

The Legal System of Licensed Notary in Accordance with Jordanian Legislations

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Abstract

This study aims to show the legal system of the licensed notary, as a modern system of authentication, that will be in accordance with the provisions of the authorized notary regulation No (22), 2015 and the public notary law No(11), 1952 and its amendments. The study will clarify the elements of this system; persons who are capable for doing this occupation, the functions of this notary whether the legal or technical ones, the power of papers organized by the licensed notary, and finally the civil liability for this section regarding the professional defaults.

Introduction

Notarial registration system is considered one of the most prominent and oldest assurances of achieving the principle of transactions stability among individuals, and maintaining their rights lest they may get lost because they fail to confirm them, yet the legislator, and in certain contracts, did make of the official notarial registration an element of such contract to become null in case of defaulting it, such as the case of selling real estate agreement or selling of movable property agreement which need not an official registration formality at the competent departments. However, the notarial registration system is not a naturally new system, it had been known to Ottoman Empire statutes and passed on to the Jordanian legal system, therefore, the Jordanian legislator approved the notarial registration system and set up its own provisions and, certain persons from the public office cadre and subordinates of the ministry of justice, were entrusted to it and, for the purposes of that, the law of notary public # (11) for 1952ⁱ was enacted.

When individuals' transaction multiplied and their worth increased and accordingly their disputes increased before the courts with the view to establish their rights and endorse them, the need became more insistent for notarial registration, which is a need that will not be satiated by the official notarial registration, namely the one charged with the public employees, the fact to which the legislator heeded, so he created a new regulation (the licensed notary), and enacted a special code for it which is the (notary license) (22) for 2015ⁱⁱ. This research is meant to fathom this new regulation and, reveal and explain its terms as the course of this research is divided over disclosing the concept of licensed notary, identifying the persons who can acquire such capacity, and exhibiting the powers commissioned with the holder (first subject), also, we will try to determine the base of legal liability of the licensed notary. We find that the comparison between the notary, in his customary image and between the licensed notarial imperative, and will impose itself as we proceed in our study of the licensed notary terms, and we will not spare efforts to set forth this comparison wherever it was feasible for this study.

Subject one

The nature of licensed notary

When the legislator decided to grant the mission of official notarization to other than the public official, it framed that with legal provisions meant to maintain the sacredness of this mission and to achieve its objective for which it was passed, thus the governing enactment of licensing the notary came to illustrate what is meant by the licensed notary and, the persons who are eligible to apply for the license to practice such a profession, also, this law did determine the jurisdictions of such people and the limits of powers they would acquire. In addition, in explaining that, this subject will contain an illustration to the concept of licensed notary (first requirement), and demonstration of his powers and jurisdictions (second requirement):

First Requirement

The concept of licensed notary

Researching into the concept of licensed notary includes that we should clarify the definition and show the synonyms of such term in Arab legislation, it includes also, identifying the people who are competent to hold the capacity of licensed notary, and the missions the law entitled them to carry out:

Section one

Definition of licensed notary

The definition of licensed notary is divided over two elements: define the notarial writing, and identify what is meant by the notary license, so if we have the explanation of these two elements the concept of licensed notary will be clear. However, the definition of notary doesn't raise any dilemma, so there is no doubt that the purpose of writing assigned to the notary is to register the transactions of individuals by a competent entity, and as such the notary writing or writing by any just person is per se the official registration; nonetheless, Arab legislation succeeded in using synonyms of the notary word, such as documenter or notarial registry officer or clerk in justice or registration officerⁱⁱⁱ.

On the other hand, the term clerk in justice was mentioned in the noble Quran within the "**debt verse**" of Al-Baqarah Sura, in which the God, glorified and exalted be He, commanded the importance of attestation and registration in liabilities, where He said "O you, who have believed, when you contract a debt for a specified term, write it down. And let a scribe write (it) between you in justice".^{iv} And, registration linguistically: "the infinitive of verb "register", quadruple at the scale of "Faal" meaning firmed up the subject, record something in registration, so it's documented and the secure is the firmed thing and, he verified his issue means taken by document, and the documentation is securing and perfection".^v Registration in terminology: "it's a system for establishing the acts, agreements and other obligations under legal stipulations written in papers, books, letters or any other means permissible to use for legal representation."^{vi}

In addition, legally: "to compose or write the instrument or agreement by the notary at the request of people concerned and register it in the records specified to this end".^{vii} And it's: "certification of the clerk in justice on the signatures or seals associated with thumb print or on the thumb print of the people concerned unto the document executed outside and according to their recognition of its content..."^{viii} Nevertheless, the statutes which we have arrived at shared in the key landmarks of defining the notary or documenter or registration officer, although it defined at most the notary public or the notary general not the licensed or private notary:

Jordanian legislator defined the notary as: "the notary public who commissioned with conduction of the transactions stipulated in this law or any other law"^{ix}. Whereas, the Algerian legislator defined the documenter as: "a public employee authorized by the public authority to undertake the writing of agreements in which the law stipulates to have official attribute and, likewise the agreements the people wanted to confer them such an attribute"^x While, the Lebanese legislator defined him as: "a public officer commissioned with, in his domain of jurisdiction, carrying out the functions set out in this law and other laws and functions which the people concerned wanted to affirm them. And, he is affiliated with the ministry of justice and receives no salary or consideration from the state but receives his fees from the people concerned according to the provisions of this law"^{xi} And, with the Syrian legislator: "**he is the employee entrusted, in the domain of his power and jurisdiction, with the functions set out in this law and any other laws**"^{xii}

As for the Emirati legislator, he differentiates between the public notary and the private notary and as such defined the first as: **'the public employee appointed at courts and charged with, in the domain of his power and jurisdiction, the tasks set out in this law'**, and defined the second as: **"the natural person entered into the registry for practicing the competencies determined for him of the notary public functions under this law"**

xiii

It's clear from the definitions proposed above that the legislation defined with certainty the notary public and gave him its attention and regulated his practice with all details, whereas it has not yet defined- at least most of them – the private notary or the licensed as a private career practiced by a person not holding the capacity of public employee.

It should be referred to here that the conference of Arab justice ministers council aimed to unify Arab enactments, issued its resolution # (734) by the 23rd session convened in Cairo on 28/11/2007 adjudicating the creation of a committee consisting of experts from the HKJ and a number of Arab states, to develop an Arab reference draft law to regulate the clerks in justice practice (documenters), and yielded the development of a law to regulate the clerk in justice practice (documenters), resulted thereof placing a law for regulating the notary career (documenters), a guiding law, which contained therein the definition of notary in article (3) pointing to the private notary as the "clerk in justice" or "documenter", as a natural person charged with public service, whether he works independently or belongs to public authority, appointed under the provisions of law, and he undertakes the execution (registration) of instruments, certification and establishment of their date, filing them, and giving photocopies thereof, in addition to other functions under the provisions of this law or any other laws relevant to each state".

The definition of licensed notary was mentioned in clause (b) of article (2) of the Jordanian notary license regulation: **"for the purposes of this regulation, the notary term means the person who is licensed according to the provisions of this regulation in order to take over the tasks of notary job or part thereof as stipulated in the law."**

Subsequently, it's clear that the definition of licensed or private notary is not very different from the definition of notary public in the objective of each practice (registration) and the missions assumed by both of them, yet, the substantial difference lies in each one's attribute, so the notary public is a public employee registered on the public office corps, while the private or licensed notary doesn't hold such an attribute at least until he has been granted the license to practice writing in justice. Thus, it's a substantial difference as the legislator is still granting the notary public the powers and missions not usually given to the private notary, for the level of legislator's confidence in the public employee and being reassured of him, is still more than that for the private notary^{xiv}.

Accordingly, the licensed or private notary is: **a person other than public employees who gets a license from the competent authority, to practice the missions of notarial writing in the limits recognized by law. As for what is meant by licensing the notarial writing**, it is that decision issued from the competent entity, according to law, permitting the applicant to practice some or all writing in justice tasks, and the competent entity in the Jordanian law is the minister of justice^{xv}, and with the Emirati legislator: the commission of notary affairs^{xvi}.

However, before granting the license the applicant should satisfy several requirements most of them concern ensuring his legal competence, good career conduct and confidence in his solvency; thus, it shouldn't be construed from the legislator trend towards privatization of notarial writing that he had made this career available to all who wanted to practice and take it up as a living earning, as such career is still highly valued and sacred in the eye of legislator, given what the notary works involve of risk for being in touch with the individuals' rights and, more than that, its relation with the public order. The legislator required conditions in each license applicant in order to practice writing in justice led by insurance of legal competency therein, keenness to keep up his career reputation high, and hence the legislator limited writing in justice to natural persons, and that perhaps suggests keeping such career away from trending to become a business, and here to follow the details of that:

The Jordanian regulation of notary license has identified the persons who have the right to apply for license to practice the notary career, they are: retired judges of high or private rank, certified lawyers who had spent, in law profession or legal practice and judiciary together, not less than twenty years according to judiciary independence law and the law of lawyers association^{xvii}.

By extrapolating this provision we find that the legislator has determined two key requirements, the first: that the notary is always a natural person and can't be corporate person, and the second: license applicant must be a retired judge with private or high rank, or otherwise a lawyer who spent in advocacy practice and judiciary together not less than twenty years.

In addition, in Dubai Emirate, the law of notary agrees with the Jordanian legislation, stipulating that the notary must be a natural person.^{xviii} Whereas, we find the Algerian law, for regulating the documenter career, allows practicing of documentation by corporate persons, in the form of civil professional company or combined offices^{xix}. However, we find here is no fault in following this approach provided to keep the requirement that says: the license applicant must be a judge or a lawyer in the manner required by the Jordanian legislator.

Our argument in demanding for licensing the corporate private notary (as civil firm), is its solvency in satisfying the debts of its creditors and, participation of partners' private property in paying the company's liabilities^{xx}, and perhaps admitting the corporate notary would enable the legislator to enact a regulation for insurance from the civil liability of such company to insure what may befall individuals of damage sowing to notary error, in addition to ensuring the monetary solvency for such corporate person deeming such a solvency as a requirement of each company's registration requirements and, that would ensure the rights of individuals towards it. Moreover, the legislator stipulates that the license applicant has spent twenty years in judiciary or law practice or both together, which is a stringent approach given the licensed notary job which is limited to –as will be shown later- some works of the public notary not all of them, and as such there is no reason to stipulate such a long period as few years would be enough to become experienced in these works, which is what adopted by the notary law in Dubai Emirate, where it stipulated for applying for the license of writing in justice that applicant should have spent five years in legal and judiciary works^{xxi}.

The matter, however, doesn't hang on the limit of stipulating professional competency and job status of the license applicant, so the legislator considers that as requirements that give their completer the chance to sit for the exam held by the ministry of justice for the sake of licensing; hence, article 3/b of the Jordanian notary public regulation states that the license applicant must pass the exam held by the MOJ for such end and, article (15) of the notary regulation stipulates: "the minister will issue the directives required to implement the provisions of this regulation, including the instructions of conducting the license exam and, the directions of performing transactions, filing and certifying them". Besides, to having the Jordanian nationality, the license applicant is required to be of good conduct, not convicted in offense or misdemeanor against honor, integrity and public trust and decencies or disciplinary penalty^{xxii}. This stipulation emphasizes that the legislator is still looking at the writing in justice as one of the most important jobs and most sacred, therefore he requires the incumbent to enjoy distinctive features ensuring his competency, neutrality, and ability to tolerate the burden of such a job. In preserving the interests of individuals whose transactions are executed by the notary, and to ensure the seriousness of the latter, the legislator required from the licensed notary to present notarial or banking bond in an amount not less than JD (100,000) to the order of the minister of justice^{xxiii}. This is however a commended approach; whereby the individuals will be assured of the licensed notary good faith, seriousness of his work, and keenness to preserve the right of the instrument's parties, and his pursuit of controls that would ensure that, and in return, an assurance of the notary keenness to perform his work with all caution and vigilance, as he knows that he violated law and misuse the license his sanction may amount to revoking his license and confiscating the bond's value^{xxiv}.

Yet, the current regulation doesn't refer to that the individuals have the right to sue the licensed notary if he misused the license or even committed mistake in exercising his missions in good faith or otherwise, and doesn't show if they had the right to claiming for the damages incurred by them from the bond value, owing to an act by the licensed notary, which makes imperative to point out to this failure and that to propose to the legislator to cover it by amending the provisions of regulation to include the stipulation that the licensed notary must present-as requirement to accept his license application – an insurance policy of the professional liability arising from his work, such stipulation will serve both parties of issue: the notary would exercise his job assured of the presence of a solvent debtor securing his professional error liability, and individuals would ensure their recourse to the insurer whenever they incur damages caused by the notary deviation off the career procedures whereby compensation is entailed. This idea was not absent from the mind of some Arab enactments, here is for example, the notary law in Dubai Emirate which determines the necessity to have insurance policy attached to license application against the notary's profession liability, hence article (13/b/3) of this law states:

"Whoever applies for obtaining the permit should ...3- present an insurance policy valid throughout the period of permit against liability for professional mistakes, issued from an approved insurer in the Emirate". In addition, the Algerian law of registration settles for the same ruling, as article 43 thereof states: "the documenter should sign an insurance to ensure his civil responsibility."

Section Three

The licensed notary missions

Jordanian legislator has determined, in authorizing the licensed notary regulation, the missions granted to him by such authorization,^{xxv} and this determination turned up, to name but a few, so that the licensed notary shall not practice anything else otherwise he will be counted as overriding the limits of authorization granted, and thus article (8) of authorizing the notary regulation has taken over the determination of the licensed notary's missions.

It seems that the legislator has missed out on that he has already defined the notary in article (2) of the same regulation as: whoever is authorized according to the provisions of this regulation to assume the missions of notary or part thereof as provided for in this regulation, a definition suggesting that the notary may practice all missions of the notary public if his license permitted so, namely, the limitation of licensing is different from one notary to another. And, we see a discrepancy there; as it doesn't follow to determine the licensed notary powers along with the definition, so the beholder of powers mentioned exclusively in article (8) of the notary license regulation will find that it renders the powers of licensed notary more restricted than those acquired by the notary public; for instance, the article has not provided for the power of the licensed notary in certifying agreements related to disposition of immovable property, nor even to their legal translations. Therefore, the legislator has not succeeded in defining the licensed notary, as he was preoccupied with differentiating between him and the notary public; it was enough for him to determine that – i.e. the licensed notary- is not a public employee and the objective of his practicing of the notary missions and limitation of his powers is the managerial license not functional jurisdiction. We find it incumbent upon us to make the differentiation between the notary public missions and between that of the licensed notary's, the substance of this part of our research, in order to be able to see the range of the licensed notary authority and the motive behind being deprived of practicing some notary public missions:

Article (8) of the notary license regulation states that: "subject to provisions of statutes applicable, the notary shall carry out the following missions:

- a. Endorse notarial warnings, services, and notifications.
- b. Legalize the agency that involves managing and filing works.
- c. Certify agreements not connecting with the acts of property transfer or respective mortgage.
- d. Certify legal translation not connecting with contracts of disposing of immovable property or transactions to which modality of conclusion is not required by law.
- e. Certify notarial representations and warranties.
- f. Sign papers and documents to establish their date.

Whereas, article (25) of the notary law states that the notary missions are:

1. Execute and endorse all agreements concluded by "offer and acceptance" and other sorts of documents, report them and endorse their translation.
2. Execute and endorse agreements and instruments relating to disposing of movable property such as selling and purchasing, donation and transfer, letting and renting, mortgaging and hypothecating, lending and other sorts of documents.
3. Execute and endorse all deeds, proxies, guarantees, conciliation, and absolution.
4. Sign papers and documents presented to establish their date.
5. Execute and endorse reports of marine vessels masters and bills of loading, "AL SIJORTA" and marine loaning.
6. Execute and endorse papers of caveat, notification, and reporting and convey them.
7. Execute and endorse inquiry papers relating to demanding to reveal the reason behind rejecting commercial and police bonds, and not paying them, in addition to protest papers relating to non-payment of their value.
8. Conduct, except than that, other sorts of services, transactions and announcements entrusted, to be conducted, to the notary under all other laws and regulations.

By holding comparison between the missions of both notaries (public and licensed), we find that the range of tasks assigned to the licensed notary is narrower than that granted to the notary public, so he shares with the latter some of the tasks yet the legislator disallowed him to practice other tasks peculiar to the notary public, for example, he can't endorse conveyance agreements of sale or gift as an example, nor even the legal translations of conveyance agreements, or any transaction required to have a mode to be concluded, also he may not endorse the agency save those related to managing and filing works. It's evident that the legislator still looks at the notary job with all appreciation and care; and good he did, as the missions the legislator limited to the notary public are fraught with so much danger that wouldn't allow their privatization, particularly in the formal acts; i.e. those which the legislator required for being carried out the intervention of official employee to be executed or certified such as real estate or cars sale, thus, the element of formality in these contracts is tied to public order, aimed to protect the individuals' rights and secure the stability of dealing with such property^{xxvi},

and it's entrusted with the competent official entities such as land registration department or vehicles registration department which are state entities, and thereby, the value of formality element will not match up to be assumed by the licensed notary, not for the lack of his competence but in respecting the purpose of determining the rights associated with such property and, determining the entity competent in executing their respective agreements, and restricting the ostensible sales that might be concluded by usurpers/appropriators of such property illegitimately. And thereby, we find that the legislator has granted the licensed notary part of the notary public missions not all of them, and confined his missions to those relevant to acts of property conveyance, and perhaps the experience will augment the confidence of legislator in the licensed notary thus enhancing his range of missions, or conversely keeping them unchanged or reducing them, or he perhaps band on the whole idea altogether. By extrapolating the missions of the Jordanian licensed notary and comparing them with his peer missions in the Emirati licensed notary law: we find that the latter has not determined the missions of the private notary nor tabulated them, but handed the authority of such doing to the notary affairs' committee, which may charge the private notary with any of the notary public's powers, which means that what may be charged with a notary may not be charged with another, and the only authority here is the committee's decision. This approach has advocates, as non-assignment would give the committee the ability to learn about the private notary experience and determine the missions in which the community will truly need such a notary.

Jordanian legislator perhaps forestalled the reading of experience and was content that the private notary must be delineated with certain range of missions without overriding them so he shares with the notary public with all his missions, and this may be understood given the importance of missions the private notary was not allowed to carry out by the legislator. By returning to the explanation of missions the Jordanian legislator has entrusted the licensed notary with, we find that they are concentrated on the power of notary in endorsement of documents without having the authority to execute them, and what a difference between the two concepts: endorsement and execution, each of them has its respective concept and, each of them has its own effect completely different from the other: Thus, endorsement of document is writing its data on its parties' responsibility and without checking on its truthness, namely, the notary will not be able to verify their occurrence in fact, he just transcribe to the instrument what the parties thereto would narrate.

While, when the notary executes the instrument he just writes the events that occurred under his knowledge such as the date of document, place of registration, names of people concerned, their eligibility and signatures, or verified their occurrence in fact by the parties like being concluded in his presence, such as the payment of price or, consensual upholding of the act before him^{xxvii}. The difference is large between the effect of executing the instrument and between the effect of endorsing it, as the authority or probative value of the data executed would differ from that of the data endorsed, so the first has official documentation authority that wouldn't accept demolition but by proving its falsification as being associated with safety presumption, on the other hand, the second doesn't have but only the standard documentation authority (conventional) the reverse of which can be proved by all versus the counter evidence, and thus its official authority is limited to signature and date.^{xxviii}

And, that is an assertion that the legislator wanted not to impart the attribute of public employee to the licensed notary, nor to grant his job the attribute of formalism, but keep him in the circuit of standard documentation wherein the stakeholder can plead its authority by proving the opposite to that contained therein without being obliged to follow the means of forgery pleading.

That is understandable legal reservation, as the missions of notary on the whole are at a level of considerable risk, and placing them at the hands of a person other than the notary public involves a lot of precautions, and whereas the licensed notary's experience is at its inception thus it becomes of judiciousness to take one's time till to granting him all powers of the notary public's, and be satisfied with giving him some of these missions and that such some to be confined to those secondary missions. Still, the legislator is immersed in his such reservation, and disallows the notary to endorse but only on certain documents, so he doesn't have the permission to endorse all agreements but his authority is confined to those that don't entail property transfer; he may, for instance, endorse the agency that involves works of filing and managing, and he can't endorse the agency that involves acts of disposition, and he may endorse all agreements unless they are pertaining to acts of property transfer or even their mortgaging, so the domain of his job will remain confined to such agreements that involve works of filing and managing only. Agreements that involve works of managing and filing are those directed to utilizing, managing and investing^{xxxix} an object, including for instance: "and leasing is considered of management agreements in particular if the term of which is not exceeding (3) years, also works of filing, maintenance, fulfillment of rights, payment of debts, selling of agricultural yields, selling of perishable movables and minor sustenance".^{xxx}

As for the contracts of disposition, they are those which pertain to object property with the respective effect of determining a right in specie to the object for others, including: sale, trade-off, mortgage, loan, and conciliation^{xxxi}, which are not under the jurisdiction of the licensed notary. Further to that, notary jurisdiction doesn't include the execution of the agency of carrying out acts of disposition, but his job is limited to those relating to works of filing and managing.^{xxxii} However, the Jordanian legislator grant the notary the authority to give the document a fixed date, so he may sign the papers and documents presented to establish their date,^{xxxiii} and the insider on Jordanian evidences law knows the importance of that, as signing a standard instrument by a competent employee will fix the date of this instrument and evidence against others who may be not a party thereto^{xxxiv}. Yet, the missions granted to the notary, be a public or licensed, between the legal and technical (managerial), and within the legal acts: the execution and endorsement of agreements, notification and etc., while the technical acts are like archiving, and delivery of completed transactions to the notary public and, providing the ministry with monthly statement containing the transactions completed, fees collected and, statements of deposits to the treasury account."^{xxxv}

Subject two

Civil liability of licensed notary

Regulation of notary license was issued by virtue of the provision of article (4) of the notary law which states in its first clause that: "the minister of justice may authorize any of the former judges or senior lawyer to carry out all tasks authorized to the notary or parte thereof", and accordingly the source of jurisdiction in granting the writing in justice is the legislation: lawfully (the notary law), and regulatory (the regulation of notary license). And as such, it becomes evident that the law is what established this created concept and undertook the composition of its provisions, yet, it has not undertaken adapting the civil responsibility of the licensed notary, specifically, no support of relation was identified between the notary and between the clients. Pursuant to illustrating the notary concept and his missions, then stating the responsibility must be highlighted on the part of licensed notary if he erred in exercising his missions or overrode his powers, and setting out this responsibility entails showing the base on which it is founded, and identifying the nature of his obligations towards his clients, and we commit to fathoming all of that in the civil section only leaving the penal section to people of competence therein. In this study lines, we address the civil liability of the licensed notary and its legal basis and the nature of commitment on his part:

First requirement

The legal basis of licensed notary's civil liability

The question of identifying the legal basis on which the notary liability is built in general, has stirred considerable scholarly controversy, so jurists divided between contractual liability or liability for harmful act and, in light of not stating the responsibly of licensed notary in the frame of notary law and licensed notary regulation, it's proper for us to tackle such views to adopt the most suitable one for our study scope, and then to return with it to the general basics of responsibility contained in the Jordanian civil law to determine a sound legal foundation for the licensed notary career, and we present hereby these trends as follows:

Section one

The groundwork of notary liability is contract

Proponents of prime trends which we present are of the opinion that the basis of notary civil liability is the contract established between him and between his client, and as such they perceive that the relation that binds the licensed notary with his clients is a contractual relation, and accordingly, any violation committed by any party to this contract will set up contractual responsibility^{xxxvi} in his trust. Moreover, advocates of this opinion rest their argument on that the documenter (notary) is a person who practices a career as the case for he physicians, engineers and other practitioners, and thus the errors committed by him while practicing his work are professional errors you wouldn't find its basis but only in the contract^{xxxvii}.

And, though the advocates of this trend agree on that the notary responsibility is not but a contractual liability, nevertheless they had not agreed on identifying the nature of this contract, so some are of the opinion that the contract is an agency, whilst others say that it's a contract act, and a third party is of the opinion to consider it as a public service contract provided from a public facility, thus it's clear that this latter trend is not valid for putting forward concerning the licensed notary, as it's a trend addressing the nature of notary public job not the private's, and thus investigation into identifying the nature of relation is limited between the licensed notary and between his clients on the assumption whether it was an agency or a contract relation.

First: the licensed notarial writing (private) is an agency:

Jordanian legislator defines the agency as: "a contract under which the authorizer institutes another person instead of himself in a known legal act",^{xxxviii} and, some jurists find their lost object in this contract to cast their judgment on the relation between the notary and between his clients, and their argument in that that the subject matter of agency contract is to carry out legal acts, and this is the state of works practiced by the notary whether he was public or private^{xxxix}, thus the works of writing in justice –for the most of its part - are mental acts and legal acts and not material in such a way that only the agency is possible to conceive therewith as its base. This idea originated in the French judiciary rules which saw in the work of registration what may necessitate promoting it above the manual works in such a manner that it will be inconceivable for the documenter's career to be a contracting, but rather an agency only for promoting and sanctifying the importance of such career^{xl}.

But this idea had settled down in the Roman code to the extent that the client was not bound to pay a fee in return for what the notary or documenter had to provide of services, hence whoever practice mental professions had to rise in his knowledge and mind above the meanness of pays.^{xli} In assessing this opinion, we would say: that agency is a contract under which the agent practice legal, immaterial act on behalf of his authorizer^{xlii}, yet, the provisions of notary license regulation don't limit the act of licensed notary to legal works only, but he has to practice along with them technical, regulatory, material tasks, so he, beside his jurisdiction in endorsing the instruments presented to him, is bound to file the transactions he completed and transmit them to the notary public and, to provide the ministry with a monthly statement including all executed transactions, fees collected and deposits bills to treasury account^{xliii}.

This is in addition to, that the agent is drawing his power from the contract he accepted with the principal, and this doesn't match up with the power source of the licensed notary, hence this latter draws his powers from the license he applied for from the ministry of justice in the manner already shown in other place hereof. Therefore, the notary is nit free in accepting or refusing to endorse the papers presented to him by concerned people as long as such papers had met the legal stipulations of endorsement, so he is authorized by the public authority to such missions and shall there by carry the burden of performing them. And, if the agency would be carried out with consideration or without consideration^{xliv} then the works of licensed notary is always payable, and the legislator has determined the fees payable in return for the services provided by the notary^{xlv}. And thus, it becomes easy to undermine the agency as a basis for the private notary responsibility, which would entail searching for another basis valid to build upon him such a responsibility, and perhaps we may find in the contract our sought after object.

Second: the licensed notarial writing (private) is a contract:

Jordanian civil law defines contract agreement as: "the act under which one party thereto undertakes to produce something or perform a work in return for a consideration to which the other party shall commit"^{xlvi}.

And, the accord on contract agreement settles on the contractor the obligation to implement what has been agreed upon, and in the way of such implementation he may practice his career works without being submitted to employer's supervision, control or management, and perhaps this is one aspect of resemblance between the contract and between the work of licensed notary; so this, the latter will practice also his career works without being submitted to the client's control, oversight or directions, thus the principles and procedures of profession per se is what dictates on him how to practice his job, and if there were any control and supervision then it will certainly not be on the part of client, but rather from another entity in Jordan, the ministry of justice. In addition to, that the contract is an offsetting agreement, so the employer is bound to pay a consideration to the contractor in return for the implementation of work, and such is the state of client with the private notary, hence he is bound to pay him for the services he provided to him.

Yet, the issue between the contract and between notarial writing is that the theme of the first is material works only, thus the contractor doesn't carry out legal acts, while the theme of the second is divided between material works and the other legal, yet this, the latter is the main hub and core for the licensed notary works, and the material works he undertakes are not but consequence to them, and this difference will ensure pulling down the contract as basis of the nature of relation between the licensed notary and between his clients. And, in specifying the liabilities shouldered by the private notary we should indicate to that his liabilities are divided in their nature between liabilities in exercising due diligence, and others require from him achieving a result, and here to follow the explanation of that:

First: notary liability is that of exercising a diligence

Debtor's liability may stand at exercising the diligence required to achieve the desired result without having the same access to it, so he exercised the ordinary man's diligence in the way to realize the result then he will have fulfilled his liabilities even if the result hadn't actually realized, and in that, article (358/1) of the Jordanian civil law stipulates: "if the debtor was required to maintain the thing or manage it or be cautious in implementing his liability then he has fulfilled the liability if he exerted in its implementation the diligence exerted by an ordinary person even if the intended purpose was not fulfilled, and this, unless law or agreement has not otherwise provided for". In the framework of notary works, there are some liabilities in which his commitment will be in exercising a diligence, for example, what contained in the general rules in the notary act in relation to his liability to verify the identity of stakeholders in the transaction, so the notary must verify outwardly according to documents without being responsible for forgery therein or impersonation by some people, so the notary shall examine how serious they are and, the forgery expert shall examine its soundness, also he shall exercise his care in eliciting the rights and obligations of each party to the contract and, the means the law requires to grants to ensuring their enforceability of volition, and this what is called guidance duty.^{xlvii}

Second: notary liability is an obligation to achieve a result

Contrary to its precedent the debtor who is obliged to achieve a result would have not satisfied his obligations even if he exercised the ordinary person's diligence as long as he hadn't fulfilled the desired result,^{xlviii} and if the base in obligations is that obligations to exercising a diligence then the law or agreement may decide their being emphasized into obligations to reach a result, which is what utilized of from the provision of article (358/1) mentioned above. And, among the notary's liabilities in which he must arrive at a result: compliance with fees collection for the transaction and abidance to keeping up and archiving the transactions and providing the ministry therewith, not to mention the general obligations in which both the private and public notaries share, like verification of the stakeholders identity, non-divulgence of a matter confidential to someone to the other, this what is called (trade secret)^{xlix}, abstention to endorse or check off papers contradicting the constitution, public order and decencies,^l and abstention to endorse or check off any contract or document demanded from him unless that was in violation of laws and regulations, and the abstention- to- endorse or check-off that is tarnished with personal interest to him or to any of his ascendants or descendants or relatives up to the 4th degree.^{li}

Section two

Foundation of the notary's liability is the harmful act

After the arguments of those resting on the contract as the base of the notary's liability had failed some of jurisdictions say that this foundation is just the harmful act, and thus the notary liability for his fault just a liability for the harmful act as named by the Jordanian law.

Advocates of this trend establish their main views on the weakness of contractual base of the notary liability, they allege that mental and intellectual acts – entitled as registration works - must be the subject of contracting, and that no force in paying the service fee, and such works must be on equal footing with manual works, and the roots of such trend go back to Roman law and French jurisprudence afterwards, which had distinguished between mental and manual works, thus they bestowed the first higher value and not importance than the second^{liii}. Furthermore, the notary conducts his activities to run a public facility based on orders issued from those in charge of such facility,^{liiii} it's apparent the this last saying only applies to the notary public and cannot be imparted on the licensed notary, as the latter is not a public official entrusted to run a public facility, but a person whom the law charged with some of the notary public tasks.

Advocates of non-contractual trend of the notary responsibility add that the idea of contract is far from the relation between the client and the notary; as contract elements are not there in this relation, so they see that satisfaction in the contractual conception as an element thereof is not present in the relation in question, but rather the idea of mutual obligations in contracts are not present therein as well, thus the client is not bound to pay the notary fee based on the idea saying that the services rendered by the notary is just for honor not contractual obligation.

What comes near to this is what the Jordanian cassation court opts for when it decides that: 1. Among the duties of the notary is to verify the identity of the two parties and to state clearly the name, nickname and domicile of each stakeholder in documents and papers he executes or endorse, witnesses and references according to the provisions of article 12 of the notary law # 11 for 1952. Failure of the notary to verify and his default to perform his job's tasks, which prompted him to execute car mortgage for the interest of purchaser (claimant) who was cheated and payment of the claimed amount to the defendants, first and second, who participated in forging the family booklet, in preparation to convey the car title to him, and being taken aback afterwards that to whomever the car was mortgaged is not its owner, and subsequently, he lost his warranty and he incurred harm. 2. Article 288 of the civil law # 43 for 1976, and given the provisions of article 256 of the same law, permitted the court, upon the request of the party affected, if it found a justification to force the payment of warranty by who's real power on the control and direction of the damage actor and was not free in his choice if the harmful act was committed by the dependent in case he is performing his job or because of it, then what is consequent on that that the governmental administration with which the notary is affiliated shall be accountable, with guarantee, for such official error and this what judiciary judgment has settled for in this respect (refer to civil cassation # 680/90 date 24/6/1993 & 843/91 date 10/8/1991).^{liv}

Our view on the legal foundation of the private notary liability:

The question of pinpointing the legal foundation for any civil liability is still of priority, as the consequent impact on the contractual liability is decidedly different from that in liability for the harmful act: and from that different scope of compensation and kinds of damage covered by warranty, eligibility, and freedom/restriction of evidencing, and the necessity of notification or non, and the extent of authorizing agreement on discharge of liability or no, and the duration of time passage barring to hear the lawsuit (prescription). In front of this significance it becomes necessary to determine the base of private attorney liability as being a created system where its impending application may bring about so many legal issues that cannot be settled but by the unveiling of such base. And, by reviewing what has been said in the determination of this legal base jurisprudence controversy became apparent between two opinions: the first referred it to contractual liability, whereas the second tended towards the liability for harmful act, and by evaluating these two opinions we find it's not possible to deny the contractual relationship between the notary and client, it's make-up is satisfaction, and eligibility should be available to its parties, besides, such a relation places on the shoulder of its parties mutual obligations, which makes it closer to the binding contract and further away from the general obligation of no harm to the other.

And, if we tend to impart the contractual quality on the relation that brings together the private notary with his client, yet the restitution of it to any of the designated contracts, such as proxy or contractor or work, is not precise, as such a relation wouldn't call forth the elements of any of such contracts as being an undesignated contract which has its special rules distinguishing it from other familiar contracts. Rather, the contractual nature of the relation between the private notary and between the client is not totally complete, where its completeness is tarnished by the legislator's intervention in phrasing the liabilities of this relation parties, not to mention that the notary is not free in determining his fee not in rejecting the completion of legal procedure; thus the fees of the private notary is determined in tables showing the fees due the certified notary will receive for each

notarial writing on the one hand,^{lv} also the certified notary cannot refuse conducting endorsement and check-out processes entitled to him if he were asked to do so otherwise he will face a disciplinary liability,^{lvi} which reveals the private notary as if he was a public official not the owner of a private business.^{lvii} It is clear that the Jordanian legislator wish not for the notary to acquire the attribute of public official in spite of what has been presented of proofs bringing it closer of this description, as the legislator is trying so often to move him away of this description:

for example, he doesn't ban the practicing of other businesses along with his work, although it must be pointed out here to that comparative laws dispel this combination; for instance what contained in article 10 of the notary law in Dubai Emirate which stipulated that the private notary shall be devoted for practicing his works, and also what contained in article 4 of the Algerian registration profession regulation law which considered that registration profession is incompatible with any sort of trade, whether directly or indirectly practiced by the notary, and that corroborates also that dispute between the relationship's parties (private notary and client) is personal not public one, so dispute of the private notary is done directly and not represented by the civil advocate general as in the case of notary public. In summary, the nature of notary places him at a mid-point between the contractor position and the public official, and he is completely by any means one of them, he is neither free in selecting with whom to contract, not has the power to disapprove the contracting, nor he is able to override the fee set to him, and in return he is not a public official, and acquires nothing of his privileges nor the immunity conferred upon him...

And, between this and that, the legal position of the private notary is a special position drawn by the legislator giving him a special and distinct quality repelling to be rendered into one character, thus the makeup of this nature is a composite between the contract and law.

Conclusion

In keeping pace with the accelerating legislation development, the Jordanian legislator submitted to the increased demand on official registration, so he acknowledged the importance of finding a substitute to the public notary to alleviate some of his burdens, thus was the private notary.

This study reached the following findings:

1. The concept of private notary is different from the concept of public notary, as both notaries depart in the boundaries of obligations entrusted with any of them, and in the nature of the relationship that gathers any one of them with his client.
2. The legislator was vigilant when creating the private notary, so he was not entrusted with the tasks of transactions registrations that involve conveyance, and his powers were limited to non-conveyance transactions.
3. The legislator was rigorous in granting licenses in notarial writing, and mandated for the applicant to have a number of requirements topped by ensured competency, neutrality and integrity.
4. Legal position of the private notary is composite between law provisions which draw his job framework and between the provisions of contract which brings him together with his client.

However, the recommendations seen by the study is needed for the experience effectiveness of the private notary in:

1. Legislator should explicitly ban the private notary from engaging in businesses in addition to notarial writing, to ensure his parting with the impact of personal interest that might impair his integrity.
2. Legislator should entrust non-conveying transactions registration to the private notary and remove it from the field of public notary unless it was connected with another conveying transaction.

Legislator should determine the nature of reliability arising from violation, by the private notary, of his obligations towards his client, the limitations of such liability; otherwise he should leave that for the domain of independent opinion.

ⁱPublication in official gazette issue #(1101), p. 110, date 1/3/1952

ⁱⁱThis regulation was issued under clause (4) of article (3) of notary public law # (11) for 1952, and published in the official gazette # 5335, p. 1626, date 1/4/2015

ⁱⁱⁱThe term of notary was mentioned in the law of organizing the Algerian notary career # 06-02 & the law organizing the Moroccan registration practice # 09-32, whereas, the Lebanese legislator used the term "notary" in regulation # 337 "regulation of notary and notarial writing fees", as for the Egyptian legislator, it was termed as "the registration officer", law # 86 for 1947

^{iv}Noble Quran, Al-Baqarah Sura, verse 281

^vCited with: Saed Bu Nuwwar, legal and Sharia frame of notarization, Al-Manahij review, p.87

^{vi}Abdelmajid Mohammad Abdulqader, the significance of notarization and the impacts consequent on it in court disputes, Judiciary review, issue 2, winter 2012, p. 81

^{vii}Second article of the notary law, Dubai Emirate # 4 for 2013

^{viii}Syrian law of notary, # 54 for 1957

^{ix}Second article of the Jordanian notary law

^xThird article of the Algerian law for regulating the notary practice- already referred to-

^{xi}Lebanese notary regulation and fees of notarial writing- already noted -

^{xii}Third article of the Syrian notary law –already noted -

^{xiii}Second article of the notary law in Dubai Emirate –already noted -

^{xiv}Later on, we will present the works that the licensed notary can practice and those that the legislator restricted to the notary public.

^{xv}Article five of the Jordanian notary license regulation

^{xvi}Article eight of the notary law in Dubai Emirate

^{xvii}Article 3/a/3 of the Jordanian notary license regulation

^{xviii}Article two of this law

^{xix}Article nine of this law

^{xx}Article 599 of the Jordanian civil code

^{xxi}Article 10/3 of the notary law in Dubai Emirate

^{xxii}Article third/1,2,4 of the Jordanian regulation of notary license

^{xxiii}Article nine of the Jordanian regulation of notary license

^{xxiv}13/b of the Jordanian notary license regulation

^{xxv}Article (8) of the Jordanian notary license regulation

^{xxvi}Vide details in the purpose of modality in agreements with: Mohammad Ali Abdo, role of mode in agreements, comparative study, Zain law publications

^{xxvii}In explaining the concept of executing the official instrument and its probative authority difference from endorsing the instrument, vide: Dr. Anis

Mansour Al-Mansour, explaining the provisions of Jordanian evidences law, Dar Ethra' for publication and distribution, 1st edition, 2011, pp.84-86

^{xxviii}This is what determined by article (6,7) of the Jordanian evidences law # (30) for 1952, published in official gazette # 1108, date 17/5/1952

^{xxix}Dr. Yasin Mohammad Al-Jbouri, manual in explaining the Jordanian civil law, volume one, first edition, Dar Al Thaqafa for publication and distribution – Amman, Jordan, 2001, p. 159

^{xxx}Article 125 of the Jordanian civil law

^{xxxi}Dr. Yasin Al-Jbouri, prior reference, p. 160

^{xxxii}Article (8/b) of the Jordanian notary license regulation

^{xxxiii}Article (8/g) of the Jordanian notary license regulation

^{xxxiv}Article (12/c/2) of the Jordanian evidences law

^{xxxv}Article (11) of the Jordanian notary license regulation

^{xxxvi}Vide detailing of that: Dr. TalbaKhattab, civil responsibility of lawyer, library of Abdullah Wahba, 2nd edition, 1986, p. 22-23; and Dr. Abdelbaqi

Mahmoud Sawadi, lawyer's civil liability for his professional errors, Dar Al -Thaqafa for publication and distribution, Amman-Jordan, 2010, p. 42

^{xxxvii}Dr. Abdelbaqi Mahmoud Sawadi, earlier reference, p. 42

^{xxxviii}Article 833 of the Jordanian civil law

^{xxxix}Dr. Abdelbaqi Mahmoud Sawadi, earlier reference, p. 45

^{xl}Preceding reference

^{xli}Previous reference

^{xlii}Adnan Al-Sarhan, civil law explanation of the agreements designated (contract, agency, warrant), 1st edition, Dar Al Thaqafa for publication and distribution, Amman, 2009, p.129

^{xliiii}Article (11) of the Jordanian of notary license regulation

^{xliiv}Article 841 of the Jordanian civil law

^{xlv}Vide the details of that: instructions of regulating the work of licensed notary # (1) for 2015, published in the official gazette # 5356, p.7651, date 1/9/2015

^{xlvi}Article 780 of the Jordanian civil law

^{xlvii}Edward Eid, encyclopedia of procedure law, evidence and enforcement- judicial regulation. Law practicing system, notarial writing, first volume, 2nd part, edition 2, without publisher, Beirut, p. 519

^{xlviii}Adnan Al-Sarhan, preceding reference, p. 302

^{xlix}Article 9 of the Jordanian notary law

^lArticle 7/1 of the Jordanian notary law

^{li}Article 8 of the Jordanian notary law

^{lii}See into the details of that with: Dr. Mohammad LabibShanab, explanations of contracting accord rules

^{liiii}Dr. Mohammad Muhyiddin Ibrahim Salim, notary self-liability, without publisher, 2003, p. 34

^{liiv}Ruling of the Jordanian cassation court in its civil capacity # 1098/2002 (quintuple tribunal) date 6/8/2002, publications of Adala center

^{liv}Article 12 of the regulation states: "notary shall receive fees according to fees list set by the minister".

^{lvi}Such disciplinary sanctions range between, as stated by article 13 of the certified notary regulation, between caveat to removal from the registry of certified notaries up to monetization of the guarantee or any party thereof.

^{lvii}Ashraf Jihad Al-Ahmad, civil liability of lawyer for professional mistake, master thesis, college of law, Middle EastUniversity, 2012, p. 52.