



RESEARCH ARTICLE

## The Legal Status Of The Auditor Of Financial Companies In The Jordanian Legislation - Comparative Theoretical Study

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ARTICLE INFO	ABSTRACT
<p>Received: Nov 16, 2024 Accepted: Jan 23, 2025</p> <p><b>Keywords</b></p> <p>Financial companies Auditor's responsibility Shareholders Jordanian legislator</p> <p><b>*Corresponding Author:</b> a.alsharu@inu.edu.jo</p>	<p>Commercial legislation in Jordan protects the rights of company and all relevant stakeholders including the company shareholders. It also preserves the legal functioning of financial company auditors by regulating their practical, financial, administrative and accounting oversight of financial company auditors. Utilizing the descriptive and comparative legal approach, this study identified the responsibility and work nature of auditor and the scope of this liability for damages incurred to the company and all the relevant stakeholders, based on the Jordanian Companies Law 1997, to fill the legislative gap in Jordan. French Companies Law and Saudi Companies Law were used as comparison. Results showed that compared to other laws, the Jordanian law perceived auditor in companies as shareholders' agent, and this has resulted in oversight violation over the actions of the Board of Directors. There need to be specific rules and laws that determine the responsibility of auditor towards third-party groups, define the obligation of auditor for his errors, and tighten auditor's responsibility based on the standard of a prudent professional. These rules and laws should also prohibit auditors that have connection with any shareholder or partner of the company, from assuming work.</p>

### INTRODUCTION

Auditors govern the management of administrators of the company's activities, particularly in the preparation of the financial statements. Company activity is controlled, but the regulations on the control differ based on the type of company. For instance, activity control in partnerships is executed by all partners, while activity control in capital companies is executed by a specialist, like auditors or financial auditors. Finance companies with dual management system are bound by legal auditing obligations and are thus required to appoint financial auditors. Additionally, the shareholders are the ones who will decide either to appoint auditors or financial auditors, and such decision is usually made during general meeting.<sup>1</sup>

In Jordan, as stipulated by Jordan company law 1997, the control activity of the company's management may be executed by the associates or by specialized bodies such as auditors or financial auditors.

In Jordan, auditors may have connection with the company. However, accounting expert censors should be an independent third party or should execute their tasks in associative forms. In addition, censors cannot be elected. In this regard, if relatives or relatives-in-law up to the fourth degree or the

<sup>1</sup> Nemeş, V. "Drept comercial. Ediția a 3-a revizuită și adăugită." (2018).

spouses of administrators have been elected, for the duration of their office term, those receiving a salary or a remuneration in any form, from the directors or the company whose employers are in contractual relations or are in competition with it, for other positions than censor, those prohibited from being part of board of directors, respectively of the supervisory board and the management, and those whose exercise duration of of the attributions conferred by this quality, possess control attributions in the Ministry of Public Finance or other public institutions.<sup>2</sup>

The company and the auditors have both legal and conventional form of relationship. Auditors receive fixed remuneration for performing their designated tasks, and the amount of the remuneration and the tasks to be executed by auditors are determined by the constitutive act or by the general assembly that appoints these auditors.<sup>3</sup>

An auditor appointed in financial companies is expected to perform his duties to the fullest extent. Notably, an auditor has relationship with both the company and the shareholders, and the relationship is perceived as flexible. Meanwhile, oversights entail professional duties and laws which will dictate the nature and scope of the obligations and work of the auditor.

### **Problem research**

The present study explored the auditor' position in a financial company based on the capacity, obligation and accountability of the auditor. Hence, the present study attempted to answer the following questions:

- 1- What is the relationship status between the auditor and the financial company? Is it a contractual or legal relationship?
- 2- What is the responsibility of the auditor towards the company, the shareholders and the third party?
- 3- What are the obligations imposed on the auditor towards the company, the shareholders, and others?

### **Objectives of the study**

The present study had the following objectives to be achieved:

- 1- To explain the status of auditor in a financial company
- 2- To identify the auditor's responsibility
- 3- To determine the auditor's scope of responsibility
- 4- To identify the relationship between the auditor, the company, the shareholders and the stakeholders

### **RESEARCH METHODOLOGY**

A doctrinal legal approach underpinned this study, and through the use of theoretical approach, this study determined the nature of auditor's work. Furthermore, using the descriptive approach, some relevant laws and references from books and magazines were highlighted. Consequently, results and recommendations were generated using the comparative and analytical approach.

In essence, the present study attempted to determine the legal position of auditor within the context of Jordanian company law. Guided by the study questions and objectives, the status, obligations and accountability of an auditor, were determined in this study.

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<sup>2</sup> Piperea, Gh. "Drept comercial român. Teoria generală, întreprinderea și insolvența." (2020).

<sup>3</sup> Ioniță, George-Bogdan. "Legal regime of auditors and financial auditors in the matter of companies." In *Proceedings of the International Conference on Business Excellence*, vol. 15, no. 1, pp. 936-944. 2021.

## 2. Legal status of the auditor

In any company, the general assembly is the one that monitors the management of the company and the integrity of the company with respect to its accounts. The general assembly is usually held once a year and it is common knowledge that many shareholders may not attend it owing to the disinterest of many of these shareholders towards the company's affairs. In fact, shareholders may only show interest if they were directly affected (in profit sharing, for instance). Also, most shareholders had no knowledge on how to monitor Board of Directors' work or audit the accounts produced by the Board, and present them to the General Assembly for approval and the decision-making proposed by the said Board. As such, the general assembly is required by law to appoint an auditor to monitor the financial management the company and assures that the company consistently abides by the legal texts and regulations, and also to ascertain how far the company functions are in line with its objectives and articles of association.<sup>4</sup> The position of auditor in a financial company is important in the Jordanian law, and so, financial company is obliged to appoint an auditor.

Accordingly, this section discusses the nature of the work of an auditor. In particular, this section discusses whether the auditor is perceived as an employee being employed based on an employment contract, or whether the auditor is perceived as an agent for shareholders, or, whether the auditor is perceived to be an expert. Relevant corporate law and legislation are also included in the discussion.

### 2.1 Worker and auditor theory

The Jordanian Companies Act 1997 specifically in article 192, provides the stipulations regarding the auditor's work within finance companies in the audit of the company's accounts. As provided by the law, auditor has contractual relationship with the company but is independent from the company's board of directors. An auditor is perceived as an employee who is paid certain amount of salary from the company. Hence, when an elected auditor is approved by the Company General Authority, the auditor will be approached by the company to sign the contract and to have the accountability of the auditor determined as stipulated in the labor contract.

The notion that states the company's auditor as a company employee as provided in the employment contract, has been criticized. The auditor of the company is not responsible to perform legal actions under the company's name. Rather, the auditor is to perform physical work such as auditing and company account review. Notably, the legal portion of the employment contract is not compatible with the contractual relationship of the auditor to the employment contract. The Jordanian Civil Law provides a definition of an employment contract in section 805 and it states that it entails a contract involving two parties namely the employee and the employer, in which the employee works for the employer under supervision and management, to serve the interest of the employer, in exchange for certain amount of wage.<sup>5</sup> As stated by the Jordanian Court of Cassation, employment contract differs from other contracts because in employment contract, one party, that is the employee becomes a subordinate to the other party, that is the employer, because the employee performs his/her works under the employer's supervision and management.<sup>6</sup>

The company's general assembly will select the company auditor. Failure in doing so or should the auditor of the company dies, section 192 of the Jordanian Companies Law requires that the company's Board of Directors appoint three auditors for the company within fourteen days from the date the position of the company's auditor became vacant. This situation shows that auditor cannot be considered as an employee to the company because the company does not directly choose the auditor, as the auditor is selected by the controller of the company.

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<sup>4</sup> Saeed albalawee, Nasir mohammad. "Legal Regulation of the Work of the Auditor in the Public Shareholding Company (A Comparative Study)." *Turkish Online Journal of Qualitative Inquiry* 12, no. 8 (2021).

<sup>5</sup> Section 805 of Jordanian Civil Law 1976.

<sup>6</sup> See the decision of the Jordanian Court of Cassation No. 1627 of 2004, published in the Jordanian Lawyers' Journal, issue 7, page 1482.

<https://www.lawjo.net/vb/showthread.php?23286->

## 2.2 Agent and auditor theory

Agent and auditor theory suggests that the relationship between the auditor and the company is contractual. In this regard, the auditor is regarded as an agent to the shareholders of the company, because the auditor is the one examining the company's books to ensure regularity and honesty of the budget set out by the company.<sup>7</sup> The auditor therefore is authorized to review the books and documents of the company, and to make sure that the inventory and accounts of the company are honest and on the right path. Relevantly, the traditional company theory describes a company as a contract under which two or more parties show commitment in partaking in a financial project to share the outcomes of profit or loss. Upon the explicit or implicit acceptance of an auditor towards being an auditor of a given company, a contract is formed.<sup>8</sup>

Agency theory is justifiable by the fact that an auditor is appointed based on the appointment contract after him being elected. Meanwhile, the rights and duties of the auditor are bound by the Companies Law and the regulations on the auditing accounts. Notably, the auditor works autonomously, that is, the auditor's work is not influenced by the company or the company's board of directors. Additionally, should the services of the auditor be ended, the process would follow certain procedures stipulated by the Companies Law, and so, the auditor cannot be dismissed by the general assembly of the company as this means disregarding the procedures. All these rules provided in the legal articles on the auditor's work in financial companies are to assure the independence of the auditor from the company.<sup>9</sup>

Clearly, the Jordanian Companies Law 1997 regards the auditor of finance company as an agent of the shareholders, as evidenced by Article 1999 through the tasks assigned to the auditor. Hence, the auditor is to perform only the audit tasks. Members of Board of Directors are the company's shareholders as well, making the auditor also the agent to these board members, in addition to supervising funds management by the board.<sup>10</sup> This situation has led to the issue on how the auditor could achieve independence when the people he is entrusted with are also responsible for monitoring them while they do by appointing him to monitor him as well.

The General Assembly of Shareholders appoints the company auditor. It also determines how much the auditor would be paid. Equally, the auditor would be dismissed by it. After completing his tasks, the company auditor is obliged to produce the results of his report to be submitted to the general assembly of shareholders. In Saudi Arabia, the Saudi Companies Law in section 130 states that one or more auditors would be appointed by the ordinary assembly. The pay and work duration of the auditor are also determined by the general assembly. The auditor may be reappointed by the General Authority. Within the context of France, the French Companies Law in Article 32<sup>11</sup> allows the General Assembly to appoint one or more auditors in examining the commercial books of the company.<sup>i</sup> In

<sup>7</sup> Vidal, Dominique. "Le commissaire aux comptes dans la société anonyme: évolution du contrôle légal, aspects théoriques et pratiques." (*No Title*) (1985).

<sup>8</sup> Garcia-Blandon, Josep, Josep Maria Argilés-Bosch, and Diego Ravenda. "Is there a gender effect on the quality of audit services?." *Journal of Business Research* 96 (2019): 238-249.

<sup>9</sup> Salama Abdel-Sanea, *The Role of Oversight in Corporate Governance*, Al-Nahda Al-Ilmiyya for Publishing and Distribution, first edition, Egypt, (2016). Available in: <https://www.neelwafurat.com/itempage.aspx?id=aeb444467-10446156&search=books> Accessed in September 2023.

<sup>10</sup> Sami, Fawzi. *Commercial companies: general and specific provisions: a comparative study*, 5th edition, House of Culture, Amman - Jordan, 2010. Available in ; <https://koha.birzeit.edu/cgi-bin/koha/opac-detail.pl?biblionumber=173634>

<sup>11</sup> The French Company Law ( 1876) was amended in the year 1937

addition, in Section 34 of the Law, the auditor of the company is required to prepare a report to be presented before the general assembly of the company.<sup>12</sup>

Contractual theory seems to contradict the agency concept. Jordanian civil law provides a definition of the concept of agency as a contract under which the client appoints another individual to be his representative within a familiar allowable act.<sup>13</sup> Somehow, it should be understood that the tasks performed by auditor are not legal actions to represent the shareholders or the company. Instead, the tasks performed by auditor are physical actions like company book examination, company book account review and budget and regularity verification. For performing their specified tasks, the auditor receives remuneration in the form of a wage.

Meanwhile, there are also those perceiving the relationship between auditor and the company as non-contractual, whereby it is considered as part of the parts of the company that his supervises. In other words, there are those perceiving the relationship between the company and the auditor as legal in nature, as stipulated by the law. In this regard, the nature of work and the mission of the auditor in the company follow the rules and provisions of the auditor appointment, and the same can also be said in terms of the pay to be received by the auditor.<sup>14</sup>

### 2.3 Combination theory

Contractual and legal theory were combined, resulting in combination theory, which accepts both contractual relationship and the legal notion of the relationship. Based on combination theory, the company's building blocks encompass both the contractual elements and the legal elements, and both these components overlap.<sup>15</sup>

An auditor of a company is selected through the general assembly involving the shareholders of the company - this is the first step of the process. The next step after the selection is the approval of the auditor, which can either be explicitly or implicitly expressed. The appointment of an auditor encompasses a contract that materializes from the agreement of two wills, and the contract is regarded as a legal act if the law does not allow the shareholders and the corporate controller to alter the terms. In accomplishing his mission, the company auditor employs the imposed rules (by the law).

The auditor-company contract is comparable to that of the state-public employee. Hence, the appointment of the auditor into the job occurs via a contract between him and the company that hires him. Upon the acceptance of the contract, the auditor would be bound by the rules imposed by the law in completing his mission. It should be noted that the law provisions in the contract cannot be amended or violated. However, at any time, the state reserves it right to amend the law pertaining to the employee, and the employee does not have the power to approve or reject such amendment. Hence, the auditor cannot agree with the company to have his job scope amended, that is, to have new tasks added to the contract or to have some tasks in the contract removed. In fact, the auditor is obliged to carry out the tasks assigned to him as stated by the Companies Law, as is, while anything other than what is stipulated in the contract is regarded as void.<sup>16</sup>

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<sup>12</sup> Lele, Priya P., and Mathias M. Siems. "Shareholder protection: A leximetric approach." *Journal of Corporate Law Studies* 7, no. 1 (2007): 17-50.

<sup>13</sup> Section 833 of Jordanian Civil Law 1976.

<sup>14</sup> Ahmed, Abdel Rahman Al-Majali. "The legal concept of the auditor's mission in the company subject to his supervision in accordance with Saudi regulations." *Revue mofakir* 13 (2018). Available in; <https://www.asjp.cerist.dz/en/downArticle/131/11/1/62427> . Accessed on September 2023.

<sup>15</sup> Fadwa Meddeb, the anonymous company and auditor, the National Association of Lawyers, the regional branch of lawyers in Sousse, the judicial (2005-2006). Available in : <https://www.startimes.com/?t=21153814> Accessed on September 2023.

<sup>16</sup> Lee, Tom, and Mary Stone. "Competence and independence: the congenial twins of auditing?." *Journal of Business Finance & Accounting* 22, no. 8 (1995): 1169-1177.

Before practicing the profession, the auditor is required by Jordanian Auditing Profession Law No (32) 1985 to take the legal oath.<sup>17</sup> Additionally, as an expert - auditor of company is perceived as an expert - the auditor of the company uses his experience to credibly to show evidence or support the available evidence. Furthermore, in facilitating the auditor in making assessment on the technical issues, the judge would utilize technical advice, and since it is linked to the legal fact, this is regarded as a direct method of proof.<sup>18</sup>

Jordanian Companies Law, specifically in section 196, highlights the case in which the company auditor recommends not approving the annual accounts during the company's general meeting and returns the annual accounts to the company. Then, Board of Directors will make decision, to either rectify the budget and the profit and loss account, or form an expert committee comprising legal auditors to handle the dispute that has occurred involving Board of Directors of the company and the auditors.

As stipulated by the Jordanian Auditing Profession Law, auditor must carry his duties guided by the foundations of the profession, while making sure not committing anything that would jeopardize the profession. In addition to the requirement to take an oath, auditor needs to have a certificate too, before practicing his profession in the company. Notably, Jordanian Auditing Profession Law 1985 states the possibility of auditor being subject to legal and disciplinary liability and penalties if he violates the regulations and his obligations, particularly concerning his duty of professional care, considering that the auditor is an expert in this matter.

### 3. The auditor's regulatory environment

The Jordanian law classes contractual obligations under obligations to "achieve specific results." It means that a party would only be free from his/her obligation(s) after certain results have been produced, and the auditor has the freedom to decide on how the results should be attained. Notably, the aforementioned obligation is also known as "fitness for intended purposes." Meanwhile, performance that was delayed or defective, or performance that was non-existent, will result in contractual responsibility, even though it did not encompass wrongdoing or cause negligence. Additionally, auditor is obliged to carry out their tasks with reasonable care (duty of care), in which liability occurs only if negligence occurs. In this context, one's performance is measured based on the "ordinary man" standard.

The Jordanian law generally does not imply 'fitness terms for purpose' into contracts for professional services, for instance, the services of auditors. This owes to the fact that a professional usually does not carry unconditional obligation in his effort to generate the desired outcome. An auditor for instance, in executing his allotted tasks, would utilize reasonable care and skill, and to a significant degree, this is in line with the common law stance.<sup>19</sup> In *Saif Ali v. Sydney Mitchell & Co.*,<sup>20</sup> Lord Diplock distinctly stated the following: *"No matter what profession it may be, the common law does not impose on those who practice it any liability for damage resulting from what in the result turn out to be errors of judgment, unless the error was such as no reasonably well informed and competent member of that profession could have made."*

<sup>17</sup> Section 12 of the Jordanian Auditing Profession Law 1985.

<http://site.eastlaws.com/GeneralSearch/Home/ArticlesTDetails?MasterID=1422653>

<sup>18</sup> Khalidi Nour Al-Huda Madani Walid, *Judicial Experience in Civil Matters*, Kasdi Merbah University, PhD thesis, Algeria, (2018).

Available in; <https://www.univdz.com/bibliotheque/1-droit-prive/10160> Accessed September 2023.

<sup>19</sup> Haloush, Haitham A., Hashem Alshurafat, and Ahmad Abed Alla Alhusban. "Auditors' civil liability towards clients under the Jordanian law: legal and auditing perspectives." *Journal of Governance and Regulation*/Volume 10, no. 1 (2021).

<sup>20</sup> See: Schofield, B. "Forensic and Litigation Support Accounting: Accountants' Professional Indemnity Claims the Role of the Expert." *International Insurance Law Review* 5 (1997): Page 73.

This section accordingly elaborates the obligations of the company auditor, focusing on the two types of obligation, namely the primary obligation (original) and the secondary obligation (accessory). The nature of civil liability is highlighted as well.

### 3.1 Obligations of company auditor

Auditors bear certain obligations arising from his practices of professional services, and these obligations, which may vary, are grounded upon the standards of the service that the auditor provides. In performing auditing tasks, auditors in Jordan need to abide by certain laws including the legal accounting profession law, the Jordanian companies law, as well as the international auditing standards. It should be noted that these obligations, which originate from the auditor's cardinal, are complementary to the auditing profession and would limit his authority, and they are to be shouldered whether or not stipulated in the contract. In essence, an auditor is obliged to abide by his profession.<sup>21</sup> An auditor is responsible to comprehensively review all the books, records and documents belonging to the company. The right of access granted by the international auditing standards allows auditors to effectively and efficiently perform their auditing tasks.

As stated in the Jordanian Companies Law, among the duties of an auditor include to review the instructions, papers, documents and commercial books of the company, the decisions made by Board of Directors and the General Assembly, and any data that the auditor needs to acquire - this means that auditor can review the commercial books of the company, any time.<sup>22</sup>

In terms of the obligations of the auditor towards the practice of Fitness for intended purposes and reasonable care, there seems to be a paradox since the claimant clearly has mentioned the complete and unqualified access of defendant to all applicable accounting and financial statements, board of directors and shareholders' meetings, internal auditing memorandums, and all the relevant communications with the Jordanian Central Bank. Notably, the court would base its reasoning on a normal "duty of care" parameters of the aforementioned, rather than relying on the defendant's level of capacity in accessing the claimant's financial records and statements in forming a higher liability threshold. It should be noted that the Jordanian courts are not likely to critically explore the defendant's blameworthiness and its significance in causing the damage.<sup>23</sup> In fact, a restrictive approach has been commonly used by all common law jurisdictions towards claims interfaces with different levels of defendant's level of discovery, disclosure, or lack of non-disclosure of confidential information. Furthermore, the defendant possesses an intricate potential of going in-depth into such information. All of these are innately interconnected with the defendant's sound expertise level.

When one party is an expert in a field (e.g., an auditor) and the other party depends on such expertise to its detriment, then, the former would assume responsibility for losses he/she causes.<sup>24</sup> In Jordanian law, an auditor is viewed as one with superior technical skills to other litigants in a court of law, who have no expertise in auditing, and so, these other litigants need to be protected. Somehow, the expertise level, or more specifically the reference scope of the expert of the auditor is not recognized. As such, under the Jordanian law, the auditor is not entitled for compensation. Such situation is showing a disruption between the contractually assumed skill and the anticipated work

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<sup>21</sup> Almasria, Nashat Ali. "Corporate Governance and the Quality of Audit Process: An Exploratory Analysis Considering Internal Audit, Audit Committee and Board of Directors." *European Journal of Business and Management Research* 7, no. 1 (2022): 78-99.

<sup>22</sup> Weishah, Ihab. The responsibility of the external auditor in public shareholding companies in Jordanian law, PhD dissertation, Amman Arab University, Amman: Jordan, 2013.  
Available in; <https://search.mandumah.com/Record/635623> Accessed in October 2023.

<sup>23</sup> See: Haloush, Haitham A., Hashem Alshurafat, and Ahmad Abed Alla Alhusban. "Auditors' civil liability towards clients under the Jordanian law: legal and auditing perspectives." *Journal of Governance and Regulation*/Volume 10, no. 1 (2021).

<sup>24</sup> Schofield, B. "Forensic and Litigation Support Accounting: Accountants' Professional Indemnity Claims the Role of the Expert." *International Insurance Law Review* 5 (1997): Page- 72-77.

quality. Somehow, this may create serious legal implications, especially in the interpretation of the wording of legal provisions and the subsequent obligations and liabilities thereof.<sup>25</sup>

Clearly, the approval of the auditor of the financial position of the company is regarded as a comprehensive legal certificate that shows some matters. Among the matters regarded as important including the credibility of the actions, documents, annual budget, the financial matters and financial position, and the profit and loss account of the company by the company's board of directors.<sup>26</sup> As the auditor of the company, he or she has to be concerned with the health and safety of the company's accounts, rather than focusing on achieving the result.

The auditor of the company also has to perform some subordinate tasks to protect the shareholders and other parties associated with the company. The subordinate tasks are tasks that are irrelevant to the accounts and financial statements of the company - these tasks mainly relate to the monitoring tasks on the board of directors of the company for any violations.<sup>27</sup> Hence, board of directors of the company should include the auditor of the company in the assembly meeting on annual financial statements adjustments.<sup>28</sup> As stated in Article 132 of the Saudi Companies System, the decision of board of directors will be void even with the endorsement of the company's ordinary assembly if the auditor's report is not considered. It is thus necessary to invite the auditor to the meetings of board of directors.

### 3.2 Auditors' responsibility

The Jordanian Companies law 1997 highlights the responsibility of auditor particularly in articles 201 and 202, where in Article 201, the following is mentioned: *"Auditors shall be liable towards the company which he audits its accounts, its shareholders, and the users of its financial statements for compensating any realized damage or lost profit incurred as a result of errors committed by him/her while carrying out his/her duties, or as a result of his/her failure to accomplish his/her duties that are specified in accordance with the provisions of this law, and the provisions of any other legislation in force, or duties demanded by internationally recognized accounting and auditing standards, or as a result of issuing financial statements that do not conform with reality in a major manner or for approving these statements."*

Meanwhile, Article 202 of the law states the following: *"...any disclosure of any secrets of the company that came to the auditor's knowledge in the course of his/her duty, either to shareholders or non-shareholders, otherwise he shall be dismissed and requested to compensate the damages."* In essence, the article prohibits auditor from revealing any company secrets to both shareholders and non-shareholders, and failure in complying may result in dismissal or requirement of damage compensation.

The special legal provisions on auditors' liability indicated in the Jordanian law are backed by the general rules of compensation in the Jordanian Civil law 1976. In essence, the Jordanian law mentions that a person that commits injurious act shall pay for the damages.<sup>29</sup> Relevantly, the Jordan civil law 1976 particularly in Article 266 mentions the following: *"...that damages shall in all cases be estimated*

<sup>25</sup> Haloush, Haitham A., Hashem Alshurafat, and Ahmad Abed Alla Alhusban. "Auditors' civil liability towards clients under the Jordanian law: legal and auditing perspectives." *Journal of Governance and Regulation/Volume 10*, no. 1 (2021).

<sup>26</sup> See: section 193 of Jordanian company law 1997.

<sup>27</sup> Ahmed, Abdel Rahman Al-Majali. "The legal concept of the auditor's mission in the company subject to his supervision in accordance with Saudi regulations." *Revue mofakir 13* (2018). Available in; <https://www.asjp.cerist.dz/en/downArticle/131/11/1/62427> . Accessed on September 2023.

<sup>28</sup> Malak Awad Ismail Sawalha. "The shareholder's right to monitor the management of the public joint-stock company" is a legal study in light of the application under the Jordanian companies law and the principles of commercial corporate governance. "Al-Zaytoonah University of Jordan Journal for Legal Studies 3, No. 2 (2022). Available on : <https://scholar.google.com/scholar?hl=en&as> Accessed in October 2023.

<sup>29</sup> See, e.g., the Jordanian Court of Cassation, Case No. 6213/2019. See also, the Jordanian Court of Cassation, Case No. 2084/2019.



by the amount of the damage inflicted on the injured person and his/her loss of profit and loss of revenue provided that the same shall be the natural result of the injurious act." It shows here that under the Jordanian law, auditors are subject to contractual liability, not tortuous liability.<sup>30</sup> Meanwhile, the Jordanian civil law 1976 in Article 363 mentions the following: "If the damages shall not be estimated in the contract or the law, the court shall estimate them as those equal to the actual damage at the time it was inflicted."

Notably, Jordanian Company law in Articles 201 and 202 mentions the obligation of auditor to cover any damage or profit loss that results from his errors. Somehow, profit loss is not recognized. As such, based on the Jordanian Contract Law in article 363 of the Jordan Civil law, the loss is not entitled for compensation. The Jordanian legal scholars indicated that the special provisions of the Jordan Company law are to limit the applicability of the general provisions of the Jordan Civil law.<sup>31</sup> Nonetheless, Articles 201 and 202 of the Jordan Company law are in line with Article 363 of the Jordanian Civil law.<sup>32</sup>

Auditors in Jordan may find themselves being bound by varied standards of proof in the judiciary. The auditors may find that their liability would be increased to one of fitness for intended purposes, rather than for reasonable care, particularly for those auditors with full access to their clients' financial records and statements. This owes to the fact that auditors with such level of access are likely to be exempted from the restrictive approach of liability that is commonly adopted by the Jordanian courts. Based on the Jordanian Contract Law, deceit or gross negligence are high threshold to meet, and the likely harm may lead to tortuous liability on the auditor's side, potentially intensifying the degree of damages.<sup>33</sup>

Judges are to make evaluation in a rational and reasonable manner, on the culpability level of each cause and the significance of each factor. Here, the contributory negligence of the plaintiff (if any) may be considered in decreasing the damages. As such, the Jordanian courts may not be the one performing an in-depth scrutiny of the culpability level of each cause and the significance of each factor.<sup>34</sup> In this regard, a Jordanian court would presumably assign more liability to an unqualified auditor with full access to the confidential information of the company if the auditor is aware that the said information is vital for his auditing tasks.<sup>35</sup>

Based on the obtained information on the legal liability of company auditor, this study found five key themes as follows: The auditors' liability, fitness for intended purposes vs. reasonable care obligations; the auditors' reliability, Contract Law and the Tort Law; a case study from the Jordanian courts; Law in motion: Contract Law vs. Tort Law; law into practice: fitness for intended purposes vs. reasonable care obligations.<sup>36</sup>

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<sup>30</sup> The Jordanian Court of Cassation, Case No. 7016/2019. See also, the Jordanian Court of Cassation, Case No. 4953/2019; the Jordanian Court of Cassation, Case No. 475/1999.

<sup>31</sup> Haloush, Haitham A., Hashem Alshurafat, and Ahmad Abed Alla Alhusban. "Auditors' civil liability towards clients under the Jordanian law: legal and auditing perspectives." *Journal of Governance and Regulation*/Volume 10, no. 1 (2021).

<sup>32</sup> Section 1448(2) of the Jordan Civil law. The article reads as follows, "the provisions of special laws shall be complied with when applying the provisions of this Code". See also, the Jordanian Court of Cassation, Case No. 289/1988.

<sup>33</sup> Flores, Cláudio. "New trends in auditor liability." *European Business Organization Law Review (EBOR)* 12, no. 3 (2011): 415-436.

<sup>34</sup> Haloush, Haitham A., Hashem Alshurafat, and Ahmad Abed Alla Alhusban. "Auditors' civil liability towards clients under the Jordanian law: legal and auditing perspectives." *Journal of Governance and Regulation*/Volume 10, no. 1 (2021).

<sup>35</sup> Section 265 of the Jordan Civil law 1976.

<sup>36</sup> Haloush, Haitham A., Hashem Alshurafat, and Ahmad Abed Alla Alhusban. "Auditors' civil liability towards clients under the Jordanian law: legal and auditing perspectives." *Journal of Governance and Regulation*/Volume 10, no. 1 (2021).

#### 4. CONCLUSION

A law-abiding company that seeks to efficiently perform its activities would need control imposed on its management. In this regard, auditors are a special control body with the ability to verify the methods used by administrators in their company activity management, in matters such as in the legality of the company's financial statements preparation.

It is very important to define the legal framework for the profession of auditor particularly in financial companies that the auditor supervises, as this would help to stabilize and preserve the activity of the company. It is equally important to understand the actual role of an auditor in financial companies, and also to ascertain the civil liability of auditor within the context of two main laws in Jordan, namely the Jordanian Companies Law and the Jordanian Civil Law.

Results and recommendations based on the findings are as provided in the following sections.

#### 4.1 RESULTS

Based on the reviewed literature, this study concluded the following:

- The Jordanian company law is rather unstable, and so, it is not able to sufficiently describe a company auditor.
- The legal protection provided by the Jordanian Companies Law seems inadequate, particularly with respect to auditor appointment in financial company. In particular, the Jordanian company law does not require not appointing the auditor if he or she (the auditor) is related to any of the founders of the company or if he or she is a shareholder or a member of the company's board of directors.
- The contract or the law states that the auditor is subject to civil liability if he is negligent in performing his appointed tasks. However, the liability source differs based on the auditor's injurious act and the relationship that binds him, resulting in a varied authority with the power to begin a civil liability lawsuit.
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#### 4.2 Recommendations

Based on the findings, this study brings forth the following recommendations:

- The use of mixed theory comprising doctrinal theory and legal theory would be more effective in identifying the personality and nature of work of auditor.
- The Jordanian Companies Law needs to include a legal text that prohibits companies from hiring an auditor who has relation with any of the company founder or who is also a shareholder or a member of board of directors of the company. If the auditor is already hired, then, he should not resume his duties as auditor of the company.
- There should be a clear definition of the tasks to be performed by auditors in Jordanian Companies Law. Not only that, what constitute as errors in auditing tasks should clarified, and then, based on the standard of a judicious professional individual, these errors should be made into a civil liability.

#### REFERENCES

- Ahmed, Abdel Rahman Al-Majali. "The legal concept of the auditor's mission in the company subject to his supervision in accordance with Saudi regulations." *Revue mofakir* 13 (2018). <https://www.asjp.cerist.dz/en/downArticle/131/11/1/62427>
- Almasria, Nashat Ali. "Corporate Governance and the Quality of Audit Process: An Exploratory Analysis Considering Internal Audit, Audit Committee and Board of Directors." *European Journal of Business and Management Research* 7, no. 1 (2022): 78-99

- Fadwa Meddeb, the anonymous company and auditor, the National Association of Lawyers, the regional branch of lawyers in Sousse, the judicial (2005-2006). : <https://www.startimes.com/?t=21153814>
- Flores, Cláudio. "New trends in auditor liability." *European Business Organization Law Review (EBOR)* 12, no. 3 (2011): 415-436.
- Garcia-Blandon, Josep, Josep Maria Argilés-Bosch, and Diego Ravenda. "Is there a gender effect on the quality of audit services?." *Journal of Business Research* 96 (2019): 238-249.
- Haloush, Haitham A., Hashem Alshurafat, and Ahmad Abed Alla Alhusban. "Auditors' civil liability towards clients under the Jordanian law: legal and auditing perspectives." *Journal of Governance and Regulation/Volume* 10, no. 1 (2021).
- Ioniță, George-Bogdan. "Legal regime of auditors and financial auditors in the matter of companies." In *Proceedings of the International Conference on Business Excellence*, vol. 15, no. 1, pp. 936-944. 2021.
- Khalidi Nour Al-Huda Madani Walid, Judicial Experience in Civil Matters, Kasdi Merbah University, PhD thesis, Algeria, (2018). ; <https://www.univdz.com/bibliotheque/1-droit-prive/10160>
- Lee, Tom, and Mary Stone. "Competence and independence: the congenial twins of auditing?." *Journal of Business Finance & Accounting* 22, no. 8 (1995): 1169-1177.
- Lele, Priya P., and Mathias M. Siems. "Shareholder protection: A leximetric approach." *Journal of Corporate Law Studies* 7, no. 1 (2007): 17-50.
- Malak Awad Ismail Sawalha. "The shareholder's right to monitor the management of the public joint-stock company" is a legal study in light of the application under the Jordanian companies law and the principles of commercial corporate governance. "Al-Zaytoonah University of Jordan Journal for Legal Studies 3, No. 2 (2022). <https://scholar.google.com/scholar?hl=en&as>
- Nemeș, V. "Drept comercial. Ediția a 3-a revizuită și adăugită." (2018).
- Piperea, Gh. "Drept comercial român. Teoria generală, întreprinderea și insolvența." (2020).
- Saeed albalawee, Nasir mohammad. "Legal Regulation of the Work of the Auditor in the Public Shareholding Company (A Comparative Study)." *Turkish Online Journal of Qualitative Inquiry* 12, no. 8 (2021).
- Salama Abdel-Sanea, The Role of Oversight in Corporate Governance, Al-Nahda Al-Ilmiyya for Publishing and Distribution, first edition, Egypt,(2016). <https://www.neelwafurat.com/itempage.aspx?id=aeb444467-10446156&search=books>
- Sami, Fawzi. Commercial companies: general and specific provisions: a comparative study, 5th edition, House of Culture, Amman - Jordan, 2010. Available in ; <https://koha.birzeit.edu/cgi-bin/koha/opac-detail.pl?biblionumber=173634>
- Schofield, B. "Forensic and Litigation Support Accounting: Accountants' Professional Indemnity Claims the Role of the Expert." *International Insurance Law Review* 5 (1997): Page 73.
- Vidal, Dominique. "Le commissaire aux comptes dans la société anonyme: évolution du contrôle légal, aspects théoriques et pratiques." (*No Title*) (1985).
- Weishah, Ihab. The responsibility of the external auditor in public shareholding companies in Jordanian law, PhD dissertation, Amman Arab University, Amman: Jordan, 2013. <https://search.mandumah.com/Record/635623> Accessed in October 2023.
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