amman, 2005, p. 241.

⁽⁴⁸⁾Dr. Samiha Al-Qalioubi, *the mediator in explaining the Egyptian Trade Law*, Part II, House of Arab Renaissance - Cairo, P. 886.

⁽⁴⁹⁾Dr. Akram Yamalki, *Commercial Papers in Accordance with the Single Geneva Convention, Banking Operations in Accordance with International Customs*, Dar Al-Thaqafa for Publishing and Distribution, Amman, First Edition 2008, P. 328.

⁽⁵⁰⁾Metwally Ali Metwally, *The Legal System of Secret Accounts, Comparative Study*, Dar al-Nahda al-Arabiya, 2001, P. 8.

The Bahrain law regulated the banking secrecy issue in the eighth chapter of the Bahraini Central Bank and Financial Institutions Law⁽⁵¹⁾, in article No. (116-120), where article (117) of the Bahraini Central Bank and Financial Institutions Law provided (The licensees are not permitted to disclose confidential information, but if:

1. In operation of express approval issued by the party to which the confidential information is related.
2. Executing to the provisions of law or international agreements which the Kingdom is a party in.
3. Executing of judicial order issued by competent court.
4. Executing of an order issued by the banking center.

However, it an exception, that the Bahraini Central Bank is permitted to disclose the confidential information the bank received directly or indirectly in any of the cases provided in article (117), in the case of taking any action to warrant the banking and finance sector in the Kingdom of Bahrain or in the case of cooperation with the international financial entities or organizations or such entities or committees of judicial jurisdiction⁽⁵²⁾.

The principle of confidentiality can generally be defined as: "an obligation of a person (the custodian) not to disclose facts and information (secrets) that come to his knowledge directly from the owner thereof (the owner of the secret) or indirectly in connection with exercise of his or her profession⁽⁵³⁾".

In the area of the transactions made by the credit card, the issuer is required to keep the credit card account strictly secret, and he is prohibited to disclose any information about the card account, either directly or indirectly, without a written consent from the cardholder or his heirs or under a resolution issued by a competent judicial party on an existing dispute. The prohibition remains in effect even if the relationship between the holder and the issuer is terminated for any reason⁽⁵⁴⁾.

⁽⁵¹⁾Bahrain Central Bank and Financial Institutions Law No. (64) for the year 2006- official Gazette-No 2755- Wednesday- 6-9-2006- Articles no (116-120).

⁽⁵²⁾ See Articles (118) - Bahrain Central Bank and Financial Institutions Law No. (64) for the year 2006

⁽⁵³⁾Dr. MoatazNazihSadiq Al-Mahdi, Commitment to Confidentiality and civil responsibility, comparative study, without publication year, P. 21, The Jordanian legislator stated the principle of confidentiality in many laws, e.g. Article (72) of the Jordanian Banking Law No. (28) of (2000) stipulates that: "The bank shall strictly keep all customers' accounts, deposits, savings and treasures secret, and prohibit the data thereof to be directly or indirectly disclosed without the written consent of the account or deposit holder or any heirs thereof or under a decision of a competent judicial authority in an existing judicial dispute or a case permitted under the provisions of this law. The prohibition shall remain has effect even if the relation between the customer and the bank for any reason is terminated. The Egyptian legislator was not isolated from the successive developments on the subject of bank confidentiality in various legislations; It adopted Decree- Law No. 205 of 1990 on the confidentiality of the bank accounts, under which the principle of commitment to banking confidentiality is regulated in Chapter 1 as well as the exceptions thereof provided in the Chapter II. When the new Trade Law No. (17) of 1999 was issued, the legislator issued a set of separate provisions on the confidentiality of accounts. Dr. Rdza Abdel-Hamid, The confidentiality of bank accounts in the light of the Decree- Law No. (205) of 1990 and the new Law of Commerce, Dar al-Nahda al-Arabiya, 2002, P. 8. Dr. Reda Al-Sayed Abdul Hamid, in his previous book, P. 8, stated that the new Trade Law does not represent an integrated regulation or a comprehensive view of this subject. Rather, some of these provisions repeated the provisions of Law No. 205 of 1990.

Decree No. 205 of 1990 published in the Official Gazette, issue No. (24) bis on June 15, 2003, was under the Central Bank the Banking System cancelled. The first Article of that Law stated that: The provisions of the accompanied law shall apply on the Central Bank and the Banking and Fund System.

The Law of the bank and credit issued by Decree- Law No. (163) of 1957 and Law No. (120) of 1975 regarding the Central Bank of Egypt and the banking system and Decree-Law No. 205 of 1990 on the confidentiality of bank accounts shall be cancelled" . The new law dealt with the confidentiality of bank accounts in Chapter IV, starting with Article 97 and Article 101, under the title of keeping the accounts confidential, see Fathallah Mohammed Hilal, Al-Wajiz in the confidentiality of the bank accounts according to the latest amendments in Law No. 88) of (2003), issuing the Law of the Central Bank and the Banking System, without publishing house, 2003, P. 5, et seq.

⁽⁵⁴⁾Article 97/1 of the Central Bank Law and the Egyptian Banking System stipulates that: "All accounts, deposits, safes, treasures and bank accounts of the customers, as well as related transactions thereof shall be confidential and may not be reviewed or disclose any data thereof directly or indirectly, without a written consent from the account, deposit, safes and treasury holder, a heir thereof, legatees of all or some of these funds, the legal representative or the authorized agent or pursuant to a judicial judgment or a judgment of arbitrators". Close to the text of Article (72) of the Jordanian Banking Law.

This prohibition will apply not only to the issuer but also to all persons who are entitled to review the cards accounts directly, by virtue of performing their duties, such as employees or indirectly such as the auditors⁽⁵⁵⁾. The paragraph III of Article IV of the Recommendation issued by the European Union on (17/11/1988) stressed the principle of confidentiality of stipulating that: "The contractual requirements imposed on the issuer towards contractor holder will require the issuer not to disclose the PIN code of that holder, or, where appropriate, the secrets data thereof except only to this holder himself"⁽⁵⁶⁾.

VI: Issuer's obligation to comply with the instructions of the cardholder:

The issuer will comply with customer's instructions, during the validity of the card contract, such as the customer request to stop or cancel the card due to theft or unwillingness to transact thereby. However, it should be noted here that issuer will not be obligated by the instructions which may be issued by the customer and would affect the rights of the Traders due to the basis of the obligation of the issuer to pay the Traders is provided in the Trader contract or the adhesion contract⁽⁵⁷⁾.

Subsection Two

The Issuer's Obligation towards the Traders

Based on the supplier's contract executed between the issuer and the Trader, there are many obligations imposed on the issuer as follows:

I: Issue the credit card and provide the tools and means required for their functioning:

The issuer will issue the credit card in accordance with the agreed form and specifications. However, the issuer will sometimes reserve the right to modify the form of the card and bear the cost of such modification⁽⁵⁸⁾.

The issuer will carry out promotional and advertisement campaigns for the card, in order to inform the public of characteristics and facilities thereof, as well as the names of Traders, shops and service providers with whom the issuer contracted to accept the credit card⁽⁵⁹⁾. The Issuer will provide these Traders with stickers and instructions to be placed on the interface of shops thereof indicating their acceptance to transact by the credit card⁽⁶⁰⁾. On the other hand, the issuer will provide all the devices, equipment and systems required to operate the card such as the electronic systems that connect him with the electronic points of sale of the Trader, as well as the sales devices (P.O.S) of the Trader so they can communicate with each other⁽⁶¹⁾. The issuer will train Traders on how to use point of sale devices (P.O.S) and how to act in the event of a defect occurred in a system.

⁽⁵⁵⁾Article 97/2 of the Central Bank Law and the Egyptian Banking System stipulates that: "The prohibition provided in the preceding paragraph shall apply to all persons and entities, including those authorized by law to access or obtain papers or data whose disclosure is prohibited under the terms of this Law. The prohibition shall remain in force even if the relationship between the customer and the bank is terminated for any reason. Article 571/4, paragraph 2 of the French Money and Fund Act states that the persons mentioned in articles (511/33, 511/34) of this Law as well as those who do not abide by the professional confidentiality in their work shall be punished by the penalty stipulated in the Article (226/13) of the French Penal Code, which provides the penalty of the imprisonment and a fine of 15,000 euros. . Phillipp, Neau-Leduc, *Droit Bancaire*, P.120.

⁽⁵⁶⁾This text is referred at: Dr. Nabil Mohammed Ahmed Subaih, *Some Legal Aspects of Bank Debit and Credit Cards*, Journal of Law, Kuwait University, First Issue, Year 27, March 2003, P.249.

⁽⁵⁷⁾Amjad Hamdan Al-Jahani, *Civil Liability for the Illegal Use of the Debit Card and establishing the controls thereon*, op. cit, P. 297.

⁽⁵⁸⁾Dr. Fayez Naeem Redwan, *Debit Cards*, op. cit, P. 121, The modification often includes the security specifications of the card in order to provide more protection and avoid the risk of fraud, and does not include the size of the card, because the modification of the card size shall subsequently require all ATMs and electronic points of sale to be modified. This modification is often unlikely due to the size of the card is a globally unified size, so that the holder can use it all over the world.

⁽⁵⁹⁾Dr. Essam Hanafi Mahmoud Morsi, *The Legal Nature of Credit Cards*, op. cit., P. 899.

⁽⁶⁰⁾Dr. Moataz Nazih Mohammed Al-Sadiq Al-Mahdi, *The Legal Nature of Electronic Credit Cards and Civil Liability arising therefrom*, op. cit, P. 105.

⁽⁶¹⁾G. Ripert et R. Robli, *Traité de droit Commercial*, P.152. Also see: Fida Yahya Ahmed Al-Hamoud, *Legal System of Credit Card*, Dar Al-Thaqafa Publishing House, Amman, First Edition, 1999, P. 47. Dr. Nazih Mohammed Al-Sadiq Al-Mahdi, *Towards a General Theory of the Credit Card System from a Legal Perspective*, Electronic-Banking Conference between Sharia and Law Prospective, United Arab Emirates University, 2003, P. 792. Dr. Essam Hanafi Mahmoud Morsi, *The Legal Nature of Credit Cards*, op. cit., P. 899.

The issuer will also inform Traders of the technological changes made in the credit card system⁽⁶²⁾.

II: The issuer's obligation to pay to the Trader:

This obligation is one of the most important obligations of the issuer. The primary purpose of the credit card system is to enable the holder to obtain goods, services and cash without immediately paying the consideration therefor by obtaining a credit instrument that will enable him to do so, provided that the issuer will pay this consideration to the Trader. Since the issuer's obligation of paying the Trader is an independent obligation arising from the contract executed between them⁽⁶³⁾; it may not be affected by any dispute between the holder and the issuer or between the Trader and the holder, this constitute a pillar according to which the transaction made by the credit card is proliferated due to Traders' worries of nonpayment arising due to a dispute between the parties to the card is frittered away.

There is no doubt that the obligation of the card issuer to pay the Trader in this way is conditional on the Trader complying with the contractual obligations contained in the supplier contract with no default or negligence committed thereby⁽⁶⁴⁾. The time when payment will be made is immediately upon completion of the purchase process. Here is the core benefit of the modern electronic nature of the credit card, as it electronically connects the Trader with the issuer. The value of the purchases or the services is immediately recorded on the Trader credit account. These values are also recorded on the credit debit account of that holder⁽⁶⁵⁾.

Chapter Two

The Issuer' Obligation that Limits Unlawful Use of the Credit Card

By virtue of the nature of its work, the issuer will audit all the sales certificates received from the Traders and verify the validity of the signature thereon. He will also publish the opposition submitted by the holder in order to prevent the Unlawful Use of the credit card. To clarify this, this Chapter is divided into two subsections: the first deals with the issuer's obligation to control the signature of the holder, while the second addresses the obligation of the issuer to publish the opposition.

Subsection One

The Issuer's Obligation to Control the Holder's Signature

The Issuer will maintain a form for the signature of the Cardholder and match it with the signature on the sale documents. The Issuer will be liable to the holder if he pay a bond of sale with a forged signature or a signature different from the form maintained therewith⁽⁶⁶⁾. This obligation is one of the contractual obligations with which the issuer will comply even if it does not stipulated in the requirements of the contract. The matching of the signature of the holder is one of the means by which the issuer verifies the validity of the holder's signature on the purchase document.

The question arising in the context of the issuer's liability for matching the signature of the holder is, is it possible to establish the liability of the issuer based on the theory of liability in the event that the signature of the holder on the sales document is false⁽⁶⁷⁾?

⁽⁶²⁾Dr. Moataz Nazih Mohammed Al-Sadiq Al-Mahdi, *The Legal Nature of Electronic Credit Cards and Civil Liability arising therefrom*, op. cit, P. 106.

⁽⁶³⁾François Grua, *Contrats Bancaires*, T.I, Economica, 1990. P.179.

⁽⁶⁴⁾Françoise Dekeuwer, *Défaussez, Droit Bancaire*, P. 80.

⁽⁶⁵⁾Dr. Nazih Mohamed Sadiq Al - Mahdi, *Towards a General Theory of the Credit Cards System from a legal point of view*, op. cit, P. 792 et seq.

⁽⁶⁶⁾François Grua, *Contrats Bancaires*, T.I, Economica, 1990 ; P.189.

⁽⁶⁷⁾At the end of the 19th century, it became clear to the jurists and the judiciary in France that the application of the rules of the known civil liability is insufficient to determine the right to compensate many of the affected, as the spread of mechanical machines in various fields led to a lot of work injuries. It was difficult to prove which party committed the fault. There were doctrinal attempts in Europe to define the basis of the liability in the case of the inability to prove the fault. In Italy, the positivist doctrine appeared which is based on the compulsory concept, e.g. that every action made by human is an inevitable result of external and internal factors. This doctrine concludes that the punishment is only just a way by which the society defend his being, and this doctrine, which had criminal origin moved to civil liability, which in turn has become a way to repair the damage and thus liberated from the idea of fault.

In Germany, materialism, which later moved to France, contributed to the emergence of that theory. It does not see the civil liability based on the fault, because it is a psychological description of the conscience of the actor, while the obligation to

compensate aims to restore the financial balance between parties. This theory has found a suitable environment to be developed by the socialist directions in the world. The socialism gives the community interest precedence over the individual interest. Therefore, if there is harm, it does not necessary to look for the fault source or not. Rather, it is necessary to find whether the interest of the group requires compensation or not. Believing that the law should be developed according to the development of the environment and its different circumstances, the Historical School called for making the fault is necessary for civil liability to be applied. However, it called for that the fault is not required to be occurred to establish the liability of damage if the society is making progress in industrial and commercial activities which is consistent with this advanced development. Dr. Mu'tazNazih Mohammed Sadiq Al-Mahdi, Professional Contractor and its Concept, Obligations and Responsibility, Dar Al-Nahda Al Arabiya, 2009, P. 132. In the French Jurisprudence, AlianBénabent, Droit Civil Les obligations,o.p.cit., P.36.

In view of these factors, French jurisprudence is trying to develop a basis for establishing the civil liability other than the fault. Indeed, in 1899, Labbe called for the fault as a basis for the civil liability to be declined; he merely based responsibility on the concept of liability since those who create new risks shall liable to its sequences. This was the opinion of Jousran. The courts began to expand the imposition of legal duties on employers and be lenient with taking judicial evidence into consideration to prove the fault the causal link between it and the harm.

See HazemNaeem Al-Smadi, Liability in Electronic Banking Operations, Dar Wael Publishing, Amman, First Edition, 2003, P. 122 et seq.

The basis of this theory is the objective liability not personal liability, because the fundamental difference between the two liabilities is that the former is based on the fault even if it is presumed. The basis of the liability is the fault not harm. The liable is the custodian not the beneficiary. The objective liability is established based on the harm not the fault and the liable is the beneficiary not the custodian. Therefore, the debtor of the personal liability if it is based on a fault which shall be proved can defend himself against it in the event that the creditor fails to prove fault committed by him. If the liability is based on a fault presumed in a way accepts otherwise to be proven, the debtor can defend himself against liability by proving a reason other than this. The debtor can always defend himself against the personal liability either by denying the fault in itself or by denying it as a reason of the harm that occurred. The objective liability cannot be discharged by denying fault, as long as the harm is committed by the person's activity, even if this person was not wrong, he liable for the harm. See HazemNaeem Al-Smadi, Liability in Electronic Banking Operations, o.p. Cit., P. 122. The Egyptian Court of Cassation has adopted the theory of liability since 1966, where it was considered that the basis of the bank's liability to pay of false checks is the harm, even if the bank does not commit a fault , civil cassation (January 11, 1966), set of cassation provisions, civil, No. 12, P. 17, this provision is referred to at: Hammad Mustafa Azab, the Liability of the Bank to Pay the false check, PhD thesis, Assiut University, 1991, P. 504.

The Jordanian legislator considered the objective liability within the field of the civil liability. Article (235) of the Jordanian Civil Code stipulates that "the offense is punishable by the sheep" and Article 257 of the same law states that: "If the act leads to harm."

For more information about the presumption of fault as a basis for the civil liability, see: Dr. Hassan Abdel-Basset Al-Ghamidi, The Extent of the Assumption of Professional Fault in the Division of Obligations into one to Achieve a Result and One of Due Diligence, Advanced Research presented to the Conference of Professional Responsibility, Faculty of Law, University of Sharjah, April 2004, P. 18. Dr. Jabir Mahjoub Ali, After Sales Service in the Sales of New Movables, Comparative Study between French Law and the Egyptian and Kuwaiti Laws, Third Edition, 2008, P. 19. Dr. Mohammed ShukriSrour, Producer Liability for Damage Caused by its Dangerous Products, Dar Al-Fikr Al-Arabi, 1983, P. 83. For more about the extent of the effect of the contract debtor's professionalism on the legal nature of his or her obligation and the provenance of fraud or significant fault committed by him or her. See: Dr. Ahmed Shawky Mohamed Abdel Rahman, The Contract Liability of the Professional debtor, Dar al-Ma'aref Establishment, Alexandria, 2003, P. 49 et seq.

For more information about this theory and its historical development, see: Abdul-Razzaq Ahmed Al-Sanhouri, Al Wasset in Explaining the Civil Code, Part VII, Volume I, Contracts on Work, contracting, agency, deposit and custodianship, Dar al-Nahda al-Arabiya, 1989, P. 633, et seq. Dr. Hassan Ali Zanoun, Al-Mabsout in Explaining the Civil Law, the Fault, Dar Wael for Publishing, Amman, First Edition, 2006, P. 11 et seq. Dr. Ahmed Mohamed Saad, Extrapolation of the Rules of Civil Liability in Environmental Pollution Disputes, Dar al-Nahda al-Arabiya, 1994, P. 307. Dr. WafaHelmy Abu Jamil, Environmental Protection Legislation, A Study in the Rules of Civil Liability, Dar al-Nahda al-Arabia, 2001. Mohamed Nasr Rifai, Damage as a Basis of Civil Liability in Contemporary Society, PhD Thesis, Cairo University, 1978. Criticism had been voiced about this theory as a base of the liability. It turns out that the person becomes responsible for the results of the activity he is engaging with, which interrupts the wheel of production and this would negatively affect the entire society, see: HammadAzab, the Liability of the Bank to Pay the False Check, o.p, cit., P. 451.

The issuer liability will only come into force when the fault occurred by him and cause the harm to be incurred by the holder. Therefore, the issuer can defend himself against the civil liability by proving that he did not commit a fault or by refuting the casual relation between his fault and the harm incurred by the holder⁽⁶⁸⁾. However, the problem of the liability to pay bonds with forged signatures is often raised, in which case we must distinguish between two cases of fraud as follows:

The First Case: If the payment is required to the Trader by the issuer as a result of a serious error by the issuer, in which case the issuer is liable for the result of such payment and is required to compensate the cardholder in this case⁽⁶⁹⁾.

The Second Case: If the sale document submitted to the issuer does not indicate its outward appearance that it bears a false signature, in which case there is a jurisprudence disagreement.

While some people⁽⁷⁰⁾ believe that the issuer must take all necessary precautions to examine the documents submitted to him by the Trader, if he has done this duty, he will have made the necessary effort in this case, and he will not be asked to comply with the false documents. In other words, this opinion sets the bank's responsibility based on the fault, and this aspect of jurisprudence says that the bank is not deemed as an expert specializing in handwriting analysis.

As for the other aspect of Jurisprudence (Fiqh)⁽⁷¹⁾, it considers that the issuer bears the result of the payment on the basis of false documents, since the issuer of the card is aware of the risks associated with the use of the card. At the same time, it has an interest in marketing the product, as well as being faithful to the customers' accounts, therefore, he will bear the result of such payment⁽⁷²⁾. This is the position of the Bahraini legislator where article (484) of the Bahraini Commercial Law No. (7) for the year 1987: (the drawee alone assumes the damage incurred in payment of a cheque in which the drawer signature was forged or the data included in the cheque text were changed if it is not possible to connect any error to the drawer whose name is indicated on the cheque where any unlike condition is considered as is not existing. The drawer is considered as made a mistake especially when has not exerted the care of the average person on maintaining the cheque booklet handed to him)⁽⁷³⁾.

In this regard, we find that the Bahraini legislator has made the issuing bank the liability of cashing a cheque where the signature has been forged or data has been changed. The bank cannot negate the liability for the same if proved that the bearer has not exerted the average person care in maintaining the cheque.

However, if the error was joint between the drawer and bank, this does not make the bank and drawer not assuming the liability for cashing forged cheque, where this was confirmed by the Bahraini Court of Cassation in its ruling No. (112) for the year 1995.

Also, the approach of the Egyptian legislator, whereas the responsibility of the issuer based on the theory of bearing the responsibility, and this is required by Article (528) of the Egyptian Commercial Law, which assumes the bank drawn on solely the damage resulting from the payment of check in which the drawer's signature is counterfeited or the data is distorted (if the forgery is in the value of the check), if no error can be attributed to the drawer, and the drawer is wrong if the ordinary person paid attention to the maintenance of the check book delivered to him⁽⁷⁴⁾.

⁽⁶⁸⁾Dr. Najwa Abu Heiba, *Civil Liability of Banks for Banking Operations (Professional Liability)*, Dar Al-Nahda Al-Arabiya, 2006, P. 85.

⁽⁶⁹⁾See closer to this meaning: Hammad Mustafa Azab, *The Bank's Responsibility for payment of the Counterfeit Check*, op. Cit., P. 119. Hazem Naeem Al-Smadi, *The Responsibility in Electronic Banking Operations*, op. Cit., P. 128.

⁽⁷⁰⁾Kilani Abdul Radi Mahmoud, *The Legal System of Cards of loyalty and security*, op. Cit., P. 959. Hammad Mustafa Azab, *The Bank's Responsibility for payment of the Counterfeit Check*, op. Cit., P. 102.

⁽⁷¹⁾Dr. Abdul Hamid Mohammed Al-Shawarbi and Mohammed Abdul-Hamid Al-Shawarbi, *Credit Risk Management from the two Banking and Legal Perspectives*, Dar Al-Ma'aref Establishment, Alexandria, without the publication year, p. 159, Dr. Muayed Hasan Mohammed Tawalbeh, *instruments Accounts and Banks' Responsibility "Checks"*, Dar Wael Publishing and Distribution, Amman, First Edition, 2004, p. 203. Dr. Najwa Abu Heiba, *Civil Responsibility of Banks for Banking Operations*, op. Cit., P. 88.

⁽⁷²⁾François Grua, *Contrats Bancaires*, T.I, Economica, 1990 ; P.180.

⁽⁷³⁾Dr. Draid Mahmoud Ali, *Explanation of Commercial papers in the Bahraini Law, Comparison Study*, Applied University Sciences Publications, First edition, Bahrain, 2015- p 424.

⁽⁷⁴⁾Dr. Najwa Abu Heiba, *Civil Responsibility of Banks for Banking Operations*, op. Cit., P. 86.
See also: François Grua, *Contrats Bancaires*, T.I, Economica, 1990; P.180.

The Egyptian Court of Cassation also ruled that: "As the principle in the discharge of the bank drawn on is not cleared before the process, if the value of the check accompanied by a forged signature on the drawer was paid as if this paper lose the check capacity due of its prerequisite loss for its existence that is the sound signature of the drawer. Therefore, the responsibility of the payment assumes on the bank, whatever the mastery degree of such forgery, provided that there is no mistake on the part of the customer named in the instrument, otherwise he would be sustained the responsibility of his fault"⁽⁷⁵⁾.

This is the approach of the Jordanian legislator, of which the responsibility for the exchange of the forged or defunct check is sustained by the bank, as long as the drawer did not commit any error or negligence, as stipulated in Article (270/1) of the Jordanian Commercial Law.

As well as many judgments issued by the Jordanian Court of Cassation, whereas it ruled that: "The responsibility of the bank is an objective responsibility based on the risks and sustaining the responsibility, and the bank is deemed as responsible for any damage caused to the customer by a Banking Services Contract"⁽⁷⁶⁾.

As for the position of the French judiciary, we find that it gives the final obligation to review the signatures and their equivalents sustained by the issuers of the cards, as this signature represents the final order of payment from the cardholder to the issuer⁽⁷⁷⁾.

Subsection Two

The issuer's obligation to publish the objection

Pursuant to the contract concluded with the issuer concerning the Cardholder is required to submit the objection to the latter within the agreed period, and the issuer is obliged to publish the objection immediately after the notice issued by the cardholder, in view of the significant legal effects of the objection particularly in determining the limit line between the responsibility of the cardholder and the responsibility of the issuer, whereas the issuer is responsible for the Unlawful Use of the credit card after the objection has been submitted by the cardholder and in accordance with the form agreed upon with the issuer⁽⁷⁸⁾.

There was a disagreement with respect to the extent to which the card issuer was responsible for its Unlawful Use, if the cardholder reported the theft or loss of the credit card without a PIN Code.

There is an opinion⁽⁷⁹⁾ that if the cardholder of Card has only limited to inform the issuer of the incident that the card was stolen or lost without the PIN Code, the issuer will not have made a mistake if he did not publish the objection or to cancel the credit card, ATMs rely upon the knowledge of the PIN Code, therefore, the cardholder who did not notify the issuer of the loss or theft of the PIN Code, he may not have the right to protest against the issuer's failure to publish the objection and not to suspend or cancel the validity of the credit card. The result _ in accordance with _ is that the cardholder bears the responsibility for the transactions carried out by the card by the illegal cardholder due to incomplete objection.

There is an opinion⁽⁸⁰⁾ that the issuer should take the necessary precautions to prevent the Unlawful Use of the credit card. Therefore, if the objection includes the reporting of the theft or loss of the card's PIN Code, it will be liable in the face of the cardholder for the Unlawful Use of the card.

We believe that the disagreement over the impact of the objection if it does not include the reporting of theft or loss of the PIN Code with the card is not important at present, because of a practical reason that the issuer is proceeded immediately, in case of the reporting of the theft or loss of the card to cancel or suspend the card, the procedure is not differed whether the PIN Code is lost or stolen with the card or not.

⁽⁷⁵⁾Civil Cassation (11/June/1984), Challenge No. 420, Q29 R, Referred to before me: Hammad Mustafa Azab, The Bank's Responsibility for payment of the Counterfeit Check, op. Cit., P. 507.

⁽⁷⁶⁾Jordanian Rights Cassation No. (70/246), published in the Journal of the Bar Association, p. 912, (1970), as well as see Jordanian Rights Cassation No. (82/1994), published in the Journal of the Bar Association, p. 333, 1994, as well as Jordanian Rights Cassation No. (742/1996), published in the Journal of the Bar Association, p. 2882, 1996.

⁽⁷⁷⁾Cass.Com. 13 mars 2001, D. 2001, P. 1535, obs, Delpech, Petites Affiches, 10 Mai, 2001, P.9.

Referred to before me: Dr. Moataz Nazih Mohammed Al-Sadiq Al-Mahdi, Legal Nature of Electronic Credit Cards and the Civil Responsabilities arising therefrom, op. Cit., P. 142

⁽⁷⁸⁾Christian Gaval de et Jean Stoufflet. Droit Bancaire, op. cit. P.388.

⁽⁷⁹⁾See in this direction: Dr. Jameel Abdel Baqi Al Saghier, Criminal and Civil Protection of Magnetic Credit Cards, op. Cit., P. 209.

⁽⁸⁰⁾See in this direction: Dr. Mohamed Tarek Abdel Raouf El-Khen, The Online Fraud Crime, Substantive Provisions and Procedural Provisions, Al-Halabi Rights Publications, Beirut, First Edition, 2011, p. 177.

In this context, it is noted that the Cardholder Contract has been obliged the Cardholder to report about the loss or theft of the card and it is not indicated in case of losing the PIN Code.

Chapter Three

Conditions for Exemption or Determination of Contractual liability

In general, the Credit Card Issuer, who has solely placed the requirements contained in the two credit card contracts (the Cardholder's Contract and the Trader's Contract), tends to establish requirements that exempt himself from the Contractual liability that may arise as a result of a breach of its contractual obligations⁽⁸¹⁾.

This requirement, under which the same issuer exempts himself from the contractual liability, is it a necessary requirement? In other words, is the issuer entitled to exempt himself from the responsibility arising out of his breach of his contractual obligations that are imposed upon him pursuant to the contract? If this is permissible, are there any exceptions?

As it is known, the contractual liability arises from the contract, the contract arises from the will, and thus the will is the basis of responsibility, therefore it is originally free to amend it⁽⁸²⁾, and therefore it may be agreed to exempt one of the parties from the responsibility resulted from the breach of its contractual obligations.

This what has been provided in article (219) of the Bahraini Civil Law: (An agreement could be reached on exempting the debtor from any liability incurred on non-execution of his contracting obligations or delay in execution because of his cheating or gross error⁽⁸³⁾).

This is stated in Article 217/2 of the Egyptian Civil Law: "It may also be agreed to exempt the debtor from any responsibility arising from the non-performance of its contractual obligations only the result of its fraud or serious error. However, the debtor may stipulate not to be responsible for the fraud or serious error that occurs from persons used in the implementation of its obligation".

It is apparent from this provision that the principle in the Egyptian Civil Law is the right to the full freedom to contract and that the contracting parties have the freedom to amend or exempt or relieve the provisions of contractual liability, not in violation of public Law, because the logic is required that the will that resulted the responsibility has the right to amend it, However, there are exceptions to this principle, one of which is mentioned by the Egyptian legislator and the other stated by the jurisprudence⁽⁸⁴⁾.

The first exception is that it is not possible to agree on exemption from the responsibility in the case of serious error and fraud, and therefore any agreement on exemption in these cases will be null and invalid and does not take into account, The absence of exemption from responsibility in these cases justifies the exemption, if permitted, would cause that the debtor's obligation will become an absolute or almost absolute obligation on a purely voluntary basis⁽⁸⁵⁾, this is prohibited by Article (267) of the Egyptian Civil Law, which states:

⁽⁸¹⁾For example, as stated in item (19) of the National Bank of Egypt's Visa Agreement and item (32) of the Cairo Amman Bank Card Campaign Agreement.

⁽⁸²⁾Dr. Tawfiq Hassan Faraj, *The General Theory of Commitment, Sources of Commitment*, Al Halabi Publications, Beirut, 2002, p. 311. Dr. Mohamed Hossam Lotfi said at the introduction of his speech on the agreement on the exemption from the contractual Liability, that "The aim of this agreement is to exempt from the contractual Liability", in order to pave the way for the criminal legislation which are beneficial to the Community, assuming that the Contracting Parties are better informed of their interests and better able to regulate their relations in words of exceptional significance that cannot be further interpreted", see, his author: *General Theory of Commitment, Book I, Sources of Commitment*, 2007, p. 186.

⁽⁸³⁾Dr. Abdul Razzaq Ahmed Al-Sanhoury, *Al-Waseet in Explaining the New Civil Law, Part I*, The publisher Maarif in Alexandria- p 619.

⁽⁸⁴⁾Dr. Anwar Sultan, *Sources of Commitment in Jordanian Civil Law*, p. 358.

⁽⁸⁵⁾Dr. Hamdi Abdel Rahman, *Mediator in the General Theory of Commitments, Sources of Commitments*, p. 573. See also Dr. Abdul Rashid Maamoun, *Al-Wajiz in the general theory of Commitments, the first book, sources of commitment*, Dar Al-Nahda Al-Arabiya, without publication year, p. 252.

In the context of the exemption from contractual Liability, we must distinguish between the nature of the obligation itself, whether it is the achievement of a result or taking care. If the obligation is deemed as achievement to a result, such as the obligation of the issuer to maintain the card's PIN Code can exempt the debtor from the responsibility for his trivial fault, and he can be exempted from the responsibility for his easy mistake. However, he may not be exempted of the responsibility for his gross fault or of his fraud. If the matter is related to his responsibility for the actions of the person who uses them in the implementation of his obligation, he may be exempted from the responsibility for their gross faults or fraud. It is evident

"The obligation will not exist if it suspends on a standing requirement that makes the existence of the obligation depends on the sole will of the obligor."

The Second Exception, according to jurisprudence⁽⁸⁶⁾, is that the requirement for exemption or Relieving of Contractual liability related to the financial damage, but if the damage is related to the person, whether it was financial or moral, the suspension of exemption from responsibility is void and null, because the human person may not be the subject of the financial agreements⁽⁸⁷⁾, everything that affects human body integrity and his moral being must remain away from agreement⁽⁸⁸⁾.

The Jordanian Civil Code, however, did not include a clear text on the exemption or limitation of Contractual liability as stated by the Egyptian legislator⁽⁸⁹⁾, which it was more clear when it explicitly provided for the exemption from the Contractual liability and its impediments.

However, by extrapolating some of the provisions contained in the Jordanian Civil Law, it is possible to say that it is permissible to agree or avoid the exemption from the Contractual liability.

Article (213) of the Jordanian Civil Law stipulates that: "The principle of the contract is the satisfaction of the Contracting Parties and their commitment to the contracting", the purport of this provision indicates that the contract is the result of the will, the contract will include such requirements as may not be contrary to public order and public morals, such as the consent of Contracting Parties to amend the provisions of the contractual liability, either by exemption or by Relieving⁽⁹⁰⁾.

Article (270) of the same law also provided that: "Any requirement requires the exemption from the contractual liability resulting from the harmful action will be null and void", the legislator here prohibits the exemption from the responsibility for the harmful act, even if the legislator wishes to prevent the amendment of the provisions of the Contractual liability as well as it expressly stated to do so as he did in the tort liability.

Conclusion

At the conclusion of our research entitled "Contracting Liability on Credit Card Issue in the Bahraini Civil Law "Comparison Study", we conclude with a number of results and recommendations, as follows:

I: Results:

1. The credit card has become important as an alternative means of money, whether through the use of electronic cash withdrawals by ATMs, or through its use as a means of payment to Trader. However, this importance and widespread use, was not accompanied by legislative regulation that is appropriate in terms of the legal provisions of the card, including civil responsibility in the Arab countries, including Bahrain, Egypt, Jordan and the UAE.
2. The French legislator took the lead in organizing some aspects which are related to the credit card when it devoted a full chapter of the Money and Monetary Act of 14 December 2000 to the provisions of the credit and debit cards. The French legislator was in favor of the cardholder as the inferior party in the contractual relationship compared to the issuer, which is a professional party with the experience and capabilities that makes it in a stronger position than the cardholder.

from this that the achievement of the obligation responsibility to achieve the result would transform that obligation into an obligation of taking care, that matter results to the transfer of the responsibility of proof from the creditor to the debtor. In the obligation to take a care, such as enabling the credit-card holder to withdraw money from ATMs, the purpose here is that the debtor's responsibility is determined on the basis of the degree of care required of him, which according to the principle to the ordinary man's care, and this care does not take responsibility beyond the simple error, and so the relieving of responsibility is achieved by the exemption from the responsibility for this error. Beyond that, the gross error and deliberate error, responsibility may not be exempted unless it is the responsibility of the debtor for the actions of the person who uses them in the implementation of his or her obligation. Dr. Mustafa Al-Jamal, *The General Theory of Commitment*, University House, Alexandria, 1987, Footnote p. 247.

⁽⁸⁶⁾Dr. Abdul Razzaq Ahmed Al-Sanhoury, *The Mediator on Civil Law Explanation*, Part I, *Theory of Commitment in General*, Sources of Obligation, p. 555. Dr. Abdul Rashid Maamoun, *Al-Wajiz in the General Theory of Obligations*, Book I, Sources of Commitment, op. Cit., P. 252, Dr. Hamdi Abdel Rahman, *The Mediator in the General Theory of Obligations*, op. Cit., P. 574

⁽⁸⁷⁾Dr. Anwar Sultan, *Sources of Commitment in Jordanian Civil Law*, op. Cit., P. 359.

⁽⁸⁸⁾Dr. Abdul Rashid Maamoun, *Al-Wajiz in the General Theory of Obligations*, op. Cit., P. 252.

⁽⁸⁹⁾Dr. Yaseen Mohammed Al-Jubouri, *Al-Wajiz in explaining the Jordanian Civil Law*, Part One, Sources of Personal Rights, Sources of Obligations, Dar Al-Thaqafa for Publishing and Distribution, p. 426.

⁽⁹⁰⁾Dr. Yaseen Mohammed Al-Jubouri, *Al-Wajiz in explaining the Jordanian civil law*, Sources of Obligations, op. Cit., P. 427.

3. There are a set of obligations on the issuer, some of which are general obligations, and others are special obligations that would limit the Unlawful Use of the credit card, and a breach of these obligations, whether public or private, would make him or her civilly liable to other parties the card.
4. The scope of the application of civil responsibility provisions for the Unlawful Use of a credit card is determined by the existence of the right contract between the committee of the illicit use and the affected by which, where case the contractual liability arises in the first case and the trust responsibility in the second case.
5. The responsibility of the civil issuer may be established based on the theory of responsibility, in a situation in which the error is not attributable to any party of the card.
6. In the absence of legislative provisions determining civil responsibility for the Unlawful Use of a credit card, they are therefore subject to the general rules of civil responsibility in Bahraini civil law. This is settled by modern jurisprudence and (feqh) Islamic law. However, there is no doubt that the provisions of the limited and specific civil law cannot cope with technological and scientific unless modified and added new texts adapted to the Variables, developments and physical facts constantly.
7. The obligation of the issuer to payment to Traders with the value of the purchases and services obtained by the cardholder is the essence of the credit card system. Independent obligation of the supplier contract between the issuer and the Trader, And therefore the issuer cannot refrain from payment to the Trader pursuant to his submissions against the cardholder.

II: Recommendations:

1. The Bahraini legislators will issue independent legislation regulating the rules and provisions of the credit card, similar to the French legislator to regulate the relationship between the parties, to determine civil responsibility in case of Unlawful Use. Subject to, the legislation would be flexible in keeping with future developments in the system.
2. The Bahraini legislator will provide a special text regarding the rule that the Trader will return to the issuer of the card with the value of the invoices before he returns to the cardholder, since the relationship between the issuer and the holder is such as the contracts of adhesion. The legislator will adopt rules of law to ensure the addressed of the imbalance of contract, and this in order to provide protection to the inferior party in the contract, the cardholder.
3. The decision to grant credit will be based on a thorough credit study by the issuer. This study includes the inquiry about the ethical aspect of the customer and his financial position. In light of this, the issuer decides whether or not to grant the credit, to avoid the risk of dealing with the credit card.
4. Credit card issuers will allocate part of their profits in the development of electronic security systems in order to avoid legal disputes arising from electronic payment.

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