



OSTENSIBLE AGENCY IN JORDANIAN CIVIL LAW: AN IN-DEPTH SCRUTINY OF JURIDICAL FRAMEWORKS AND THE IMPERATIVE FOR LEGISLATIVE REFORMULATION

Alaa Mohammed Alfawaeer

Affiliations: Associate Professor of Civil Law, Faculty of Law, Jerash University, Jordan.

<https://orcid.org/0000-0002-8966-7818>

alaa.alfawaeer@jpu.edu.jo

Tariq Kamal Alhasan

Affiliations: Commercial law lecturer, Private Law Department, Faculty of Law, Al-Ahliyya

Amman University, Jordan.

<https://orcid.org/0000-0003-2957-334X>

<https://www.scopus.com/authid/detail.uri?authorId=58220752400>

t.alhasan@ammanu.edu.jo

Ayman Mamdouh Alfaoury

Affiliations: Jordanian Judicial Council

ayman.faouri@yahoo.com

ABSTRACT

The current inquiry delves profoundly into the construct of ostensible agency embedded in Jordanian Civil Law. This legal edifice, revered by the judiciary and scholarly luminaries, underpins the protections accorded to bona fide third-party transactors interacting with agents. This is particularly poignant when these agents deviate from their stipulated ambit or operate under a void or rescinded agency. Established legal tenets exonerate a principal from the repercussions of actions by an agent breaching their agency boundaries or operating devoid of authentic authorization. Such actions are statutorily nullified, obliterating subsequent legal consequences. Yet, the empirical legal landscape has borne instances where agency contracts gain validity, imposing binding encumbrances on the principal or mandator towards the bona fide third entity, even amidst agent deceit. A predominant research conundrum emanates from a legislative void: the glaring absence of a codified doctrine for ostensible agency. Intriguingly, Article (833) of Jordanian Civil Law's portrayal of ostensible agency draws critique, notably its omnibus nature enveloping juridical and actual deeds. Notably, jurisprudential narratives lack a cogent definition, merely demarcating its scenarios and stipulations. Consequently, the investigation advances seminal advisories, accentuating the revamping of Article (833) to expressly confine the agency to juridical deeds, and to distinctly sideline testamentary bequests from its scope.

Keywords: *Ostensible agency; Jordanian Civil Law; Juridical structure.*





INTRODUCTION

Contracts have become an increasingly critical facet of today's legal and economic landscapes due to the rapid growth of transactional dynamics and expanding economic ventures (Al-Sarhan, 2015). This heightened importance has necessitated enhanced legislative scrutiny. Within this broader context, individuals often find it challenging to safeguard their diverse interests.

Jurisprudential mechanisms, recognizing this challenge, have established provisions allowing individuals to engage on behalf of others in contractual agreements. This legal concept, known more commonly as "agency" or "representation," is mentioned in the Jordanian Civil Code within Articles 115-118. It categorizes agencies into two types: statutory and contractual.

Central to the concept of agency is the "mandator," or the principal, who authorizes someone to act on their behalf. The actions taken by this representative are seen as stemming from the principal's intent, making the principal liable for the outcomes of those actions (Al-Far, 2016).

The importance of agency within Jordanian law is underscored by its distinct classification within their Civil Code. The judiciary refers to Articles 833-867 for matters relating to agency. Judges often revert to the broader principles governing contract theory if a particular issue needs to be addressed within these articles (Al-Zaabi, 2014).

An agent's actions are typically bound by the terms set out in the agency contract. They must arise from an authenticated and genuine agency active when the agent acts. However, there are situations where the consequences of an agent's actions might impact the principal, even if there were oversteps in authority or if the agency was revoked or never existed. This is recognized as "ostensible agency."

There is a noticeable gap in the Jordanian Civil Code regarding this principle of ostensible agency. This research aims to bridge this gap by developing a comprehensive framework for understanding ostensible agency. The goal is to guide Jordan's judiciary, ensure consistent judgments, and clarify the ongoing debate surrounding this legal concept.

Significance of the Study

This study, titled "Ostensible Agency in Jordanian Civil Law: An In-depth Scrutiny of Juridical Frameworks and the Imperative for Legislative Reformulation" delves deep into vital dimensions:





1. **Theoretical Implications:** This study aims to provide a clear and comprehensive analysis of ostensible agency as embedded in Jordanian civil law. By eliminating jargon and embracing a more streamlined exposition, we aim to make this intricate topic more accessible to legal scholars and practitioners.

2. **Practical Implications:** The concept of ostensible agency frequently emerges in legal proceedings. When an individual or entity acts as if they have the authority to represent another (the principal) and make decisions on their behalf, it brings to the forefront legal questions, especially when confronted by adversarial third parties with questionable intentions. Understanding and interpreting ostensible agency becomes vital for judges and legal practitioners, ensuring fair judgments.

In the Jordanian context, the existing legal framework has a fragmented approach to ostensible agency. This often results in inconsistent interpretations and verdicts, especially in cases where the legality of the ostensible agency is juxtaposed with the rights and interests of the principal or where the explicit legal stance on the ostensible agency is unclear.

The urgency of this research is further heightened by the lack of existing scholarly work addressing this significant legal challenge in the Jordanian context. Such a gap poses risks for genuine representatives and creates loopholes for malevolent third parties.

With this work, we aim to serve as a robust reference point, shedding light on this complex area of law and offering guidance to academia and legal practitioners.

METHODOLOGICAL FRAMEWORK

To comprehensively explore the domain of ostensible agency in Jordanian civil law, this research follows a descriptive-analytical approach. The methodology includes:

- Detailed analysis of the concept of ostensible agency.
- Examination of relevant legal texts and provisions within Jordanian law.
- A deep study of the basic principles underpinning contract law.

Study's Aims

This research aims to develop a clear legal framework that outlines the consequences of actions undertaken by an apparent agent. This includes examining these actions concerning potentially deceitful third parties and the original principal, as defined by Jordanian civil law.





Problematic Exposition

There exists a noticeable gap in Jordanian legislation regarding the outcomes of actions by a presumed agent, whether towards a dishonest third party or the original principal. This absence in the legal framework has spurred debates among legal scholars. Some critics argue that judges might sidestep established laws to pursue equitable outcomes. While Jordanian law does make passing references to the ostensible agency, it needs to provide a clear stance, leading to ambiguity in legal interpretations. This vagueness results in a challenge: Should the focus be strictly on the letter of the law, or should the spirit of justice be prioritized?

To address this, the research seeks to shed light on the complexities of ostensible agency in Jordanian civil law. The ultimate goal is to provide a clear guideline for lawmakers and judiciary members, especially when faced with situations involving ostensible agencies in business transactions.

1 AGENCY AND OSTENSIBLE AGENCY IN JORDANIAN CIVIL JURISPRUDENCE: AN IN-DEPTH EXPLORATION

In the intricate realm of Jordanian Civil Jurisprudence, the concept of agency plays a pivotal role. It governs the dynamics of representation and contractual obligations and offers a foundation upon which many legal interactions are constructed. This treatise delves deep into the nuances of agency as enshrined in the Jordanian Civil Code, providing readers with a comprehensive overview of its established tenets and the more nebulous yet equally critical notion of ostensible agency. Through this exploration, we venture into the heart of debates and interpretations arising from legislative dictums and the esteemed judgments of the Jordanian Court of Cassation.

1.1 *The Notion and Taxonomy of Agency Under the Jordanian Civil Jurisprudence:*

In the legal framework of Jordan, the essence and foundation of the agency are entrenched within its Civil Code. The underlying concept elucidates the modus operandi whereby one individual designates another to act in lieu of him/her, either emerging from mutual accords or dictated by statutory provisions. Specifically, the Jordanian Civil Code





elucidates this in Article 108, which delineates the paradigm wherein contractual obligations can be established directly or via an intermediary unless there is a contravening legal stipulation (Jordanian Civil Law, Article 108).

Diving deeper into the taxonomy of agency, two distinct classifications emerge:

1. **Contractual Agency:** This typology is birthed from a mutual concord between the delegator (principal) and the delegate (agent). This construct is aptly encapsulated in Article 833, which posits, "Agency is a contract whereby the principal bestows upon another the authority to act in their stead for a designated lawful act" (Jordanian Civil Law, Article 833).

2. **Statutory Agency:** Rooted in the fabric of legal mandates, this form of agency does not necessitate a bilateral agreement but arises directly from jurisprudential dictates akin to guardianship provisions.

A notable attribute of the Jordanian Civil Jurisprudence is the expansive latitude of the term "agency," as underscored by Article 833. This provision adopts a comprehensive perspective, encapsulating both juridical and tangible acts. However, such an encompassing interpretation has been full of scholarly criticism. Detractors argue that the legislative ambit should have been circumscribed solely to juridical acts, distinguishing it from mere physical labor, thus delineating it from employment and contractual undertakings (Al-Sanhouri, 2015, p. 375).

Furthermore, certain prerequisites must be consummated for an agency arrangement to gain legal sanctity. These encompass the delegator's prerogative to engage in the appointed act, the delegate's competence, and the stipulation that the agency's objective remains lawful, feasible, and apt for representation (Jordanian Civil Law, Article 834).

Delving into the quintessential attributes of agency accords, they are inherently anchored in personal considerations. Furthermore, such accords are characterized by their consensual nature, contingent reciprocity (either pecuniary or gratuitous), revocability, and a non-obligatory essence, as elucidated in Articles 863 and 865 of the Jordanian Civil Code (Al-Sarhan, 2017, p. 103).

In summation, while the Jordanian Civil Code offers a structured framework around agency, critical insights, and scholarly discourses continue to shape its interpretation and application in contemporary legal scenarios.





1.2 Dissecting the Intricacies of Ostensible Agency: A Legal Analysis

1. Ostensible Agency: Unraveling its Semantic Complexity and Juridical Consequences. Ostensible agency, a term imbued with legal nuances, demands a precise delineation within the ambit of legal scholarship. This concept pertains to a semblance of agency where, regardless of the lack of genuine legal sanction, a person is perceived as an authorized agent due to manifest conduct or overt indications, subsequently influencing the perceptions and actions of third parties (Al-Jumaiy, 2000, p. 4). Such a scenario inevitably casts ripples in the juridical pond, ushering in many legal consequences and implications, particularly when third-party interests intersect with these seemingly authorized actions.

2. Demarcating Genuine Agents from Their Ostensible Counterparts: A Comparative Examination. An analytical deep dive into the agency world necessitates a keen differentiation between genuine and ostensible agents. The former category, the genuine agents, operates under the aegis of explicit, lawfully recognized mandates, thereby possessing legal sanctity in their undertakings. Conversely, ostensible agents lack this formalized mandate; their actions stem from the appearance of authority, often generated by the actions or inactions of the purported principal. This appearance, devoid of actual legal backing, can lead to real-world ramifications, especially when third parties enter the fray under false assumptions of legitimate representation (Qarra, 2014, p. 9).

3. The Legal Quandaries Spawned by Ostensible Agency Actions: Third-Party Implications. The terrain of the ostensible agency is fraught with intricate challenges, primarily when such agents initiate actions that, in turn, affect third parties. Given that these agents lack genuine authorization, their undertakings can thrust both the purported principal and unsuspecting third parties into a legal quagmire. The crux of the matter is safeguarding transactional stability and addressing the deviation from established legal norms (Al-Fikhani, 2010, p. 980). When third parties engage with ostensible agents in bona fide reliance, the ramifications can traverse the spectrum from contractual obligations to potential liabilities. This complexity is further exacerbated by the Jordanian Civil Law's silence on ostensible agency, making its interpretation reliant on judicious insights from landmark decisions like the Jordanian Court of Cassation Decision 1177 of 1996 and 4534 of 2018.

In essence, with its myriad twists and turns, the labyrinth of ostensible agency underscores the indispensability of judicious legal acumen in navigating its challenges. While





the terrain may be uncertain, the convergence of legal precedent and scholarly analysis clarifies its multifaceted dimensions.

1.3 Judicial Interpretation and Application of Ostensible Agency in Jordanian Law:

In the legal edifice of Jordanian jurisprudence, ostensible agency remains an enigma. While it plays an instrumental role in shaping the dynamics of representation and contractual obligations, the Jordanian Civil Law remains conspicuously silent on its explicit delineation. This lacuna necessitates a deeper delving into the repositories of judicial interpretations for a comprehensive understanding (Al-Fikhani, 2010, p. 980).

The Jordanian Court of Cassation, a venerable institution in the legal landscape of Jordan, has stepped into this legislative void to delineate the contours of 'ostensible agency.' The court has endeavored to fill this legislative lacuna through its rigorous judgments, thereby contributing to the evolving legal tapestry of agency in Jordan. Their judgments offer invaluable insights and have, in many ways, become the touchstone for understanding this legal construct (Jordanian Court of Cassation Decision 1177 of 1996).

The Jordanian Court of Cassation has affirmed the application of the concept of 'ostensible agency,' stipulating the presence of three essential conditions for its establishment:

- a) The agent acts in the principal's name without agency authority.
- b) The third party dealing with the agent acts in good faith, believing the agent is a legitimate representative.
- c) an external appearance of agency is attributed to the principal, leading the third party to justifiably assume that a valid agency relationship is in place. This distinctive condition defines the ostensible agency's essence and foundational basis. (Jordanian Court of Cassation Decision No. 4534 of 2018)

An in-depth analysis of the Court of Cassation's jurisprudence reveals a methodical and nuanced approach. The Court did not confine itself to a mere acknowledgment of the ostensible agency theory. Instead, it embarked on a scientific trajectory, beginning with foundational contractual principles, meticulously delineating the exceptions therein, and culminating in a robust exposition of the ostensible agency's intricacies. The abovementioned decision is a testament to the Court's sagacious approach, which intertwined the contractual principle with the ostensible agency exception, offering a holistic perspective (Hanna, 2018, p. 191).





This researcher, reflecting upon the tapestry of judgments and legal discourses, posits that ostensible agency, though shrouded in factual ambiguity, demands legal recognition. This is especially pertinent when the principal inadvertently crafts an illusionary tableau wherein the ostensible agent is perceived as the bona fide agent. Such a misrepresentation, born out of the principal's oversight, may inveigle a third party, acting in good faith, into a contractual quagmire under the erroneous presumption of engaging with a genuine agent operating within the sanctified boundaries of a legitimate, unexpired, and unequivocal legal agency (ostensible agency).

In conclusion, while rooted in factual distortions, the ostensible agency's essence cannot be sidelined in the larger narrative of Jordanian Civil Law. Its practical and theoretical implications are profound, necessitating a judicious blend of legislative oversight and judicial interpretation (Qarra, 2014, p. 9).

2 NAVIGATING AGENCY IN JORDANIAN JURISPRUDENCE: AN IN-DEPTH DISSECTION OF BOUNDARY EXCESSES, TERMINATION, AND OSTENSIBLE REPRESENTATION

Agency, as enshrined within the Jordanian Civil Law, encapsulates a sophisticated confluence of principles, delineations, and exceptions that govern the very essence of commercial and legal relationships. This intricate interplay can be envisaged as a trifold paradigm, revolving around the agent's boundary excesses, the implications of agency termination, and the nuanced complexities of ostensible agency absent formal delegation.

In exploring these facets, we first dissect Article 840, a fulcrum upon which the edifice of agents' responsibilities rests and the delicate balance between adherence and flexibility. We then traverse the landscape of agency termination, illuminating its normative implications, legislative idiosyncrasies, and the ensuing transactional dynamics. Finally, our discourse culminates in a meticulous examination of ostensible agency, where appearances can be deceptive, and the lines between representation and misrepresentation become perilously thin.

Through this profound introspection, we aim to offer readers an enriched understanding of the multifaceted domain of agency in Jordanian Civil Law, spotlighting its rigorous mandates, inherent exceptions, and the myriad of challenges and opportunities they present.





2.1 Ostensible Agency in Light of Boundary Excesses: An Exegesis on Article 840 of the Jordanian Civil Law

The agency is a cornerstone of contractual relationships in the intricate labyrinth of legal transactions. According to Article 840 of the Jordanian Civil Law, the agency emerges as an embodiment of trust and delegation, vesting the agent with circumscribed powers. Such a delineation requires the agent to act judiciously within the confinements of the agency boundaries (Jordanian Civil Law, Article 840). This brings forth the inviolable principle of *res stricta*, implying the agent's unwavering obligation to function strictly within the agency's stipulations.

However, the vast and dynamic legal cosmos often witnesses scenarios that deviate from such straightforward mandates. The Jordanian Civil Law acknowledges instances where deviations from the delineated powers might, in fact, serve the best interests of the principal. The Article carves an exception, by stating that agents can transgress their demarcated boundaries if, and only if, such transgressions yield benefits more auspicious to the principal than strict adherence would (Jordanian Civil Law, Article 840).

This exception, though seemingly diminutive, is of paramount importance. It acknowledges the fluid nature of commercial transactions and accentuates the necessity for flexibility in certain circumstances. This legal elasticity, while imperative, needs to be checked. The principal's best interest acts as a barometer, ensuring that any transgressions serve a purpose more profound than mere whimsical deviations.

However, as one delves deeper, it becomes imperative to draw a distinction between the consequences of an agent exceeding their boundaries and the ramifications of an agency's termination. In an enlightening juxtaposition, the Jordanian Civil Law adopts a comparatively stringent stance towards the former while providing a more lenient approach to the latter. For instance, the ramifications of an agent overstepping their designated boundaries can often result in nullifying their actions. In contrast, even upon the cessation of the agency, under certain circumstances, the agent's actions might still bind the principal, provided neither party was aware of the agency's termination at the time of the transaction (Jordanian Civil Law, Article 114).

In conclusion, agency, in its essence, is a delicate interplay of trust, delegation, and accountability. While Article 840 of the Jordanian Civil Law sets the foundational principles of agency, it also provides for exceptions, underscoring the need for adaptability in the ever-





evolving legal landscape. The intricate distinctions between boundary excesses and agency termination further enrich the legal discourse, emphasizing the nuanced intricacies embedded within the broader framework of agency in Jordanian Civil Law.

2.2 Ostensible Agency: Termination Implications in Jordanian Jurisprudence

Within the purview of Jordanian legal doctrine, the concept of ostensible agency, particularly concerning the cessation of the agency relationship, presents an intricate intersection of principles and applications.

1. Underpinnings of Agency Contract Termination:

The dissipation of an agency contract can emanate from a diverse array of sources. Intrinsic determinants, such as the culmination of the designated task or the exhaustion of the preordained temporal span in time-bound contracts, stand juxtaposed with extrinsic precipitators. These might encompass events like the principal's unforeseen demise or the inception of a legal incapacity (Al-Jamie, 2000).

2. POST-TERMINATION NORMATIVE RAMIFICATIONS:

Conventional jurisprudential wisdom dictates that the agent's erstwhile prerogatives dissolve concomitantly upon the lapse of the agency contract. This dissolution renders any subsequent actions by the agent as non-binding on the principal, establishing a default legal trajectory (Fares, 2014).

3. JORDANIAN LEGISLATIVE EXCEPTIONALISMS:

Despite the aforementioned normative trajectory, Jordanian legislative canons incorporate certain nuanced exceptions. These exceptions, woven into the legal fabric, ensure that even in instances where an agency relationship has been extinguished, the agent's subsequent engagements, particularly with third parties oblivious to the agency's lapse, might still tether the principal. This jurisprudential architecture serves dual purposes: it safeguards bona fide third-party interactions and upholds the sacrosanctity and stability of transactions.





4. INTERPLAY OF KNOWLEDGE AND TERMINATION:

A cardinal distinction surfaces when delineating the implications of an agent's actions post-termination. If a third party, endowed with the knowledge of the agency's cessation, still opts to engage with the agent, such an act cannot compel the principal to honor the agent's commitments. Conversely, should the agent, in a veil of ignorance regarding the termination, continue to act while the third party remains informed of the lapse, such a transaction is tainted by deception. This stratagem contravenes key provisions stipulated in the Jordanian Civil Code, particularly Articles 861, 114, 863, and 862/1.

In summation, while the cessation of an agency contract in Jordanian legal practice typically liberates the principal from ensuing obligations, the nuances and exceptions enshrined in the law emphasize the protection of third parties and the upholding of transactional integrity.

2.3 Ostensible Agency in the Absence of Formal Delegation: A Jurisprudential Examination

Within the complex tapestry of agency law, particularly as envisioned under Jordanian jurisprudence, arises an intricate scenario termed the "ostensible agency without formal delegation." This facet of agency law engages with situations wherein an individual represents without a formalized, legitimate agency relationship. Ostensibly, this individual projects authority, inducing third parties into transactions based on the appearance of genuine agency despite the lack of an actual mandate.

A meticulous scrutiny of the Jordanian Civil Law, especially concerning Article 320, unveils pertinent insights. This Article predicates that "Payment to the creditor or his representative is valid. A person proffering a settlement document from the creditor is perceived as endowed with the authority to amass the debt, barring explicit agreements dictating payment directly to the creditor" (Jordanian Civil Code, n.d., Article 320). This legislative provision infers a tacit recognition of ostensible agency, even in scenarios where possession of the settlement document might not have been procured through legitimate or transparent means. It emphasizes the potential ramifications of allowing an individual bearing





such a document, regardless of its acquisition method, to function in the capacity of an agent for debt collection purposes.

For the doctrine of ostensible agency, in the absence of a genuine mandate, to be appropriately invoked, several criteria must be satisfied:

1. The purported agent must be ostensibly undertaking actions on the principal's behalf, devoid of an agency contract.
2. An external party, grounded in bona fide intentions, must engage with the supposed agent, swayed by evident representations that suggest a genuine agency relationship.
3. Considering the circumstances, this third party's belief, rooted in the apparent manifestations of agency, must be deemed reasonable and justifiable.
4. An overt display or semblance of agency attributable to the principal must exist, thereby validating the third party's assumptions and consequent actions (Ali, 2023).

In summation, while the edifice of Jordanian Civil Law provides a structured approach to agency relationships, the nuance of ostensible agency, especially when an actual mandate is conspicuously absent, demands rigorous legal discernment. The implications of Article 320, in particular, underscore the necessity of understanding the layered dimensions of agency, both genuine and ostensible.

3 NAVIGATING THE NUANCES: OSTENSIBLE AGENCY IN JORDAN'S JURISPRUDENTIAL LANDSCAPE

In the multifaceted realm of Jordanian civil law, the conceptual interplay between ostensible agency and overarching jurisprudential paradigms presents a fascinating narrative. A deep dive into this terrain reveals a rich tapestry of civil liability doctrines, discerning the boundaries of accountability for the entitled party. Simultaneously, a distinct strand emerges, highlighting the vicarious nature of liability, especially when rooted in the unique matrix of Jordanian legal thought. Central to this discourse is the profound resonance of Islamic jurisprudence, or 'fiqh,' in shaping the parameters of ostensible agency within the Jordanian legal milieu. This section embarks on a journey through these interconnected paradigms, shedding light on their profound implications, synergies, and challenges. Through a comprehensive exploration, it endeavors to provide clarity, offering insights into the dynamic dance between civil liability, vicarious accountability, and the intrinsic influence of Islamic jurisprudence in shaping Jordan's legal contours.





3.1 Civil Accountability of the Entitled Party:

In analyzing the civil liability landscape, one must recognize the centrality of the doctrine that underscores the obligations of the entitled party. The discourse predominantly bifurcates into two seminal schools of thought.

1. **Liability Premised on the Notion of Culpability:** Within this purview, juridical discourse foregrounds the significance of culpability as the linchpin for instituting liability. Following this paradigm, liability emanates from an act or omission that breaches a certain standard of care, either intentionally or negligently, leading to the deception of a third party acting in good faith (Al-Sanhuri, 2015, p. 611).

2. **Liability Anchored in the Principle of Risk Assumption:** Contrasting the earlier perspective, this doctrine postulates that the essence of liability rests upon the shoulders of those who assume certain risks, particularly in commercial undertakings. Such an assumption inherently implies that the entitled party, while enjoying the benefits of an expanded commercial purview due to agency relations, must bear the potential hazards accompanying such enhancements. However, this paradigm remains a subject of contention within academic circles, given its interpretative ambiguities and the associated ramifications (Badr, 2014, p. 220).

Both these views elucidate the multifaceted nature of civil liability, particularly in the context of the ostensible agency. This analytical exposition seeks to serve as a beacon, facilitating deeper exploration and interpretation of the concepts above, ensuring that the legal underpinnings align with the evolving jurisprudential landscape.

3.2 The Notion of Liability for the Acts of Another: An Exploration within the Context of Jordanian Legal Discourse

Within the rich tapestry of legal theories surrounding ostensible agency, there emerges a distinct perspective grounded in the doctrine of vicarious liability, positing it as the potential fulcrum for establishing the legitimacy of ostensible agency. Delving into the intricacies of this notion, it becomes paramount to elucidate both its merits and potential pitfalls, especially when framed within the jurisprudential parameters of Jordanian law.

It is pertinent to underscore that the doctrine of vicarious liability postulates the premise wherein an individual (the principal) shoulders the responsibility for the actions





undertaken by another entity (the ostensible agent), given the existence of an established relationship between the two. Critics argue that this very foundation of the doctrine might render it ill-suited as a foundational principle for ostensible agency. This skepticism stems from the observable reality that, in many ostensible agency scenarios, the purported principal often remains oblivious to the ostensible agent's existence, let alone their actions (Al-Maamouri, 2016, p. 63).

Furthermore, this perspective necessitates the ostensible agent's fault, an aspect that inevitably dictates the principal's subsequent liability. Such an exigency, however, seems incongruous with the elemental tenets of ostensible agency, particularly when contemplating situations where the ostensible agent, unaware of their lack of representational authority, operates in an unblemished state of good faith.

Drawing upon Jordanian Civil Law for deeper contextual comprehension, one observes that Article (2) of the Jordanian Civil Code outlines a hierarchical approach to legal interpretations. This hierarchy places Islamic jurisprudence and customary practices as pivotal sources to resort to without explicit legal provisions. However, there is an evident circumspection in directly invoking Islamic jurisprudential theories, especially when they seem discordant with the overarching principles of agency that civil law espouses.

This intricate confluence of legal principles, doctrines, and the practical exigencies of the Jordanian legal landscape underscores the need for a judicious, albeit innovative, approach to the ostensible agency. It beckons the Jordanian legislative apparatus to delve deeper, drawing from the reservoir of scholarly insights and ensuring an equilibrium between transactional stability and jurisprudential integrity. Only through such a holistic exploration can one hope to provide the Jordanian judiciary with the requisite tools to navigate the complex terrains of ostensible agency (Jum'ah, 2011, p. 57).

3.3 Interplay with Islamic Jurisprudence in the Context of Ostensible Agency in Jordanian Civil Law

Islamic jurisprudence, often termed "fiqh," plays a pivotal role in underpinning and influencing the contours of Jordanian civil law, especially when delineating the contours of ostensible agency. Predicated on a rich tapestry of historical, theological, and legal scholarship, fiqh provides profound insights into various aspects of agency, both real and ostensible (Al-Maamouri, 2016).





Article (2) of the Jordanian Civil Code is central to the Jordanian legislative fabric, which explicitly articulates the hierarchical engagement with sources of law. According to this foundational Article, if a specific provision remains elusive within the confines of the existing legislation, the judiciary's recourse should be to align with the precepts of Islamic jurisprudence that are most congruent with the extant civil law statutes (Jum'ah, 2011). However, it is noteworthy that the jurisprudential adoption is not absolute; it is circumscribed by the necessity of congruence with the tenets of the civil code.

Should the application of fiqh yield no viable solution, the Jordanian legal system then turns to customs—a dynamic repository of long-standing practices that have attained a quasi-legal status due to their perennial and consistent presence. These customs, however, must be in harmony with legal directives, public order, and morality, and any regional custom is restrictively applied to its specific geographical domain. The principles of justice then serve as the last resort, emphasizing fairness and equity (Jordanian Civil Code, Article 2).

The circumspect engagement with Islamic jurisprudence underscores the Jordanian legal system's endeavor to strike a delicate balance: on the one hand, acknowledging the profound contributions of fiqh and, on the other, ensuring that its application does not deviate from the modern principles of agency enshrined in the civil code. It is also a testament to the law's reticence to the unbridled application of Islamic jurisprudence, especially when it diverges from the foundational principles of agency.

Furthermore, while the Jordanian judiciary primarily remains an implementer of the law, eschewing legislative creation, sporadic judicial decisions have indeed anchored their judgments in the bedrock of ostensible agency, drawing inspiration from both civil law and fiqh (Jum'ah, 2011).

In conclusion, the intricate dance between Jordanian civil law and Islamic jurisprudence illuminates the complexities inherent in the conceptualization and application of ostensible agency. It underscores the exigency for a cohesive theoretical framework, urging the Jordanian legislature to re-evaluate and potentially incorporate these nuanced provisions, thereby fortifying transactional stability and providing clear interpretative guidance to the judiciary. This becomes paramount, especially in an evolving legal landscape where pragmatic exigencies often challenge established norms.





4 OSTENSIBLE AGENCY IN JORDANIAN CIVIL LAW: DYNAMICS, IMPLICATIONS, AND INTERACTIONS

Jordanian Civil Law is a testament to the intricate dance of legal relationships, especially when examined through ostensible agency. This section delves deep into the myriad connections, focusing on the nexus between the ostensible agent, the principal, and third parties. From discerning the underpinnings that frame the relationship between the ostensible agent and the principal to elucidating the vicarious consequences when third parties operate in good or bad faith, this research casts light on the multifaceted implications of agency within the Jordanian legal panorama. A comprehensive understanding of ostensible agency's intricacies emerges through a synthesis of legal tenets and academic discourse.

4.1 Implications for the Relationship between the Ostensible Agent and the Principal within Jordanian Civil Law Context

Within the realm of Jordanian Civil Law, the intricacies of the ostensible agency serve as a linchpin, shaping the dynamics of principal-agent interactions. The nexus between the ostensible agent and the principal is delineated primarily by the underpinnings outlined in the Jordanian Civil Code.

Article 112 of the Jordanian Civil Code encapsulates a pivotal aspect of this relationship, positing that a contract executed by a representative, staying within the confines of their agency, obligates the principal with the resultant rights and duties, barring specific legal exceptions (Al-Jubouri, 2012, p. 265). This jurisprudential tenet underscores that the agent's endeavors provided they remain within the purview of the agency's stipulations, bind the principal inextricably. An auxiliary explanatory memorandum elucidates that, when the essence of an agent is indispensable for contract consummation, the contractual repercussions should rest exclusively with the principal. This endows the principal with the entirety of rights while simultaneously burdening them with any concomitant responsibilities.

Further insight into this relationship is gleaned from Article 840, which posits that an agent should remain within the agency's boundaries by dint of the agency accord. Transgressions are permissible only if they augur benefits for the principal (Anwar, 2010, p. 78). Such provisions amplify the assertion that the agent's actions, in adherence to the





agency terms, bear directly upon the principal, endowing them with rights and ensconcing them with duties. A reinforcing corroboration emerges from Article 859/1, emphasizing the principal's liability for rights acquired during the agency's standard execution.

An agent's fiduciary duty during the execution of an agency agreement is non-negotiable. As epitomized in Article 841, agents are compelled to exercise a degree of care commensurate with their personal matters, especially in pro bono agencies. Remuneration, however, necessitates the agent manifesting a reasonable individual's prudence characteristic.

Synthesizing the above, an academic consensus emerges among jurists. When ostensible agency prerequisites are satisfied, with the agent operating under the genuine belief of staying within the agency's purview, the agency's legitimacy is unassailable. Subsequently, any liabilities arising from the agent's actions are deflected away from them (Abu Qamar, 2014, p. 96). However, a dichotomy arises if the ostensible agent, harboring malevolent intentions, bypasses agency boundaries, ensnaring a third party operating in bona fide. In such instances, the effects resonate as if from a genuine agency, holding the ostensible agent culpable for transgressions against the principal. This mandates reparations, establishing the ostensible agent's malfeasance, resting squarely on the principal (Al-Sanhouri, 2015, p. 614).

4.2 The Role of Ostensible Agency in the Relationship between the Ostensible Agent and a Third Party Acting in Good Faith

Within the ambit of Jordanian Civil Law, ostensible agency occupies a noteworthy position when examining the interplay between the ostensible agent and a third party that operates under the banner of good faith. The legal edifice, as articulated in the Jordanian Civil Code, offers a compelling narrative about the vicarious consequences stemming from the actions of an ostensible agent, especially in situations where the agent might transcend the perimeters of their conferred authority.

A pivotal tenet that emerges from the legal discourse is the protection accorded to third parties acting bona fide. This protection is not merely an ad hoc legal construct but is deeply rooted in the rationale of fortifying the stability of commercial and civil transactions. For instance, when an agent, ostensibly acting within the confines of their authority, interacts with a third party, the resultant actions are taken under the protective umbrella of the





principal's apparent consent. The repercussions of such actions are bound by the external manifestations of the agency, even if internally, such authority may be absent or limited.

Furthermore, the Code makes it abundantly clear that should a third party be led astray due to the ostensible appearance of an agency – potentially because of the principal's inadvertence or other reasons – and has taken standard precautions to ascertain the veracity of the agent's authority, the consequences of the agent's actions are imputed upon the principal. This remains operative irrespective of the agent's subjective intentions, be it noble or nefarious. This jurisprudential stance underscores the legal system's commitment to shield third parties who operate in good faith and safeguard the bedrock of transactional stability in the legal domain (Shawqi, 2006).

The doctrines enshrined in Jordanian Civil Law accentuate the consequential weight of ostensible agency, particularly in scenarios involving third parties operating in good faith. The architecture of the legal system is fashioned to ensure that the integrity of transactions remains intact and that third parties are insulated from potential pitfalls that may arise from the complexities of agency relationships.

4.3 The Influence of Ostensible Agency on the Principal's Relationship with Third Parties (Good-Faith and Bad-Faith)

In the labyrinthine landscape of Jordanian Civil Law, the intricacies of ostensible agency give rise to multifaceted relationships, particularly when the principal engages with third parties through an ostensible agent. This relationship undergoes nuanced transformations, contingent on the demeanor - good faith or bad faith - exhibited by the third parties.

For third parties acting with *bona fides*, the contours of their relationship with the principal hinge on the appearance of the ostensible agency. If, under the guise of agency, an ostensible agent goes beyond their authority or acts based on an expired or non-existent agency, the principal remains tethered to the consequences. In such cases, where the third party was led astray due to the apparent validity of the agency – an illusion often engendered by the principal's negligence or other factors – the law safeguards their interests. Under these tenets, the outcomes of the ostensible agent's actions, irrespective of the agent's intent, are attributed to the principal, thereby prioritizing the stability of transactions and shielding the unsuspecting third party (Shawqi, 2006).





On the other hand, third parties tainted with *mala fides* are governed by a different set of repercussions. If deception, substantial errors, or collusion mar the agent's actions, intending to undermine the principal, the agent's authority becomes null and void at that juncture. The principal remains insulated from any transactions made in this shadow of deceit. However, complexities arise when the agent needs more authority, perhaps due to the agency's expiry or if it was never constituted. The principal remains untouched by the consequences unless they subsequently validate the agent's actions. Employing the doctrine of subsequent authorization, an intricate nexus is formed between the principal and the third party, allowing either party to seek redress based on the obligations arising from that place. However, when the principal distances themselves from the agent's undertakings, the third party's reclamation remains circumscribed by the doctrines of "al-fadhalah" or overcompensation and the broader tenets of unjust enrichment (Al-Jabouri, 2012).

When interwoven with the principal's relationship with third parties, the aura of ostensible agency creates a rich tapestry of legal outcomes delicately balanced between protecting genuine interests and punitive measures for deception.

CONCLUSION

Amid the absence of comprehensive legislative provisions in Jordanian Civil Law and palpable inconsistencies within the judiciary's decisions, one must analyze the prevailing situation. This situation arises particularly when an agent, with *mala fide* intentions, enters into a contractual relationship with a third party, misled by the semblance of the agency on behalf of the principal. This gives rise to a legal dilemma that balances the rights and interests of the principal against the *mala fide* third party, leading to the elucidation of the doctrine known as "ostensible agency."

In this research endeavor, an exhaustive exploration of the ostensible agency has been undertaken, encompassing its definitional aspects, underlying conditions, foundational legal principles, and the consequent legal implications.

Following a meticulous study, the researchers formulated pertinent findings and proffered the ensuing recommendations:

FINDINGS:

1. The current stipulation within Article (833) of the Civil Law delineates the concept of agency. Nonetheless, this articulation presents discernible inadequacies, notably its broad scope covering juridical and factual acts.





2. On ostensible agency, the Jordanian legal framework remains silent. Notably, the role of legislative bodies needs to be more conventional to proffer definitions. Moreover, existing jurisprudential discourses define ostensible agency explicitly and delve deeper than merely outlining its criteria and scenarios.

3. To uphold the sanctity of commercial transactions and prioritize the mala fide third party's interest, the repercussions of ostensible agency tend to favor the principal. This is notwithstanding the potential transgressions by the ostensible agent, whether due to surpassing the pre-defined limits of the agency or acting under an annulled or non-existent agency mandate.

4. The current state of the Jordanian Civil Law exhibits fragmented provisions concerning ostensible transactions and agencies.

RECOMMENDATIONS

1. The scholars emphatically advocate for a legislative review of Article (833) of the Jordanian Civil Law. This revision should encompass the insertion of the descriptor "legal," thereby circumscribing the agency's purview to solely juridical acts, effectively sidelining factual acts. Furthermore, including the stipulation "during his lifetime" is paramount to exempt testamentary dispositions from the agency's ambit categorically.

2. The legislative framework in Jordan presently curtails the acceptance of agency exceedances to actions aligned with the principal's best interests. This study recommends the introduction of a legal provision permitting agents to act beyond their mandate under exceptional circumstances. This is especially pertinent when prior communication to the principal is infeasible, and the prevailing circumstances strongly insinuate that the principal would have assented to such actions.

3. Given the burgeoning relevance of the ostensible agency doctrine in contemporary economic landscapes, its integration within the academic syllabus of the Private Law faculty is indispensable. Such an inclusion resonates with evolving commercial paradigms, fortifying transactional certainty, and safeguarding the interests of mala fide third parties.

REFERENCES

Abdul Rahim, A. Q. (2014). Irrevocable Agency. Research presented at the Jordanian Judicial Institute, Amman.





Abdul-Jabbar, M. R. (2016). Agency in Sharia and Law (2nd ed.). Dar Al-Kutub Al-Ilmiyah, Beirut.

Al-Amrousi, A. (2016). Comprehensive encyclopedia in explaining civil law with jurisprudence schools and modern judicial rulings in Egypt and Arab countries (Vol. 5, 4th ed.). Dar Al-Adalah, Cairo.

Al-Fakahani, H. (2010). Explanation of the new Jordanian civil law, Encyclopedia of Judicature and Jurisprudence for Arab Countries (Vol. 46, 4th ed.). Dar Al-Thaqafa for Publishing and Distribution, Amman.

Al-Far, A. Q. (2016). Sources of obligation – Sources of personal right in civil law (3rd ed.). Dar Al-Thaqafa for Publishing and Distribution, Amman.

Ali, Y. S. E. (2023). Nature, Types, and Effects of Agency under the English Law: A Comparative Study. UAEU Law Journal, 2023(93), 5.

Al-Jabouri, Y. (2012). A concise commentary on civil law: Effects of personal rights, provisions of obligations – A comparative study (Vol. 2, 4th ed.). Dar Al-Thaqafa, Amman.

Al-Jumail'i, A. B. (2000). Theory of ostensible situations – The appearance contradicting the reality and its consequences (3rd ed.). Dar Al-Nahda Al-Arabia, Cairo.

Al-Ma'amouri, D. H. (2016). Ostensible Agency. Bab Al-Sciences Humanities Journal, 15(2).

Al-Momani, I. (2011). The Suspended Contract in Jordanian Civil Law (3rd ed.). Cairo, Egypt: Dar Al-Nahda Al-Arabiya.

Al-Sanhoury, A. R. (2015). The mediator in explaining civil law: Contracts based on labor (Vol. 1, 4th ed.). Al-Halabi Legal Publications, Beirut.

Al-Serhan, A. (2015). Commentary on sources of personal rights (obligations) – A comparative study (3rd ed.). Dar Al-Thaqafa for Publishing and Distribution, Amman.

Al-Serhan, A. I. (2017). Explanation of civil law: Named contracts (contracting, guarantee, agency) (2nd ed.). Dar Al-Thaqafa for Publishing and Distribution, Amman.

Al-Shuweiry, B. Al-Qadi. (2012). Ostensible Agency. Near East Studies in Law Journal, Faculty of Law and Political Science, Saint Joseph University, Beirut, Lebanon.

Al-Za'abi, M. Y. (2014). Named contracts – Explanation of the sales contract in Jordanian law. A peer-reviewed scientific book by the Deanship of Scientific Research, Graduate Studies College, Mutah University.

Anwar, S. (2010). Sources of obligation in Jordanian civil law (3rd ed.). University of Jordan Publications, Amman.

Azmi, M. (2017). The implications of an agent exceeding the limits of their agency in Jordanian civil law: A comparative study. Journal of Legal Sciences for Postgraduate Studies, Middle East University.

Badr, J. M. (2014). Representation in legal transactions (4th ed.). Dar Al-Nahda Al-Arabia, Cairo.

Fares, A. (2014). Powers and obligations of the agent and the termination of his agency in law (3rd ed.). Dar Wael Publishing, Amman.





Hanna, B. (2018). Agency: Jurisprudential considerations in agency matters (Vol. 2, 3rd ed.). Al-Halabi Legal Publications, Beirut.

Issa, M. (2020). The legal system of ostensible agency. Master's thesis, Yarmouk University, Irbid.

Jum'a, N. (2011). Fundamental appearances as sources of right (3rd ed.). Dar Al-Nahda Al-Arabia, Cairo.

Munzir, A. F. (2007). Named Contracts (3rd ed.). Amman, Jordan: Dar Al-Thaqafa for Publishing.

Qarra, F. (2014). Provisions of Ostensible Position (3rd ed.). Alexandria, Egypt: Al-Ma'arif Establishment.

Shantawi, Z. A. (2017). Irrevocable Agency. Master's thesis, Yarmouk University.

Shlalha, N. (2018). Claims for annulment of agencies – A comparative study through jurisprudence, legal texts, and jurisprudence (2nd ed.). Al-Halabi Legal Publications, Beirut.

Shoukry, A. A. R. (2006). The extent of the principal's authority to terminate the agency agreement by his sole will (3rd ed.). Faculty of Law, Mansoura University, Egypt.

Talba, A. (2012). The mediator in explaining civil law (Vol. 4, 3rd ed.). Dar Al-Fikr Al-Jami'i, Alexandria.

