

## **RESOLVING FINANCIAL TRANSACTION DISPUTES: BAHRAIN'S LEGAL FRAMEWORK**

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DOI: <https://doi.org/10.5281/zenodo.11244673>

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**Abstract:** The development of international relations has led states to apply foreign laws in cross-border disputes, raising concerns about the violation of public order. Parties may manipulate support officers to avoid the original governing law, which may challenge foreign law's impact on individuals' legal status. Bahrain has addressed these conflicts through rules of attribution in personal status and financial transactions. This article explores these solutions and their impact on various forms of money, both material and moral, in the context of international conflict of laws.

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**Keywords:** Conflict of Laws, Foreign Laws, Personal Status, Financial Transactions, Bahraini Legislature

### **Introduction**

The development of special international relations across regional borders has led each State to dilute adherence to the principle of territorial integrity in the application of its national laws and to allow its courts to apply foreign laws governing the dispute, but these recent laws may violate the public order of the judge State. A party to a dispute manipulates the support officer to evade from the law originally competent to rule the relationship in dispute, and the conduct of persons in accordance with their national law must not be challenged by foreign law, which is impinged or deregulated by their legal status, and must be protected by national law.

The Bahraini legislature has developed solutions to the various conflict-of-laws issues through a set of rules of attribution in both personal status and financial transactions. It has regulated personal status issues such as eligibility, marriage, maintenance, divorce and inheritance, within the provisions of article 21 of the pleadings Act No. 12 of 1971<sup>(i)</sup>. Financial transactions are regulated in a new separate Act No. 6 of 2015 on conflicts of laws in civil and commercial matters of foreign component<sup>(ii)</sup>.

Money is meant by law<sup>(iii)</sup>, a right that can be replaced by money and the money is divided into material money such as real estate, movable property and moral money such as intellectual property (literary, artistic and industrial), and whatever kind of money may be the subject of a legal relationship that arouses the conflict with a foreign element between the laws of different countries. This dispute should be resolved by first adapting the

nature of its subject matter to the law of its location, and then by establishing the law to be applied to it, by implementing the national fiduciary rules<sup>(iv)</sup>.

If money in terms of legal concepts includes real estate and movables<sup>(v)</sup>, what we are interested in is money transferred, which may be material and may be moral, so that in both cases it may be difficult to locate the money to know what law is applicable to it. The instability and transferability of the transferee, on the one hand, could be subject to more than one law, raising the problem of variable conflict<sup>(vi)</sup>.

Based on the above, the study will be divided into three claims as follows: First: Contractual and non-contractual obligations Second: Status of funds.

### **1: Contractual and non-contractual obligations**

This requirement will be divided into two sections, the first dealing with contractual obligations and the second dealing with non-contractual obligations.

#### **1.1: Contractual obligations**

A contractual obligation is a legal situation that originates from the contract, in which a person is required to take action or to refrain from acting or giving something of financial value<sup>(vii)</sup>. The International Decade is intended as a contract involving a foreign component, whether that element relates to its place of conclusion, place of implementation, subject matter or parties, other than national contracts that are always subject to the provisions of national law and do not, in all its elements, create a conflict between laws. Consequently, there is no room for interference with the will of contractors to choose the applicable law<sup>(viii)</sup>.

The Bahraini legislature, having taken the rule that the contract is subject to the law of will, has stipulated in article 17 of Act No. 6 of 2015 that: "A - applies to the contract in terms of objective and formal conditions and in terms of the effects thereof, the law of the State in which the common home of the contractors is located; The dislocation of the secret place of the law of the State in which the contract was concluded, unless the agreement is reached or the circumstances indicate that another law is to be applied.

B- Each part of the contract may be legally chosen by the contractors if this part is separable from the rest of the contract"<sup>(ix)</sup>.

It is clear from the text of the preceding article that the Bahraini legislature has used to establish the law the duty to apply to the contract by the express will of the contracting parties as a general rule or by their tacit will, which the trial judge seeks and explores from the circumstances and circumstances of the contract in the event of the express will, such as the nationality of a particular State by the contractors. The requirement to perform the contract in a State, to require payment in a particular currency, to write the contract in a particular language or to use known conventions in a particular law, or to make jurisdiction over disputes arising from the contract to the courts of a particular State.

However, if the express will were to fall behind and the implied will could not be derived from the circumstances of the contract, the legislator would have to introduce two successive attribution officers: The common home of the contractors to unite their home country, although a variation in the home would have to introduce the second control, which is the subject of the contract; In other words, the law of the State in which the contract was concluded shall apply<sup>(x)</sup>.

It should also be noted that the Bahraini legislature did not distinguish between the form of the contract, the framework within which the parties' will was devolve, and the subject of the contract, it became established that legal acts were subject in form to the law of the country of the session<sup>(xi)</sup>.

The wisdom of subjecting the disposition to the law of the shop is that the local form of safe transactions between people is appropriate, since the rules of this form necessarily make it easy for contractors to know and be more accessible to them, especially if it is necessary to apply to those who edit contracts in this place. If contractors respect the form required by the law of the shop, this is called upon to reassure them of their actions and their integrity in appearance, and since the primary consideration in applying the formality rule in behavior is to facilitate transactions and to facilitate access to the local law for the correctness of the form, If the contractors are aware of the rules of form required by the law of their common nationality, they may choose to apply this law in the form of their own conduct.

It is further noted that the Bahraini legislature did not invoke the notion of the supposed will of contractors, according to which the judge would apply the law that presumes the will of contractors to enforce its provisions and which the contracting parties would have chosen if a particular law were to be chosen<sup>(xii)</sup>. However, the principle of the power of will in choosing the law governing the contract must not be confused with the will to regulate the terms of the contract, since in the latter case the dispute of laws in the contract must be resolved before the conflict of laws is resolved by the determination of the law in question<sup>(xiii)</sup>.

Whether the freedom of individuals in this regard is free, or restricted, may be questioned here? Whether contractors are free to break up the contract and subject each part to a different law, for example, the parties may agree to subject consent to the law of judge and dissatisfied persons to the law of nationality or domicile, the place of compliance with the law of the country of execution of the contract, and its effects on the law of the will of contractors?

In response to the first part of the question, most of the jurisprudence considers that the freedom of contractors is a two-sided mirror, which is neither absolute nor restricted at the same time, provided that the law chosen is not severed from the contract to be related to the elements of the contract in one way or another<sup>(xiv)</sup>. With regard to the second question, the doctrine also considered that the contract should be viewed as a single process, and thus the rules governing its convening and its effects should not be multiple.

Consequently, all legal acts arising from the contract in terms of its composition, the validity of its consent, and the symptoms and defects that may arise therefrom, The object and effect of the contract, as well as the subject matter or in terms of persons, the determination of when the contract is considered null and void or not, the status of contract reduction, the limitation of invalidity and invalidity, as well as the determination of options for contract requirements as the condition option, the option of vision, and the option of defect; The option of appointment is governed by the common will law, which is the subject of the implementation of contractual obligations, where such obligations are to be implemented in kind, when they are to be implemented through compensation, as well as by the subject of non-execution payment and its terms and effects on contract, as well as by limitation and time on contractual obligations. It shall determine its duration and shall regulate the question of its stopping and disregarding<sup>(xv)</sup>.

### **1.2: Non-contractual obligations**

Non-contractual obligations are any obligation that arises outside the scope of contractual liability, falling under the other type of obligation, which in turn is divided into two types: The first is the obligation to compensate for damage caused by wrongful act, which is based on the rule of every mistake causing injury to the non-obliging person<sup>(xvi)</sup>, the second being the obligation to enrichment sans such as unauthorized agency or Undue payment<sup>(xvii)</sup>.

Article 25 of Bahraini Law No. (6) Of 2015 sets out the duty to apply to non-contractual obligations arising from unlawful work by saying: "A- obligations arising from unlawful work shall apply to the law of the country where the illegal act was signed, unless another law is agreed upon. B. the provisions of paragraph (a) of this article shall not apply to facts which occur abroad and are lawful in the Kingdom. C. If the person responsible for the unlawful act is an insured person, the person may bring a direct action to the insurer if the law applicable to the insurance contract permits this"<sup>(xviii)</sup>.

As for non-contractual obligations arising from useful work, article (26) of the same law states: "It applies to obligations arising from enrichment for no reason, undue payment and unauthorized agency of the law of the country in which the act established occurred, unless it is agreed to choose another law".

It is clear from the two previous texts that the Bahraini legislature has made non-contractual obligations subject to a law in question and that the act is unlawful under the law of its place and in accordance with the law of the judge, namely Bahraini law, and that it has made a difference between harmful acts and acts of good effect. The latter governs the law of the country in which the act establishing the obligation occurred, unless they agree on another law.

The question arises as to the determination of the applicable domestic law if the elements of the legal fact are dispersed in more than one State, is it more important to determine where the mistake occurred or where the harm is caused? What is the provision if it occurs in a place not subject to the territorial sovereignty of a particular State? The answer to this question requires that the elements of a legal situation in more than one State be examined first, and then that the act occurs outside the territorial sovereignty of a particular State.

## **2.2: The elements of the legal event are dispersed in more than one State**

If the elements of a legal fact are different in more than one State, the responsibility arising from the wrongful act must be distinguished from that of the useful act on the other.

### **(A) Responsibility in rank for the wrongful act:**

It is conceivable that the mistake may have occurred in one country and the damage is done in another, as if someone had put a time bomb in an airplane and then exploded, manufactured materials and equipment in a country that caused damages in another, or that someone could mail another country that had a missile on the latter's part. Or imitate a brand in a country and then sell the goods that bear that mark in another country, and as if someone in a country sent some sweets in which poison was taken to his rival in a second country, he took it up and died.

The question arises in such hypotheses about the law applicable to liability arising from the wrongful act: Is it the law of the State in which the fault occurred or the State in which the injury was caused?

The most likely jurisprudence went to balance the interests of each of the wronged and injured on the other, by enabling the injured person to choose the law that entitles him to compensation for damage to fate and the conditions most appropriate to his or her interests, whether it is the law where the mistake occurred or where the injury occurred, and provided that the act in the latter case is unlawful in accordance with the law of the state in which it was committed<sup>(xix)</sup>.

It is difficult to ignore the location of the mistake, especially since the judiciary does not appreciate the estimated compensation of the harm done on the basis of the extent of the damage done; it also takes the gravity of the mistake committed, and the place where the damage is done cannot be ignored. In its recent development, the

civil liability regime is not intended to sanction the wrongdoer as much as it is intended primarily to protect the injured and to make it compensated for the harm caused.

The 1973 Hague Convention on the determination of the Act used the duty to apply to liability for dangerous products mainly by the law of the State in question, with the possibility of applying the law of the home of the injured person or residence under certain conditions, the law of the principal administrative center of the person responsible or the law of the place of ownership of the product from the injured.

**(B) Responsibility for a useful act:**

The most likely jurisprudence is to invoke the law of the shop in which enrichment is achieved as the legal basis for the obligation, but for the payment of deceivable and unauthorized agency as images of enrichment for no reason, the law is applicable in both of them: The law of payment and the law of the place of performance of the unauthorized agency<sup>(xx)</sup>. This is provided for in article 26 of Bahraini Law No. 6 of 2015.

**2.2: Occurrence outside the territorial sovereignty of a particular State<sup>(xxi)</sup>**

The question arises as to which law is applicable if the act establishing the obligation occurs in a place not subject to the territorial sovereignty of a particular State, as if two aircraft collide in space not above the land or maritime territory of a State, or two ships collide in the non-territorial waters of a State.

The most likely jurisprudence is to apply the common flag law if they belong to a single State, but if they differ in nationality, the law of the State of the judge shall be applied as the reserving jurisdiction in cases where the functions of the fiducially officer are not possible, Unless there is an international treaty to regulate such facts, such as the 1910 Brussels Treaty on certain rules relating to maritime collision.

This is in relation to the collision between two or two ships, but the accident may occur on board a ship in the territorial waters of a particular State or an aircraft as it passes through the airspace of a State, so the doctrine likely to apply the law of the State of the territory as domestic law. Part of the modern jurisprudence favors the application of the law of science in this case because it is difficult to determine whether the event establishing the obligation has actually occurred in territorial waters or in the general sea or occurred in the airspace of the State or outside it.

**2: Money Center**

The study of the status of funds requires dealing with both material funds, on the one hand, and moral funds, such as intellectual rights such as copyright, the right of inventors, industrial designs and trade names, and the like of fixed rights in negotiable papers, on the other.

**3.1: Physical money Center**

The status of funds shall mean the legal regime governing their possession and the rights in kind arising therefrom, whether in terms of their origin, movement or demise<sup>(xxii)</sup>.

Article 19 of the Bahraini Civil Code defines money, stating that: "Anything other than dealing by nature or by law is a right to be a place of financial rights. Things are considered out of the ordinary course if no one can afford them, and things are considered out of the rule of law if the law does not allow them to be a place of financial rights".

The Bahraini legislator has been keen to subject the funds to the law of its location, which stipulates in article 15 of Act No. 6 of 2015 that: "A. applies to the possession and ownership of the property and the rights in kind which it entails and the ways in which it is acquired, transferred and terminated; And property-related acts in form by the Law on the Site of Property.B. acts relating to the property shall apply in terms of the objective conditions of

its contract, and in terms of the effects of the law on the site of the estate, unless the agreement is reached or the circumstances indicate that another law is to be applied".

**Law governing transport and goods during transport:**

**1. The law is applicable to ships and aircraft:**

The most likely doctrine is that both the ship and the aircraft are subject to the law of science, i.e. the law of the State in which they were bound and carried their knowledge regardless of their actual place of existence; because these two methods are permanent and therefore difficult to determine the applicable law<sup>(xxiii)</sup>.

Some of the jurisprudence also considers that this solution is adopted for river vessels that navigate international rivers, and ships that conduct internal navigation are obviously subject to the law of their actual location, and that the same rule is followed for aircraft and the same transfers are subject to the law of the State to which they are flying and belonging<sup>(xxiv)</sup>.

**2. The law is applicable to goods in transit:**

These are the funds on the back of a means of transport sent from the place of export to the sending Country<sup>(xxv)</sup>, and the prevailing doctrine holds that the law of the State to which the goods are destined should be consulted; since this State is the place where the goods will be located<sup>(xxvi)</sup>.

**Variable conflict provision for the transferee:**

Article 16 of Bahraini Law No. (6) Of 2015 sets out the fiducials to be followed in determining the law governing the transfer, which stipulates that: "A- applies to the possession and ownership of the transferee and the rights in kind that arise therefrom and the ways in which these rights are acquired, transferred and terminated. The law of the State in which such transfer exists at the time of the realization of the reason for the acquisition, ownership or other in-kind rights, their transfer or termination, unless the agreement is reached or the circumstances indicate that another law is to be applied. The law of the sending State shall apply to the transferee during his transfer from one State to another, unless the agreement is reached or the circumstances indicate that another law is to be applied.

The preceding provision applies whether the elements of the right are completed under the old law of the site, but if the elements of the right are not completed in accordance with the old law of the site, but rather with its new law, the right cannot be recognized and the transferee transferred to a country where this right is recognized<sup>(xxvii)</sup>.

**3.2: Moral money Center**

Moral money is, however, imperceptible, material or tangible, and yet it serves as a right of the right to the right of the right to the right of the inventor, for example, mental rights, such as copyright, the right of the graphic owner or industrial model, and the rights contained in the distinctive marks and trade names; Besides mental rights - and literary, artistic and industrial property - there are personal rights (debt) that can be seen as moral money<sup>(xxviii)</sup>.

Referring to the provisions of Bahraini law, we find that the lawmaker has kept silent on the statement of the base of moral money, so when adapting it to the issue in dispute, the judge must refer to the second official source, namely the principles of private international law. The use of informal sources, such as jurisprudence and jurisprudence, to arrive at a statement of law applicable to moral funds.

**First: Intellectual rights (literary, artistic and industrial property)**

Some view mental rights as falling within the scope of the financial system, and thus subject to the rule of the law of the signatory, others consider that moral, artistic and industrial property (mental rights) is subject to regional law, i.e. the law of the State which grants and protects it <sup>(xxix)</sup>.

It seems clear from the comparison of the two previous views that each of them enters mental rights within the scope of regional law with the difference in the basis on which this jurisdiction is built <sup>(xxx)</sup>.

The Bahraini legislature has established a basis for moral and artistic property in the body of article 27 of Act No. 6 of 2015 as: The law of the State in which protection is required and industrial property, including the distinctive commercial means, is applicable to the moral and artistic property of the State in which it is registered, if it is registered in more than one country, including the Kingdom of Bahrain, the applicable law is Bahraini law. The provisions of article (17) <sup>(xxxi)</sup> of this Act shall apply to contracts with rights holders with a view to the exploitation of any financial rights relating to intellectual property".

### **1. Copyright, author, or publisher:**

Copyright is subject to the law of the State in which publication, representation or presentation was first made and, if not published until after his death, is subject to the author's personal law or the law of his home country, since the workbook relates to the author personally and his protection is the protection of the author himself.

In article II, paragraph 8, of Decree No. (1) Of 1995 concerning the accession of the Kingdom of Bahrain to the Convention establishing the World Intellectual Property Organization (WIPO) <sup>(xxxii)</sup>, which states: "Intellectual property includes rights relating to:

- Literary, artistic and scientific works.
- The achievements of performers, artists, radio and television programs.
- Inventions in all areas of human endeavor.
- Scientific discoveries.
- Industrial designs.
- Trademarks, service marks, names, and trademarks.
- Protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields".

It should be noted that if the publication is carried out in several countries at the same time, the law of the State in which the principal, original or first publication took place should be applied, some of them see the law of the author's home.

This is in the context of national laws. In the context of international conventions, countries have been concerned with regulating the protection of literary, artistic and industrial property as the amended (Berne Union) agreement, held on September 9, 1886 concerning the protection of literary and artistic works.

### **2. Patent right**

Article (1) of Bahraini Law No. (1) of 2004 on patents and utility models <sup>(xxxiii)</sup> stipulates that: "the patent is granted in accordance with the provisions of this Act for each new invention, which involves a creative step, and is applicable to the industry, whether the invention is related to new industrial products - imported or locally produced - or industrial methods, or a new application of known industrial methods.

The patent is granted independently of any amendment, improvement or addition to an invention that has already been patented, and is granted to the author of the amendment, improvement or addition in accordance with the provisions of this Law".

In the opinion of the jurisprudence, the patent right is subject to the law of the patented State, and the law of the forum State may also be called upon to provide such protection in order to safeguard the national interests of the forum State before which the dispute is before, unless a treaty exists in particular and applicable to the dispute at that time<sup>(xxxiv)</sup>.

### **3. Industrial designs**

The question of industrial designs is applied according to the predominant view of the law of the State in which the drawing or model was first registered. Registration is the legal means of publication for it, and it is a presumption that the owner's right has existed since the time of registration, and the law of the State of the Court before which the dispute is submitted may also be applied<sup>(xxxv)</sup>.

### **4. Trademarks and trade names**

It is understood that the right to trade marks and names is derived from the precedence in their use to refer to a particular project, so that the law governing their right according to the prevailing view is the law of the State in which such trademarks and trade names are located and which is effectively applied irrespective of the nationality of the parties; That is, the law of economic, commercial or industrial enterprise should be applied. The Bahraini legislature has been keen to protect the trademarks in Law No. (6) Of 2014<sup>(xxxvi)</sup> by approving the GCC trademark (System) Act.

Article 2 of the trademark Act states that: "Everything that takes a distinctive form of names, words, tenders, letters, symbols, numbers, addresses, seals, drawings, pictures, patterns, packaging, graphic elements, shapes, color, groups or services of any other property or services or their significance Perform a service, or perform control or inspection of goods or services. The brand of sound or smell can be considered a trademark".

With regard to the protection of trade names, it was regulated by the Bahraini legislature in Law No. 18 of 2012<sup>(xxxvii)</sup>, which defines article 1 as: "The name used by the merchant in his trade to distinguish his shop from other stores, and he signs his transactions and puts him on his papers to inform the clients and others about this merchant".

A trade name shall enjoy legal protection as soon as it is registered, unless it has been waived or removed administratively or by a final judgment<sup>(xxxviii)</sup>.

### **Second: Debt**

The debt arises either from contractual obligations, or from acts that are harmful or beneficial, if the contractual obligation originates in them, the law of the will of the contractors, although the obligation is no contractual, the law governed by it is the law of the place of the act creating the obligation, and of course, the law establishing the obligation. This is limited to the creation and termination of the right between the creditor and the debtor, but if it is considered a course of dealing, the laws may be contested in its judgment, which requires that one be given jurisdiction, and to determine this law differentiate between ordinary personal and fixed rights in negotiable papers<sup>(xxxix)</sup>.

#### **A. ordinary personal rights:**

A debt created under the relevant law is a personal right, which may be seen as moral property of the debtor that can be disposed of. A creditor can bet or transfer it by transfer, and this acts as a conflict of laws, raising the question of the applicable law? There are several trends in the determination of this law<sup>(xi)</sup>.

However, the conduct under which the transfer took place is more likely to be subject to the law of will, which is determined by article 17, paragraph 1, of the Bahraini law of conflict of law. The transferability or nontransferability of the right or Mortgage is determined by the law under which the religion arose (the law of will, if the source of the obligation is the contract, or the law of the place of the act creating the obligation, if the source of the obligation is the act of provenance or benefit); It is this law that is used to determine whether the right is transferable or non-transferable or mortgage, and it governs the relationship between the assignee and the assignee, and is due to the law of the debtor's home as to what needs to be done to enforce the transfer against others(xli).

**B. Fixed rights in tradable securities:**

Debts may appear as embodied in papers that are subject to the law governing this entity.

As a result, debt has two sides in origin, possibly arising from contracts, and thus is governed by the law to which these contracts are subject, the law of will. Or they may be the result of acts subject to domestic law.

The question arises of the law, which is applicable, especially in terms of the transfer of a personal right if it is fixed in negotiable instruments?

In order to answer the above question, a distinction must be made between stocks and face bonds, bearer stocks and bonds, bills, promissory notes and the check.

**1 – Paper and nominal shares:**

They are like stocks and bonds and are subject to the law governing the legal system of the legal person who issued them, which is the law of the body that issued them; that is, the law of its effective principal administrative center<sup>(xlii)</sup>.

This is what article (23) of Bahraini Law No. (6) Of 2015 states: "The law governing the issuing country applies with respect to stocks and bonds".

**2. The papers for the bearer:**

The example of these papers is the bearer's share and the bearer's bond, which is governed by the provision of the material transferee, since its right is incorporated into the instrument and is therefore subject to the law of its actual location at the time the carrier's cause of the inalienable right, is achieved. The site law also governs the relationship between successive holders of the bond and applies to the real effect of trading the stock or bond of the holder, while the relationship between the holder of the bond and the person who issued it is governed by the law governing the establishment of the relationship in accordance with general rules.

**3. Commercial paper:**

Like bill, promissory note and check, the French judiciary has been subject to the law of the place of fulfillment, where disputes arise and precautionary and executive action is taken.

This is what the Bahraini legislature has adopted in article 24 of Act No. 6 of 2015, which stipulates that: "The law of the country of fulfillment shall apply with respect to the check, bill, promissory note and other commercial paper".

**4. Stock exchanges contracts:**

Jurists disagreed on the extent to which contracts of sale and purchase entered into by financial intermediaries between them in the stock market are subject to the general rule that private financial contracts of an international character are subject to will law, as follows<sup>(xliii)</sup>: The first trend is that contracts for the sale of securities of an international character are subject to the law of will, and if there is no will, to the law of the place of conclusion of the contract (the Stock Exchange Act). "The obligations arising from legal acts entered into in the stock exchanges shall apply to the Stock Exchange Act, unless the contractors have chosen the applicable law, which shall also apply to contracts entered into in the public market".

Second direction: Some jurisprudence subjects stock market sales contracts to the law of the state of existence of the stock exchange. This solution was taken by the French judiciary, as well as Bahraini legislation, in article 18 of Law No. 6 of 2015, which stipulates that: "Contracts in stock exchanges shall be governed by the law of the State in which these exchanges are located".

The legislature did well when it decided to have jurisdiction over the law of the State in which the stock market or the public market existed, which would lead to the submission of contracts in which it had entered into a single law, which would require the stability of transactions in stock exchanges and public markets.

#### **5. Employment contracts:**

Article 19 of Act No. 6 of 2015 stipulates that:

"A" applies to employment contracts concluded by employers with their workers by the law of the state in which the employment contract is basically executed, if the employment contract is essentially enforced in more than one state, the law of the state in which the main center of such work is located. B. If the main center of these works is abroad, and it is the branch of this center in the Kingdom that concluded the employment contracts, Bahraini law is the law applicable if the employment contract is mainly enforced in the Kingdom. c. The agreement to apply another law on employment contracts does not violate the rules of the applicable law in accordance with the provisions of paragraphs (a) and (b) of this article". It is the same content as the Rome Convention of 19 June 1980, which decided on individual employment and consumer contracts that the parties express their will with regard to the choice of the law governing these contracts, is not valid if the chosen law is contrary to the applicable law in accordance with objective attribution controls.

It is clear that there is a general approach that can be drawn from the national legislation of international private law, and from the international treaties with a view to protecting the weak, and this approach is to maintain the role of will in the appointment of the law of contract, which continues to exercise its function in assigning the contract to a particular law, but is no longer bound by the fact that the law to which it is intended is intended to conflict with the rules of the relevant law in accordance with objective controls. This approach undoubtedly provides effective protection for the vulnerable, the latter - at the same time as it enjoys a minimum of protection and the relevant law in accordance with substantive attribution - may have the possibility of better protection as best as possible by the law of will, if the law is more protective of its interests than the first law.

#### **6. License Contracts (Franchise):**

As a new contract in the legal and commercial environment, the interest of many jurists, trade and judiciary has been so high that public unions have been established both at the state level, such as the British Confederation of French francs and the French Federation of French francs, or internationally, such as the International Federation of French Franchise. Thus, a specific definition of Franchise must be passed through some of the definitions that

have been said about it, either at the level of jurisprudence, the judiciary or the level of international and civil unions that were created specifically for Franchise.

In this regard, the International Federation of Franchise defines the latter as: "A contractual relationship between two parties, the donor and the donor, where the donor is committed under this relationship to transfer the technical knowledge and training of the donor, who is in return committed to acting under the name, form or regulations of the grantor. He is investing his own money at work - in place of the French - so that the risks of success of this process are unique to him and borne solely by him"<sup>(xliv)</sup>.

The Commission of the European communities recognizes that: "An agreement between independent projects, one of them, the donor, allows one or more projects to exploit the ingredients of this success: His brand name, brand, logo, innovative methods of production, as well as all the information that led to this success in exchange for an entry right, and periodic installments"<sup>(xlv)</sup>.

The French Federation of French Franchise defines it as: "A cooperative means between the grantor's project on one hand and one or more of the projects granted to it on the other...". The British Franchising Association defines French as: "A contract between a person called the grantor Franchisor and another person named to Franchisee, allowing the latter to conduct during a certain period a particular act under a particular name of a particular person or grantor"<sup>(xlvii)</sup>.

In the Kingdom of Bahrain, there is no special law for the Franchise, and therefore no special definition is available, but this did not prevent the organization of this contract, especially with the issuance of Minister of Human Rights and Social Development's decision no. (3) Of 2012 concerning the license to register the Franchise Association (xlviii).

Article 20 of Bahraini Law No. (6) of 2015 also defined the fiducials Officer for Licensing Contracts (Franchise) as: The law of the State in which the principal administrative center of the licensee is established at the time of the conclusion of the contract shall apply to licensing contracts (Franchise) unless the agreement is reached or the circumstances indicate that another law is to be applied.

#### **7. Agency contracts and commercial representation:**

Article 21 of Act No. 6 of 2015 stipulates that: "The contracts of the commercial agency and the agency shall be governed by Commission and commercial representation Law of the Home of the agent or trade representative unless the agreement is reached or the circumstances indicate that another law is to be applied".

#### **8. Consumer contracts:**

The principle of the power of will, and the granting of freedom to contractors to choose the law governing their contracts by private international law relations, is a fundamental principle enshrined in all legal systems, but is the main reason for the inequity of the strong party in the contract with the weak party. So limiting that freedom was the main way to avoid it.

Article 22 of Bahraini Law No. 6 of 2015 stipulates that: "Consumer contracts shall be governed by the law of the State of the ordinary residence of the consumer, unless the agreement is reached or the circumstances indicate that another law is to be applied, and provided that the consumer is not deprived of the protection provided by the jus cogens of the law of the State in which his or her normal residence is established".

This approach has also been reflected in a number of international treaties on international contracts. The draft convention on the law applicable to certain consumer sales, adopted by the Hague Conference on Private International Law in 1980, Parties' choice of contract law is not significant if it would deprive consumers of the

protection guaranteed by jus cogens in the law of their habitual residence, which would have held jurisdiction when parties did not express their will for such a choice.

**Conclusion:**

It is clear from the study that the general rule in conflict of laws regarding the law applicable to money is the law of the location of money, whether it is real estate or movables. Although the latter required the application of the general rule to be a condition of verification, the law applicable to the movable property was determined at the time the reason for the possession had been achieved.

However, the general definition of money does not raise many problems if it comes to determining the location of money, but difficulties arise when money does not have a specific physical location. In other words, when it comes to moral money, its location itself raises problems separate from conflicts of law because it does not have a physical entity through which it can be located, so the nature of moral money requires the legislator to recognize it first, and to determine its legal and default status second, in effect and to facilitate the determination of the applicable law.

The study has reached several conclusions and recommendations as follows:

**First: Results**

- 1- The obligation of the judge to apply the rule of attribution and to apply foreign law, which refers to his jurisdiction, is suspended on the condition that the adversaries adhere to the provisions of this law.
- 2- In private international contracts, parties are free to choose the law governing their contractual relations, but this freedom is constrained by the link between the contract and the law chosen.
- 3- The Bahraini legislator has established standby controls that the judge will apply in case of the will to choose the contract law, these controls are the law of the common home of contractors, if there is no law of the country of contract.
- 4- The Bahraini legislature violated the rest of the Arab laws in the position of the International Decade, subject the form of the contract to the same law as the subject of the contract, without referring to the law of the country of conclusion, or any other law that might facilitate the contract form for contractors, The basis for the attribution rule laid down by the legislator has a positive advantage: The unification of the law applicable to the contract as a whole, which is welcome but does not respond to modern legislative trends, This is welcome, but it does not respond to recent legislative trends, especially in the 2008 Rome Statute on the Law applicable to contractual obligations in Europe, The purpose of this option is to facilitate contractors by reference to either law which corrects the contract in form.
- 5- The Bahraini legislature did not distinguish between ordinary contracts and consumption contracts in the area of genuine submission to the law of will, and the parties were authorized to agree on the choice of law applicable in the consumption contracts, whether expressly or implicitly.
- 6- The Bahraini legislature has decided to resolve the controversy over the distinction between the elements of the responsibility-creating event between more than one country, so that the mistake occurs in one country, and the damage is done in another, as the Bahraini legislature expressly stipulates in article 25 of Law No. 6 of 2015, according to the law of the place of unlawful action, i.e. the mistake. Although we prefer to introduce the law of the State of harm for many reasons.

7- The Bahraini legislature has excluded two cases of submission to the law of will or local law of liability arising from unlawful work: The situation of direct liability of the insurer to the injured, and the other is the legality of action in the Kingdom of Bahrain, although it is not lawful under applicable law.

8- The Bahraini law on the protection of copyright is not new, since subjecting the protection of copyright to the law of the State in which its right has been violated is merely an application of the base of attribution in matters of unlawful work. Under which responsibility for that act would be subject to the law in question of the very occurrence of the wrongful act, there was no doubt that the violation of the rights of authors and artists was certainly an unlawful act which required civil liability.

### **Second: Recommendations**

1- To ensure that solutions are consolidated within the framework of conflict-of-laws technology in financial transactions matters, with a view to reducing the difference between single-reference Arab legislation, and this is achieved through collective and bilateral agreements dealing with conflict of laws problems.

2- To review the text of article 15 of Act No. 6 of 2015 on conflicts of laws in civil and commercial matters of foreign element, so that the will officer is excluded as an officer to base on acts of property; The general jurisdiction remains reserved for the Law on the Site of the Property with respect to all related formalities, topical issues or effects.

3- The Bahraini legislature has taken the express will of contractors to choose the law applicable to the international contract, as well as the tacit will, so I propose to the Bahraini legislature either to cancel the idea of the implied will completely, or to replace it with the idea of firm will. This is in order to reduce the chances that the judge will exceed his discretion in drawing the parties' tacit will.

### **Margins:**

(i) Published in Official Gazette No. 926 of 22 July 1971.

(ii) Published in Official Gazette No. 3217, 9/7/2015, p. 5-11.

(iii) Money in the legal sense is a financial right that can be assessed in cash, which is every eye or right of material value.

(iv) Dr. Hassan Al-Hadawi, Private International Law, conflict of laws, General Principles and positive Solutions in Jordanian Law: Comparative Study, Second Edition, Culture Publishing and Distribution Library, Amman, 1997, p. 129, Dr. Hasan Ali Kazem, supporting Rules and Application mechanisms in Iraq, Research published in Ahl Al-Bayt Magazine, Ahl Al-Bayt University, Iraq, issue 20; Published on 18/12/2016, p. 328, Dr. Ahmed Abdel Karim Salama, the flag of the rule of conflict and the two optional laws, New Al-jalla library, Cairo, 1996, p. 971. (v) Article 20 of the Bahraini Civil Code No. 19 of 2001, published in Official Gazette No. 2476 of 9 May 2001, stipulates that: "Everything is stable in a fixed area where it cannot be transferred without damage or change in its form is a property. However, it is considered a property of privatization, which is transferred by the owner in his property, as a monitoring of the service or exploitation of this property". Abdurrahman Buhush, problem of conflict of laws in relation to money transferred, p. 2, date of visit 12/12/2019 at 9 p.m., article published on the website: <httpswww.mohamah.netlaw>

(vi) Dr. Abdul Razzaq Al-Sinhouri, mediator in Civil Law explanation, Part one, the theory of compliance in general, Arab Renaissance House, Cairo, 1964, p. 254.

(vii) Dr. Hisham Ali Sadik, Private International Law Courses, University House, Beirut, without a year published, p. 254, Bend116.

- (viii) Article 20 (1) is met by a Jordanian civilian.
- (ix) This set out the Jordanian Court of Cassation's decision No. 67 of 1987, published on page 1080 of the sixth issue of 1990 of the Jordanian Law Bar Association magazine, saying: "If the employment contract was signed in Amman between two Jordanian teams, The joint home of the two contracting teams was also terminated and the Amman plaintiff was separated. The applicable law is the law of the State in which the common home of contractors is located, namely, the Hashemite Kingdom of Jordan Act under article 20 of the Civil Code, which provides that contractual obligations shall apply to the law of the State in which the common home of contractors is located if they are United in accordance with the principle of the sovereignty and laws of the State Its citizens and its territory, which is a provision that is not subject to the control of contractors in choosing the applicable law, If a home is different, the law of the State in which the contract was made shall apply unless the contractors agree to the application of another law, but if their home is different, the contractors may agree to apply the provision of the law of the State of their own chosen, and the rule of conflict of laws which requires that the dispute be foreign element".
- (x) Dr. Ahmad Al-Fadli, Summary in Private International Law, first Edition, Qandil Publishing and Distribution House, Amman, 1424H - 2004, p. 141.
- (xi) This is what the Court of Cassation has ruled in the Human Rights Decree No. 62 of 2003, published on page 886 of the 2004 Bar Association Journal, by saying: "The Court of the subject shall have full authority to interpret and invoke the joint intention of the contractors, but shall be bound not to depart from the apparent meaning and bearing of the terms ...".
- (xii) Dr. Munir Abdel Meguid, conflicts of laws in individual labor relations, Al-knowledge establishment, Alexandria, 1992, p. 60.
- (xiii) Dr. Hisham Ali Sadik, Lessons in Private International Law, op. cit., p. 262-263, clause 120.
- (xiv) See this topic of preference, Dr. Amer Al-Kisswani, Encyclopedia of Private International Law, (conflict of laws), Culture Publishing and Distribution House, Amman, 1431 AH - 2010, p. 194 - 218, as well: Szaszy, I, L.L.D, International Labour Law, A.W. Sijthoff-Leyden, 1968.
- (xv) Dr. HossamUsamaShaaban, Concise in Bahraini Private International Law (conflict of laws - International Civil Procedure), University of the Kingdom, Kingdom of Bahrain, 2016, p. 204.
- (xvii) Dr. EzzAddin Abdullah, Private International Law, Part one, 10th edition, Arab Al-nahda House, Cairo, 1977M, 717 et seq., Dr. Jamil Al-Sharqawi, General Theory of obligation, first book, sources of obligation, Arab Al-nahda House, Cairo, 1975, 428 et seq. Lessons in Private International Law, op. cit., clause 122, p. 270, D. Amer Al-Kisswani, conflict of laws, op. cit., p. 219.
- (xviii) Article 22 is met by a Jordanian civilian.
- (xix) Dr. Muhammad Al-Mabrouk Al-Lafi, conflict of laws and conflict of International jurisdiction, Publications of the Open University, Tripoli, Libya, 1991, p. 191.
- (xx) Ibid, p. 740-741.
- (xxi) Dr. EzzAddin Abdullah, Private International Law, op. cit., 507 and later, Dr. Hisham Ali Sadik, conflict of laws, Third Edition, Knowledge facility, Alexandria, 1984, 745 and later.
- (xxii) Dr. Hisham Ali Sadik, Lessons in Private International Law, op. cit., S294, paragraph 131.
- (xxiii) Dr. EzzAddin Abdullah, Private International Law, op. cit., p. 385, Dr. Hisham Ali Sadik, Lessons in Private International Law, op. cit., p. 299, item 134; Dr. Muhammad Al-Mabrouk Al-Laffi, conflict of laws and conflict

of International jurisdiction, op. cit., p. 164, Dr. Hassan Al-Hadawi, Private International Law, op. cit., p. 133. (xxiv) Dr. EzzAddin Abdullah, Private International Law, op. cit., S385-386, Dr. Jaber Gad Abdul Rahman, conflict of laws, Arab Renaissance Library, Cairo, 1959, S526-799, Dr. Hisham Ali Sadiq, conflict of laws, op. cit., p.798799, and for the author himself, lessons in private international law, op. cit., p.299-300, item 134.

(xxv) Dr. Hasan al-Hadawi, Private International Law, op. cit., p. 133.

(xxvi) See: Dr. Hisham Ali Sadik, Lessons in Private International Law, op. cit., p. 300, paragraph134, Dr. Mohamed Al MabroukLaffi, conflict of laws and International jurisdiction, op. cit., p. 164.

(xxvii)Dr. Mansour Mustafa Mansour, memos in private international law, (conflict of laws), without a party and a year published, p. 296.

(xxviii) See article 71 of the Jordanian Civil Code, Hassan Ali Kazem, the rules of support and the mechanisms of application in Iraq, op. cit., p. 330.

(xxix) Dr. EzzAddin Abdullah, Private International Law, Part one, 10th edition, Arab Al-nahda House, Cairo, 1977, p. 398.

(xxx)Ibid, p. 398.

(xxxi) Article 17 provides that: "A. the contract shall apply in terms of the substantive, formal and consequential requirements of the law of the State in which the common home of the contractors is located, if the breach of the place of the law of the State in which the contract is concluded, Unless the agreement is reached or the circumstances indicate that another law is to be applied.

B. The contractors may choose for each part of the contract an applicable law if this part is separable from the rest of the contract."

(xxxii) Published in Official Gazette No. 2151 of the Official Gazette of 11/2/1995.

(xxxiii) Published on 24/1/2004, published in No. 2619, 28/1/2004.

(xxxiv) Dr. Mamdouh Abdel KarimArmosh, Private International Law, (conflict of laws), Culture Publishing and Distribution House, Amman, 2005, p. 157.

(xxxv)Ibid, p. 157.

(xxxvi) The Act, promulgated on 17/2/2014M, published in No. 3145, dated 27/2/2014M, repealed both Act No. 11 of 2006 and amended by Act No. 3 of 2011.

(xxxvii) Published in Official Gazette No. 3047, dated 9/4/2012.

(xxxviii) Article (2) of Law No. (18) Of 2012 concerning Bahraini trade names.

(xxxix)Dr. Hassan Al-Hadawi, Private International Law, op. cit., p. 140.

(xl) Dr. Hassan Al-Hadawi, Private International Law, op. cit., p. 141.

(xli)Ibid, p. 141.

(xlii) Dr. Hassan Al-Hadawi, Private International Law, op. cit., p. 142.

(xliii) Dr. Mustafa Yasin Mohamed Al-Asbhi, Law applicable to Legal Relations Related to International Securities markets, Research presented to the Conference on Securities and Exchange markets, Faculty of Law and Law, United Arab Emirates University, vol. III, 2006, pp. 19-25.

(xliv) See this definition of the "Doaa El-Bishtawi", "Al-Faranshays Decade and its effects", M.Sc., Al-Najah University, Nablus, Palestine, 2008, p. 20.

(xlv) Dr. NaiemMagbgeb, Al-Farnshays, Al-Halabi's Human Rights Publications, Beirut, 2006, p. 20 et seq. also see Dr. HamdiBaroud, "Al-Azhar University" Commercial License Contract in accordance with the

provisions of the Palestinian Trade Law, the Islamic University Journal, the Human Studies Series, vol. 16, issue 2, Al-Azhar University, Gaza, Palestine, p. 815.

<sup>(xlvii)</sup>Dr. NaiemMagbgeb, Franchise, op. cit., p. 22.

<sup>(xlviii)</sup>Published in Official Gazette No. 3040, dated 23/2/2012.

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