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Legal of "Regeneration of Payments" Principle in Current Bank Account in Light of the Omani Commercial Law

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Abstrac

This study attempted to examine the principle of "regeneration of payments" in current bank account contract, analyze its implications, and explore the significant consequences of principle on both sides of the account. Further, the study endeavored to examine the effects of regeneration principle on payments entered and incorporated into the account.

It has been found that the change in the nature or type of claims needed to enforce or acquire the financial rights incorporated in the current account is not imposed by legal provisions of Omani Commercial Law, but rather, it is an effect to the agreement of parties who established the current account and agreed to accrue such regeneration effect on payments or financial rights incorporated into the current account. Thus, the effects of regeneration principle are based on and related to contract rather than legal provisions of Omani Commercial Law.

Keywords: Current Account, Regeneration of payments, traditional theory, new theory, reverse entry.

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النتائج القانونية لمبدأ الأثر التجديدي في الحساب الجاري في ضوء قانون التجارة العماني

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ملخص

جاء هذا البحث محاولةً لدراسة مبدأ تجديد المدفوعات في عقد الحساب الجاري وتحليل مضامينه واكتشاف النتائج الجوهرية لهذا المبدأ على طرفي الحساب. وقد سعت الدراسة لبحث آثار مبدأ تجديد المدفوعات على الدفعات الداخلة في الحساب الجاري. وقد توصلت الدراسة إلى أن التغيير في طبيعة أو نوعية الدعاوى اللازمة لتفعيل أو تحصيل الحقوق المالية الداخلة في الحساب الجاري، لا يعود لنصوص قانون التجارة العماني، بل هو أثر ناشئ عن اتفاق الأطراف المنشئين للحساب الذين اتفقوا على ترتيب الأثر التجديدي على المدفوعات والحقوق المالية الداخلة في الحساب. ولذلك، فإن آثار مبدأ تجديد المدفوعات ترجع في أساسها إلى العقد وليس إلى نصوص قانون التجارة العماني.

الكلمات الدالة: الحساب الجاري، مبدأ تجديد المدفوعات، النظرية التقليدية، النظرية الحديثة، القيد العكسي.

Introduction

The principle of regeneration of payments goes back in its origins to the theory of debt regeneration which is widely known in civil law, under the theory of debt regeneration a newly established debt substitutes and replaces an old debt. The result will be termination of the old debt and establishing a new debt in its place by consent of both sides of the contract. The new debt will be different from the old debt in various aspects such as its source, limitation period and financial value.

"Regeneration of payments" principle is one of the key issues in the contract of current bank account. It forms the core of the whole current bank account arrangement between contract parties.Its meaning is centered on the fact that all payments credited in the current account loose its own and independent identity and structure,by being incorporated in the account they will become a mere item of payment incorporated and consolidated in the account. Thus payments entered into the current bank account will change from single independent transactions or payments into items or account entries merged and consolidated together to form one single credit balance.(1)

Determination of final positive (credit) balance or negative (debit) balance can only be made upon the termination of the account. It is not possible to determine whether the bank or the customer is a creditor or a debtor to each other during the period when the account is still open. Upon the closure or termination of the account, a final settlement will be made and only then each side of the account will be able to know whether he is on the debtor or a creditor side and in what balance.(2)

In one of the Omani High Court decisions, the case included a claim submitted by a bank operating in Oman seeking the payment of a debt owed by one of its customers who was involved in a current account with the bank.(3) The bank argued that client made certain money withdrawals and never returned withdrawn amounts to the bank. The bank (while current account was still active) demanded that customer shall pay such debt amounts, although current account was still not closed yet. Both court of first instance and court of

(1)Ali jamaleddeen Awadh, Banking Transactions from the Legal Perspective in the new commercial code and Arabic countries' legislations, 3rd edition, 2000, Dar Alnahdha Alarabiah, Cairo, p: 239.

(2) Ibid, p: 239-240. See also: Mahmood Al kailani, Commercial and banking encyclopedia, Volume 4, 1st ed, 2008, Dar Althaqafa for publishing and distribution, Amman, p: 119-120.

(3) Appeal Number 1989, Hearing date: 6 February 1989, Legal rules decided by Commercial Authority in its fifth Judicial Year. 1988-1989. Authority for settlement of Commercial disputes, Oman, p: 50.

appeal ruled that customer shall pay the amount of debt stipulated in report of the nominated accounting expert.(1) Customer appealed to the high court arguing that the accounting expert concluded that customer is indebted to the bank while current account was still open and active between customer and the bank. Customer further argued that there shall be no debt decided before the closure of the account. Accordingly, there is no valid debt. The High court upheld customer's argument and revoked the decision on the same basis.(2)

The conduct of the bank in the above case reflects the fact that in many cases banks practice constitutes an infringement to commercial law and legislative provisions. That occurs when banks extract deposit after transaction is recorded to determine the indebtedness of customers. Such practice is inconsistent with legislative provisions of Omani Commercial Law, specifically, Article 398.(3)

Research problem:

The problem of this studylies in the implications of "regeneration of payment" principle which have always been subject to great controversial arguments and views. Such controversy revolves aroundthe impact of the principle in changing the legal nature and characteristics of debts and payments. Our examination of these controversial views will focus on two theories, the first is called "traditional theory", and the second is called modern or new theory.

This study will examine the principle of "regeneration of payments" in current bank account contract and analyzeits implications, explore the significant consequences of principle on both sides of the account, and also on the payments entered and incorporated into the account. All that will be done by reference the above theories, and in light of the relevant current bank account provisions stipulated in the Omani Commercial law issued by means of the Sultani Decree number 55 /90 dated 11th July 1990.

(1) Ibid.

(2) Ibid. The Omani judiciary has not changed its attitude expressed in the above case since 1989, it still considers that no final debt can concluded against any side of the account unless the current account is closed. see Omani court of appeal decision no 19/ 75 /2002 hearing of Wednesday 8th January 2003.

(3) Khalifa bin Mohammad ALhadhrami, above number 7, p: 63-64. In relation to banks liability for fraudulent activities, see generally: Fraser Valley Credit Union V Canorama Development Corp (1984), 56 B.C.L.R. 145 (B.C.S.C) [fraser Valley]. See also Maple Valley Acres Ltd. V Canadian Imperial Bank of Commerce (2001), 46 R.P.R. (3d) 32 (Ont.S.C.J.).

Significance of the study:

The significance of this principle stems from its serious and overwhelming impact in changing the legal nature and independent characteristics ofsuch debts and payments. The impact extends also to change the limitation periods, accrual of interest on the balance, and also the legal nature of the obligation itself that will be changed to a new different obligation which shall, eventually, be subjected to different legal provisions. For example, when a bill of exchange is discounted and credited into the account, the customer will lose all advantages he enjoyed before discounting and crediting the bill of exchange into the current account opened between himself and the bank, such lost advantages include joint liability claimsof payment from drawer and endorsers. That refers to the fact thatbill of exchange debt will be changed and regenerated into a normal commercial debt falling outside bill of exchange provisions, once it has been incorporated into the current account.

Research methodology

This study follows qualitative and doctrinal research methodology. That includes an interpretation and analysis of relevant legal provisions governing the regeneration principle within Omani Commercial Law. Moreover, it encompasses an analysis of relevant legal literature to clarify the current state of knowledge regarding "regeneration" principle, along with the implications of controversial theories and arguments established to clarify the legal nature and consequences of the regeneration principle on the payments entered into the current bank account, to enable the determination of rights and obligations of each side to the account.

Origin and concept of current bank account

The Genesis of current bank account goes back in history to the customary rules which prevailed among merchants in large Italian cities during the twelfth century.(1) During that time, merchants performed their commercial activities using current bank account system.Following the establishment of banks, both banks and merchants were conducting their commercial transactions by means of current bank account. Subsequently, the customary rules of current bank account developed overtime and were incorporated into legislations.(2)

(1) Hoggson, N. F. (1926) Banking Through the Ages, New York, (1926) Dodd, Mead & Company.

(2) Hudson, M, Entrepreneurs: From the Near Eastern Takeoff to the Roman Collapse within The Invention of Enterprise: Entrepreneurship from Ancient Mesopotamia to Modern Times. (26 Feb 2012) Princeton University Press. See also: Emmanuel N. Roussakis, GLOBAL BANKING: ORIGINS AND EVOLUTION, RAE - Revista de Administração de Empresas, São Paulo, v. 37, n. 4, (Dez. 1997) p. 46-47; Goldthwaite, R. A. (1995) Banks, Places and Entrepreneurs in Renaissance Florence, Aldershot, Hampshire, Great Britain, Variorum; Macesich, George. "Central Banking: The Early Years: Other Early Banks". Issues in Money and Banking. (30 June 2000) Westport, Connecticut: Praeger Publishers (Greenwood Publishing Group).

Countries started enacting legislations to regulate banking transactions and current bank account was among them. The Commercial law of the Sultanate of Oman, issued by the Royal Decree number 55/90 dated 11th of July 1990, included provisions governing current bank account in chapter nine, articles: 398 – 414.

Based on Article 398 of the Omani Commercial Law, current bank account is defined as a contract by which parties agree to record, through mutual overlapping payments,the debts arising out of the transactions performed between themincluding delivery of money, goods, orcommercial papers, So that the individual settlement of debts is replaced by one final settlement made upon the closure of the account.(1) Determining whether a party to the account is a creditor or a debtor to the other can, only, be made upon the final closure of the account.(2)

Current bank account contract is considered as one of the most significant banking operations. It achieves great advantages for both parties of the account by simplifying their financial operations. Instead of making separate settlement for each operation, current bank accountconverts such separate and repetitive operations into single payments that is merged and incorporated into the account either in the creditor or debtor side of each party. Upon closure of the account, a final settlement will be conducted to determine the status of each party against the other, weather a debtor or a creditor.(3)

Thus, it can be said that single financial operations paid into the account (such as cash deposits, deposited commercial papers, or delivery of goods) are converted into account items incorporated and merged with each otherlosing their independency inside the account. That is referred to as the regeneration principle. Since single independent financial operations are merged and incorporated and then regenerated, inside the account, into a new form called account items losing theiroriginal nature. Such principle will be addressed in details in the following section.

(1) Article 398 of the Omani Commercial Law, issued by the Royal Decree number 55/90 dated 11th of July 1990.

(2) Nasif, Elias, Banking contracts, second edition, 2012,ALhalabi Law Publishing, Beirut, p: 187-188.

(3)Akram Yamilki, Commercial Papers and Banking Operations, 1st ed (2009), Dar althaqafa for publishing and distribution, Amman, P: 275-276. See also: Akram Yamilki and Faeq Al shamma'a, Commercial Law, 1980, Baghdad, 40-43.

Definition of regeneration principle

The principle of regeneration implies that single payments losesitsoriginal legal structure and merge inside the current account. Thus, such single payments are converted into current account items rather than single independent financial operation. The basis of regeneration theory can be traced back to the theory of debt renewal known in civil law, which occurs when debt is expired and new debt is established in its place. The new debt is different in its legal elements.(1)

In addition to the above, judicial judgments have contributed to clarifying the concept of regeneration of payments. In one of its decisions Cairo court of first instance concluded that regeneration of payments means that the every debt entered into the account loses its original legal nature and elements and expires as it merges inside the account.(2) Such debt expires and get subrogated and renewed taking a new form expressed in an account item which will be reconciled when the final clearance is made upon the closure of the account.(3) The new regenerated debt item will be subject to new rules with regard to claiming procedures, limitation periods, being commercial or civil transaction.(4)

The French judiciary was the first to apply regeneration principle in current account in a judgment issued by Orleans court on 14th July 1847. The court decided that the right or debt recorded in the current account disappears and ceases to exist due to the regeneration effect and is subrogated by a new debt in the form of an account item governed by the special current account rules.(5)

There are certain conditions needed for the regeneration principle to work and achieve its effects, the first is that the expiration of the old debt shall be in conjunction with the new established debt. That assumes the existence of an agreement between account parties stating that the new debt will rise at the same moment of expiration of old debt. Both debt obligations must have real and actual existence free of any reason or factor of nullification. The second condition is the dissimilarity between debts, debts must be different in their

(1) Alsharqawi Mahmoud, Commercial Law, Part three, Dar Alnahda Al Arabia, 1984, p: 516.

(2) Yousuf Audeh Ghanem &Ali Abdel Aali, Integration of the principles of regeneration and non- division of payments in determination of the effects of current bank account, p: 129.

(3) Khalifa bin Mohammad ALhadhrami, Civil liability of commercial banks in Omani Law 2017, Alghandoor center, Cairo, p: 63.

(4)Ibid, p: 129.

(5) Banan Khaled Al dardoor, The effects of recording payments in current bank account (comparative study), Master thesis, Aal Al-bait University, Jordan, 2000, p: 4.

subjective and formal elements. The third condition is the partiesintentionsmust go towards regeneration and renewal of the old debt.

Theories of regeneration

Traditional theory

Traditional theory of regeneration believes that the idea of regeneration of payments goes back to the principle of (regeneration or renewal of obligation) widely known in civil law. In this context, regeneration means subrogation or substitution of one obligation in the position of another while the old obligation that has been substituted or replaced is different from the new obligation which came in place.(1)

There is no conflict among both legal scholars and judiciary about the impact of the current account on payments entered in it, as such payments incorporated into the account constitutes the basis of the right for one party of the account against the other. The result of incorporating a payment within current account will be the termination of original obligation connected to such payments along with all attached securities and legal characteristics. As a result, a new account item will rise and be established in its place becoming an integral part of the current account.(2)

The idea of regeneration or renewal in current account is very similar to the principle of regeneration in civil law. Such similarity can be obviously observed when the old or original obligation related to the payment (entering the current account) is terminated with all attached provisions and securities. Instead, a new obligation is established which will form part of the final deposit which will be determined upon the termination of the current account.(3)

New theory of regeneration

Supporters of the new theory emphasize that when a payment is incorporated into current account, it loses its original legal nature. It will be transferred into an account item which merges within the account. However, all

(1) Charles Mitchell & Stephen Watterson, Subrogation, 2007, 1st edition, Oxford University Press, Paragraph: 1.01.

(2) Henry Newton Sheldon, The Law of subrogation, 2017, 1st edition, University Press, 1882, Cambridge, p: 1-2.

(3) M.L. Marasinghe, historical introduction to the doctrine of subrogation: the early history of the doctrine 1, Volume 10, Number 1, fall (1975) *Valparaiso University Law Review*, p: 46, 51-52. See also: ALmoutasem Bellah ALGheriani, commercial Law: Commercial transactions, 2007, New university Press, p: 257.

that would be referred to the impact of regeneration principle (as new theory supporters believe). The termination of the original obligation and the creation of the new account item within the current account, would be an effect of fulfillment of obligation by incorporating the payment or debt in the current account. It will not be, in any case, referred to the regeneration effect.

In other words, the new theory assumes that the alleged effects of regeneration principle are not, in fact, caused by such principle. To the contrary, they are caused by and an effect of the action of fulfillment of debt made by a party to the account. The result is merging the fulfilled payment into the account and becoming an account item. Thus, it is about the impact of fulfillment of debt rather than a regeneration effect. (1)

Supporters of new theory rely on a judicial decision issued by a French court of cassation where court stated that incorporation of a debt in the current account is an equivalent to the fulfillment of such debt in terms of its effects. The fulfillment of the debt is achieved when payment is incorporated into the current account. The new theory ascertained that fulfillment of debts by entering them in the account is made successively and individually for each debt rather than jointly upon the closure of the account.(2)

However, the French court of cassation, later, changed its view by issuing a new decision in 1935, when it determined than securities and guarantees attached to payments would not be lost or terminated for payments entered into current account. Securities and guarantees may be terminated when account parties agree to do so by their free wills either implicitly or expressly.(3)

The Omani legislature took similar view which can be clearly seen in article 403 of the Omani Commercial Law. Article 403 permits to record and incorporate (within the current account) debt secured with contractual securities or guarantees when all concerned parties expressly agree to do so.(4) In such a case, the debt entered into the current account would not lose the attached securities. However, since the debt will be regenerated and renewed into an account item, the security will continue to be part of the final deposit equal to the amount of debt entered in the account. The security would not be securing the whole amount of the account deposit upon closure.(5)

(1) Mohyyeddin Ismaeel Alamuddin, Banking Operations Encyclopedia, 1987, Altanani printing, Cairo, P: 320.
(2) Ali jamaleddeen Awadh, above number 1, p: 264.
(3) Ibid.
(4) Article 403 of the Omani Commercial Law.
(5) Article 404 of the Omani Commercial Law.

Legal consequences of regeneration principle

Thereseveral consequences for the application of regeneration principle in current account. There is no dispute among legal scholars regarding such consequences. Most of these consequences are incorporated within the provisions of the Omani Commercial Law in articles 403 – 407 and it will be explained in the following subsections.

Payments entered into the account loses their legal identity and legal nature and is regenerated into a new debt acquiring the qualities of current account.

Payments entered into current bank account would lose their original identity and nature, they will be transformed into an account item which will contribute to the final balance of the account upon closure. The change in the legal nature and identity will be expressed in the following aspects:

A. Legal nature

The legal nature of payments entered into current bank account will change, if payments entered were civil and not commercial then they will become commercial if the current account was commercial. On the other hand, if payments were commercial and the current account was a civil transaction, such payments will become civil in their nature and lose their commercial nature. Accordingly, such current account and payments entered in it will be subjected to commercial law or civil law rules based on their legal nature.(1)

Moreover, payments or financial rights incorporated into the current account will be detached from its supporting securities. If an "in personam" security or a "security in rem" were attached to the payments or debts entering into the current account, such payments will be detached from their securities. Detachment of in rem or personam securities occurs as payments are regenerated and transformed into a new legal form.(2)

It should be noted that detachment of securities would apply only to legal securities rather than contractual or consensual securities. While in some other legal jurisdictions including Omani and Egyptian laws, payments would hold and maintain their attached securities. Under Omani Commercial Law, in rem or personam securities would remain attached to the payments entering into

(1) Ali Baroodi, Contracts and commercial Banking operations, 2001, Dar El Matboaat El Jameya, Alexandria, p: 244.
(2) Ibid, see also, Articles: 403-404 of the Omani Commercial Law.

current account even after payments are incorporated into the account. But that only apply to consensual or contractual securities rather than legal securities.(1)

B. Legal claims

All payments entered or incorporated into current bank account would lose all eligibility for legal claims as they will be transformed into a new item within the account. Such new account item will acquire a new nature which will result in changing the types of claims it can use to enforce rights against others.(2) For example when a commercial paper (such as a bill of exchange) is incorporated into the current account such payment in the form of a bill of exchange will lose its commercial nature and all claims that are based on commercial papers rules will no longer be possible. That is due to the fact that the value of the bill will be incorporated in the account and regenerated in the form of an account item with a new legal nature and accordingly, acquiringnew types of legal claims.

Usually, its enforcement or any claim related to it will be based on the legal nature of current account rather than claims related to commercial papers or commercial law. Thus, when a bill of exchange is regenerated and transformed into a new form which is the form of an account item, the new form will acquire new rules derived from the nature of the current account itself, weather commercial or civil. The new account item will have a new legal system of limitation periods.(3)

The change in the nature or type of claims needed to enforce or acquire the financial rights incorporated in the current account is not imposed by legal provisions of Omani Commercial Law, but rather, it is an effect to the agreement of parties who established the current account and agreed to accrue such regeneration effect on payments or financial rights incorporated into the current account. Thus, the effects of regeneration principle are based on and related to contract rather than legal provisions of Omani Commercial Law.(4)

C. Accrual of interest

When payments or financial rights are incorporated within the current account, the accrual of interest on these payments or financial debts will stop, interest accrual will cease from the date of incorporation in the account since such payments or financial rights or debts will be subject to another type of

(1) Ibid.
(2) Yousif Ghanim, Ali Khashan and Alaa Omar, the integration of renewal and non-division of payment principles in determining the effects of current account, Volume (2) 2010 Mouhakiq Al-hilly Journal for legal and political science, p: 132.
(3) Ali Jamaleddeen Awadh, above number 1, p: 296-300.
(4) Ibid.

interest which is the current account interest. Even when original debt payments had no interest eligibility prior their entry into the current account, such debts or payments will still be eligible to accrue interest under the current account in which they were incorporated.(1)

However, the issue of whether payments or debts entered into the current account are eligible for interest or not is still controversial. The Jordanian and Lebanese Commercial Laws have stated in support of interest accrual and stated expressly that payments and debts incorporated within current account shall be eligible for interest by the force of the law. While Egyptian and Kuwaiti Commercial Laws stated that such payments or debts shall not be eligible for interest unless there is an agreement or a contractual provision between parties stating for interest eligibility.(2)

Omani Commercial Law, Article 407, stated: "payments entered in the current account shall not produce any interest unless it was agreed otherwise, and if the agreement did not specify the amount of interest, then it will be calculated based upon custom. And in relation to current accounts opened at banks it is permitted to calculate interest while account is still open".(3) Moreover, interest shall be accrued and calculated from the date account is closed unless otherwise agreed, or during the validity period of the account if the account was opened with a bank.(4)

5. Exceptions to principle of regeneration

The principle of regeneration is not absolute in terms of its effects, since there are certain cases where regeneration principle will have no effect on payments entering into the current account. In these exceptional cases payments or debts incorporated into the current account will not lose their original nature, these exceptions aim to protect certain interests and prevent circumvention of rules.

5.1. Original debt is illegitimate

If current account is established between A and B. when a payment or a debt is incorporated into account, a distinction shall be drawn between the payment entered into the current account in favor of side A and the underlying

(1) (Jordanian Commercial Law No 12, 1966, S. 110 (JO), Syrian Commercial LawNo:33, 2007, S.187 (SY), and Lebanese Commercial Law 1943 No 304, S.302 (Le).
(2) (Kuwaiti Commercial Law No 68 of 1968, S. 397 (KU); Egyptian Commercial Law No 17 of 1999, S. 366 (EG).
(3) Article 407, of Omani Commercial Law.
(4) Article 407, 411, of the Omani Commercial Law.

legal relationship which led to the formation of such payments which (in general rule circumstances) shall be kept separate or isolated from the payment entering into the account since payment entering into current account is renewed and regenerated into a new form and will merge in the account becoming an account item. Thus, losing its connection with the underlying original debt that led to such payment.

For example, if A sold his car to a person B, and B who purchased the carpaid the price through drafting a cheque in favor of A in payment of the price. The sale contract will be the original relationship that led to drafting the cheque. If A decided to incorporate the cheque as a payment in the current account between himself and B, the cheque value will be incorporated as a payment in favor of A in the account and will be renewed and regenerated into a new form becoming an account item. Such account item will lose relationship with the original debt or underlying contract which was a car sale contract.

However, that is not absolute. Under this exception (illegitimacy of the original debt) and in the above example, if the original contract underlying the payment (which is a car sale contract that led to drafting the cheque) was invalid or illegitimate, then the incorporation of the cheque into the current account would not legitimize it. The principle of regeneration will not be able to legitimize it, the cheque will still be connected to the original underlying invalid contract and will invalidated.(1)

Despite the incorporation of the cheque into the account, it can still be erased as an account item by doing what is called “reverse entry”. Such reverse entry which is made due to an invalid original contract is an exception that prevents regeneration principle from having any effect on the cheque payment.[2]If regeneration principle was allowed to legitimize the payment despite the invalid contract of sale, the regeneration principle will be used as a tool for circumvention and deception through using cheque or payments obtained by means of illegitimate contracts or invalid contractual relationships. A matter which is inconsistent with the law.

5.2. Reverse entry of commercial papers:

Reverse entry is a case which forms an exception to the principle of regeneration. When a commercial paper (such as a cheque or a bill of exchange) is incorporated into current account, the value of such commercial paper will be recorded as an account item in favor of its legitimate holder. If it appears subsequently that the commercial paper was honored or paid by the drawee in

(1) Article 406 of the Omani Commercial Law.
(2) Article 413 of the Omani Commercial Law. See also:*Iraqi Commercial Law, s. 223(IR).*

its due date, in such a case, the endorsee who is the other party (such as a bank) in current account has the right to make a reverse entry of the commercial paper.(1) Reverse entry is done by recording an amount equal to the value of the commercial paper on the debtor side of the endorser. To explain in more details, we give the following example: John contracted to open a current account with Muscat Bank. John received a bill of exchange from Sameer in payment of a price of a car which John sold to Sameer. John (being the owner and legitimate holder of the bill of exchange) decided to incorporate it into the current account opened between himself and Muscat bank. John did so by endorsing the bill to the interest of the bank to be included in the current account. Such bill will be recorded on the creditor side of John and on the debtor side of the bank. If it appeared subsequently that the drawee refused to pay the bank the amount of the bill, the bank has the right to record a reverse entry against John in the same amount of the bill in addition to costs incurred by the bank. Since incorporating a bill of exchange into the account is conditional upon it being honored by drawee and collected by the bank on its due date. Otherwise, the bank will code an amount equivalent to the value of the bill in the debtor side of John, and the result of that will be erasing the bill's value from John's creditor side of the account. Regeneration principle cannot prevent such reverse entry coding.(2)

In Oman, the court of appeal ruled that recording the value of a commercial paper in the creditor side of the person neither mean that his creditor account has increased nor it would enable him to withdraw the value of the paper from that account. He would not be able to withdraw until the value of the commercial paper is settled in the account.(3) Settlement of the paper would only occur when paper is discounted and actual value is collected by the bank. The court of appeal added that when a person submits a commercial paper to be recorded in the account, its value will be recorded and placed on hold. It will not be considered final until collected. If the bank was unable to collect and discount its value, the bank will perform a reverse entry.(4)

Reverse entry of commercial papers in the context of current bank account was stipulated in article 413 of the Omani Commercial law when the Omani legislator permitted performance of reverse entry of commercial papers even

(1) Article 413 of the Omani Commercial Law.

(2) Ibid. See also: Murad Moneer Fahim, Commercial Law, Maaref Institution, 1982, Alexandria, at: 208-209. See also: Momamed AlFaqi, Commercial Law, Halabi Law Publishing, Beirut, 2010, p: 327.

(3)Court of Appeal, Wednesday Hearing 08 January 2003, decision number: 19, Appeal: 75/2002.

(4) Ibid.

after the endorser who presented the paper for discounting is declared bankrupt by a court of law.

6. Results

This research study has found that the change in the nature or type of claims needed to enforce or acquire the financial rights incorporated in the current account is not imposed by legal provisions of Omani Commercial Law, but rather, it is an effect to the agreement of parties who established the current account and agreed to accrue such regeneration effect on payments or financial rights incorporated into the current account. Thus, the effects of regeneration principle are based on and related to contract rather than legal provisions of Omani Commercial Law.

Traditional theory of regeneration believes that the idea of regeneration of payments goes back to the principle of (regeneration or renewal of obligation) widely known in civil law. In this context, regeneration means subrogation or substitution of one obligation in the position of another while the old obligation that has been substituted or replaced is different from the new obligation.

new theory emphasizes that The termination of the original obligation and the creation of the new account item within the current account, would be an effect of fulfillment of obligation by incorporating the payment or debt in the current account. It will not be, in any case, referred to the regeneration effect. Article 403 of the Omani Commercial Law permits to record and incorporate (within the current account) a debt secured with contractual securities when all concerned parties expressly agree to do so.

7. Conclusion

This research study examined the implications of principle of "regeneration of payments" in current bank account and explored its significant consequences on payments incorporated in the account in light of the provisions of Omani Commercial Law.

The study concluded that the result of incorporating a payment within current account will be the termination of original obligation connected to such payments along with all attached securities and legal characteristics. As a result, a new account item will rise and be established in its place becoming an integral part of the current account. The effects of regeneration principle are based on and related to contract rather than legal provisions of Omani Commercial Law.

References

Akram Yamilki, Commercial Papers and Banking Operations, 1st ed (2009), Dar althaqafa for publishing and distribution, Amman.

Akram Yamilki and Faeq Al shamma'a, Commercial Law, 1980, Baghdad

Ali Al Areef, Explanation of Egyptian Commercial Law, 1959, Ahmad mkhaimar printing, Cairo.

Ali jamaleddeen Awadh, Banking Transactions from the Legal Perspective in the new commercial code and Arabic countries' legislations, 3rd edition, 2000, Dar Alnahdha Al-Arabiya, Cairo.

Ali Baroodi, Contracts and commercial Banking operations, 2001, Dar El Matboaat El Jameya, Alexandria.

ALmoutasem Bellah ALGheriani, commercial Law: Commercial transactions, 2007, New university Press.

Alsharqawi Mahmoud, Commercial Law, Part three, Dar Alnahda Al Arabia, 1984.

Banan Khaled Al dardoor, The effects of recording payments in current bank account (comparative study), Master thesis, Aal Al-bait University, Jordan, 2000.

Charles Mitchell & Stephen Watterson, Subrogation, 2007, 1st edition, Oxford University Press.

Henry Newton Sheldon, The Law of subrogation, 2017, 1st edition, University Press, 1882, Cambridge.

Hoggson, N. F. (1926) Banking Through the Ages, New York, (1926) Dodd, Mead & Company.

Hudson, M, Entrepreneurs: From the Near Eastern Takeoff to the Roman Collapse within The Invention of Enterprise: Entrepreneurship from Ancient Mesopotamia to Modern Times. (26 Feb 2012) Princeton University Press.

Khalifa bin Mohammad AL-Hadhrami, Civil liability of commercial banks in Omani Law 2017, Alghandoor center, Cairo.

Mahmood Al kailani, Commercial and banking encyclopedia, Volume 4, 1st ed, 2008, Dar Althaqafa for publishing and distribution, Amman.

Murad Moneer Fahim, Commercial Law, Maaref Institution, 1982, Alexandria.

Momamed AlFaqi, Commercial Law, Halabi Law Publishing, Beirut, 2010.

M.L. Marasinghe, historical introduction to the doctrine of subrogation: the early history of the doctrine 1, Volume 10, Number 1, fall (1975) Valparaiso University Law Review.

Mohyyeddin Ismaeel Alamuddin, Banking Operations Encyclopedia, 1987, Altanani printing, Cairo.

Nasif, Elias, Banking contracts, second edition, 2012, ALhalabi Law Publishing, Beirut.

Sameeha aL qalliobi, Banking operations and commercial papers,1986, Dar Al nahdha Al Arabia, Cairo.

Yousuf Audeh Ghanem & Ali Abdel Aali, Integration of the principles of regeneration and non- division of payments in determination of the effects of current bank account

Yousif Ghanim, Ali Khashan and Alaa Omar, the integration of renewal and non-division of payment principles in determining the effects of current account, Volume (2) 2010 Mouhakiq Al-hilly Journal for legal and political science.

Yakoob Sarkhawah, Banking operations from legal perspective -in Kuwaiti Law, 2nd Edition, without publisher.

Legislation:

Omani Commercial Law, issued by the Royal Decree number 55/90 dated 11th of July 1990.

Cases:

Appeal Number 1989, Hearing date: 6 February 1989, Legal rules decided by Commercial Authority in its fifth Judicial Year. 1988-1989. Authority for settlement of Commercial disputes, Oman.

Fraser Valley Credit Union V Canorama Development Corp (1984), 56 B.C.L.R. 145 (B.C.S.C) [fraser Valley].

Maple Valley Acres Ltd. V Canadian Imperial Bank of Commerce (2001), 46 R.P.R. (3d) 32 (Ont.S.C.J.).

Court of Appeal, Wednesday Hearing 08 January 2003, decision number: 19, Appeal: 75/2002, Oman.