

Received: December 2023 Accepted: January 2024

DOI: <https://doi.org/10.58262/ks.v12i2.288>

## Judicial Framework for Raising Interest Rates on Financial Consumers in Jordanian Laws

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### **Abstract**

*This research clarified the legal regulation of raising the interest rate on the financial consumer. The consumer is the weaker party in the bank loan contract, so the financial consumer or customer has the first priority in taking care of his interests, especially in the field of raising the interest rate and the legal basis for this increase in the interest rate during the loan repayment period. Then, the position of the Jordanian judiciary on raising the interest rate was revised by reviewing the decisions of the Jordanian Court of Cassation. The research concluded with a set of results and recommendations, the most important of which is the need for the Jordanian legislator to address, through a clear and explicit text, the extent of the bank's right to raise the interest rate or not through the Central Bank of Jordan.*

**Keywords:** *Interest rate; financial consumer; Court of cassation; Loan repayment*

### **Introduction**

The interest rate represents the price of disclaiming money or capital, and the state uses it as a tool to control markets and direct economic activity. Any change, even if slight, that occurs in it affects the movement of money in society and investment trends, whether it is direct in the form of projects or indirectly in securities. Changes in the money supply are transmitted to the real economy through interest rates, which is a major reason for focusing on them in judging monetary policy. Changes in the money supply in turn cause changes in market interest rates, which then affect the decision of families to purchase homes and cars and the decision of companies regarding assets, factories, and equipment. Therefore, it is a price like anything else that is determined by supply and demand. The small interest is the economic variable that reconciles and links lenders and borrowers in financing relationships, as the borrower pays it as a cost for using the borrowed money for a specific period of time, and the borrower takes it as income from the loans it grants, so that if he keeps them, he has left the return he could get from the lending process and is therefore called opportunity cost.<sup>(3)</sup>

Accordingly, the interest rate varies depending on the differences in economic growth, financial instruments, their marketing potential, and the degree of their risks, as there is no fixed interest rate but rather a variable rate with the change in financial instruments. Therefore, interest rates on bank loans differ from interest rates on bonds issued by the government or borrowing companies, and they differ depending on the conditions of the instrument itself. Given that

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<sup>3</sup> Khalaf, Fahih (2006), Financial and Monetary Markets, Modern World of Books, Amman, Jordan, p. 65.

the interest rates' rise and fall are linked to many things, many theories of the interest rate have emerged.

## **Second: The Impact of Interest Rate Changes on the Financial Consumer**

The change in interest rates by the central bank, whether they fall or rise, has many effects on consumers, some of which are positive and some are negative. As central banks find solutions to confront the repercussions of the global financial crisis on the global and national economies by changing interest rates, it raises many problems facing financial consumers. Some businessmen and investors are demanding that the central bank reduce the interest rate on lending to reduce the cost of converting productive and investment projects and thus increase their ability to increase production, replace imports, employ new workers, contribute to reducing the unemployment rate, increase the economic growth rate, and improve stock prices on the stock exchange. This means that reducing the interest rate has many positive effects on consumers, and this confirms that raising the interest rate causes harm to financial consumers. Hence, the dispute arose over the right of banks to raise interest rates. One opinion went on to say that the bank has no right to raise interest rates on the grounds that it seriously harms consumers and, as a result, economic growth.(4)

This opinion justifies what was argued by saying that raising interest rates has many negative repercussions, whether on the economy as a whole or on individuals in particular. Its repercussions on the economy are represented by a slowdown in economic growth rates and a decline in the pace of investment. This also leads to the productive sectors being affected by raising interest rates, as it leads to not borrowing or postponing borrowing that targets productive projects, such as expanding existing projects or opening new projects, and this in turn leads to a slowdown in employment processes and an increase in the number of unemployed, and the financial markets (5) is negatively affected by raising the interest rate, which leads to traders in the financial markets and investors in stocks, in the event of a rise in interest rates, resorting to depositing their money in banks in order to benefit from the high interest rates, which leads to a decline in stock prices and stock exchange returns, which leads to stagnation in these markets (6).

The negative effects of raising interest rates on individuals are represented by an increase in their borrowing costs from banks by increasing the burden of new and existing loans.

## **Third: The Position of the Jordanian Judiciary on Raising the Interest Rate**

### **A- The bank does not have the right to raise interest rates on old contracts without consulting the borrower**

#### ***1- The legal right to determine the minimum and maximum interest rates for the Central Bank***

The Jordanian legislator granted the Central Bank the right to determine the minimum and maximum rates of interest and commissions, and this is what was stated in the text of Article No. (43) of the Central Bank Law, as it stipulated: "The Central Bank may issue to banks and

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(4)Abu Al-Futouh, Ahmed (1998), *The Theory of Money, Banks, and Financial Markets*, University Youth Foundation, Alexandria, Egypt, p. 122.

(5)It is a semi-liquid savings market, and long-term credit is allocated for investment financing. Banking and non-banking financial intermediation agencies play a major role in forming this market, and their success depends on the presence of savers, as well as the availability of a suitable climate in terms of the efficiency of the economic infrastructure and the suitability of investment legislation. (Al-Zubaidi, Hamza Mahmoud (2000), *Investment and Finance Management*, Dar Al-Thaqafa for Publishing and Distribution, Amman, p. 25).

(6)Al-Najjar, Jamil (2022), *Measuring the Impact of Macroeconomic Variables on the Returns of Financial Market Indices*, An-Najah University Research Journal, Nablus, Palestine, Volume 36, Issue 1, 2022, p. 41.

specialized lending institutions, with the exception of banks and financial institutions, to operate in investment in accordance with Islamic law or an order published in the Official Gazette and other media stating the following:

- A. The minimum and maximum interest rates charged by banks and specialized lending institutions on the credit facilities they grant to customers, without being bound by the provisions of any other legislation or system related to interest or Murabaha (Islamic banking).
- B. The minimum and maximum commission rates it charges on its credit facilities, managing clients' accounts, and providing services to them.
- C. The minimum and maximum interest rates paid by banks and specialized lending institutions on their deposits.
- D. The minimum cash percentage of the value of documentary credits opened to a beneficiary from abroad, and the Central Bank may request that this percentage or part of it be deposited with it until the date of payment .<sup>(7)</sup>

French legislation is consistent with the opinion that banks do not have the right to raise the interest rate unilaterally, as Article 1907 of the French Civil Code stipulates that interest is either legal or conventional, and the conventional interest may exceed the percentage stipulated by the law unless the law prohibits that, and the interest must include the agreement in writing.

Likewise, the French legislator took a new form of coercion, which is economic coercion, which is the result of exploiting the state of dependency, which was stipulated in Article 1143 of the French Contract Code, and made the penalty of coercion in Article 1142 a reason for invalidating the contract.

As for American law, the American judge has wide discretionary power in all contracts, especially also in model contracts prepared in advance, where the authority was given to the judge to nullify and amend the terms of the contract. Thus, the condition of raising the interest rate in American law is up to the judge to decide whether or not to raise the interest rate. This is permissible and based on the contract presented before him, and thus the amendment can only be through the judiciary.<sup>(8)</sup>

The decision of the Court of Cassation, in its legal capacity, stated: "And since the authority of the Central Bank to issue orders and decisions to determine the upper and lower limits of interest rates based on the aforementioned article does not mean in any way that what it issues should be considered as rules related to public order that apply directly, which applies directly to the benefits due to contracts prior to their implementation, This is because the basis for entitlement to contract interest is the creditor's agreement with the debtor. If the two parties agree on a specific price, the creditor may not independently raise it. This is because the new interest rates, if raised by the Central Bank, will apply to new contracts regulated after their issuance. As for operations and contracts prior to their issuance, what matters is what was agreed upon when contracting. The relationship between the appellant and defendant was originally subject to the principle of will power; thus, the decisions of the Central Bank are not considered at all as legal rules related to public order, and the violation of the banking contracts

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(7) Article No. (43) of the Central Bank of Jordan Law No. (23) of 1971 AD and its amendments.

(8) Abdullah, Fatima (2020). Invalidation of the contract due to unfair imbalance as a result of the inequality of the contracting parties (a look at American law and a call for approval in Egyptian law). Research published in the Journal of Jurisprudential and Legal Research, Issue Thirty-Nine, Cairo.

that banks conclude with their customers does not result in invalidity unless the agreed-upon interest rate exceeds the maximum limit specified by those decisions. Considering that the maximum interest limit that may be legally agreed upon is related to the rules of public order that require protecting the weak party in the contract from exploitation.

This means that contracts prior to the issuance of a decision to raise interest remain governed by the current agreement between the two parties and subject to the laws under which they were established. It does not change this if a condition is included in the contract concluded between them, granting the creditor bank the license to raise the agreed-upon interest rate without the need for renewed approval from the debtor client. The creditor bank cannot, by its own will, raise the interest rate beyond the rate agreed upon when concluding the contract, which is the rate that was agreed upon by both parties, written in handwriting in the contract, without other printed conditions. Since the contested ruling reached this correct result in its ruling, it is not obligated after that to follow the opponents in their various statements and arguments. Every statement or argument that is raised is rejected. As long as the implicit response that invalidated those statements and arguments was reassured that the truth existed, it would be accused of misapplying the law and interpreting it without basis.

Whereas the Court of Appeal, in its capacity as a subject court, adopted the current expert report of the court of first instance, which it found to be in accordance with the law and principles and to which no factual or legal objection was responded to that would lead to its exclusion, it was in accordance with the provisions of Article 83 of the Civil Procedure Code, and it may take with all or part of the expert's report because it is convinced of the validity of its reasons, which then become part of the reasons for its ruling, and it is not obligated to respond independently to the appeals addressed to it, which makes these reasons irrelevant to it and necessitates its rejection. Based on the above, we decide to reject the cassation as a matter of fact, ratify the appealed ruling, and return the papers to their source..<sup>(9)</sup>

In the same context, a decision by the Irbid Court of Appeal stated: "Since the appellant disputes and maintains that raising this interest rate, as referred to, was in accordance with the instructions of the Central Bank and the loan contract, and that the loan was before the issuance of the transparency instructions by the Central Bank in 2016, then this dispute is invalid. This is because it is established in the jurisprudence of the esteemed Court of Cassation that it is not legally permissible to fortify bank records and accounts and consider them valid and binding on the customer before they are examined and audited by a legal auditor who shows the amount of amounts that the customer received from the bank, the amounts that this customer paid, and the value of commissions and interest, and the percentage of each, and how to calculate it. This is to verify that the calculation of these interests and commissions has been carried out in accordance with the terms of the contract and the provisions of the law. As for saying that the customer's commitment to the terms of the contract and the bank's restrictions, and that the customer was satisfied with these contracts that he signed with the bank, what is meant by that is that the bank's restrictions are binding on him if they are sound, correct, and agree with the terms of the contract, and if they are protected after challenging them and challenging the interest rate and commission calculation, the bank's restrictions will not be binding on the client after it has been shown by the expert that what is stated therein is incorrect and that it violates the terms of the contract concluded with the client (the plaintiff).

It is also legally and judicially established that technical expertise, in accordance with Articles

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<sup>(9)</sup>Cassation Rights No. 1208/2019 dated 12/31/2019

2/6 and 71 of the Evidence Law, is a means of proving that the legislator left the matter of adopting it to the trial court in accordance with the powers granted to it in Article 34/1 of the same law, if this is done in a consistent manner with the provisions of Articles 83 and 85 of the Code of Civil Procedure. It is also established in jurisprudence and judiciary that the basis for entitlement to interest is the agreement of the creditor with the debtor. If the two parties agree on a specific rate of interest, the creditor may not be independent in raising it on his part only.

Law No. 19 of 1979 - Central Bank Jordan, in Article 43 thereof, gave the bank the authority to issue orders to determine the minimum and maximum limits for interest rates, without being bound by the provisions of any other legislation and the limits of interest assessment, in accordance with the General Authority for Economic and Social Development of general policy in the country.

Since the plaintiff's lawsuit was to challenge the validity of the interest and commissions that the defendant received, considering them to be in excess of the legal limit agreed upon in the loan contract signed between them.

Whereas the technical expertise and auditing of the bank accounts and the installments paid by the plaintiff, the calculation of late fines, and the calculation of interest after adjusting its price, as was referred to in the body of this decision, the expert therefore concluded that the interest calculated by the defendant until the month of November 2021 reached the amount of (9398) dinars and 547 fils.

Whereas the authority of the Central Bank to issue decisions determining the minimum and maximum limits for interest rates based on the previously mentioned article does not mean in any way that what it issues should be considered as rules related to public order that apply with a direct and immediate effect on the interest it is entitled to under contracts prior to work. This is because the basis for entitlement to interest is the agreement of the creditor and the debtor, and in the event of agreement on a specific interest rate, the creditor may not independently raise it. This is because the new interest rates, if raised, apply to new contracts organized after the issuance of these instructions, and that the operations and contracts prior to these instructions are in accordance with what was agreed upon according to the contract.

In summary, contracts prior to the issuance of decisions and instructions to raise the interest rate are governed by the current agreement between the two parties, and subject to the laws under which they were established. This does not harm the inclusion of a condition in the contract that the bank transfers the license to raise the agreed-upon interest rate without the need for the client's approval, and the appellant cannot in this case raise the interest rate unilaterally, and the agreed upon interest rate is the applicable rate, which came as a result of the agreement of the two parties.

Whereas the technical expert's report is in accordance with the law and the rules and includes all the conditions and requirements of Article (83 and 85) of the Code of Civil Procedure and is valid for basing a judgment on it, and its approval by the court of first instance does not contain anything that violates the law and the rules. Therefore, it appears that these two reasons do not respond to the appealed decision and do not affect it, which must be rejected.

Therefore, based on the above, the court decides, and in accordance with the provisions of Article (188/1) of the Code of Civil Procedure, to dismiss the appeal as merit, ratify the

appealed decision, and return the papers to their source”.<sup>(10)</sup>

## 2- The Rule of Non-Retroactivity of Laws

The principle of non-retroactivity of laws is considered one of the general principles included in the constitutions of countries. Therefore, the retroactivity of laws receives strong opposition, and is considered an exception to sound legal rules that do not establish the enforcement of laws except in future incidents. Most countries are keen to prohibit retroactivity in decisions except within the narrowest limits.

Paragraph (d) of Article No. (44) of the same law of the Central Bank of Jordan stipulates that these decisions issued by the Central Bank shall not have a retroactive effect.

The Jordanian Court of Cassation, through its Decision No. 1208 of 2019 dated 12-31-2019, ruled in favor of a person who borrowed a housing loan from a bank, and the bank raised the interest value on this loan from what it was when signing the contract, and the text of the decision stated: “The new interest rates, if they are raised by the Central Bank, apply to new contracts only, and that what matters is what was agreed upon when contracting, so the bank cannot unilaterally raise the interest rate from what was agreed upon in the contract in light of the issuance of a new decision from the Central Bank to raise the interest.” If the two parties agree on a specific interest rate, the creditor may not be free to raise it. In addition, the central bank’s authority to issue decisions to determine the minimum and maximum interest rates does not mean, in any way, that it authorizes it to deviate from the general rules. This means that the contracts prior to the issuance of the Central Bank’s decision to raise interest remain governed by the current agreement between the two parties and subject to the laws under which they were established. This does not change if a condition is included in the contract concluded between the bank and the customer to grant the creditor bank the license to raise the agreed upon interest rate without the need for renewed approval from the debtor client, as the creditor bank cannot unilaterally raise the interest rate beyond the rate agreed upon concluding the contract in light of the issuance of a new decision from the Central Bank to raise the interest rate, and that the interest rate relied upon is the one that was agreed upon by both parties and written in handwriting in the contract without other printed terms.

Likewise, it was stated in the decision of the Jordanian Court of Cassation in its legal capacity No. 8946 of 2022 issued on 6/15/2023 regarding raising the bank interest rate, where the decision of the Court of Appeal was upheld regarding the impermissibility of demanding an increase in the interest rate and fixing the loan. Thus, the Court of Cassation established the principle of the impermissibility of raising interest at the sole discretion of the bank.

### b. The Bank has the Right to Raise Interest Rates On Old Contracts Without Consulting the Borrower

On the other hand, banks can protest against raising interest rates with the following arguments:

#### 1- The Rule of (*Pacta Sunt Servanda* : Agreements Must Be Kept)

The principle of the *pacta sunt servanda* is considered one of the most important legal principles, especially in the field of civil law, as it has become a fixed and stable principle with a fixed and precise concept in the field of contract theory. It indicates that the principle in the contract, whenever it is valid and established in accordance with the law, the contracting parties are

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<sup>(10)</sup>Irbit Court of Appeal Ruling No. 1877/2022 dated 9/26/2022

committed to it and submit to it just as they are subject to the law .<sup>(42)</sup>

The contracts concluded between banks and customers include a clause that allows the banks to raise the amount of interest according to the Central Bank's decisions to raise it, and the client's signature on this contract means his agreement to this clause and the contract is the law of the contracting parties.

### **1- Islamic Legal Principle : (Returns are Justified By Taking Risks)**

The meaning of this rule is that whoever gains the benefit of something must bear its risk. The risk is in return for the benefit .<sup>(11)</sup>

If the central bank decides to reduce the value of interest on loans, this applies to old and new contracts for borrowers from banks, and then we will not hear a protest against reducing the value of interest, as banks must adhere to this decision, and in the event that no bank reduces the value of interest, this is a reason for protest of customers of the bank that did not reduce the interest rate.

As it was stated in a decision by the Jordanian Court of Cassation in its legal capacity: "Our court finds from reviewing Article Seven of the loan contract that is the subject of the lawsuit, which the Court of Appeal did not discuss and did not extract the facts of the lawsuit according to what is proven from it, as its meaning is the following:

The bank has the right to raise the interest rate and/or commission at any time after signing this contract and according to its (the bank's) average cost of funds without the borrower or guarantor having the right to object to that.

The bank has the right to raise the interest and commission rates in light of the instructions issued by the Central Bank of Jordan to raise the minimum interest rate on receivable accounts and/or raise the maximum commission on the loan account and/or increase the minimum interest rate that banks pay on deposits.

The bank has the right to calculate interest and a delay commission according to administrative instructions on the amount due and late payment from the due date until full payment without the need to notify the borrower.

As long as the relationship between the two parties is a contractual relationship and is governed by the loan contract concluded between them, and since Article Seven of the loan contract referred to above dealt with vocabulary and connotations that differ from each other.

Whereas the Court of Appeal discussed the instructions of the Central Bank in general, including the instructions and orders that it will issue in the future, and dealt with the case accordingly when it said (...the defendant does not have the right of his own volition to raise the interest rate to the rate agreed upon when concluding the contract in light of the issuance of a new decision by the Central Bank to raise the interest rate...) and that it did not refer to the details of those instructions and orders that it issues now and in the future to banks, in which it specifies the minimum and maximum interest rates that it charges on its credit facilities that it grants to customers, and this is something that it should have (done). Since it does not have the power, with future instructions and orders, to detail the instructions and orders in force during the validity period of the loan contract that is the subject of this lawsuit, in order

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(11) Al-Zoubi, Muhammad Younis Falih (2005), the jurisprudential rules concerned with the components of judicial ruling and their applications in the Jordanian Sharia judiciary, doctoral thesis, University of Jordan, Amman, p. 192.

to discuss them with research and indicate the effective date. Taking into account the significance of what was stated in Article (7) of the contract itself in this regard, after clarifying which of the provisions of this article applies to the incident of the case, especially since the instructions and orders issued pursuant to the provisions of Articles (43 and 44) of the Central Bank of Jordan Law apply on all types of transactions covered by these instructions and orders according to the dates specified therein.

Since the Court of Appeal did not take into account that matter, which prevents our court from extending its oversight over it, this reason makes it impossible for the contested ruling to be overturned.

Therefore, based on the above, we decide to accept the appeal as merit and overturn the contested ruling without the need to respond to the rest of the reasons for the appeal and return the papers to their source to carry out the legal requirements” .<sup>(12)</sup>

We believe that banks do not have the right to raise interest rates on old contracts for borrowers, as the original decisions do not apply retroactively, and most borrowers are not alerted to this point in bank contracts, even if they exist. It is rare for banks to read contract clauses for borrowers in addition to poor wording and the small font prevents many people from reading the terms of the contract. For all of the above, we believe that such a condition, which is a change in the interest rate, must be handwritten and signed by the borrower in order for it to be approved. Thus, there must be a legal system that addresses the increase in interest rates and the foundations on which they are based within a framework that protects the borrower and ensures the achievement of the interests of both parties to the loan contract and the national economy through a clear and explicit text and with the approval of the Central Bank.

## **Conclusion**

The research dealt with raising the interest rate on the financial consumer in light of the decisions of the Jordanian Court of Cassation, and this was explained by defining the concept of interest in terms of its definition, defining the interest rate, and explaining the theories related to the interest rate, and then researching the reasons and factors that lead to the change in this price with its rise and fall, arriving to determine the impact of this change on the consumer and to indicate the extent to which the bank has the right to raise the interest rate or not, the researcher reached the following results and recommendations through the research:

## **Results**

1. Jurisprudence differed in defining the concept of interest rate, and the reasons leading to its change.
2. There are many jurisprudential theories related to the interest rate and its impact on the financial consumer and economic growth.
3. Jurisprudence differed between supporters and opponents of the bank's right to raise interest rates.
4. The position of the Jordanian legislator and through the decisions of the Jordanian Court

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(12)Rights Cassation No. 3425 of 2021 dated 12-30-2021. Qarark : website. <https://qarark.com/>



of Cassation were not decisive in this matter if it was made clear that there are decisions that support the bank's right to raise the interest rate and there are decisions that reject this right.

## **Recommendations**

1- We hope, through research, that the Jordanian legislator will clearly and explicitly stipulate in the Central Bank Law or in the Banking Law the bank's right to increase the interest rate or not in a clearer manner and to avoid the confusion that occurred in the decisions of the Jordanian Court of Cassation in this regard.

2- We hope that the Court of Cassation will meet in its general assembly to decide on the matter by a general assembly decision.

3- We hope that the Jordanian legislator will confirm that the bank does not have the right to raise the interest rate on its own and give the judge the authority to do so, as is done in American law.

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