The crime of goods fraud in the Jordanian penal code

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Abstract The primary focus of this research study is the analysis of Article 433 of the Jordanian Penal Code, which criminalizes goods fraud as a means of providing criminal protection for consumers. A descriptive and analytical methodology is employed in this study, involving the review and analysis of legal texts, judicial precedents, and relevant legal jurisprudence. The distinction between the crime of goods fraud and other similar offenses is elucidated in this study. It is confirmed through the findings of this research that this crime comprises three essential elements: the presumed element as stipulated in the sales contract of goods, the material element rooted in the fraudulent act, and the mental element, often referred to as the "guilty mind," which assumes the form of a general criminal intent. It has also been established that individuals found guilty of this offense face penalties ranging from one month to one year of imprisonment, coupled with a fine ranging from five to fifty dinars, or one of these penalties. This criminal punishment encompasses attempted crimes as well. The study concludes that the scope of criminalization should not be confined solely to fraud within sales contracts, but rather should be expanded to encompass other types of contracts. Furthermore, it is recommended that restitution of the sold goods be mandated, and the return of money to the buyer be ensured.

Keywords: criminal law, consumer protection, Jordanian law, commercial fraud, justice

1. Introduction

Combating commercial fraud has a profound impact on economic life. This crime is not a modern-age crime; it is an old crime that began with the emergence of human transactions and trade. Consumer protection and well-being are the main goals of any economic development strategy. Thus, consumer protection has become the focus of many legislative systems.

Commercial fraud has negative effects on various social, ethical and economic activities that affect not only consumers but also businessmen, traders and industrialists. Consequently, unless such crime is eradicated, the state will face serious negative effects on its national economy and economic reputation.

In light of the insufficient protection accorded to the consumer in the Jordanian Civil Code, it was necessary for the penal legislature to intervene more effectively to increase the confidence of members of society in their commercial dealings. It is true that the Civil Code and the Commercial Code adopted and established consumer protection measures, but this is not enough without the deterrence provided under the Penal Code. Criminalization of goods fraud provides additional protection to the consumer. The Penal Code recompenses attempted crimes as well. The study concludes that the scope of criminalization should not be confined solely to fraud within sales contracts, but rather should be expanded to encompass other types of contracts. Furthermore, it is recommended that restitution of the sold goods be mandated, and the return of money to the buyer be ensured.

2. Distinguishing crime from others

2.1. Distinguishing the crime of fraud in goods from fraud (417 Penal Code)

The crime of fraud in goods differs from deception since the crime of fraud involves an action that falls upon the property itself rather than the particular person (the purchaser). Thus, the needed error occurs not by influencing the state of
mind of a particular person or buyer in its own right but rather by altering, replacing or distorting the nature of the agreed object by showing it in a disguised form. This is done by giving false statements about the item sold or by replacing it with something less valuable than the buyer's choice, i.e., by lying orally. There is no fraud except by deception, which is the seller's intention to make the buyer or let him be ignorant of the true nature of the item sold. Any method that the seller used to sell his goods would not be relevant to prove the existence of fraud; no fraud shall occur if at the time of sale, the buyer shows the true state of the item sold (Amman Court of first instance, 408/2020, 2020).

The crime of deception requires that falsifying be supported by external manifestations that promote it and lead others to believe its validity. In the crime of fraud in goods, it is sufficient to have even one false act, statement or gesture directed toward the contracting buyer. In terms of intent, the perpetrator of the crime of deception aims to seize all or part of the victim's wealth. In the crime of fraud in goods, he aims to make a legitimate profit as a result of the victim's being made to make a mistake in both the nature and the type of the goods (Hafez, 1997).

Despite the difference between the two crimes, there is no objection to a situation of moral plurality between the crime of deception on the one hand and commercial fraud on the other, if a commercial transaction is involved, and the lies of the contracting party are accompanied by acts of deception (Obaid, 1979).

2.2. Distinguishing crime of goods fraud from food fraud (23 Food Code)

Article 23 (b) (1) of the Food Act No. 30 of 2015 provides that: "Anyone who deals in falsified food for the first time within the meaning of article 18 (b) of this Act shall be liable to a fine of no less than 3,000 dinars and no more than 5,000 dinars." With reference to the text of article 18 (b) of the Food Act, it reads: (Food shall be considered falsified in any of the following cases:

1- If it contains a food additive that is allowed and not authorized for use in that product in accordance with the technical rules.
2- If it contains a food additive that is licensed for use in that product but contains a higher limit than prescribed or permitted under the Technical Rules.
3- If any of its components have been removed, altered or reprocessed, unless stated in its statement card and permitted in accordance with the conditions and instructions issued by the Council.
4- A substance has been added that would reduce the nutritional value of food for profit or to conceal a defect, deficiency or increase in its size or weight.
5- If any food that has expired has been circulated with the knowledge thereof, except for substances that have been transported for destruction at the time of expiration, provided that they are isolated or pre-authorized.
6- If it is circulated in conditions which make it unsafe for human consumption or contrary to sanitary and phytosanitary measures.
7- does not conform to the quality requirements of the adopted technical rules.
8- Any food that has been circulated prior to authorization in accordance with the provisions of this Law.
9- Any change in the shelf life of any food, contrary to the original declaration of such food, and without the official approval of such change.
10- Any food that has been distributed contrary to the provisions of article 15 of this Law.
11- If it is dealt with in conditions or circumstances that make it unsafe or harmful to health.

It is possible to sum up the differences between this crime and the crime of goods fraud in the following terms:

a) The circulation of solely falsified food is criminalized by the Jordanian Food Control Law, and food is defined in Article II as follows: "Substances or products, whether manufactured, semi-manufactured, unprocessed, or raw, intended for or expected to be intended for human consumption by mouth, including beverages, gum, and any substance used in the manufacture, processing, or preparation of food, except fodder, implants, and plantings, under the applicable Agriculture law, Tobacco, Tobacco Products, Narcotic Drugs, Psychotropic Substances, Medicines, and Cosmetics, under the Drug and Pharmacy law, and drinking water under the applicable Public Health law."

While the subject of the crime of Article 433 of the Penal Code is goods, the meaning of goods differs from the meaning of food defined in the second article of the food code in that the definition of goods is broader than the definition of food, and food is considered a type of goods.

If a general description and a special description are applied to the act, the special description is taken in accordance with the requirements of Article (57/2) of the Penal Code, and since the offense of fraud in food is a special description of food and fraud in goods is a general description that includes food and nonfood, the food law is applicable when there is fraud in food (Al-Rusaila court of First instance, 671/2022, 2022).

The decisions of the Jordanian judiciary settled on that same view. That can be seen in the decision issued by the Al-Rusaila court of first instance in its appellate capacity, the court canceled all legal proceedings against the defendant for the crime of goods fraud in accordance with article 433 of the penal code. The court provided the following justifications for its decision:
i. The act of the defendant, involving the sale of olive oil mixed with vegetable oil, meets two descriptions: the first is a general description, which is the description of goods fraud provided in Article (433) of the Penal Code, and a special description provided under the food law.

ii. Under Article 33 of the Food Law, the application of any provision in any other legislation that contradicts the provisions of the food law is canceled.

iii. If a general description and a special description apply to the act, the person is prosecuted for the act only once in accordance with articles (57 and 58) of the Penal Code. The appellant was convicted of this act (food fraud) in its special description.

iv. This necessitates the cessation of prosecution for the crime of goods fraud in accordance with article 433 of the Penal Code being the general description of his act" (Al-Russaifa court of first instance, 167/2022, 2022).

b) The crime of trading falsified food differs from the crime of goods fraud. The material element of the first crime requires trading, while the material element of the second crime requires the act of fraud. The second article of the food law defined trading as "stages of food production, manufacturing, preparation, processing, packaging, processing, transportation, possession, storage, distribution, offering for sale, sale, gift or donation". This indicates that legislators have expanded legal protection in the field of food protection since the concept of trading in falsified goods is broader than the concept of goods fraud.

c) The crime of goods fraud requires the existence of a contract of sale and a contracting party (the buyer). The offense of falsified food does not require a contract or a contracting party. It has been ruled that "The crime of fraud in goods is a separate crime from that of trading falsified food and has its own elements. Our Court finds that there is no victim in this case for the crime of goods fraud in accordance with the provisions of article 433 of the Penal Code and that the fact that the defendant was caught in possession of falsified olive oil without anyone having negotiated with him or engaged in the act of purchasing it, the mere offer of oil by the defendant does not constitute the crime of fraud, but rather it constitutes the crime of trading falsified goods (Amman court of first instance, 60/2022, 2022).

2.3. Goods fraud and drug fraud (Drug and Pharmacy Act)

Article 82 of the Drug and Pharmacy Law No. 12 of 2013 prohibits the use of any counterfeit drug. According to article 81 of the same law, a drug is considered counterfeit in any of the following cases:

a. Made in a company other than its original company and without its consent.

b. Does not contain the active substance or contains a substance other than that provided for in the declaration card.

c. Has a counterfeit trade name, trademark or declaration card.

d. If the country of manufacture is written on the domestic or external packaging of the drug, contrary to the country of actual manufacture.

According to Article 89, anyone who circulates any counterfeit medicine in the Kingdom shall be punished by the following:

* With temporary hard labor for a period of no less than three years and not exceeding five years or a fine of no less than 1,000 and not exceeding 5,000 Jordanian Dinars, or with both penalties.

* With a fine of ten times the sale price of counterfeit medicines to the public.

The crime of goods fraud is different from the crime of trading a drug from a counterfeiter, as the first crime falls on the goods, while the subject of the second crime is the drug. Article 2 of the Drug and Pharmacy Act defines a drug as (a) the substances contained in any of the Jordanian pharmacopoeias adopted by the Minister or b) the pharmaceutical form containing any active substance or substances that perform their work in diagnosing, treating, healing or preventing diseases in humans or that are described as having such advantages. Thus, the scope of the drug is narrower than the scope of goods. Although a drug is considered a good, drug falsification would not constitute goods fraud since drug falsification is governed by the legal provisions contained in the drug and pharmacy Act and particularly article 89. applicable to it, namely, the text of article 89 mentioned above.

The crime of goods fraud requires the action of fraud, while the crime of drug falsification requires the act of drug trading. Article 2 of the Drug and Pharmacy Act defines trading as (transport, possession, distribution, offer for sale, gift, donation, purchase, import, entry or use).

3. Elements of Crime

3.1. Assumed element: Object of the crime

The assumed element of the crime of good fraud is a legal or factual status whose existence precedes the commission of the crime. It must be ascertained before examining the availability of other elements of the crime (Moneim, 2003). Dr. Abdel Azim Wazir (1983) defined it as a legal status protected by criminal law rule.
This element is a special element of the crime. It is not needed in all crimes but may be needed for certain crimes (Issa & Khater, 2023). For example, in the crime of murder, the rules of penal law require that the victim be alive at the time of murder and that there must be an appropriation of movable property belonging to another in the crime of theft.

The question that arises in this regard is whether the legislature needed an assumed element in the crime of goods fraud.

From the examination of the text of article 433 of the abovementioned law, it appears that it requires that the fraud be committed against the contracting party. This means that there must be a contract between the offender and the victim and that the act of fraud must be committed against the goods. The existence of a contract and the presence of goods is a presumed element of this crime, but did the law require a specific type of contract? What does the word goods mean?

Regarding the type of contract, part of Egyptian jurisprudence held that the crime may be in sale, as it may be in any other contract, such as an istisna’a contract, a mortgage or a lending (Al-Fiqi, 1998). This crime covers all types of contracts, whether formal, consensual or real contracts, since the legislature needed that the contract subject to fraud be a commutative contract. Thus, it is inconceivable that the crime could be committed on donation contracts, as they are voluntary contracts in which one contracting party provides benefit to the other without remuneration (Hafez, 1997).

This view has been taken by some Jordanian courts and the Amman Court of Appeal, which ruled: “One of the conditions of article 433 of the Penal Code is the existence of a contract regardless of whether it is a sale contract, a contract of works, or any other contract.” (Amman Court of Appeal, 20235/2017, 2017). In another ruling, it stated: (one of the conditions for application of the legal provision is the existence of a contract, whether a contract of works or any other contract) (Amman Court of Appeal, 11119/2014, 2014).

Some court decisions have held, however, that this crime is needed to be connected to a sale contract rather than any other contract. The judgment of the Amman court of Appeal reads as follows: (The crime of goods fraud requires the offender to sell the falsified goods, with his knowledge of falsification. Since the relationship between parties is not a sale relationship, the elements of the crime are not available) (Amman Court of Appeal, 29374/2014, 2014). According to the judgment of the Irbid Court of Appeal: (Article 433 of the Penal Code makes it mandatory (for the existence of elements of a fraud crime in sales) to have a valid contract of sale with legal effects between parties by transferring ownership of the goods) (Irbid Court of Appeal, 60/2014, 2014).

In another judgment, the court ruled: (The text of article 433 of the Penal Code stipulates that criminal liability for the crime of fraud in goods requires the existence of a contracting party or a purchaser of the goods) (Irbid Court of Appeal, 888/2011, 2011).

The Amman court of First Instance, in its Appellate capacity, decided that “the relationship between the complainant and the defendant is governed by a construction contract, whereby the defendant undertakes the construction of a house on the complainant’s territory, and the construction is completed with completion of finishing, such as painting, equipment, and tiling for a fee. However, the crime of fraud in goods requires that a contract for the sale of certain goods be concluded and that the specifications, quantity, qualities and source of those goods be agreed upon. The seller committed to delivering such goods to the purchaser is thus defrauding the purchaser, giving him different or inferior goods. In light of evidence provided by the complainant, which is a contracting agreement concluded between both parties and the witness’s statements, the court finds that the contract signed between parties is a contracting agreement and not the sale contract needed by article 334 of the penal code. In other words, the sale contract was the primary requirement for proving the existence of goods fraud, i.e., we must have a sale contract and this is not available” (Amman court of first instance, 1878/2022, 2022). It also held that “the crime should not be committed if the complainant (left a computer with the defendant for the purpose of paid reparation, but the defendant did not fix or repair it)” (Amman court of first instance, 26764/2014, 2014).

In legal terms, the contract of sale must be valid. If the contract of sale is void, there will be no crime. The void contract is restored to the way it was before contracting. In application of this conclusion, it was ruled that no goods fraud crime will be committed in the case of a car sale outside drivers and vehicles licensing Authority, since the contract is legally void and has no effect (Amman court of Appeal, 8574/2014, 2014, Irbid Court of Appeal, 60/2014, 2014).

The Jordanian Penal Code has not defined the concept of goods, and the law does not usually provide a definition (Miqdad et al., 2022). However, Customs Law No. 20 of 1998 defines goods as “any natural substance or animal, agricultural or industrial product, including electric energy”. In that regard, law shall be read as one integral unit; thus, that definition can be taken into account since no other definition was included in other laws. It is unreasonable to assume that the legislature intended to use the same term in two different meanings simply because they are mentioned in two different places (Al-Saeed 2008). This view is in line with the rules of legal interpretation. Under rules of legal interpretation, it is recognized that technical terms used by the legislature in any part of the law shall apply to the terms mentioned in all other parts where such terms were undefined unless the law states otherwise (Al-Saifi, 1972).

In our interpretation of the term used in criminal legislation and had been previously used by another branch of the law, we should attach that second meaning used in that other branch of law to the first term. However, that second meaning can be disregarded if there were sufficient justifications to depart from it, provided that the departure from that meaning shall not prevent the achievement of the supreme purpose of the legal system, which is the public good (Al-Saifi, 2019).
Some jurisprudence also defines goods according to their commercial meaning as follows: (Every substance purchased with the intent to sell, and therefore every substance falling outside the business environment is removed from the scope of the goods). However, the goods are more likely to be (any movable asset that is tradable originating from agriculture or industry, whether solid, liquid or gas, and may even be an electric current) (Obaid, 1979).

The Amman Court of Appeal, when addressing the concept of goods, defined them as “Any kind of products, whether industrial or natural products, traded in commerce” (Amman court of Appeal, 6543/2007, 2008). In addition, so it came to the conclusion that: “The provision of article 433 of the Penal Code cannot in any case be applied to real estate trading...

Article 58 of the Civil Code defines the property by stating: everything that is settled in a fixed space in which it cannot be moved without damage or change of appearance is real estate..., etc., and that excludes property out of the concept of the goods mentioned in article 433 of the Penal Code”. Goods are not needed to have a particular value, either material or moral, so the crime is committed even if the goods have no value or have a specific value (Sadeq, 1996).

3.2. Material element (Actus Reus)

The material element of this crime is the act of fraud by the fact that such fraud is in the nature, essential qualities, composition or quantity of the goods, or in their type or source, when the identification of the type and source is considered under the agreement or custom to be the primary reason for the sale.

The Judiciary argues that the material element of this crime is the voluntary movement of the offender, namely, selling the victim goods of the agreed type, but in a manner different from agreement or custom, so that the goods differ in nature, character, composition, quantity, type or source, and the consequent or potential harm to the victim as a result of the offender’s delivery of such goods (Amman court of first instance, 408/2020, 2020).

Although the penal code does not define fraud, legal jurisprudence considers that the existence of fraud requires two elements: the first is deception or the intent to deceive or conceal and in some cases secrecy. The second is actual or potential damage caused by means of such deception or concealment (Rabah 2004). It is well established that the act of the offender must cause immediate or potential harm to the victim (Amman court of first instance, 564/2022, 2022; 842/2022, 2022; 19770/2021, 2023).

The Egyptian Court of Cassation asserts that fraud may occur by adding a foreign substance to the goods or by removing some of its beneficial elements. It is also achieved by hiding the goods under a deceptive appearance that would deceive the buyer, and this is achieved by mixing them or with a substance that is different from the nature of the goods or from the same nature but of a lower quality, with the intention of deluding the mixture as flawless or with the intention of concealing the poor quality of the goods and showing them better than they are in reality. The nature of the goods is not needed to change after deletion or addition, but it is sufficient that they have been falsified (AL-fiqi, 1998).

The Jerash Criminal magistrate Court adopted a literal approach when defining the concept of fraud by stating “a change in the substance or quantity of the authorized object by deception, counterfeiting or deceit in violation of the law” (Jerash Magistrate court, criminal division, 1489/2020, 2020).

The Amman Court of First Instance, in its appellate capacity, also held that fraud occurs when the fraudulent activity falls on the item rather than the person. That occurs by altering, replacing or distorting the nature of the agreed item by showing it in a disguised form. This is done by giving false statements about the sold item or by replacing it with something less valuable than the buyer’s choice. That is done by misstating in kind rather by verbal misstatement. Regardless of the methods used by the seller to dispose of his goods, no fraud crime shall be committed if at the time of sale, the buyer shows the true state in which the item was sold (Amman court of first instance, 408/2020, 2020).

According to the text, fraud must occur in the nature or essential qualities of the goods, their composition, the quantity of beneficial elements contained therein, their type, or their origin when the type and source designation is considered under the agreement or custom to be the main reason for the sale. These qualities are provided exclusively, and thus, they can neither be subject to analogical reasoning nor be broadly interpreted (AL-fiqi, 1998).

The judiciary emphasizes that fraud must occur in the genus of goods. The genus of goods refers to the sum of their essential qualities and characteristics, which would otherwise accompany them, without which the buyer would not have purchased. Their loss would have altered the nature of the thing sold. Fraud may be in nature, essential qualities, composition, quantity, type or source of the goods sold (West Amman court of first instance, 1234/2018, 2018).

This is achieved by either changing the sold item, i.e., replacing the agreed item with another, and this is only after the contract and upon delivery. If the genus or source of the item is changed, it is at the time of the contract that fraud in the genus of goods is such as an agreement to sell a good and to be replaced with another after some change has been made. An example is the agreement to purchase silver equipment and the sale of iron metal, which has been modified so that its outer appearance is showing silver. Regarding the source, this is achieved if the sold item comes from a source other than the agreed source, provided that the source has an effect on the determination of the genus of the good (Amman court of first instance, 408/2020, 2020).
The following cases were considered to be goods fraud: the sale of a 5-kilo washing machine as a 7-kilo washing machine with a 7-kilo cover (Irbid court of Appeal, 9259/2017, 2017) and the supply of Canadian fish to a buyer who agreed with the supplier to purchase American fish (South Amman court of first instance, criminal Division, 432/2016, 2016).

3.3 Mental element (Mens rea)

The text of article 433 of the Penal Code requires that fraud must be with previous knowledge. That means it requires criminal intent to carry it out (Amman court of Appeal, 42500/2012, 2012). Since this crime is intentional, the general criminal intent requires knowledge and will, that is, knowledge of the elements of the crime and the direction of the perpetrator’s will to achieve the result. The general criminal intent requires the perpetrator to know that he is deceiving the contractor and to direct his will to the achievement of such fraud. Such intent must be available at the time of the commission of the act of fraud, i.e., at the time of the conclusion of the contract (Atiah, 2014).

The intention to defraud arises from the sellers’ knowledge of the true nature of the goods he sells. Knowledge is assumed when the product in question is not in conformity with the standard specifications. If goods were sold with a proven defect, the seller cannot invoke good faith, even if he was not the manufacturer of the product. Regarding the degree of proof and strength of intention, a distinction is made between two assumptions:

The first assumption refers to the apparent defects in the goods. In this case, the intention to defraud is clearly established, and the offender cannot deny his knowledge of such defects. The second assumption relates to hidden or hidden defects. In this case, a question arises as to whether the seller’s liability is based on having an obligation to verify the goods before delivery. Is criminal intent presumed in this case? The presumption of knowledge of fraud in this crime is, in fact, untenable; it requires the prosecution authority to prove this criminal intention (Ahmad, 1998).

In this regard, the Amman Court of Appeal ruled that the Public Prosecutor’s Office must prove the criminal intent of the defrauder (Amman court of Appeal, 38506/2013, 2013). In application of this, it was ruled that “Since the Public Prosecutor’s Office did not provide any evidence indicating that the offender was aware that the goods, he sold were unfit for work or falsified, he must be declared not responsible for the crime assigned to him, due to the absence of the knowledge” South Amman court of first instance, Criminal division, 45/2013, 2013).

Would a special criminal intention be needed in this case?

Jordanian courts held that this crime requires a special criminal intention, since the perpetrator’s intention is to take undue possession of the victim’s property as a result of the delivery of falsified goods (Amman court of first instance, 842/2022, 2022; 499/2022, 2022; Zarqa court of first instance, 2632/2022, 2022). We disagree with such contention, since special criminal intent can only be needed by implied or express statements in the provision or based on the nature of the crime (Salem, 1959), which is not the case in article 433 of the penal code. Moreover, general criminal intention is considered the general rule. Thus, it can be assumed even when it is not expressly stipulated in the text of article 433.

4. Penalty for crime

According to article 433 of the Penal Code, a person who commits such crimes is sentenced to one month to one year of imprisonment and/or a fine of five to fifty dinars. This shows that the judge has the discretion to impose either a prison sentence and a fine together, a prison sentence only, or a fine only.

Based on the above penalties determined under article 433 of the Jordanian penal code, the crime of goods fraud is classified as a misdemeanor. Generally, an attempt to commit a misdemeanor is not punishable under the Jordanian penal law code (Al-Billeh & Issa, 2022). In misdemeanors, penalty is imposed upon commission rather than an attempt, unless they fall within the exceptions stipulated under article 71 of the penal code, which considered the attempt in some types of misdemeanors as punishable. Article 437 stipulates that attempts at crimes listed under article 430 and subsequent articles in chapter (IV) of the penal code are punishable. Accordingly, an attempt at the crime of goods fraud provided under article 433 is punishable.

An attempt to commit a crime occurs when a person tries to commit a crime with specific intention and takes substantial steps toward its completion but fails to complete it due to reasons beyond his control. Thus, an attempt to commit a crime is only punishable if the perpetrator initiates an actual act toward completion of the crime. Preparatory work is not considered an initiation of an act toward committing a crime. Article 69 of the Penal Code states that:

“A mere intention to commit a crime or a preparatory act is not considered an attempt, and anyone who attempts to act and has voluntarily retracted the procedural acts of the crime is punished only for the act or acts committed if they constitute a crime per se.”

Accordingly, the preparatory work for the crime of goods fraud is not punishable, and the Amman Court of First Instance, in its appellate capacity, ruled that such crime should not be attempted if the accused was caught with falsified olive oil in his possession without having a person with whom to negotiate or actually purchased from him (Amman court of first instance, 60/2022, 2022). The court added that manipulating measuring instruments would not be considered an attempt at goods fraud (Amman magistrate court, Criminal division, 3746/2016, 2018).
5. Final considerations

This article shows that the crime of goods fraud stipulated in article 433 of the Jordanian Penal Code differs from other similar crimes in terms of its terms, locality and nature of the contract between the parties. It has unique characteristics that make it different from other crimes.

Goods fraud requires that fraud activity falls on the good itself rather than the other party to the contract. The goods involved must not be food or medicine since food and medicine are protected under another criminal law. We believe that the legislature should have expanded the criminalization of fraud. For example, in the case of a contracting agreement, it includes the performance of works and the sale of goods at the same time. Such contracts, as stated in the decisions of the Court of Cassation, would be outside the scope of protection in the event of fraud in the goods sold within the combined contract. The criminalization of fraud should be expanded to other contracts.

It has also been found that the Penal legislature penalizes the attempt to defraud goods under article 437 of the Penal Code as a misdemeanor crime. However, the penal legislature did not provide clear criteria for determining the concept of “attempts” in the crime of goods fraud.

It appears that some courts have taken the view that there is a need for a special criminal intention in this crime. Special criminal intention is expressed as the intention of the offender to take possession of the victim’s money. We do not support that view. We believe that the crime of fraud in goods requires nothing more than general criminal intent. An analysis of the text of article 433 has shown that the legislature did not require special intent. Requiring special criminal intent will narrow the criminalization process and exclude many cases of fraud, making it difficult to prove special criminal intent.

Based on the analysis of Jordanian court rulings, the crime of goods fraud has been criminalized, and the offender was punished with an imprisonment term or a fine.

However, due to the nature of this crime and the fact that it entails the transfer of the victim’s money to the offender as a result of such fraud, we consider that it is within the powers of the courts to rule restitution, in accordance with article 43 of the Penal Code, which states that “restitution is a restoration of the situation as it was before the crime, and the court decides on its own initiative whenever restitution is possible”. This avoids the victim’s recourse to civil courts, shortens the litigation period and hastens the collection of rights.

Ethical considerations

Not applicable

Conflict of Interest

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