

Judicial jurisdiction and legal conflicts on the Internet: an analysis of Jordanian cyber jurisdiction rules

Mohammad Mahjoob Almahareh (2012)

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Almahareh, M M (2012)

*Judicial jurisdiction and legal conflicts on the Internet: an analysis of Jordanian cyber jurisdiction rules*, PhD, Oxford Brookes University

OXFORD BROOKES UNIVERSITY  
FACULTY OF H & SS  
SCHOOL OF LAW

# Judicial Jurisdiction and Legal Conflicts on the Internet:

## An Analysis of Jordanian Cyber Jurisdiction Rules

THESIS FOR THE DEGREE OF PHILOSOPHY OF DOCTORAL (PhD)

-By-

Mohammad Mahjoob Almaharmeh

Oxford 2012

## Abstract

Before the advent of the Internet, jurisdiction rules had evolved within individual countries to reflect the culture and perceived needs of their citizens. In this sense, and for the purposes of this study, the term jurisdiction can be taken to refer to the power of an entity such as a country or a court, over a specific geographical area and over the activities, materials and people associated with that area. Jurisdiction types in this definition refer to adjudication, prescription and enforcement. These types of jurisdiction can be defined as functional at both at domestic and international levels, in matters pertaining to the activities, materials and people of a specific country, and in accordance with the personal, territorial and subject matter rules of that country.

However, since the development of the Internet, extension of legislation to cyberspace has posed one of the greatest cross-border jurisdictional challenges to the international legal community, that of establishing acceptable jurisdiction over internationally shared lands, seas, air-space and outer-space. Such a task poses an infinitely complex set of problems, surpassing those arising from any earlier technological media such as the telephone and the fax. The internet, by virtue of its borderless and stateless nature, has forced the question as to which entities should be responsible for regulating cyberspace, and as to whose authority the control of cyberspace activities should be answerable.

Although international treaties do already exist to regulate cross-border disputes in law; an important issue is that not all countries are equal in having fully evolved a set of jurisdiction rules for dealing with Internet activities. Still-developing countries are as yet in process of consolidating rules which will best reflect the needs of their citizens and of their national security. Such a developing country is Jordan, which can be taken as representative of many developing countries seeking solutions to internet activities within the tenets of their laws and cultures. The aim of this research therefore is to examine Jordan as a case study of how such solutions may be achieved.

This research assembles data from previous literature, reviews prior cases and examines the issues from the specific vantage point of Jordanian law. The findings of this research uphold a current viewpoint that international legislation has only a partial capacity to accommodate internet jurisdictional issues, and that for full capacity to be achieved, certain reforms will be required. From the findings of this study, it is recommended that for such reforms to be effective, individual countries must not only engage in international co-operation but be prepared to waive certain of their attitudes to sovereignty issues. Taken as a case study the challenges facing Jordan can be argued as typical of many other countries still developing a jurisdictional framework for accommodating internet crime. The case study of Jordan also illustrates the need for countries to co-operate in prioritising future clarity for internet jurisdiction over national partiality. In order to make such co-operation a reality, the major recommendation of this research is for the establishment of an international body or convention which will serve to resolve cyberspace jurisdiction disputes.

## *Acknowledgement*

In the name of Allah, the most Beneficent, the most Merciful

I would like to acknowledge my sincere gratitude and appreciation to my supervisory team for their abundantly helpful assistance, support and guidance.

Deepest gratitude are also due to the university academic and administrative staff members; without whose knowledge and assistance this study would not have been successful.

I wish to express my love and gratitude to my beloved family, relatives and friends for their understanding & endless love throughout the duration of my study.

Last but not least; this humble work is proudly presented to my revered and beloved father Shaikh “Abdullah” Mahjoob Almaharmeh for his countless virtues, may God bless him.

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## List of Abbreviations

- ADSL: Asymmetric Digital Subscriber Line
- ADRs: Alternative Dispute Resolutions
- ATM: Automated Teller Machine
- ATS: Antarctic Treaty System
- BBS: bulletin board system
- B2B: Business to Business
- B2C: Business to Consumer
- CC: Civil Code / Jordan
- CCL: Cyber Crime Law
- CrC: Criminal Code / Jordan
- CPL: Civil Procedures Law / Jordan
- CrPL: Criminal Procedures Law / Jordan
- DIP: Digital Intellectual Property
- DOS: The Jordanian Department of Statistics
- DARPA: Defence Advanced Research Project Agency
- DNA: DeoxyriboNucleic Acid
- DN: Domain Name
- E-Crime: Electronic Crime

## Abbreviations

- EC: Europe Council Regulations
- ECJ: The European Court of Justice
- EFF: Electronic Frontier Foundation
- ETL: Electronic Transaction Law, Jordan
- FNC: Forum Non Conveniens
- HKJ: The Hashemite Kingdom of Jordan
- HTTP: Hypertext Transfer Protocol
- HTML: HyberText Markup Language
- ICANN: Internet Corporation of Assigned Names and Numbers
- IC3: Internet Crime Complaint Centre
- IFCC: Internet Fraud Complaint Centre
- IPS: Internet Protocols Address
- ISCL: Information System Crime Law, Jordan
- ISP: Internet Service Provider
- ITO: International Trademarks Office
- JBA: The Jordanian Bar Association
- JBAM: The Jordanian Bar Association Magazine
- JD: Jordanian Dinar
- JGID: the Jordanian General Intelligence Department
- JNITC: The Jordanian National Information Technology Centre

## Abbreviations

- LFRC: the Law of Formation of the Regular Courts, Jordan
- LICRA: La Ligue Contre Le racisme Et L'antsemitisme (International League Against Racism and Antisemitism)
- MICT: The Ministry of Information and Communications Technology
- MOJ: Ministry of Justice
- NCHR: The National Centre of Human Rights
- OF: Official Journal
- PBUH: Peace Be Upon Him
- PCT: Patent Cooperation Treaty
- PGP: Pretty Good Privacy
- PSD: the Jordanian Public Security Directorate
- P2P: Peer to Peer
- RWBs: Reporters Without Borders
- SL: Shariah Law
- SSC: the State Security Court, Jordan
- TE.Data: Telecommunication Data Company, Egypt
- TRC: Telecommunications Regulatory Commission
- TRIPS: the agreement of Trade Related Aspect for Intellectual Property Rights
- UDHRs: the Universal Declaration of Human Rights

## Abbreviations

- UDRP: Uniform Domain Name Disputes Resolution Policy
- UEJF: Union Etudiants Juifs de France
- UNCITRAL: United Nation Commission on International Trade Law
- URLs: Uniform Resource Locators
- WCT: WIPO Copyright Treaty
- WTO: World Trade Organisation
- WIPO: World Intellectual Property Organisation
- WPPO: WIPO Performance and Producers of Phonograms Treaty
- WWW: World Wide Web

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## Chapter 1- Research Plan & Methods

### 1- Introduction

The history of law is embedded in the history of cultures and countries that have created their legal systems in order to regulate, and hold authority over issues that influence their citizens in matters political, commercial, criminal, and social. Such systems would have begun locally but over time developed to represent the interests of nationals internationally. Such systems may be considerably diverse, depending on the period and level of cultural development reflected in a nation's laws. A powerful model of how such systems change and develop over time can be exemplified by the Roman legal system, which first developed as a legislature to influence domestic rule in Rome itself, and then eventually burgeoned into complex legislature for the regulation of Rome's network of relationships with other nation states.<sup>1</sup> Also over time the history of world law has shown itself to be dynamic, reflecting the disappearance and emergence of nations, the retention, and adaptation of old legal systems and the creation or adoption of new systems, designed to meet new worlds.

Within each country's attempts to build a legal system best adapted to control domestic and international issues, there must be inherent a capacity to be elastic and flexible in how the law develops in order to meet the new challenges which arise as each culture changes and develops. Thus such systems have neither been fixed

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<sup>1</sup> Nicholas, Barry. *An Introduction to Roman Law* (Clarendon Law Series, OUP, Oxford 1962). P32.

nor immortal, but have always required regular evaluation, amendment and revision, and the creation where needed of new legislation in order to be functional for purpose. A recourse common to many legal systems for ensuring flexibility is the subdivision of the rule of law into matters pertaining to personal, territorial and subject issues, and the development of criteria for allocating a case to one or another of these subdivisions.<sup>2</sup>

Notable to an historian of law will be the differences in the way different national systems have dealt with change, and the ways in which they have amended their legislation to accommodate change. For example, the civil system is mainly based on codifications in a constitution, with statutes requiring a lengthy legislation amendment process, while the common system is based on judicial presidencies which allow a generally more expeditious process than that of the civil. However, it is not the scope of purpose of this study to engage in debate as to the suitability of different systems for dealing with new challenges. Rather the aim is to focus on a specific legal issue pertaining to jurisdiction rules, and to examine the potential for adaptation or flexibility in these rules when a legal system is faced with certain unique conditions, such as those arising in the 20<sup>th</sup> and 21st century world of cyberspace.<sup>3</sup>

Whatever the legal system, amongst all the issues which exercise legal historians, jurisdiction rules have been foremost, since these rules regulate the legal

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<sup>2</sup> Clarkson, Chris and Jonathan Hill. *Jaffey on the Conflict of Laws* (2<sup>nd</sup> edn, Butterworths, London 2002). P5.

<sup>3</sup> Simmonds, Nigel. *Central Issues in Jurisprudence: Justice, Law and Right* (3<sup>rd</sup> edn, Sweet & Maxwell, London 2008). P 9.

environment between individual citizens and the laws of their country, between individual countries; and between a country and international bodies.<sup>4</sup> Jurisdiction rules can generally be classified according to three major types: *Adjudicated, Prescriptive and Enforcement* jurisdiction.<sup>5</sup> Both adjudicative and perspective jurisdiction deal mainly with issues related to jurisdictional law, deriving their rules from international private laws. They can be classified as *jurisdiction in rem, jurisdiction in personam* and *subject matter jurisdiction*.<sup>6</sup> Such jurisdiction types are separately regulated under international laws on the basis of territoriality; nationality and universality.<sup>7</sup> This research core point is to discuss and examine adjudicative and prescriptive jurisdiction types in relation to cases on the internet mainly jurisdiction disputes.

In addition to the two divisions discussed in the previous paragraph, there exists a type called enforcement jurisdiction, or executive jurisdiction, used for implementing orders and judgements whether issued at national or international levels; the latter level involving enforcement of foreign judgements rules. Examination of enforcement jurisdiction rules however, will not feature widely in this research, since the main focus is on jurisdictional authority over cyber cases, in accordance with traditional jurisdiction and conflict of law rules.

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<sup>4</sup> Clarkson and Jonathan. Ibid No. 2.

<sup>5</sup> AlHadawi, Hassan. *Conflict of Laws: General Principles and Perspective Solution under Jordanian Laws. A Comparative Study* (Dar Althaqafa, Amman 2005). P 26.

<sup>6</sup> Kohl, Uta. *Jurisdiction and the Internet: a study of regulatory competence over online activity* (CUP, Cambridge 2007). P 13.

<sup>7</sup> Kohl. Ibid. P 14.

In the history of law, it can be easily traced how different national legal systems have accommodated to international legal challenges in general and those related to jurisdiction rules in particular. An example of a general legal challenge might be to deal with international relations insofar as they affect modern methods of goods transportation or the international drugs trade; a similar example might relate to how rules of war and permissible use of modern weapons should be managed between nations. In terms of jurisdiction challenges, legal systems have most been changed by the impact of political issues such as sovereignty principles, or of 20<sup>th</sup> century technological innovations such as developments in the telephone and television. In the 21<sup>st</sup> century however, the newest, and greatest modern challenge to legal systems (mainly national systems) is the internet, not just the changes it has brought to communication, but to the fact that it inhabits an ever expanding and unpredictable virtual world known as 'cyberspace'.

The development of this technology and means of communication as unboundaried has posed a major challenge to individual countries and international communities in the last decades. The internet has rendered the world in terms of communication a single cyberspace continent, where world citizens may carry out transactions and functions in a virtual place, without borders, and as such may escape being subject to any one country's power of legislation. This is particularly problematic in the question of which country or international body should regulate issues related to activities committed in cyberspace. This question has had a major impact on international cooperative measures to find legal solutions for such legal challenges.

Given that the legal regulation of the virtual internet world is a relatively new development in the history of law, it is unsurprising that there are several contested areas as to how this legal regulation should be managed between countries. As said earlier, among the most contested question is who should have jurisdiction over the internet and internet sovereignty. The main issue is the degree to which traditional jurisdiction rules as found in different legal systems, that is, those normally applied in the non-virtual, terrestrial world, may be deployed or adapted in creating a set of jurisdictional laws acceptable to the countries applying those laws, On this issue, a major contention is whether such traditional rules can do the job or not in cyberspace.

On this the views of lawmakers and related bodies can be divided into three main groups: the first group believe that existing jurisdiction rules are suitable and sufficiently elastic to deal with cyber jurisdiction issues, with no need for the creation of new legislation or amendments. Currently this view is followed within the French legal system.<sup>8</sup> The second group believe that existing jurisdiction rules do not have the capacity to govern cyber jurisdiction issues and that countries need to develop new specialised cyber laws;<sup>9</sup> this view was argued strongly in 1996 by John Perry Barlow at *the Declaration of the Independence of Cyberspace*.<sup>10</sup>

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<sup>8</sup> Thierer, Adam. & Crews, Clyde. *Who Rules The Net? Internet Governance and Jurisdiction* (Cato Institute, Washington 2003). P 42.

<sup>9</sup> Bonnici, Jeanne. *Self-Regulation in Cyberspace* (The Information Technology& Law Series, T.M.C. Asser Press, Hague 2008). P 9.

<sup>10</sup> Barlow, John. 'A Declaration of the independence of Cyberspace' [8<sup>th</sup> February, 1996] <<http://editions-hache.com/essais/pdf/barlow1.pdf>>. Accessed: November 2011.

The third group takes a more neutral stance in accepting and rejecting arguments put forward to support the other two viewpoints. This third view is that existing jurisdiction rules may cover some kinds of internet activities or transactions but not all. The main argument put forward with this view is that theoretically each nation has a right to claim cyber jurisdiction over issues related to its benefit. Of course such a right is lawful for each country, but creates a complex and possible contentious situation, giving rise in disputes between countries as to which national laws should have precedence in enforcing international judgements. Even so, this third view is that most upheld by most of the world nations.<sup>11</sup>

One reason this third view appears to be widely accepted may be related on one hand to the nature of cyber space as a virtual place, and on the other on the nature of each country's protection law policy (which also includes the regulation of international bodies). This third view upholds the application of traditional rules but requires some amendment to these rules. For example this view leads to the rejection of the idea of worldwide jurisdiction such as might be considered a consequence of applying traditional personal jurisdiction rules over an internet dispute. Instead, the preferred argument is that each country should be given right of jurisdiction by draft, or that more rules should be applied, such as the principles of the sufficient minimum contact as applied in the "*Zippo Manufacturing v. Zippo Dot Com*" case.<sup>12</sup>

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<sup>11</sup> Bonnici, Ibid No.9. P 16.

<sup>12</sup> *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997).

Moreover, based on the theories above, there has been a call to apply conventional rules of related cases that have similar mechanisms and legal applications, such as those which already apply to the telephone, telex or the fax. The argument for comparing these instruments of transaction to the internet as an equivalent medium of transaction is based on the assumption that all these media share the same basics of transaction, for instance, e-contracts may parallel contracts made by telephone whilst defamation may equally occur by medium of fax or email. However, commonsensical though it may appear, this theory has faced huge opposition from those who argue that even though there may be some natural similarities between cyberspace and other media, there are many important differences, such as the lack of recognisable place of transaction on the internet, where events are transacted in a virtual rather than geographically fixed place.

Increasingly; the world is witnessing an observable transformation in the types of activities carried out, in how they are carried out, and in the kinds of consequences which will ensue as a result of such activities. This transformation is attributable to the expansion of transportation, the growth of trade and the burgeoning of electronic technology, all of which have facilitated the spread and impact of legal activities from the local to the international. Nevertheless, in dealing with the international impacts of these activities, many countries have had to amend their traditional existing legislation which was designed only to manage local matters. Indeed the number of countries is small that have not already amended their existing legislation and/or established new laws in order to join the international bodies set up to regulate

international issues under suitable international agreements. For example, the impact of crime growth has obliged international communities to cooperate in prevention measures. The problem with this however, is that the basis of cooperation has often entailed relevant countries waiving or abandoning in part their own sovereignty in order to accept the applications of international conventions within their territories. At the same time, this international cooperation is seen to help in resolving complicated issues committed in ungoverned territories, such as jurisdiction and sovereignty issues on the high seas and in Antarctica.<sup>13</sup>

Generally speaking, whatever legislations are applied in such cases, consideration is based on three criteria: that of a location in which an activity is committed; that of the presence of a case's parties; and finally that of the nature of the activity, whether civil or criminal. These three criteria may be sub-divided further in accordance with special jurisdiction rules or functions, such as national, international, personal, territorial, subject matter, exclusive, civil and criminal jurisdiction.<sup>14</sup>

Traditionally, the classification of an activity will be firstly decided on the basis of territory, so that jurisdiction may be national or international; secondly on the basis of personality, taking into consideration such factors as nationality or citizenship; thirdly, on the basis of the nature of the crime, so that jurisdiction may be civil or criminal. However, such classifications may be rendered useless if the basis of territory is ignored or overlooked; for instance where there is contention over political

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<sup>13</sup>Seganish, W. Michael. 'Criminal Law In Antarctica: Law West Of the Pecos Revisited' [2008] 1 JBER < <http://www.journals.cluteonline.com/index.php.JBER/article/download/3066> >. Accessed: October 2011.

<sup>14</sup> Morris, John. *The Conflict of Law* (3<sup>rd</sup> edn, Stevens and Sons, London 1984). P 38.

or geographical borders between countries, it may become unclear which country or territory shall have jurisdiction over a case.<sup>15</sup> Similarly, if the nature of the activity is vaguely defined, so might a suitable judgement, with the risk that the activity falls into the swirl of “conflict of laws”.<sup>16</sup>

Redrafts and amendments to the law have been designed over time to accommodate such changes as outlined above in the real world. However, since 1969, and the birth of the Internet, laws and especially jurisdictional rules have needed to recognise some conditions which are prevalent only within the reality of the virtual world, such as lack of borders and ungoverned territory,<sup>17</sup> as well as phenomena such as e-money, e-transactions, e-contracts, and e-publications.

Since the provenance of these unique conditions, civil and criminal jurisdiction on the internet has led to considerable debate between countries of different legal backgrounds. For instance, as previously mentioned, criminal rules have been transiently based on considerations such as border or nationality. But arguably these basics are missing in cyberspace. This gives rise to the question firstly as to who has the right to govern crimes on the internet (cybercrimes), and secondly as to where offenders or offences should be persecuted. However, despite the birth of new penal domestic legislation and ongoing international conventions, at this stage

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<sup>15</sup> Chehtman, Alejandro. ‘Extraterritorial Criminal Jurisdiction: Should state have the right to punish offences committed abroad?’ [2004] London School of Economics and Political Studies. UK. Pp 6-8. Article available at: <[http://www.lse.ac.uk/collections/law/wps/WPS2008-04\\_Cehtman.pdf](http://www.lse.ac.uk/collections/law/wps/WPS2008-04_Cehtman.pdf)>. Accessed: Jan. 2014.

<sup>16</sup> Johnson, David. And Post, David. ‘Law and Borders: The Rise of Law in Cyberspace’ [1996] 48 SLR. <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=535](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=535)>. Accessed: November 2011.

<sup>17</sup> Bonnici. Ibid No. 9. P 11.

traditional criminal jurisdictional systems do not appear capable of presenting an appropriate and a unified solution to these questions, as will be discussed in this research.<sup>18</sup>

Among the countries involved, developing countries tend to follow the trends of developed countries. One of these developing countries is Jordan, which has been adopted as a case study for the purposes of this research. Jordan faces the same kinds of internet challenges as elsewhere, and in particular legal challenges related to issues of jurisdiction. It is important to clarify here that Jordan is a pluralistic legal system based on civil and Shariah law as will be discussed in chapter 4; however modern Jordanian legal policy is inclined to a common system policy of judicial precedence. Judicial precedence is a relatively new addition to previous Jordanian judicial customs, reflected in the fact that rights of decision which hitherto were accorded uniquely to the highest legal body in Jordan, the Cassation Court, are now also given for consideration to lower courts in Jordan.

Jurisdiction rules under the Jordanian legal system are documented mainly in the procedure laws alongside some rules derived from conventions and agreements to which Jordan is party. General jurisdiction rules are to be found in articles 102 to 110 of the Constitution, under main types such as civil, criminal, religious and special

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<sup>18</sup> Internet Crime Complaint Centre (IC3) 2005 Internet Crime Report. [June 20, 2006] <[http://www.ic3.gov/media/annualreport/2005\\_IC3Report.pdf](http://www.ic3.gov/media/annualreport/2005_IC3Report.pdf)>; Internet Fraud Complaint Centre (IFCC) 2002 Internet Fraud Report [2003] <[http://www1.ifccfbi.gov/strategy/2002\\_IFCC\\_Report\\_Pdf](http://www1.ifccfbi.gov/strategy/2002_IFCC_Report_Pdf)>; Internet Fraud Complaint Centre [August 11, 2004] <<http://www1.ifccfbi.gov/index.asp>>. Accessed: November 2011.

jurisdiction. The specification and the details of these rules are clarified in the relevant laws, for example: the Civil Procedure Code and the Criminal Procedure Code.<sup>19</sup>

Thus, one purpose of this research is to evaluate significant amendments and new legislation within the Jordanian system that may be seen to have dealt with cyber jurisdiction cases. For instance, in 2004, following a recommendation by the Jordanian parliament and government, the national legislature added a provision to article 5 of its criminal procedure code related to e-crimes. That article 5 deals with insufficient territorial jurisdictions of Jordanian courts regarding perpetrators' domiciles. However, to deal with electronic and internet crimes and challenges which postdate the electronic revolution in the country and its technical links to the whole world, article 5/4 states that "crimes committed by electronic means outside the Kingdom shall be subject to the Jordanian Judiciary, if the results of these crimes impact on the Kingdom or on its citizens particularly or entirely". This article demonstrates the attempts of the Jordanian legislature to engage a suitable approach over e-crimes, such as the effects approach.

To conclude, this study sets out to address one of the most important current topics in legal research, that is, the regulation of cyberspace. Given the diversity of potential issues, however, it is important to limit the scope of this research to a specific topic that will reveal useful and in-depth information. The major reasons for limiting this research specifically to cyber jurisdiction disputes are firstly, that the

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<sup>19</sup> El-Qudah, Mefleh. *Civil Procedure* (Dar Althaqafa, Amman 2004). Pp 51-53.

jurisdiction is the main focus when courts are opening a case or receiving a dispute over lack of jurisdiction. Secondly, jurisdiction is an extended matter which incorporates conflict rules and international private laws under its branches. Thirdly, jurisdiction is strongly linked to key political issues, particularly sovereignty rules, since it is believed that the most serious challenge to traditional legislation is cyber jurisdiction and sovereignty over cyberspace.

It is important to say here that this study is only a single attempt amongst many others to inform the international community in general and the cyber community in particular of the complexities that must be considered in regulating the internet world. And, needless to say, it is not possible in this research to include all related issues over internet jurisdiction cases, nor is the scope of the study to be fully comprehensive or complete (this is one of the reasons of excluding the enforcement jurisdiction type from this work and leave it for a separate research). This research however hoped at this stage to contribute usefully to current understanding of the potential interests and suggestions over cyber jurisdiction disputes and its overall aim is to cover the Jordanian jurisdiction rules as will be explained in chapter four.

## 2- The research plan

This section sets out to outline this research plan as well as to explain the philosophy underpinning this research, and how this philosophy impacts on the choice of research method and methodology. In addition to outlining this research plan, this section includes a rationale for favouring an interpretative and critical

qualitative research approach, and for choosing a case study method as the most appropriate for contextualising research questions, and for researching, presenting and analysing data relevant to this research questions. This section will also address obstacles and problems as encountered in the course of this research, such as limited sources of evidence.

As stated in the previous section, this research aims to explore the capacity of current legislation to accommodate rapid diversifications in recent cyberspace activities. The literature reveals a variety of views and perceptions amongst the primary movers engaged in cyber jurisdiction and conflict of laws on the internet. Within this context, this research focuses specifically on jurisdictional conflicts regarding the use of the Internet. It is hoped that this focus will address a current gap in understanding as to the most appropriate means of dealing with cases arising within the medium of the internet, since no current solutions appear to be comprehensively successful.

As a revised thesis, this research plan is to divide the work into two main stages. The first stage of this research entails a generic exploration and explanation of jurisdiction rules. Stage two aims to find solutions for identified gaps in the Jordanian jurisdiction system in regard to cyber jurisdiction disputes. Within the context of this case study, this research seeks to clarify how the legislature distributes traditional and cyber jurisdictions for different types of cases between different action courts, in accordance with different sets of rules based on Jordanian litigation and procedure

laws. It is useful to note that in Jordan the legislature governing court authority over criminal jurisdiction rules follows a different system to civil legislature governing the judicial system, in that criminal authority is accorded more consideration and significance than that given to civil authority within the courts, because of the specialist nature and complexity of criminal matters.<sup>20</sup> These discussions are covered under chapters five, six and seven of the dissertation.

However, this research aims also to explain how the Jordanian legislature sets out to simplify the jurisdiction rules of Jordanian courts by dividing these into two main types: international jurisdictions, and national or domestic jurisdictions. It will be explained in detail how the legislature in Jordan has been obliged to adapt to various international conventions and agreements, in order to stay in line with the highly developed modern laws adopted by developed countries in Europe (such as France and the UK). Similarly, it will be discussed how it has had to consider comparable laws in Middle Eastern countries (such as Egypt), in setting general jurisdiction principles in relation to the subject matter.<sup>21</sup> The functions of these rules have needed to be clarified in special and relative laws, taking into consideration the country's domestic and international private laws.

Moreover, this research aims to examine and illustrate the various divisions within these jurisdiction approaches, contextualising this in a discussion of the jurisdiction approaches to cyber jurisdiction cases that have been applied to different legal

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<sup>20</sup> Namour, Mohammad. *Criminal Procedures* (Dar Althaqafa, Amman 2005). P 23.

<sup>21</sup> Al-Ibrahim, Akram. *Criminal Policy* (Dar Althaqafa, Amman 2008). P 30.

systems such as those of the US and the EU. The work will consider the most applied approaches and jurisdiction tests over cyber jurisdiction cases, such as the domicile, target and effects approaches.

This research methodology is explained in the following section, with a consideration of the methodology types and research techniques used in the work. A rationale will be offered for adopting qualitative methods with a case study technique as the best way to achieve the requirements of this research objectives, and discuss in more detail how this method was determined after a review of related legal methodology, as well as consideration of the nature of the study. The limitations as to source material and complexities of the matter on cyber jurisdiction disputes will also be discussed.

### 3- Research Methodologies and Paradigms

“Research signifies the systematic study of a topic. ‘Research’ seeks to define, describe and explain what the topic is and how it has come to be distinct from other similar phenomena. Research requires the ability to access then critically assess the various debates and issues the topic has generated.”<sup>22</sup>

One of the main criteria for good research is that it is embedded in a clear understanding of research philosophy, which gives rise to a logical and systematic

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<sup>22</sup> Salter, M., and Mason, J., “Writing Law Dissertations: An Introduction and Guide to the Conduct of legal Research” (Longman. England, 2007), p.5.

rationale for choice of method in terms of what is being investigated. Such a rationale will aim for transparency of process, laying out the connections between theoretical position to investigated findings, and transparency of method, both of which must be coherent with the philosophy underpinning the research; that is, the epistemology of framing the research design,<sup>23</sup> and the approaches to gathering, investigating and interpreting data. For the research to have integrity and authenticity, this philosophical dimension must be explicit, both to benefit the researcher in structuring the research and to the readers of the research in evaluating its practical and academic importance.<sup>24</sup>

The research philosophy can be described as “the development of the research background, research knowledge and its nature”.<sup>25</sup> Thus, a clear understanding of the research philosophy will guide researchers to understand relations between related topics such as paradigms, ontology, epistemology and methodologies. Enderby-Smith observes that a clear understanding of research philosophy will “enable and assist the researcher to evaluate different methodologies and methods and avoid inappropriate use and unnecessary work, by identifying the limitations of particular approaches at an early stage”.<sup>26</sup> He also points out that a strong research

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<sup>23</sup> Blaikie, Norman. *Designing Social Research: The Logic of Anticipation* (Blackwell Publishers Ltd, Oxford 2000). P 35.

<sup>24</sup> Crossan, Frank. “Research Philosophy: towards an understanding”. (2003) NRJ 11 (1). Pp 46-55. Available at: EBSCO.

<sup>25</sup> Saunders, Lewis and Thornhill, A. *Research Methods for Business Students* (4<sup>th</sup> edn Prentical Hall Financial Times, Harlow 2007). P 16.

<sup>26</sup> Easterby-Smith, Mark. Thorpe, Richard. Lowe, Andy. *Management Research* (2<sup>nd</sup> edn The Sage, London 2002).P24.

philosophy will enable the researcher to be “creative and innovative in either election or adaptation of methods that were previously outside his or her experience”.<sup>27</sup>

However, a good research paradigm aims to “understand, describe, predict or control an educational or psychological phenomenon, or to empower individuals in such contexts”<sup>28</sup> to understand research to those ends. A research paradigm can be defined as “a loose collection of logically related assumptions, concepts, or propositions that orient thinking and research”,<sup>29</sup> based on: “a belief about the nature of knowledge, a methodology and criteria for validity”.<sup>30</sup> Oates has usefully described a research paradigm as a motivated way of thinking about particular aspects in or from the world.<sup>31</sup>

As many as there are definitions of research paradigm, so there are also various classifications as to type of research paradigm. The most accepted paradigm types include positivism, constructivism, and interpretivism. Other paradigms are known as transformative, emancipatory, critical, pragmatic and deconstructivist.<sup>32</sup> Whatever the type, paradigms are seen as beneficial to social science research, in that they

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<sup>27</sup> Easterby-Smith, Ibid. P 27.

<sup>28</sup> Mertens, Donna. *Research and evaluation in education and psychology: Integrating diversity with quantitative, qualitative, and mixed methods* (Sage, London 2009). P 21.

<sup>29</sup> Bogdan, Robert and Biklen, Knopp. *Qualitative research for education: an introduction to theory and methods* (3rd edn Allyn and Bacon, Essex 1998). P 29.

<sup>30</sup> Bogdan and Biklen. Ibid. Pp 29-30.

<sup>31</sup> Oates, Briony. *Researching Information Systems and Computing* (Sage, London 2006). P 62.

<sup>32</sup> Mackenzie, Noella and Knipe, Sally. ‘Research dilemmas: Paradigms, methods and methodology. Issues in Educational Research’ [2006] 16(2) <<http://www.iier.org.au/iier16/mackenzie.html>>.

can be independently adopted for research in particular contexts, or combined where appropriate in other contexts.<sup>33</sup>

## **-Rationale for approach**

This section will cover in more detail the rationale for choice of research approach and methods, data collection and analysis. It is important to refer to the fact that in addition to the given period offered by the oral examination committee (Viva) to revise the previous thesis, this chapter summarises work undertaken over a period of approximately three years, amended, developed and improved through reports (e.g. first plan proposal, registration and transfer reports) to accommodate updates and activities as emerging throughout this research period.

### **a- The rationale for adopting interpretative and critical paradigms**

As mentioned earlier, it has been the intention to adopt interpretative and critical paradigms in conducting this research, and to follow a qualitative case study method. Given that the focus of this research is cyber jurisdiction, a relatively new and complex phenomenon with many interpretations at international and domestic levels, it would not be practicable nor desirable to adopt a research approach based on positivist precision. Thus the positivist paradigm has been excluded from this research plan. Instead, in order to allow some flexibility in dealing with the nature of cyber jurisdiction, in itself a relatively new phenomenon, and as yet subject to several contrasting theories and confusion of definitions, it seems preferable to

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<sup>33</sup> Mertens, Ibid. No. 28. P 22.

combine interpretative and critical paradigms as a means of arriving at a deep and comprehensive understanding of this research objectives.

Critically reviewing this research options offered via available paradigms, it would seem that adoption of interpretative and critical approaches would best serve the requirements of an exploratory and constructive research plan, especially since a major aim of this research is to map the richness of factors that have over time influenced the evolution of cyber jurisdiction rules. This research carries this mapping of past and current developments in cyber jurisdiction issues through into logical recommendations for how future jurisdiction rules might be most appropriately developed in order to resolve jurisdiction disputes and conflict of laws on the internet.

The breadth and scope of this research topic, in investigating the topic at international and global levels, obliges the researcher to follow two parallel strands: the first focuses on a case study to exemplify the kinds of challenges facing developing countries applying their laws in ever more complex cyber law situations; the second focuses on an intensive exploration and discussion of international situations arising from such situations. Given this complexity, it is argued that the combination of interpretative and critical research paradigms is most appropriate in undertaking this study.

## b- The rationale for adopting qualitative research

In terms of this research methods, the research is dealing with a renewable topic: jurisdiction. This is an ancient legal practice which constantly comes under review as new human phenomena are encountered and become subject to legal control; in this instance the phenomenon is cyberspace. Therefore if, as in this instance, this research engages with new ways of framing the law, the normally positivist and deterministic functions of quantitative methods are not suitable for undertaking this complex study. Quantitative methods are geared mainly to statistical and measurement strategies for data collection and analysis, and to hypothesising outcomes of actions carried out in specified ways rather than dealing with concerns into why such actions have occurred.

The data collection methods of quantitative research which rely mainly on collating results arising out of replicable isolated actions in an experimental context, or conversely on collecting large amounts of data through survey and questionnaire techniques, would not match the aims of this research, which are to consider theoretical problems arising from challenges to current traditional legal rules. This research focus, by means of an exemplary case study in Jordanian jurisdiction, is to reflect back on the causes of these obstacles, and on answering concerns as to how such obstacles have come about, why and where they have appeared, and what impact they have had on various contexts. Quantitative methods in their statistical nature are useless in the face of these philosophical questions, and the statistical

function of quantitative methods too limiting to permit analysis of texts, development of themes and interpreting outcomes.

There are huge gaps in the literature identifying which factors have influenced the implementation of jurisdiction rules on the internet over time, and to what degree these factors are dynamic in nature. Consequently, there is scope for the present research to further identify and engage in an in-depth analysis such factors, how they might have changed over time in different contexts and from different perspectives, and how they have impacted on the efficacy of traditional law. It is argued that it is only by using qualitative methods that this research can gain the necessary rich information and insight into the dynamic nature of these factors.

Cyber jurisdiction is still a relatively new phenomenon, the regulation of which is still very much in the early stages. As such, there is an obvious dearth of reliable data and publications about this topic. As a result, qualitative methods are also the appropriate choice for this study in that they offer methods which can generate theory from data even when little is yet known about the topic under study.<sup>34</sup> In the case of this research, it is necessary to examine and understand the experience of applying jurisdiction rules to the internet at both global and local levels. Thus, it is argued that qualitative research methods, evolved in order to investigate the

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<sup>34</sup> Creswell, John. *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (3<sup>rd</sup> edn Sage, London 2009). P 111.

complex, analytical and critical nature of phenomena,<sup>35</sup> are the most appropriate choice for investigating these phenomena according to those methods.

It is generally accepted that analysis in qualitative research tends to be inductive and interpretive,<sup>36</sup> and that findings tend to be richly descriptive, often being used to build or expand on theory.<sup>37</sup> Thus, as a means of understanding the complexity of sources, many contrasting and some questionably reliable, especially from secondary sources, qualitative methods are arguably more suitable for achieving our research objectives than any alternative methods.

### c- Justifications for choosing case study methodology for data collection

It is beyond the scope of any single research project to consider all issues related to internet activity. However, in considering the question as to how different countries deal with internet law in protecting the rights of their citizens, valuable and rich insight can be derived from considering a particular case study. That is, looking at how one specific country legally approaches cyber jurisdiction and internet issues within its own legal structures may illuminate the challenges encountered by other countries in similar instances.

By using one country as an illustrative case study it is hoped that results will offer more detailed and richer insight into how the phenomenon of cyberspace is

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<sup>35</sup> Yin, Robert. *Case Study Research. Design and Methods* (Applied Social Research Methods Series 5, 3<sup>rd</sup> edn Sage, London 2002). P 3.

<sup>36</sup> Strauss, Anselm and Corbin, Juliet. *Basics of Qualitative Research: Grounded Theories Procedures and Techniques*. (SAGE, London 1990). P 65.

<sup>37</sup> Charmaz, Kathy. *Constructing grounded theory: a practical guide through qualitative analysis* (SAGE, London 2006). P 177.

encountered by changes in jurisdiction, and help us to determine those elements most influencing the way jurisdiction rules may be implemented via the internet.

There are a number of reasons for choosing Jordan and its approach to cyber jurisdiction as a research case study. Jordan resembles many developing countries in having a legal system not yet as ready as those in developed countries to deal with internet legal issues. Jordan also is typical of many emergent middle-Eastern states in having a legal system built originally on Shariah (Islamic) and civil laws, only later amended through common laws. Having amended many laws to be line with international treaties, the Jordanian legal system occupies an interesting developmental middle of spectrum position between modern legal systems of developed countries and emergent legal systems of developing countries. It could also be argued that as an Islamic country, Jordan serves as a useful case study in examining how the Islamic foundation of many other developing Islamic and Arab countries needs to be adapted in order to meet modern challenges such as cybercrime.<sup>38</sup>

Not the least of justifications for using Jordan as a case study is that analysis may be enhanced by the researcher's familiarity with Jordanian law through studies at LL.B (Bachelor in Law) and LL.M (Master in Law) levels in Jordan, supported by a professional practice background of several years duration. This background

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<sup>38</sup> Open Net Initiative, Jordan Internet Law <<http://opennet.net/research/profiles/jordan>>. Accessed: February 2012.

underpins the researcher's familiarity with Jordanian laws as well as the current status of internet laws in Jordan, rather than in any other country.

If Jordan can thus be argued as usefully illustrative as a case study, at the same time it presents some research challenges. First is the very limited availability of sources of information to date on Jordanian approaches to cyber law; little has been published in related previous literature studies. Although there are records of Jordanian landmark cases related to internet disputes which might have international impact outside of Jordan (e.g. the case of Prophet Mohammad -PBUH- and the Danish Cartoonist), these are few. This indicates a gap which might usefully be bridged by this research.

To sum up, the nature of the topic, and limitations in access to resources may be offset by choice of this case study approach which can offer rich situated data and potential for insight into the dynamic nature of cyber disputes as played out in domestic contexts with international implications.

d- Collecting data In order to investigate the current status of cyber jurisdiction rules in Jordan

It is argued that this research has collected sufficient data to satisfy the objectives of this study and to give a full picture of the phenomenon under research. It will be discussed how the data collections were undertaken following interpretative and

critical paradigms within qualitative methods. It is important to say here that a minor part of this research used quantitative methods in organising information collected from cases in Jordan, but of insufficient quantity or focus to make any significant impact on findings. Rather, as part of the case study method, an intensive analysis of relevant primary and secondary sources was undertaken as a source of rich data reflecting the complexity of this research phenomenon.

The data collection work has been divided into two major sections, one focusing on general information regarding the international dimensions of the phenomenon, and one focusing on the selected case study with a view to illustrating potential issues within Jordan and other countries with a similar law structure. Between these two sections, this research has distributed its objectives and methods. It has intentionally balanced the collection of primary and secondary sources to provide coherence in taking into account the global dimension of the cyber jurisdiction topic whilst examining the impact of this topic intensively in a local environment.

Data collection involved collating information regarding the nature of current internet laws of developing countries and comparing these with some corresponding laws from cyber jurisdiction in developed countries. The scope of data collection has included but not been limited to Jordan, the UK, the USA, the UAE, Egypt and the EU. Part of the data collection has included leading historical internet cases as a critical component of this research since such cases offer insights into the ways that jurisdiction has historically needed to adapt to specific instances, and may inform

how future potential internet law reforms and future judicial approaches might develop. At the same time, this research has also collected secondary materials written in English and Arabic languages from both printed and electronic sources to illustrate the situations in the countries mentioned above.

At the first stage of the data collection plan, the aim was to gather detailed information on relevant Jordanian legislation in order to facilitate textual analysis and critical appraisal of the efficacy of Jordan's current laws and legislation in regard to cyberspace issues. This included reviewing related current provisions in the Jordanian legislation and constitution. In addition to putting together a detailed account of the relevant Jordanian legislation, this research has taken into consideration the interpretation principles of Jordanian laws, which allow for identifying the most likely content of law in undecided issues (for instance Jordanian Constitution art. 102; Jordanian Civil Procedures Law, art. 27-47). Additionally, relevant Jordanian judicial decisions related to Internet and Computer laws have been examined, as have different court cases, judgments and decisions, such as those of the Cassation Court decisions and the Supreme Court of Justice judgments.

Going beyond this, this research has reviewed those regional and international agreements in which Jordan takes part, related to cyber jurisdiction. This review involves an examination of the applicability of current regular jurisdiction rules within those agreements related to cyber jurisdiction, including the Jordanian legislation dealing with international agreements, for instance private international laws.

Instances of conflict between Jordanian legislation and any of the agreements of which it is part have also been studied. The aim has been to gather data from a wide scope of Jordanian jurisdiction rules related to two specific kinds of jurisdiction: civil and criminal. In addition, data has been collected on the attribution and remission rules in international private law which have been followed by Jordanian judges dealing with internet related cases.

This first stage of data collection for research provides a critical exposition of Jordanian law, in itself a contribution to world knowledge. The next step evaluates solutions sought by Jordanian law in relation to cyber issues within the wider context of more fully developed cyber law systems in other countries and examines the applicability of such systems to Jordanian law. Thus, findings from stage one have served to offer a focus and direction for stage two. The main method at this stage involves a textual analysis of modern laws to cast light on how issues identified as problematic in stage one might be resolved. In addition to considering formal textual features of the data, at this stage this research takes into account the strategies that lead to the creation of a consistent body of legislation on cyber cases, and, further, the differences and similarities that connect such a body to other legislative genres.

The inevitable limitation to the scope of this data collection lies in the dearth of available primary and secondary sources related to the question, and the diversity in views and quality of the content of such sources (this reasonably attributed to the modernity of this area). Internet law is arguably a newly regulated topic most likely

based on the application of traditional legislation to internet cases or disputes.<sup>39</sup> Consequently, it is unsurprising that there are such few laws fully adequate for dealing with cyber jurisdiction disputes, especially those dealing with questions related to third world or developing countries.

As cyber law is a new legal field involving national and international norms, many of the secondary sources offered have merely replicated the information or details available to all. In other cases, where there is considerable conflict between several references over the same point, some displaying what is argued as a non-academic and illogical stance, the data has been processed in the light of a specific position taken in this research and reported in the findings.

To sum up, the data collection methods have been as thorough as current sources allow. However, it must frankly be acknowledged that the quality of secondary research, mainly from data made available through the internet, is flawed; the majority of sources have been written by individuals presenting personal opinions and with a strong bias towards a certain theory while ignoring others, often in order to influence political interests. Although some of this kind of data may emerge as useful, it must be made transparent that the position on and purpose of disseminating them may be suspect, and discussed as such.

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<sup>39</sup> Bonnici, Ibid No. 9. P 13.

## 4- Conclusion

This chapter has presented this research plan and its methodologies and data collection processes as used in this research. Qualitative research with an interpretive and critical stance has been identified as being most appropriate and effective for exploring the dynamic nature of the factors that influence jurisdiction rules, and for exploring conflict of laws principles as applied to the internet. In this, a case study focus is argued as being not only the most flexible, and usefully applicable to other cases in similar contexts.

## Chapter 2: The Research Basics: Traditional jurisdiction and Conflict Rules

### 1- Introduction

The previous chapter presented this research plan, incorporating an overview of research methodology and paradigms, as well as the specific rationale for the research methodologies and methods used in this study. This chapter moves on to a consideration of the core points in the study, relating to jurisdiction and cyber disputes, followed by a highlighting of the historical background of legal rules as forming the fundamentals of jurisdiction principles.

For the benefits of this research, jurisdiction can be defined in its basic meaning as the extent to which legal authority, control or power is held by an institution over someone or something. Since the term “jurisdiction” has evolved over time to inhabit its current meaning, it is of interest in this Chapter Two to explore the historical roots of jurisdiction and conflict rules throughout history, dating from the earliest establishment of legal systems. Looking at jurisdiction from this perspective allows us to develop a comprehensive understanding of how jurisdiction rules are intended to function, as well as how they have been improved, developed and amended over time. This chapter will explore the relationship between jurisdiction and conflict rules, and also set out to clarify why many types of jurisdiction seem vague or open to misunderstanding. The purpose of such an exploration is to embed the developmental perspective of jurisdiction and conflict rules in a consideration of how they function, particularly how legislation functions in regard

to phenomena which occur in cyberspace. Since cyberspace legislation is the main and fundamental focus of this research, it is important to present a clear picture of traditional jurisdiction and conflict principles before discussing internet obstacles to, and reasonable solutions for, internet activities. Within this context, the main aim of this chapter is to highlight jurisdiction rules that have been considered specifically by Jordanian legislature and law scholars in Jordan, this with no preference to one specific legal system.

## 2 – Legal Rules in History:

The earliest form of human law was the principle of force, generating rules which reflected sovereignty of the strong over the weak. Such rules would have been established and enforced in accordance with the judgment of the owner of the right to exert force. Historically and culturally, such rules could be said to predominate in how individuals and communities were governed, until the rise of religious influence which asked how laws might otherwise be formed and implemented. Such an example has been charted as far back as 3000 year BC, to the period in which the prophet *Abraham* (Ebra) was recorded as following the codes of the Kingdoms of Egypt and Iraq. The first written legal-religious code was founded in Egypt in 1790BC by King *Nahot*, although other codes have been discovered in Iraq as active in the era of the Kingdom of Babel.<sup>1</sup> Among the many codes of that era, the most important was that of King Hammurabi, which included issues and objects from previous codes concerning trade and agriculture matters, as well as

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<sup>1</sup> Breasted, James. *Ancient times, a history of the early world: an introduction to the study of ancient history and the career of early man* (Kessinger Publishing, Mont 2003). P 50 – 53.

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the rights of women, children and slaves.<sup>2</sup> This code, discovered in 1901, and now kept in the Louvre museum in Paris, was written on a stone tablet standing over eight feet tall (2.4 meters). The code of Hammurabi contains 282 laws, written by scribes on 12 tablets.<sup>3</sup>

Another distinguished code some 300 years later was that delivered by the Prophet *Moses*, said to be sent by God to the Egyptian King *Pharaoh*. The code of Moses, later recorded in the Holy Book known as *Al-Tawrat* (the Bible), resembled that of Hammurabi, in laying out rules on state governance, rights, and punishments for offences. This book has been recognized for its religious but also its legal significance amongst many communities, mainly Christian, Jew and Muslim. Successive codes were those of King *Bokokhoris* (the leader of the 24<sup>th</sup> royal family in Egypt), the *Draconian* Code (Athens 621 B.C), and the *Solonic* Code (Athens 594 B.C).<sup>4</sup>

The Twelve Panels Code created in Rome in 451 B.C was the first formal code to be drafted by a political group rather than by a king or governor, and led to a new era of law based on *customary traditions*.<sup>5</sup> In this era, religion and spiritual traditions were not the only source of law. The law was separated from religion, relying more on customs and traditions as a main source. This coincided with the appearance of jurisprudence and legislation processes, as well as a proliferation of

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<sup>2</sup> Breasted, Ibid. P 64.

<sup>3</sup> Breasted, Ibid. P 65.

<sup>4</sup> Breasted. Ibid. P 70.

<sup>5</sup>The University of Jordan. Lectures on Legal Theories <<http://etudiantdz.net/vb/t8459.html>>. Accessed: August 2011. P 12-32.

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legal theories regarding differences between civil and common laws within the state.<sup>6</sup>

The rule of democracy gave rise to the development of sovereignty of law, and jurisdiction rules as part of a political code. Prior to this, sovereignty and jurisdiction over all activities and persons belonged exclusively to the king or the governor of a country.<sup>7</sup> Legislative authority was concentrated in the hands of a higher power, normally that of a single leader, whilst judicial authority evolved over time from an authority upheld by force, to an authority upheld by legislation. The enforcement of this authority was not dissimilar over time from previous jurisdictional authority types.<sup>8</sup>

The legal term “Jurisdiction” first appeared in Roman legislation during the expansion of the Roman Empire, evolving to take into account the social and political conditions of the time, reflecting an increasing influx of foreigners into the country, an increase in external trade and development of new political alliances throughout the empire. As a consequence of such conditions,<sup>9</sup> intricacies began to develop in the rules of jurisdiction to accommodate different types of jurisdiction and conflicts between laws. These rules further evolved over different historical

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<sup>6</sup> Abdu Alkareem, Mamdouh. *Conflict of Laws* (Dar Althaqafa. Amman 2005). P 43.

<sup>7</sup> Habermas, Jorgen. *Between Facts and Norms: Contributions to a discourse Theory of Law and Democracy* (Polity Press, Oxford 1996). P 112-113.

<sup>8</sup> Likosky, Michael. *Transnational Legal Processes: Globalisation and Power Disparities* (Law in Contents, Butterworths, London 2002). P 21.

<sup>9</sup> Harris, Phil. *An Introduction to Law* (CUP, Cambridge, 2007). P 67.

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eras, in some instances working closely with religious law, to form the legal principles which govern us today.<sup>10</sup>

Current jurisdiction and conflict rules reflect the richness of their historical development, having been adapted gradually to the complexities and pressure of changing legal relationships over time. Within this jurisdiction context more specific principles of territoriality and personality were developed, as well as relative jurisdiction standards and subject matter rules. Over time, different schools, especially the Italian, French and German schools in Europe, became established in response to a critical need to address gaps and conflicts arising from perceived inadequacies in antiquated legal theories. Different types of updated and modernized solutions and theories emerged, as well as the classification of conflict rules into internal and external. Such challenges to change are with us to present day, in that there is always a constant and changing need to correlate and re-correlate national and international legislation, and to regulate jurisdiction and conflict rules, in order to meet new challenges. This is especially pertinent in the current challenges governing extra-national areas such as the high seas and cyberspace.<sup>11</sup>

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<sup>10</sup> Nicholas, Barry. *An Introduction to Roman Law* (Clarendon Law Series, OUP, Oxford 1965). P 40-41.

<sup>11</sup> The correlation manifested in many ways such as: countries international private laws, the enforcements of foreign judgements nationally and international conventions and agreements.

### 3- Jurisdiction and Conflict Rules: a Conventional Perspective

The term Jurisdiction is derived from the Latin *ius, iuris* meaning "oath" and *dicere* meaning "to speak".<sup>12</sup> When first used, the concept of "jurisdiction" would have referred to the legal system at the time, to indicate the authority awarded to a formal leader (such as a king) or to an official body (such as a Council) to empower them to deal with specific issues, within a distinct territory, over a specific group of people. This jurisdiction would have applied to obligations of administered political, legal and other rights. Although the original meaning of the term would have reflected a country's internal and external relationships, its expansion and occupation policy, its external trade activity and its relations with foreign traders, the meaning of the term would have had to evolve over time to reflect changes in legal systems, whether under a dictatorship, or an absolute monarchy, or under a more democratic system.<sup>13</sup>

Currently, the term jurisdiction can be read in two ways: first in its local meaning specific to the internal application of an individual country's laws; second in its application to public international law. At the domestic level, political jurisdiction is linked to the sovereignty of the state and the leadership of the country. Rights to security jurisdiction in all countries belong generally to police departments and army units, or to any other bodies playing a protective role in the country. Overarching these types of jurisdiction is legal jurisdiction, or *Justice*. In any

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<sup>12</sup> Wang, Faye. *Obstacles and Solutions to Internet Jurisdiction, A Comparative Analysis of the EU and US Laws*. JICLT 3, 4 (2008). P 1-9.

<sup>13</sup> Clarkson, Chris. and Hill, Jonathan. *Jaffey on the Conflict of Laws* (Butterworths. London 2002). P 42 and P 116.

country this consists of three main pillars: legislative, judicial and enforcement. However, each of these pillars has certain functions which must be managed by systematic national and international processes.<sup>14</sup>

Enforcement jurisdiction rules, also known as executive jurisdiction rules, are a set of processes which aim to impose, implement or apply judgements and orders in accordance with certain domestic and international legislation.<sup>15</sup> At national level, a country's domestic codes are applicable within a country's borders; nationally enforced bodies such as courts and police departments may be physically located and distributed throughout the country, while countries at international level have no power to enforce their codes beyond their borders. However, some countries have claimed extraterritorial jurisdictional powers of their legislation in certain situations such as occupied territories and neutral areas.<sup>16</sup>

Enforcement jurisdiction rules undoubtedly depend for their effect on recognition of borders, in that the rules which apply within a country's borders are deemed to have no recognized power or impact in another country's territory without that country's acceptance or allowance. Such permissions may be recognized by bilateral, regional or international conventions between countries; an example of this is the Convention of the Arab League of Nations on the Enforcement of

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<sup>14</sup> AlHadawi, Hassan. *Conflict of Laws: General Principles and Perspective Solution under Jordanian Laws, A Comparative Study* (Dar Althaqafa, Amman 2005). P 52.

<sup>15</sup> Wimmer, Kurt. and Pogoriler, Eve. 'International jurisdiction and the internet' [2006] (Covington & Burling. Washington D.C. <<http://euro.ecom.cmu.edu/program/law/08-732/Jurisdiction/InternationalJurisdiction.pdf>>. Accessed: October 2011. P 16.

<sup>16</sup> AlHadawi. Ibid No. 14. P 60.

Judgements of 10 November 1952.<sup>17</sup> However, conflicts may arise between countries where there is a lack of a comprehensive international convention serving to enforce cross-border judgments, for example those involving cases needing applicable law and forum law. Such cases have previously been treated under adjudicative and prescriptive jurisdiction rules, and by the application of a country's international private laws regarding principles of conflict of laws.<sup>18</sup>

An alternative solution has been adjudicative jurisdiction, also known as judicial jurisdiction, which refers to a court's authority over individuals and matters within a specific country. Such jurisdiction simply deals with choice of court or choice of forum issues, subjecting concerned parties or issues to the country's legal bodies, whether courts or tribunals.<sup>19</sup> Judicial jurisdiction has two branches: the first is general judicial jurisdiction, the second specific or limited judicial jurisdiction.<sup>20</sup> General jurisdiction is defined as "the legal authority of a court to entertain whatever type of case comes up within the geographical area over which its power extends". Specific or limited jurisdiction on the other hand is defined as "the power of a court to hear only certain types of cases, or those in which the amount in controversy is below a certain sum or that is subject to exceptions".<sup>21</sup>

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<sup>17</sup> Mohd, Habib. And Al Mulla, Sharif. 'Conventions of Enforcement of Foreign Judgments in the Arab States' (1999) ALQ 14 (1) Pp 33-56.

<sup>18</sup> Clarkson and Hill. Ibid No. 13. P 32.

<sup>19</sup> Brilmayer, Lea and others. "A General Look at General Jurisdiction". [1988] Texas Law Review. 66. P 28-39. Available at: LexisNexis.

<sup>20</sup> Wimmer and Pogoriler. Ibid No. 15. P 38-39.

<sup>21</sup> Wang, Ibid 12. P 7.

A third significant jurisdiction type is prescriptive, or legislative jurisdiction, the function of which is to prescribe a state's authority to apply its legislation over activities and behaviours related to or affecting the state's home benefits or interests.<sup>22</sup> However, this authority also includes actions committed within the country's territory, by its nationals or others, as well as acts committed abroad that have impact on the country's territory or on its citizens.<sup>23</sup> Considering the importance of state boundaries in applying such jurisdiction, undoubtedly the function of these legislative rules is to decide the applicable law, known as the procedure of choice of law, in terms of balance between domestic and international issues. Such decisions involve domestic laws on one hand and international private or public laws on the other.<sup>24</sup> In recent times the prescription of such rules has undergone intensive review at international level in order to fine-tune various terms and categories for prescriptive jurisdiction rules and types.

#### 4- Jurisdiction types

The previous section has highlighted the legal background of jurisdiction rules and those definitions most prevalent in the literature. However, there are several types of jurisdiction rules that have been created for different legal systems, although it is important to say here that no single categorisation or classification of these rules

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<sup>22</sup> Wimmer and Pogoriler. *Ibid.* No. 15. P 61.

<sup>23</sup> Darrel Menthe, "Jurisdiction in Cyberspace: A Theory of International Spaces" *MTTL*. 4. 69 (1998), available at: <http://www.mttl.org/volfour/menthe.html>. P 9.

<sup>24</sup> Mansell, Wade and others. *A Critical Introduction to Law* (3<sup>rd</sup> edn Cavendish, London 2004). P 73.

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has been established sufficiently to allow discussion of such rules under adjudicative or prescriptive jurisdiction.<sup>25</sup>

Consequently, one aim of this section is to review various categories involving legislative jurisdiction principles, such as personality, territoriality and subject matter principles. In this research the categories of legislative jurisdiction principles as used in Jordan will serve as an example and case study focus.

It is important before discussing jurisdiction types to clarify the relationships between conflict of law rules and jurisdiction principles. Conflict of laws concerns the law relating to the resolution of cases which have foreign aspects of connections. “Different countries have different laws and there can be ‘conflict’ in the sense that more than one country can have jurisdiction and more than one law can be applied. Conflict of law rules are designed to eliminate these conflicts by indicating which court should have jurisdiction and which of the ‘conflicting’ laws should be applied.”<sup>26</sup>

Conflict of laws has three aspects, jurisdiction the topic we are focusing on in this thesis, choice of laws (which considers whether a court should apply the laws of its home state or those of the foreign state connected to the dispute) and enforceability of judgments. Conflict of laws is also often referred to a private international law because it deals with the rules relating to civil dispute with an

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<sup>25</sup> For instances; Kohl referred to this point under jurisdiction bases of public law by saying that: “Note that some discuss these bases under the heading of prescriptive jurisdiction and others under adjudicative jurisdiction.” Kohl, Uta. *Jurisdiction and the Internet: a study of regulatory competence over online activity* (CUP, Cambridge 2007).

<sup>26</sup> Clarkson, C.M.V., and Hill, J., *The Conflict of Laws* (4<sup>th</sup> edi. OUP, Oxford, 2011) p.1.

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international flavour. State activities and international criminal law are governed by public international law. This thesis focuses on jurisdiction because it spans the public/private law divide and is a prerequisite for the application of both.

Jurisdiction as defined in the previous section is the power of the state to use its domestic law in any specific case. As Harris asserts:

*“State jurisdiction is the power of the state under international law to govern persons and property by its municipal law. It includes both the power to prescribe rules (prescriptive jurisdiction) and the power to enforce them (enforcement jurisdiction). The latter includes both executive and judicial powers of enforcement. Jurisdiction may be concurrent with the jurisdiction of other states or it may be exclusive. It may be civil or criminal. The rules of jurisdiction identify the persons and the property within the permissible range of the state’s law and its procedures for enforcing that law.”<sup>27</sup>*

To express it another way, jurisdiction is part of the sovereignty of the state and has legislative executive and judicial aspects (see page 36-38). With regard to the judicial aspect (which is of prime concern for this thesis) the following principles whilst not universal are recognised by a number of states:

- the territorial principle;<sup>28</sup>
- the active nationality principle;<sup>29</sup>
- the passive personality principle;<sup>30</sup>

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<sup>27</sup> Harris, D., *Cases and Materials on International Law* (7<sup>th</sup> Edi. Sweet and Maxwell, London, 2010) p. 227.

<sup>28</sup> *Macleod v AG for New South Wales* [1891] AC 455 – ‘all crime is local’, ‘*extra territorium jus dicenti impune non paretur*’ per Lord Halsbury LC

<sup>29</sup> For example as in the UK Official Secrets Act 1911 s10

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- the protective principle;<sup>31</sup> and,
- the universality principle.<sup>32</sup>

Following are discussions of the most related jurisdiction types to this research objectives.

### 4. 1- Special, Exclusive, Limited, Franchise and Private jurisdiction

“Limited” and “special” jurisdiction are terms used to define a court or legal body’s authority over particular matters, people or cases. For instance a court may specialise in dealing with financial matters such as bankruptcy, or with juvenile issues or military jurisdiction. It is important to mention here that the limitation of court powers is derived from rules established in a country’s constitution, agreements or conventions.<sup>33</sup> However, in the same context the terms “exclusive” and “private” can be read as having a wider function in belonging to other legal bodies such as councils or social centres, in addition to the current use of the term exclusive in contract clauses as a reference to a particular jurisdiction or law.<sup>34</sup> For instance, “Franchise” jurisdiction is a term which appears in English Common Law,

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<sup>30</sup> *The Lotus* (1927) PCIJ, Series A, No 10.

<sup>31</sup> See for example the supreme court of Israel in *Eichmann v AG* (1962) 36 ILR 277

<sup>32</sup> *In Re Piracy Jure Gentium* [1934] AC 586

<sup>33</sup> Cornell, Janet. “Limited Jurisdiction Courts – Challenges, Opportunities, and Strategies for Action” [Washington, 2012] The National Centre for State Courts publications [www.ncsconline.org](http://www.ncsconline.org) . Article available at: <http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/courts-and-the-community/3-6-limited-jurisdiction-courts.aspx>

<sup>34</sup> See Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters - 1988, Section 5, Article 16: Exclusive Jurisdiction.

referring to property rights; the origin of franchise jurisdiction is attributed to *Courts Baron*, or *Courts Leet*, merchant courts, and the *Stannary Courts*. Most of these earlier courts however, were officially disbanded by the English Courts Act of 1971.<sup>35</sup>

#### 4. 2- General Jurisdiction

In contrast to limited jurisdiction, the term “general” jurisdiction refers to a court’s authority to process different types of cases such as bankruptcy or juvenile cases. The term “general” was adopted in world legal systems after the term “*equitable*” jurisdiction fell into disuse. However, in current legal policies, countries tend to favour limited legal systems which require exclusive jurisdictional rules, not just in civil or criminal issues but also in many other categories such as customs, families and intellectual properties clauses.

#### 4.3- Positive and Negative Jurisdiction

Both positive and negative jurisdiction can occur in jurisdictional rules. Positive jurisdiction is applied to disputes or conflicts over priority of jurisdictional application, usually when more than one court claims authority over a case or dispute. In contrast, negative jurisdiction is applied in cases where a court refuses to accept a case or dispute, leaving no legal reference or body to hear the case or

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<sup>35</sup> Szabo, Nicholas. ‘Jurisdiction as Property: Franchise Jurisdiction: from Henry III to James I’. The George Washington University Law School. April 21st, 2006. <<http://szabo.best.vwh.net/JurisdictionAsProperty.pdf>>. Accessed: Jan. 2014. P 16.

the dispute.<sup>36</sup> Both positive and negative jurisdiction are famously known to be invoked at national level where the geographical power of the courts is vague or the limited amount of court monetary jurisdiction is based on more than one law. However, generally speaking the decision as to which jurisdictional court will hear a case is made by the Supreme Court or by a court more highly ranked than the courts or tribunals involved in the dispute. At international level, when courts from different countries claim authority over a case or a dispute, mostly in territory foreign to both of them, then the solution is generally located in conflict of laws rules and in international private and public laws.<sup>37</sup> These rules are applicable and adaptable in both civil and common countries.

#### 4.4- Concurrent jurisdiction

The previous section discussed jurisdiction rules which are invoked when there are two conflicting bodies, whether positive or negative authority. But those bodies may share the same claims or authorities over one case as is the situation in concurrent jurisdiction, a type of shared application of jurisdictional rules when more than one court has jurisdiction over a case or dispute at the same time and within the same norms, such as territory and parties. Concurrent jurisdiction may occur at international and national levels, particularly in federal countries.

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<sup>36</sup> El-Qudah, Mefleh. *Civil Procedure* (Dar Althaqafa, Amman 2004). P 53.

<sup>37</sup> AlHadawi. *Ibid* No. 14. P19-23.

Moreover, it mostly occurs between general courts and limited or special courts, given that the general court has the same authority of jurisdiction as limited courts.<sup>38</sup> Concurrent jurisdiction is most likely to be applied if a dispute occurs between the boundaries of two countries. As in the case of border activities, it is also arguable that this may be the most likely jurisdiction to apply in the case of cyber activities, given the absence of nationalities and boundaries on the internet. This will be discussed in a later section.<sup>39</sup>

#### 4.5- National, Domestic and Municipal Jurisdiction:

Jurisdiction rules linked to nationality may be given priority of application over other rules inside a single unified country or federal state. In this instance, the country will have exclusive jurisdiction over all acts and people in its territory, control over physical distribution of its courts and legal bodies around the country, and an internal conflict system for court jurisdiction. On the other hand, countries based on a federal system, such as Australia, Brazil, India, Mexico and the United States, normally adopt subnational jurisdiction rules.

Subnationality rules give subunit divisions the authority of jurisdiction in accordance with systematic courts procedures. It is much more likely to find a number of concurrent jurisdiction disputes in the case of subunit jurisdiction than in a unified country system. However, in both cases a supreme or high court makes decisions over any jurisdictional conflicts. In a narrower sense, the terms

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<sup>38</sup> Clarkson and Hill. Ibid No. 13. P 33.

<sup>39</sup> AlHadawi. Ibid No. 14. P 81.

“domestic” and “municipal” are used to refer to a country’s internal laws exercised in an international dimension. Both terms refer to a national court and legal body authority as used in international conventions, agreements and supranational bodies. The terms might be used when national courts use external acts under their jurisdictional authorities, or when an external body such as a supranational body or another country’s courts use national jurisdictional codes. A country’s legislative and judicial powers deal mostly with a country’s legislation jurisdiction, while its enforcement powers deal with enforcing orders and judgments in accordance with the consequences of the first two powers and the national enforcement of foreign judgments.<sup>40</sup>

#### 4.6- International and Universal Jurisdiction

In an earlier section we have referred to different types of jurisdiction according to their national or international functions, some typically domestic and others ranked between domestic and international, such as national and concurrent jurisdiction respectively. Following on, this section will discuss such typical international jurisdiction types as international and universal jurisdiction.

International and universal jurisdiction are fundamental to international private laws, in that they are based on the idea of protecting a country from dangers beyond its borders (such as acts committed abroad by the country’s nationals or

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<sup>40</sup> Mansell and others. Ibid No. 22. P 58.

foreigners, regardless of nationality or residence) or from the consequences of other relationships to any prosecuting countries, and how these might have impact inside the country's territories. The term "international" is commonly used in international conventions and the rules of conflict of laws; however, in terms of universal jurisdiction, there are gray areas in establishing agreements over the term and its historical appearance, in addition to its legacy. While some have referred to the novelty of the term "universal jurisdiction" in legal contexts and the legislation of different countries,<sup>41</sup> others have logically explained this as an extension of national cooperation in pursuing and prosecuting international criminals beyond country borders. This applies to crimes such as piracy, genocide, slavery and trafficking of children.

The establishment of supranational bodies has limited the scope of universal laws and left each country to manage international jurisdiction procedures in coalition with its international private laws.<sup>42</sup> It is very important to note here that the enforcement of such supranational bodies' jurisdiction may differ in different countries, even if each has signed up to and accepted the enforcement of orders and warnings from bodies such as the International Criminal Court.<sup>43</sup>

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<sup>41</sup> Kissinger, Henry. 'The Pitfalls of Universal Jurisdiction'. Aug 2001. An article adapted from his latest book, *Does America Need a Foreign Policy? Toward a Diplomacy for the 21st Century*. <[http://www.icaonline.org/xp\\_resources/the\\_pitfalls\\_of\\_uj.pdf](http://www.icaonline.org/xp_resources/the_pitfalls_of_uj.pdf)>. Accessed: January 2014.

<sup>42</sup> Areas of international Private Laws. HCCH, International Legal Cooperation and Litigation. <[http://www.hcch.net/index\\_en.php?act=text.display&tid=10#litigation](http://www.hcch.net/index_en.php?act=text.display&tid=10#litigation)>. Accessed: January 2014.

<sup>43</sup> In 2005, Tony Blair officially invited the Israeli Premier Ariel Sharon to UK. Even though Israelis have very good legal experts in the UK, Sharon rejected the invitation and said, "...I have heard that the prisons in Britain are very tough. I wouldn't like to find myself in one." Anyhow, due to objections from various countries, certain changes are being proposed to the current UK law, avoiding minor cases being filed. <<http://www.globalpeacesupport.com/globalpeacesupport.com/post/2010/12/04/Universal-Jurisdiction-e28093-UJ-%28International-Jurisdiction%29.aspx>>. Accessed: January 2014.

#### 4.7- Personal Jurisdiction

Personal jurisdiction or *in personam jurisdiction* refers to a court's power to determine natural and legal persons' rights by making orders against persons. A court's personal jurisdiction is based on certain principles such as the principle of nationality or on a particular level of contact between the court and case parties. Most countries' laws include a clause regarding the application of national laws to their citizens when resident abroad; this authority is granted in accordance with the nationality principle, bearing in mind that the jurisdiction is built on obligations or crimes punishable under the country's laws. The function of Personal jurisdiction has undergone several changes in interpretation in regard to citizens' physical location, types of legal systems and geographical divisions. For instance, the terms "positive and negative" personal jurisdiction have appeared in modern legal systems to justify the application of countries' laws over crimes committed outside their jurisdictional territories by or over their nationals.<sup>44</sup>

Personal jurisdiction is one of the main standards used by courts to deal with forum issues at national and international levels. Functionally, it gives courts a clear direction to exercise jurisdiction over, for instance, a non-resident being sued for illegal activity outside the country's territory. Several trends can be noted in the adaptation of different countries' personal rules in accordance with their political systems and geographical divisions; federal countries, for example, have double circular rules for applying subunit or regional personal jurisdiction rules alongside

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<sup>44</sup> Al-Masri, Mohammad. *Explain the Jordanian Civil Procedure Law* (Dar Qandeel Publishing, Amman 2003). P 64.

national personal jurisdiction rules. This forms the basis of another trend, which is to deal with a country's personal jurisdiction rules as a single unit against extraterritorial issues. Unquestionably, personal jurisdiction rules have a positive impact on the nomination of a forum court under adjudicative jurisdiction rules, and on protecting nationals from unfair prosecution. Such policies can be seen in the newly established long arm jurisdiction of the American System.<sup>45</sup>

However, despite personal rules being purely functional, they can be strongly contested in many arenas, such as in international trade, or where international crimes occur within state boundaries. This is understandable, particularly in political jurisdiction (sovereignty principles), in addition to the clash with universal jurisdiction rules.<sup>46</sup> In the same context, problems with stateless people have forced countries to guarantee national cooperation in giving those people nationality, and protection under personal rules.<sup>47</sup> It may also oblige countries, if they wish to sue a national in their own country, to issue orders requiring enforcement in other countries' territories; this means enforcing the foreign judgement in the place where the national lives.<sup>48</sup>

Additionally, some countries such as Italy, France and Egypt have dealt with the nationality standard by giving their courts personal jurisdiction over their nationals

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<sup>45</sup> Price, Vedder. 'Long-Arm Statutes: A Fifty-State Survey'. Available at: <[www.vedderprice.com](http://www.vedderprice.com)>.

<sup>46</sup> Saqf Al-Hait, Adel. *The Crimes of Libel, Slander and Defame Committed Via Electronic Means: Internet and Mobile Networks & Via Traditional, Mechanical Tools and Press, A Comparative Legal Study* (Dar Althaqafa, Amman 2011). P 313.

<sup>47</sup> The Convention on the Reduction of Statelessness, 1961. <[http://untreaty.un.org/ilc/texts/instruments/english/conventions/6\\_1\\_1961.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/6_1_1961.pdf)>. Accessed: December 2011.

<sup>48</sup> Schoenblum, Jeffrey. *Multistate and Multinational Estate Planning* [2009]. Google E-Books. <<http://books.google.co.uk/books?id=zktPurWpQyYC&pg=SA15-PA84&lpg=SA15-PA84&dq=personal+jurisdiction+obstacle&source=bl&ots=YMgjVWLiJE&sig=wkokeOPz4mgKcSbfVdDPBN00>>. Accessed: November 2011. P 62.

and their obligations as well as over their committed offences. Other countries such as the USA, UK and Jordan have accepted a limited application of the nationality principles by applying personal rules over certain types of nationals' activities connected to the country's laws, with the exception, for instance, of such as immovable property cases, which are mostly subject to the country's laws in accordance with their location.<sup>49</sup> For instance, we see an American court issue a judgement containing the test of "minimum contacts level" to apply personal jurisdiction rules over citizens and foreigners living abroad. Such a judgement was issued on the third of December 1945 in regard to the well known case *International Shoe Co. v. Washington*.<sup>50</sup> The International Shoe headquarters were located in St. Missouri, Delaware, US. While the company had no offices or agents in Washington, it had thirteen salesmen receiving a commission and working for the company in Washington. Those salesmen had limited power and responsibility to enter into contracts with new customers; instead, any buyers who showed interest in the products were obliged to proceed to dealing with the headquarters in Missouri.<sup>51</sup> Based on its laws, the Washington local government asked the Shoe Company to pay an unemployment corporation reserve for businesses, arguing that the company had subjected itself to proceedings by carrying out activities within Washington jurisdictional territories. The International Shoe company refused to respond on the basis of lack of jurisdiction, saying that Washington had no right to collect unemployment contributions since the company was not a

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<sup>49</sup> Carter, Stephan. Russell, Charles Office Publications. 'Guide to Jurisdiction' [2008] available at: <[http://www.charlesrussell.co.uk/UserFiles/file/pdf/Insurance/Guide\\_-\\_Insurance\\_Reinsurance\\_-\\_Guide\\_to\\_Jurisdiction.pdf](http://www.charlesrussell.co.uk/UserFiles/file/pdf/Insurance/Guide_-_Insurance_Reinsurance_-_Guide_to_Jurisdiction.pdf)>. Pp 1-3. Accessed: February 2014.

<sup>50</sup> *International Shoe Co. v. Washington*. 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95.

<sup>51</sup> *International Shoe Co. v. Washington*. Ibid.

corporation of Washington.<sup>52</sup> The company argued that it had no business activities in Washington nor employees to be served. The court granted and affirmed the judgement for Washington.<sup>53</sup>

The court held that it did not offend the *traditional notions of fair play and substantial justice* by granting Washington personal jurisdiction over International Shoe. The Supreme Court stood by its judgement on the basis of the 14<sup>th</sup> amendment of the American Constitution and the norms applying to personal jurisdiction rules over the case.<sup>54</sup> The Due Process Clause permits courts to exercise personal jurisdiction over persons with sufficient minimum contacts; these minimum contacts are generally built on physical presence, financial gain, stream of commerce, and election of the appropriate court via contract.<sup>55</sup> The court concluded that:

*“to have special jurisdiction in a state, a defendant must have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. The salesmen working with the corporation inside Washington State were sufficient as minimum contacts. The maintenance of the suit did not offend traditional notions of fair play and substantial justice, since the corporation’s business dealings in Washington were very systematic, over a period of several years. They resulted in a large volume of*

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<sup>52</sup> International Shoe Co. v. Washington. Ibid.

<sup>53</sup> International Shoe Co. v. Washington. Ibid.

<sup>54</sup>The opinion of the court available at: [http://www.law.cornell.edu/supet/html/historics/USSC\\_CR\\_0326\\_0310\\_ZO.html](http://www.law.cornell.edu/supet/html/historics/USSC_CR_0326_0310_ZO.html).

<sup>55</sup> States are different in their long arm jurisdiction which includes the personal jurisdiction rules and the sufficient minimum contact level. For more information see: Price, Vedder. Ibid No. 41. P 88.

*interstate commerce, during which time the appellant received the benefits and protections of the state in which they were conducting business. They established sufficient contacts with the state to determine that it was fair and just to have jurisdiction”.*<sup>56</sup>

Nevertheless, since that time the test of the minimum contacts level has been criticised for its vagueness, uncertainty and complexity. Some have said that the “ambiguity” and “incoherence” of the minimum contacts level test over the past two decades has diminished its previous status as a distinguished cornerstone of court practice.<sup>57</sup> In the case of *International Shoe Co. v. Washington*, the court at the time of issuing its judgement sought, by adopting gestalt factors, to prevent the defendant from arguing for dismissal of jurisdiction.. This underpins Kevin McMunigal’s frank acknowledgement that “the minimum contacts test’s criteria are confused, its purposes perplexing, and its results often unpredictable”.<sup>58</sup> Moreover, Lea Brilmayer has gone through the test’s difficulties and explored some illogical bases of defining contacts or minimum contacts. Lea argues that: “the meaning and relevance of ‘how contacts count’ has never fully been resolved”.<sup>59</sup>

To sum up, personal jurisdiction rules comprise a single set of three main bases for forming adjudicated jurisdiction rules; as such they have played major roles in granting or dismissing jurisdiction of one party over another. Despite the

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<sup>56</sup> *International Shoe Co. v. Washington*. Ibid No. 50.

<sup>57</sup> McMunigal, Kevin. ‘Desert, utility, and minimum contacts: toward a mixed theory of personal jurisdiction’ (October 1998). 108 (1) *The Yale Law Journal*. Pp 189-235. Available at: JSTOR.

<sup>58</sup> McMunigal. Ibid. P 72.

<sup>59</sup> Brilmayer, Lea. ‘How Contacts Count: Due Process Limitations on State Court Jurisdiction’ (1980) *SUP. CT. REV.* 77-113.

importance of personal rules, they face along with other jurisdictional rules, serious modern challenges such as statelessness obstacles against the nationality principle, as well as obstacles of technology, especially in relation to the internet. Such issues may serve as a nail in the traditional rules coffin. The next section will discuss the remainder of the adjudicated rules, that is, territorial and subject matter rules.

#### 4.8- Territorial Jurisdiction

The term “geopolitical” is frequently used to describe those geographic or political borders which play a major role in defining the power of one party over a certain piece of land. Since ancient times, various persons, tribes and countries have sought to define or clarify their rights to control properties which they perceive as belonging to them, and to control which persons are free to use these properties, as well as to control activities which are perceived to be relevant to the use of these properties. These rights having been recognised in law, such countries also are considered to have the right to create a strong set of laws in order to manage their internal affairs and related international issues under the rules of legislative jurisdiction or jurisdiction to prescribe.<sup>60</sup> Moreover, they are considered to have the right to establish a systematic legal control over their legal bodies in setting up and

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<sup>60</sup> Harris. Ibid No. 9. P 51.

controlling activities in their territories under adjudicative and the enforcement jurisdiction rules. That is, they have the right to form territorial jurisdiction rules.<sup>61</sup>

As a legal definition, territorial jurisdiction could be described as a country's authority over all persons and events within its territories. Once the country's courts have established territorial jurisdiction over such persons and events, this gives them the right to bind obligations and adjudicate disputes on rights.<sup>62</sup> Territorial rules can be distinguished from personal and subject matter rules in that whilst personal jurisdiction rules are based mainly on the principles of nationality, subject matter rules are based on individual particular topics. Territorial rules depend on the "physicality of the parties" and the conducting of "activities" within the country's territories.<sup>63</sup> The territorial jurisdiction rules apply to the selection of venue and forum for court activity. Various territorial rules have been adopted for this purpose as they refer mostly to the locality and the geographical authority of a court or a country.<sup>64</sup> It is essential to mention here that while such rules may frequently be applied in establishing a venue, their function is less important and carries less authority than territorial jurisdiction rules.<sup>65</sup>

Commonly, territorial jurisdiction in national and international dimensions can be divided into two trends: first in reference to subjective territorial jurisdiction, second

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<sup>61</sup> Ingman, Terence. *The English Legal Process* (11<sup>th</sup>edn OUP. Oxford 2006). P 73.

<sup>62</sup> Abdu Alkareem. Ibid No. 4. P 68.

<sup>63</sup> Gray, Tricia. 'Minimum Contact in Cyberspace: The Classic Jurisdiction Analysis in a New Setting' (2002) 1 JHTL Pp 85-100.

<sup>64</sup> AlHadawi. Ibid No. 14. P142.

<sup>65</sup> Saqf Al-Hait. Ibid No. 42. P 220.

to objective territorial jurisdiction<sup>66</sup> Subjective territorial rules form the basis of legislation in most countries, especially in regard to criminal laws, in giving the forum state jurisdiction to prescribe a rule as appropriate for all activities in its territories. Whereas objective territorial rules are involved when actions take place outside the forum state's territories, they still have impact and influence within the forum country. A classic case of application of objective territorial rules is one involving state-boundary issues: for instance if a man inside Jordanian territory shoots a Syrian inside Syrian borders, it is considered to be an offence committed in Jordan but with an effect or result based in Syria; this gives the Syrian Authorities the jurisdictional right to prescribe a penalty for the perpetrator in accordance with Syrian law, well known in this legal context as the "effects of place" or the "effects jurisdiction".<sup>67</sup>

Territorial jurisdiction mainly depends on agreement over geopolitical borders, and may make a difference to solutions ascribed to subjective and objective territorial rules. The difference is in the interpretation of minor territorial rules in national and international issues, in that they may be used to determine which state in a dispute is the forum state, using principles such as the place of contract establishment in civil jurisdiction or the place of a defendant in criminal jurisdiction. These important differences are based on interpretation of borders.

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<sup>66</sup> Menthe, Ibid No 23. P 8.

<sup>67</sup> Menthe. Ibid. No 23. P8.

However, such interpretations become problematic in cases where borders are entirely absent, or unacknowledged. Although superficially the view of conflict of laws may apply, it must become clear that where there is no physicality of persons or things, then the effectiveness of laws built on these being present must come into question. In such cases, the question of lack of physicality is no less important than consideration of relevant borders in affirming jurisdiction.<sup>68</sup>

The issue of territorial jurisdiction goes further than a country's territories, to encompass matters pertaining to persons, activities, and interests in those territories. Territorial jurisdiction when applied over nationals living abroad, has the function of serving as a set of extraterritorial jurisdictional rules. That is, the same rules can be functional over events which affect a country internally, but may also affect international committee interests and events committed outside a country's territories, such as piracy on the high seas, or events occurring in ungoverned lands, or lands under no sovereignty by any nations, such as in the case of Antarctica or outer space. In such cases, in order to avoid conflict over which laws should be applied or which forum state should be named in applying jurisdiction over the mentioned extraterritorial rules, many treaties and agreements have been established to facilitate a mutual organisation of jurisdictional rules between states, and to adjudicate on conflict of international private and public laws, or other laws such as the law of the high seas.<sup>69</sup>

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<sup>68</sup> Hiller, Janine and Cohen, Ronnie. *Internet Law & Policy* (Pearson Education, New Jersey 2002). P 173.

<sup>69</sup> For more info see: the Antarctica Treaty System (ATS), The Law of the High Seas, and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

Nevertheless, despite territorial jurisdiction rules having a major impact on national and international events, and playing a significant role in determining the authorised jurisdiction over an obligation or an offence, they appear to be limited in regard to modern challenges, for example those arising from cross borders activities such as international crimes and international commerce.<sup>70</sup> The main obstacle is the possibility that boundaries are missing or that there is a gray area in determining which countries have been affected. This is particularly so in reference to the use of technology for communications in the 21<sup>st</sup> century.<sup>71</sup>

#### 4.9- Subject Matter Jurisdiction

The third type of adjudicative jurisdiction is subject matter jurisdiction, based on a court's capacity to apply its powers over certain types of disputes and cases.<sup>72</sup> A court's subject matter authority to hear and try particular cases related to its jurisdiction is the most important of all jurisdictional types. Personal jurisdiction requires person norms; territorial jurisdiction is built on events occurring within a country's land; and subject matter jurisdiction is based on public orders since courts' powers are restricted under adjudicate jurisdiction rules.<sup>73</sup> Consequently, while personal and territorial jurisdictional rules may be dismissed and waived,

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<sup>70</sup> Johnson, David and Post, David. 'Law and Borders, the Rise of Borders in Cyberspace' (1996) SLR 1367. P 40-43.

<sup>71</sup> Johnson and Post. Ibid. P 45.

<sup>72</sup> AlHadawi. Ibid No. 14. P 168.

<sup>73</sup> Post, David, 'An Outline for the Perplexed' [1998]. Paperwork presented at the Conference on Computer Law and Policy, Cornell University July 8-10/ 1998. Paper available online at: < [http://www.temple.edu/lawschool/dpost/outline.htm#N\\_1](http://www.temple.edu/lawschool/dpost/outline.htm#N_1) >. Accessed February "2014.

subject matter rules cannot be waived or impose nullity on court judgements if they have missed their legal reference under subject matter jurisdiction.<sup>74</sup>

However, in exceptional cases territorial or personal rules may be subject to public order, for example administrative cases; but such exceptions are limited, and subject to systematic clauses and laws.<sup>75</sup> Even so, parties in special cases may have the constitutional right to agree to ignore subject matter rules subject to authorisation by a primary jurisdictional court. In this case also, exceptions to jurisdiction types are limited, in that the court must raise the issue of subject matter jurisdiction before opening the case or at any time during the trial in case it arises during the trial; otherwise its judgements will be considered null (repealed). In the case of personal and territorial jurisdiction, courts have no authority to raise these issues until one of the disputed parties makes a claim concerning them. In all cases, the jurisdiction of a court to try a case is subject to subject matter rules, in addition to one of the other adjudicative types, such as personal or territorial jurisdiction.<sup>76</sup>

Generally speaking, subject matter jurisdiction is divided into two key branches: civil and criminal cases. Under subject matter rules in modern laws, more special courts have been established to carry out jurisdiction over special norms and to include personal and territorial rules, since they have their powers in accordance

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<sup>74</sup> AlHadawi. Ibid No. 14. P 153.

<sup>75</sup> See: Article 807 of the Civil Procedures Code in Algeria.

<sup>76</sup> Legal Information Institute (LII) "Topics of Law: Subject Matter Jurisdiction", (Cornell University Law School. Posted September 2010). Post available at: <[http://topics.law.cornell.edu/wex/subject\\_matter\\_jurisdiction](http://topics.law.cornell.edu/wex/subject_matter_jurisdiction)>. Accessed: February 2014.

with the jurisdiction in personam or the rem jurisdiction.<sup>77</sup> The first branch specialises in trying certain people and their crimes, such as in the case of Juvenile courts. The second specialises in cases where the subject of the case is the specialist focus rather than the persons being tried, such as in customs or commercial courts.<sup>78</sup>

In terms of the in rem type of jurisdiction under subject matter jurisdiction, in most countries the law has adopted certain categories for distributing court authority, principally the case amount and type. According to the monetary category, a court's capacity to hear cases is subject to certain limited amounts, for instance in regard to the seven thousand Jordanian Dinar (7000JD) limit which separates the capacity of the Conciliation and First Instance degree court authorities in Jordan Civil Courts Law. That is, the Conciliation Courts may hear cases of less than 7000JD, while any cases exceeding that amount are subject to the First Instance Courts.<sup>79</sup>

Some countries with a federal system may have other categories within the same division of the addressed subject matter rules above. A clear example can be found in American law, where the Federal Courts have subject matter jurisdiction of two major types: diversity jurisdiction and federal question jurisdiction. Courts with diversity jurisdiction specialise in claims between residents of two different states

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<sup>77</sup> Ingman. Ibid No. 57. P 61.

<sup>78</sup> AlHadawi. Ibid No. 14. P54.

<sup>79</sup> For details please see: Article 3 of the amended Jordanian Conciliation Courts code No. 30 of 2008. and article 55 of the Jordanian Civil Procedure Act of 1976 as amended in Act. 24 of 1988.

such as New York and Washington, and specialise in claims exceeding \$75000. On the other hand, courts under federal question jurisdiction specialise in cases arising in accordance with the constitution or the federal laws, regardless of the amounts of the claims involved.<sup>80</sup>

## 5- Parallelism between jurisdiction and conflict of law rules

In practical terms, courts must first determine their jurisdiction, regardless of type, and only then go on to consider whether there is a conflict as to the applicable law.<sup>81</sup> Additionally, jurisdiction rules do not need to reflect the various complex theories associated with conflict rules since they depend primarily on national laws and international private laws. However, this does not minimise the importance of the function of conflict rules, especially in cases related to *attribution rules* in international private laws: conflict rules play a major role in appointing a jurisdictional court or the applicable law, especially in disputes over personal status or estates.<sup>82</sup>

Reasonably, both jurisdiction and conflict rules are designed to support considerations relevant to determining the law applicable at national and international levels. For example, while jurisdiction rules do not refer to the foreign law applicable in certain cases, this function will be met by conflict rules which serve to inform the applicability of foreign laws over disputes or obligations

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<sup>80</sup> The Constitution of the United States of America, articles 1331 and 1332.

<sup>81</sup> Clarkson and Hill. *Ibid* No 13. P 41.

<sup>82</sup> McClean, David and Beevers, Kisch. *The Conflict of Laws* (6<sup>th</sup> edn Sweet & Maxwell, London 2005). P 41.

involving a foreign norm (see section 3 earlier for further explanation).<sup>83</sup> Clearly, both jurisdiction and conflict rules run parallel in their functions, with minor differences, each serving to complement the other's role in jurisdictional decisions and to inform courts of the rules necessary to solve national and international cases brought before them.<sup>84</sup> Nevertheless, legal system disagreements regarding suitable terms or definitions do arise when countries are adapting their legislation, particularly in relation to international private law, conflict of laws or the attribution rules. This does not change the fundamental function of these rules; realistically they may differ only in minor ways, such as in the use of interchangeable terms and nothing else.<sup>85</sup>

## 6- Conclusion

Chapter two has presented a clear definition of the term "jurisdiction" and its relation to the principles of conflict rules. It has also differentiated various types of jurisdiction in order to clarify common confusions in the use of these terms in common and legal academic works. This chapter started off with an historical revision of how earliest codes were established and then amended over time, and moved on to situating present current jurisdiction and conflict rules in a straightforward framework whilst illustrating that jurisdiction and conflict rules are complex and involve multi-issue relationships at national and international levels. In addition, this chapter has sought to demonstrate that jurisdiction and conflict rules

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<sup>83</sup> McClean and Beevers. *Ibid.* P 42.

<sup>84</sup> Dicey and others (ed) *The Conflict of Laws* (13<sup>th</sup> edn, Sweet & Maxwell. London 2000). P 31.

<sup>85</sup> AlHadawi. *Ibid* No. 14. P 186.

## Chapter 2

work cooperatively to appoint the applicable law and the authorised courts. Moving on from this, the chapter addressed the adjudicative jurisdiction types pertinent to the issues considered in this study, that is, personal, territorial and subject matter jurisdiction. This research has focused particularly on these three types of jurisdiction in order better to understand their functioning, not only in their traditional and local forms, but also at international level, which level is the core focus of this research as considered under Jordanian laws. The following chapter will discuss jurisdiction and conflict rules on the internet, cyber jurisdiction disputes and the challenge that the internet poses for these rules and related issues, such as the sovereignty issue.

## Chapter 3- Cyber Jurisdiction: Exploring Jurisdiction Principles on the Internet

### 1 - Introduction

The previous chapter briefly addressed traditional jurisdiction types and conflict rules in order to illustrate the current status of these rules within the main three divisions of jurisdiction discussed were those used to prescribe, those used to adjudicate and those used to enforce a law. In practical terms, it was discussed that enforcement or executive jurisdiction is used for implementing orders and judgements, whether issued at national or international level, the latter involving enforcement of foreign judgements rules.<sup>1</sup> Examination of enforcement jurisdiction rules however, will not feature widely in this research, since the main focus is on jurisdictional authority over cyber cases, in accordance with traditional jurisdiction and conflict of law rules. That is, discussion of enforcement jurisdiction rules will be offered wherever is necessary to do so, but will not be a main feature of this research. On the other hand, an aim of future research will be to discuss more intensively in a separate work the enforcement of jurisdiction rules in order to link these rules to the current objectives of this research.

The following section will however discuss the major jurisdiction rules and highlight the most salient challenges posed by the internet in regard to existing rules. This requires both a clarification of the ways in which the term “cyber” might be defined, and a rationale for combining this term with other terms. In particular, the term “cyber”

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<sup>1</sup> Clarkson, C. and Hill J., *Jaffey on the Conflict of Laws* (2nd edn, Butterworths, London 2002). P 6.

will be considered alongside traditional phrases such as jurisdiction, disputes and cases. Combining “cyber” with such other terms serves to differentiate such definitions from their traditional terms, as well as to indicate that cyber-jurisdiction, cyber-disputes and cyber-cases involve elements related to activities on the internet. This research will go on to discuss political issues related to jurisdiction rules in respect of the internet, mainly on matters related to sovereignty, and the importance or necessity of an independent internet jurisdiction with separate cyber jurisdiction rules. And finally the chapter will conclude with two sections discussing the current states of territorial and personal jurisdiction rules in cyberspace.

## 2- Jurisdiction and the challenge of cyberspace

In addressing key jurisdiction types used in cyber cases, this research takes into account certain differences between traditional and modern legal theories and systems, such as those involving civil and common laws. Each jurisdiction type serves a particular function and role in context, but fundamentally the principles and the basics of jurisdiction rule fall into three main types: personal, territorial and subject matter (as discussed in chapter two). This research does not particularly dwell on contentions as to the specific application of these three types, for instance whether they should be considered as part of adjudicative or legislative jurisdiction.<sup>2</sup> Rather, it aims to differentiate between the choice of forum under adjudicative rules and the choice of the law which relates to the legislative jurisdiction. The

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<sup>2</sup> In this; see footnote 25 at chapter 2. Kohl, Uta. *Jurisdiction and the Internet: a study of regulatory competence over online activity* (CUP, Cambridge 2007). P 17.

understanding of these differentiations is important as a guideline in selecting or suggesting the jurisdiction approaches most appropriate within adjudicative and legislative rules to accommodate forum issues and cyber jurisdiction cases.<sup>3</sup>

Earlier discussions of personal, territorial and subject matter rules have sought to clarify that each type, functioning according to its own principles, forms the basis of the relevant rules (see chapter two; sections 4.7, 8 and 9). In general, the nationality principle appears to be the most significant in terms of personal rules while the borders norm appears to form the basis of territorial rules. Subject matter rules, on the other hand, depend mainly on certain sets of matters and events, wherein a court claiming jurisdiction over a case must meet the conditions of either personal or territorial rules as well as of subject matter jurisdiction.<sup>4</sup>

The previous chapter discussed the important of a geographic area in the consideration of such rules as regards both national and international traditional jurisdiction. These rules figure largely in dealing with domestic and universal juridical relations, in addition to their roles in individual legislation over international conventions and agreements, especially in cases involving foreign parties or norms. The high status of these rules has evolved through a long history of developments and amendments as required in order to adapt to new variables and updates, coming from various sources, levels and legal systems which differ in their interpretations as to the importance of domicile in civil and common laws. Some of these adaptations

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<sup>3</sup> The researcher has considered these rules in its international frame as well as their location under the Jordanian rules.

<sup>4</sup> Briggs, Adrian. *The Conflict of Laws* (2<sup>nd</sup> edn Clarendon Law Series, OUP, Oxford 2008). P 21.

have served to meet the challenges of legal innovations, such as recognising DNA science as a means of identifying criminals, or for dealing with slave trade and piracy at international as well as national levels.

Currently, the question is how such rules can or should adapt to modern challenges, for instance those touching in unexpected ways on sensitive legal and political issues such as state sovereignty. The most observable of such legal challenges are activities committed by technological means, particularly those taking place in the Virtual World <sup>5</sup> which has significantly developed in its current cyberspace or cyber world view.

The origin of the internet is believed to date from 1969. It was officially recognised in 1972<sup>6</sup> by the Department of Defence of the United States of America, which set up a secret agency, the Advanced Research Project Agency (ARPA)<sup>7</sup> to explore the feasibility of establishing a new wireless communication system.<sup>8</sup> This project gave birth to a wireless communication mediator intended for use by *interactive multi-*

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<sup>5</sup> It is important to note here that the term *virtual world* was founded in 1962. But in this research the term refers to the internet or the cyberspace world which includes websites and computer worlds.

<sup>6</sup> Svantesson, Dan. *Private International Law and the Internet* (Kluwer Law International, Netherlands 2007) P6.

<sup>7</sup> Also known as DARPA; Defence advanced Research Project Agency.

<sup>8</sup> Arguably, it has been referred to earlier dates; 1962, 1958, or 1954! Also, the fundamental aim of the internet they believed, was to find a wireless communication means during the cold war for military use. "The Internet was designed in part to provide a communications network that would work even if some of the sites were destroyed by nuclear attack. If the most direct route was not available, routers would direct traffic around the network via alternate routes". For details see: Howe, W. "A Brief History of the Internet" Posted August 2008. Last update Sep. 2012. Available at: < <http://www.walthowe.com/navnet/history.html> >. Accessed February 2014.

*access computer communities*, with the educational purpose of linking computer and technical centres by electronic networks, now known as the Internet.<sup>9</sup>

The internet or the Net (a shortened expression of the phrase *internetwork*<sup>10</sup>) refers to a number of interconnected computers located inside various countries as well as their outside territories.<sup>11</sup> As a medium in this network, a complex hypertext language was developed to transfer data and information through special hyperlinks or routes and Uniform Resource Locators (URLs), distinguished by particular domain names on the World Wide Web (WWW) such as <http://www.brookes.ac.uk>.<sup>12</sup> The internet has created a technological open zone for people around the globe from different backgrounds and ethnicities to share activities which exceed the potential of the non-virtual world, and to exercise an autonomy of action and influence which transcends geopolitical borders. The internet facilitates the setting up of global connection networks in this virtual community, which serve not only to benefit international trade but also, as acknowledged by scholars such as John Barlow<sup>13</sup> to grant total or partial independence to its users.

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<sup>9</sup> Rheingold, Howard. *The Virtual Community: Homesteading on the Electronic Frontier* (2<sup>nd</sup> edn MIT Press, Massachusetts, NY 2000). Pp 42-44.

<sup>10</sup> Lyon, Barrett. The Opte (op-tee) Project started in October 2003. See: <<http://www.opte.org/>>. Accessed: January 2014.

<sup>11</sup> Bigos, Oren. *Private International law: Aspects of Cross-Border Wrongs on the Internet* (Magdalen College. Oxford University, PhD Thesis, 2006). P29.

<sup>12</sup> Gromov, Gregory. "History of Internet and WWW: the roads and crossroads of the Internet history" [1998] Chapter 1. P1-4. Paperwork published at: < [http://www.netvalley.com/cgi-bin/intval/net\\_history.pl?chapter=1](http://www.netvalley.com/cgi-bin/intval/net_history.pl?chapter=1)>. Accessed: January 2014.

<sup>13</sup> Barlow, John. 'A Declaration of the independence of Cyberspace' [8th February, 1996] < <http://editions-hache.com/essais/pdf/barlow1.pdf>> . Accessed: November 2013.

To describe the Internet as a community is contentious; some argue that the internet has the character and features of a community,<sup>14</sup> while others reject this idea.<sup>15</sup> Whichever the view, it is incontestable that the Internet not only brings benefits in the wake of its development, but also is misused in criminal ways, posing new dangers to real life individuals and communities whether or not directly involved with the Internet. Given that, however, the existence of the Internet is an inescapable fact, virtual world theories have needed to evolve and be under constant review as new and tangible norms become established. This can be illustrated by the evolution of virtual terms such as cyber, *E-* for electronic, *cyberspace*, *cyber-terrorist* and *cyber-jurisdiction*; also, *electronic money (e-money)*,<sup>16</sup> *e-transfer*, *e-crime* and *virtual space*.

The evolution of such terms reflects a perception of the internet as different and perhaps parallel to the real world, a stateless place which reflects the activities of the real world while being free from subjection to any particular sovereignty, and belonging to all people in all lands. The sixth Circulate Court in *Thomas v U.S* illustrates this in saying: “the internet is a place which is home to Tibetan monks and Icelandic fisherman”.<sup>17</sup> On the other hand, along with the acceptance of an internet

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<sup>14</sup> Oberding, Juliet and Norderhaug, Terje. ‘A Separate Jurisdiction for Cyberspace?’ [1.Jun,1996] CMCJ 2. <<http://onlinelibrary.wiley.com/doi/10.1111/j.1083-6101.1996.tb00186.x/full>>. Accessed: October 2013.

<sup>15</sup> ‘A California couple was convicted for distributing obscenity in Tennessee. The content failed to meet local community standards in Tennessee. The Thomases appealed, saying that Internet users form their own community. The Sixth Circuit Court of Appeals rejected the idea of a cyber community’. See *United States v. Thomas* (1996). **Also**; Read more: *The Internet - Community Standards - Child, Pornography, Obscenity, Software, Law, and Miller* <<http://law.jrank.org/pages/22467/Internet-Community-Standards.html#ixzz1EmlCFZEI>>.

<sup>16</sup> It is important to say here that e-money known also as cyber money, digital money, e or digital currency, and the appearance of it was approximately 20 years ago. However, this to clarify that some people are mixing between the finding of cash points (ATM) and e-money. The first ATM idea may go back to late 1950s, while the appearance and used of e-money is newly born particularly after accepting electronic transactions in financial functions which was in early 1990s (Good, Barbara. *The changing face of money: will electronic money be adopted in the United States?* (Garland Publishing, New York 2000). Pp13-15.

<sup>17</sup> *United States v. Thomas*, 74 F.3d 701 6th Cir. Jan. 20, 1995. Nos. 94-6648 and 94-6639.

community concept comes a need for safeguards, regulations and legislation to control misuse of the cyber activities, in addition to imposing legal sovereignty over activities between members of the Internet community. A major current concern regarding the cyber community is sovereignty over the space and its members. This issue is discussed widely later in this chapter.

The need for new cyber-rules and legislation or the application of traditional rules over cyberspace has been deeply debated, particularly in respect to jurisdiction rules. Some argue that members of the internet community (the cyber-community) should be able to draft and create their own regulations; this cyber-legislation should establish rights and obligations in some measure similar to the foundations of traditional subject matter jurisdiction rules.<sup>18</sup> Other scholars and writers have challenged the capacity of traditional jurisdiction rules to resolve disputes and issues in cyberspace or in *internet cross borders disputes*. Hörnle and Perritt have taken a frank position on this question, Hörnle stating that:

*Where activities occur -or, more precisely, where we deem them to have occurred- answers the traditional questions of jurisdiction and choice of law under conventional private international law analysis. But where activities occur might not be the right inquiry for private international law in internet law disputes. I propose that we adapt private international law to the realities of the internet.*<sup>19</sup>

Perritt explains that:

*Traditional dispute resolution machinery depends on localization to determine jurisdiction. Impediments to localization [on the internet] create uncertainty and*

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<sup>18</sup> Oberding and Norderhaug. Ibid No. 14.

<sup>19</sup> Hörnle, Julia. *Cross-border Internet Dispute Resolution* (CUP, Cambridge 2009). P 19.

*controversy over assertions of jurisdiction. That uncertainty has two results. It may frustrate communities that resent being unable to reach through their legal machinery to protect local victims against conduct occurring in a far-off country. It also subjects anyone using the internet to jurisdiction by any of nearly 200 countries in the world and, in many cases, to their subordinate political unites.*<sup>20</sup>

A useful illustration of the conflicts discussed above about the reality of cyber-community is a case pertaining to the use of the MySpace website; this case exemplifies the confusion which may arise in applying traditional rules over internet activities as belonging to an independent community. In 2006, a 49 year old woman, Lori Drew from Missouri, was convicted of three minor offenses in a cyber-bullying hoax case that apparently drove a 13-year-old girl, Megan Meier, to suicide. The court did not charge Drew for the felony of accessing computers without authorization to inflict emotional harm; instead she was found responsible for three misdemeanour offences of accessing computers without authorisation. Both the court and the jury reached their decision for apparently illogical reasons and the legislation questioned whether the case was clearly treated. The three year prison sentence and \$100,000 fine verdict were criticised by both sides: Dean Steward, Drew's lawyer, said: "I don't have any satisfaction in the jury's decision and I don't think these charges should have ever been brought", while Megan's mother, Tina Meier, also was dissatisfied at the light sentence saying: "For me it's never been about vengeance, this is about justice, Drew deserves the maximum of three years behind bars".<sup>21</sup>

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<sup>20</sup> Perritt, Henry. 'Dispute Resolution in Cyberspace: Demand for New Forms of ADR' (2000) 15 Ohio State Journal on Dispute Resolution.

<sup>21</sup> The Associated Press. "Conviction on lesser charges in MySpace case" [2006] last update Aug 2012. Available at: <[http://www.msnbc.msn.com/id/27928608/ns/us\\_news-crime\\_and\\_courts/](http://www.msnbc.msn.com/id/27928608/ns/us_news-crime_and_courts/)>. Accessed February 2014.

It surprised many that the case fell under the jurisdiction of a Californian Court, after a transfer by the federal prosecutors who justified their decision by saying that MySpace was based in Beverly Hills. The Missouri authorities criticised the prosecution's decision, stating that "there was no state law under which Drew could be charged". Observers criticised the authorities' use of territorial jurisdiction rules over the MySpace case as they believed that the rules were not suitable to progress the case details. This attitude was supported by the unavailability of any similar precedent cases. Consequently, instead of being charged with causing death, Drew was prosecuted under the Federal Computer Fraud and Abuse Act<sup>22</sup> which was created originally to control hacking and trademarks theft cases. The U.S. Attorney Thomas O'Brien, chief federal prosecutor in Los Angeles, considered this case as the nation's first cyber bullying trial.<sup>23</sup>

The reason for choosing the MySpace case for illustration, when there are many other remarkable cyber cases available, is to offer a view regarding the multifarious problems which the internet has created for traditional legislation. Such problems include the confusion as to which legal bodies should deal with a cyber case, the slowness in processing cyber legal issues at national level, and the complex and at times contentious involvement of institutions and communities in seeing justice to be done. When new challenges arise in a state's legal system, inevitably individuals and institutions will start digging for solutions and reinforcing their defence laws by supporting and repairing the existing ones, as well as filling any perceived gaps with new codes. Yet to date the success of this process is not uniform in cyber cases; for

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<sup>22</sup> MySpace Case. Ibid.

<sup>23</sup> MySpace Case. Ibid.

many reasons there may be a shortfall between the development of new laws and the capacity of the courts to carry these out, depending on the wider governmental infrastructure.

For example, countries under a federal system of government have longer experience than unitary countries in dealing with cross borders and sub-disputes cases.<sup>24</sup> Moreover, the monopoly of technology and inventions in and between certain countries has extended the distance between developed nations such as the United States and developing countries such as Jordan. One important reason seems to be in the way that such different countries and councils have dealt with cyber issues, comprehensively or partially; domestically or internationally.

The history of countries and unions dealing with cyber issues reflects the way particular legislations, agreements and conventions have been applied, for instance in the way the European Union dealt with jurisdiction in certain electronic contract disputes connected with the Hague Conventions.<sup>25</sup> Another illustration is offered in the way American legal systems have developed cyber cases theory in adapting modern jurisdiction tests from the original minimum contact test. What distinguishes these examples is that they deal specifically with particular cyber issues: the first example with cyber contracts, the second with cyber jurisdiction disputes.

In the next section this research will go on to seek a wider view, in exploring the definition of cyber jurisdiction in regard to major trends in national legislation and international conventions. An analysis of jurisdiction topics and theories regarding the

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<sup>24</sup> Svantesson. Ibid No. 6. P 6.

<sup>25</sup> The most important in this field is the Hague Convention 2005 on Choice of Court Agreements.

internet will be carried out, as well as an analysis of tests adopted by courts or judges to treat cyber jurisdiction obstacles in cyber cases. This will be supported by discussion of different countries' and unions' experience of related jurisdictional issues such as electronic contract disputes and cyber crimes.

### 3 - Jurisdiction on the internet (cyber jurisdiction):

In an earlier section of this research the main traditional jurisdiction types were examined with the intention of clarifying an often vague understanding in the use of these types at national and international level. Such clarification of jurisdictional types and conflict of law rules in domestic and foreign laws has emerged as particularly necessary, given the notable difference in the way legal terms have been interpreted by researchers and experts of different countries' legal systems. However, in the same context it is hardly surprising that cyber jurisdiction has given rise to huge disputes between legal scholars and experts, given the absence of influential domestic internet and cyber laws as well as international agreements and conventions. Thus, the next discussion will attempt to define cyber jurisdiction terminology as it has appeared in modern cyber laws and conventions as well as some major cases.

It is useful before launching into cyber jurisdiction definitions to examine the etymology of the phrase *cyber*<sup>26</sup>: as an adjective it is alleged to be derived from the ancient Greek expression *κυβερνητικός* – *kybernetikos* – which means to steer or

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<sup>26</sup> 'Cyber is such a perfect prefix. Because nobody has any idea what it means, it can be grafted onto any old word to make it seem new, cool -- and therefore strange, spooky'. New York Magazine, Dec. 23, 1996. <<http://www.etymonline.com/index.php?search=cyber&searchmode=none>>. Accessed: August 2011.

guide. The term has appeared in different contexts and many fields such as science fiction e.g. incorporated into *cyberspace* by the writer William Gibson, also coined in 1948 by U.S. mathematician Norbert Wiener.<sup>27</sup> Currently, the term is more widely used as an indication of connection with the internet, requiring or involving computer networks;<sup>28</sup> in this research, it will be extended to terms such as *cyber jurisdiction* and *cyber cases*.

The term *jurisdiction* in its traditional definition has been explained earlier (chapter two) as a legal body's power over certain territory or particular topics. Jurisdictional authorities and powers are normally enforced within a particular country's courts and other legal bodies. With the illustration of Jordan, we have already examined a number of jurisdiction types, each with its own functions, premised on certain criteria and rules. Some jurisdiction types are more limited than others in their authority or application at domestic and international levels. It was discussed earlier that the main functional jurisdiction types derived from international private laws and conflict of laws rules are territorial, personal and subject matter jurisdiction. However, it is important to define more closely the combined term '*cyber jurisdiction*' and its application on the internet before expanding on this subject in the following chapters.

In general, *cyber jurisdiction* or *internet jurisdiction* means both the authority of a court or a country over activities carried out on the internet, and the application of traditional jurisdiction rules in cases committed on or by means of the internet, mainly or partly involving internet activities or users. These definitions underpin this research

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<sup>27</sup> Cavallaro, Dani. *Cyberpunk and Cyberculture: Science Fiction and the Work of William Gibson* (The Athlone Press, New Jersey. 2000). P5.

<sup>28</sup> Cavarallo, Ibid. P6.

perspective of current trends in defining the meaning of the combined legal terms “cyber” and “jurisdiction” in accordance with the existing and available works and legislation. Few writers have tried to put forward a definition for cyber jurisdiction. The majority of internet field experts prefer not to narrow the definition down to a few words. More commonly the view is taken that cyber jurisdiction is just a case of applying traditional rules over the internet, such as occurs when applying jurisdiction over events on the High seas and in Antarctica.<sup>29</sup>

However, an interesting and useful definition offered by Smith is of internet jurisdiction as “a term used to determine which legal authority may hear a case, between a defendant and plaintiff, in which potential crimes was committed on the internet”.<sup>30</sup> This definition appears to be premised on solutions to a dispute between two hypothetical parties in a particular area; it limits the arena to criminal activities as opposed to internet activities involving other civil and commercial matters. However, in such definitions there is no reference to the boundaries norm, nor to the nationality principle, an element argued in this research as important, as will be described later. Academically speaking, it suffices to say here that there appears to date no unified definition for cyber jurisdiction.

Nevertheless, this research has previously distinguished three main jurisdiction types as most effective in the majority of legislation bases (Chapter 2/ Section 4). Subject

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<sup>29</sup> Kimball, Lee. ‘The International Legal Regime of the High Seas and the Seabed Beyond the Limits of National Jurisdiction and Options for Cooperation for the establishment of Marine Protected Areas (MPAs) in Marine Areas Beyond the Limits of National Jurisdiction’ [2005] (Technical Series, Secretariat of the Convention on Biological Diversity, Montreal) Pp19- 64 <<http://www.cbd.int/doc/publications/cbd-ts-19.pdf>>. Accessed: December 2013.

<sup>30</sup> Smith, Anna. “What is Internet Jurisdiction” Paperwork published at WiseGEEK Office Website, August 2010. Available at: < <http://www.wisegeek.com/what-is-internet-jurisdiction.htm>>. Accessed: February 2014.

matter jurisdiction rules as part of a public order are considered the most fundamental in all cases aside from the uses of personal or territorial jurisdiction types. Where personal or territorial rules are implemented this does not discount subject matter jurisdiction as being acceptable in the absence of any other jurisdiction type, this mostly occurring in certain cases such as financial disputes. If traditionally personal or territorial jurisdiction types would have been invoked to determine the authorised court and to govern traditional disputes or cases, it must be argued that this is not applicable in cyberspace cases, where personal or territorial fundamentals may be too vague or unclear to perform the same functions as in the traditional cases.<sup>31</sup>

The capacity of current jurisdiction rules to legislate over internet activity is a topic of current wide debate: the justification given by some, in arguing that it is difficult or impossible to apply traditional jurisdiction rules over the internet, is simply that the foundations of some jurisdiction types are missing or hard to implement, such as boundaries in territorial jurisdiction and the nationality principle in personal jurisdiction rules.<sup>32</sup> By extension, it is argued necessary to create new internet laws and conventions or start a comprehensive amendment for the current legislation and regulations.<sup>33</sup>

But others have argued that it is partly acceptable to apply some of the existing jurisdiction types over cyber cases with some amendments, improvements and refinements of certain jurisdiction clauses, particularly in domestic legislation and

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<sup>31</sup> Oberding & Norderhaug. Ibid No. 14.

<sup>32</sup> Johnson, David and Post, David. 'Law and Borders, the Rise of Borders in Cyberspace' (1996) Stanford Law Review 1367.

<sup>33</sup> Barlow. Ibid No. 13.

international private laws. Some of those adopting this trend believe that it is a matter of establishing rules and regulations instead of amending the original jurisdiction clauses. Thus they define cyber jurisdiction in accordance with sovereignty principles and the role of the person considered responsible, as it is “a system operator’s or user’s power to establish rules and enforce them in a community set up in cyberspace or virtual world. Or it is the physical government’s power and court’s authority over net users or their activity in cyberspace”.<sup>34</sup> But this definition has also fallen under criticism as there are no agreements currently over internet sovereignty, or as previously discussed, over geopolitical boundaries.<sup>35</sup>

A third, and philosophically optimistic group have moved towards a view of the unrestricted capability of traditional jurisdiction rules to govern and control the internet and cyber cases, offering several examples of the success of traditional legislation and agreements in meeting recent challenges, such as piracy at high seas and sovereignty over the Antarctica territories.<sup>36</sup> In the case of the internet it seems that even though we are encountering a virtual world, its norms must have been physically established somewhere around the real world, and that the purchase of products under e-contracts must be physically located in a factor or a seller’s place from where they must be delivered in accordance with traditional transferring and transporting methods. As such we could say that this is just a sales operation which

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<sup>34</sup>Hamano, Masaki. ‘Comparative Study in the Approach to Jurisdiction in Cyberspace. Chapter T. The Principles of Jurisdiction’ [2000] Available at: <<http://www.reocities.com/SiliconValley/Bay/6201/principles.html>>. Accessed: December 2013.

<sup>35</sup> Harter, Peter. [1995] The National Public Telecomputing Network council.

<sup>36</sup> Gray, Tricia. ‘Minimum contact in Cyberspace: The Classic Jurisdiction Analysis in a New Setting’ (2002) 1 JHTL 85-100.

has gone through an online procedure and which has occurred between two parties having their attendance in the same territory or in two different ones.<sup>37</sup>

In terms of cyber crimes, both the offender and the victim are deemed to be living in a certain place in the real world, and also that the outcomes and the impacts of these crimes have happened somewhere in the real world. For instance, while it might be argued that e-money crimes targeting a virtual object, information in e-privacy violation, (hyper data being stored in software or in electronic programmes) operate in a new medium, these crimes essentially derive their basis from traditional crime committed in the real world. Nevertheless, the argument in the case of online disputes exemplified above is premised on the capacity of conflict of laws rules, and international private and public laws to solve such issues in cyberspace, in addition to the ability of alternative dispute resolution (ADRs) to function alongside these legal codes.

The issue here is that if we accept this argument, we risk a clash with the argument that holds that traditional rules are inadequate for accommodating cyber jurisdiction and online disputes. This dilemma is compounded if we accept the criticism that some online dispute norms are vague, as well as being subject to different legal references at international level. Moreover, many countries have already frankly excluded certain online activities and their jurisdiction disputes from prosecution, in accordance with conflict of laws rules and international private laws clauses.<sup>38</sup>

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<sup>37</sup> Gray. *Ibid.*

<sup>38</sup> Jordan Electronic Transaction Law, Article 32.

From this research point of view; it is noticeable that the trends or arguments discussed above are still far from coming to a common solution as to cyber jurisdiction disputes, or to the capacity of traditional laws to cope with the internet crimes comprehensively. The main problem facing cyber jurisdiction is that there is no one legal reference over this virtual world. It is classically agreed that countries take their sovereignty and laws into priority when determining a case involving foreign norms, although consideration of other countries' legislation may be considered in multiple foreign parties disputes. Consequently, any country affected or involved in a cyber jurisdiction dispute may claim its courts' authority over the case, and the right of hearing cases involving foreign parties, even if those foreigners are located in other countries' territories.<sup>39</sup> This may or may not be influenced by the rules of sovereignty which will be discussed in the next section.

#### 4- Jurisdiction and sovereignty in cyberspace:

The appearance of modern legal systems has made a difference in how states impose their sovereignty and manage their authority. New terms have appeared in democratic countries such as "the sovereignty of law" or "state of law" which address the legal rather than just the political nature of sovereignty, although the political nature of course has continued in other conservative countries.<sup>40</sup> Added to these differences, there is a new approach, adopted especially among democratic countries, which extends the term "sovereignty" to overrule the idea of territoriality,

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<sup>39</sup> Smith. Ibid No. 30.

<sup>40</sup> Wasel, Mohammad. 'Jurisdiction and Sovereignty Issues' Paper work <<http://adel-amer.catsh.info/vb/showthread.php?t=9497>>. Accessed: December 2011.

and to distribute a state's authorities between legislative, judicial and enforcement powers. This new approach is all the more supported given that the internet has rendered territorial boundaries virtually meaningless in cyberspace.<sup>41</sup>

From the time of the Romans through to the present day, the term "sovereignty" has been discussed, debated and questioned, leading to many changes in its definition, concept, and application.<sup>42</sup> Generally, sovereignty means dominance and governance; in this research context, it is an authority given to a state or legal bodies to impose laws and orders over particular groups in particular areas.<sup>43</sup>

Sovereignty at one time was an exclusive power wielded by the head of the state (King, Prince, President...) to gather the state's main powers (legislative, judicial and enforcement) under one authority. But latterly, this sovereignty is more limited and legal bodies have more sway over parliament's functions. The idea of territorial sovereignty of states beyond their geographical borders found its way into the international community's conventions and agreements, notably in the middle of the 20th century.<sup>44</sup> The concept of a state's sovereignty has come to limit some countries'

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<sup>41</sup> Taylor, Stephen. 'Erosion of National Sovereignty by 21st Century Technology' . International Business Centre. Research work. <[http://www.internationalbusinesscenter.org/international\\_business\\_resources/Sovereignty.pdf](http://www.internationalbusinesscenter.org/international_business_resources/Sovereignty.pdf)>. Accessed: November 2011.

<sup>42</sup> AlHadawi, Hassan. *Conflict of Laws: General Principles and Perspective Solution under Jordanian Laws, A Comparative Study* (Dar Althaqafa. Amman 2005). P 42.

<sup>43</sup> Faruqi, Harith. *Faruqi's Law Dictionary* (3<sup>rd</sup>edi. Beirut 2002).

<sup>44</sup> "There exists perhaps no conception the meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception, from the moment when it was introduced into political science until the present day, has never had a meaning which was universally agreed upon". Oppenheim, Lassa. *The Future of International Law* (Google eBook) P17. Available at: <[http://books.google.co.uk/books?id=IIhppdtKYSeC&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](http://books.google.co.uk/books?id=IIhppdtKYSeC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)>. Accessed Feb. 2014.

power abroad while supporting the idea of the state's internal sovereignty over its domestic affairs without any external interference from another country.<sup>45</sup>

However, many issues have led to an adapted interpretation of the geography of sovereignty, such as external sovereignty, sovereignty over occupied lands, sovereignty over high seas and the Antarctica.<sup>46</sup> More recently, sovereignty over cyberspace or the virtual world has come to the fore as representing a country's rights to regulate and control a new legal challenge exemplified by jurisdiction and sovereignty over a borderless world.<sup>47</sup> The lack of physicality in the virtual world creates a major problem in terms of conflict of sovereignty which in our area is related to conflict of laws or the applicable law in cyberspace. Cyber-conflict differs from traditional conflict because of the borderless nature of that medium. While the application of traditional rules depends on extraterritorial rules based on certain private laws, the absence of cyber-conflict rules has left countries without solutions as to the legality of, for instance, the contents of a website, considered legal in country A and illegal in country B.

If the problem of sovereignty and cyber jurisdiction is still looking for a solution, the theory of state sovereignty abroad, alongside with problems of judicial jurisdiction in the real world, is still widely argued by scholars, especially if the jurisdiction is

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<sup>45</sup> The concept of state sovereignty was outlined in a declaration on Principles on International Law proclaimed by the General Assembly of the United Nations in 1970.

<sup>46</sup> The Antarctica Treaty System (ATM). The treaty signed in December 1959 and came into force in June 1961.

<sup>47</sup> Johnson and Post. Ibid No. 32.

imposed by force.<sup>48</sup> Some scholars differentiate between sovereignty and the independence of cyberspace, while others believe that states have sovereignty over cyberspace and there is no need to recognise the independence of cyberspace. Others see the internet as a new world deserving independence from traditional sovereignty and jurisdiction rules, particularly territorial ones.<sup>49</sup>

Accordingly, as a consequence of such criticisms, on February, 8<sup>th</sup> 1996, John Perry Barlow (formerly of The Electronic Frontier Foundation (EFF), U.S) published a declaration named “A Declaration of the Independence of Cyberspace”, based on his understanding of the internet as private in nature. Barlow’s address to the world’s governments challenged the role of national government in cyberspace:

*“You claim there are problems among us that you need to solve. You use this claim as an excuse to invade our precincts. Many of these problems don't exist. Where there are real conflicts, where there are wrongs, we will identify them and address them by our means. We are forming our own Social Contract. This governance will arise according to the conditions of our world, not yours. Our world is different”.*<sup>50</sup>

In contrast, many scholars do not accept Barlow’s rejection of the need for private laws over the internet. Instead they argue that countries should cooperate in applying

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<sup>48</sup> Davis, Diane and Duren, Nora. (Ed) *Cities & Sovereignty: Identity Politics in Urban Spaces* ( Indiana University Press, Indiana 2011). Google book :<  
[http://books.google.co.uk/books?id=kU\\_d4vdoEdsC&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](http://books.google.co.uk/books?id=kU_d4vdoEdsC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)>. Accessed: January 2012.

<sup>49</sup> Barlow, Ibid. No. 13.

<sup>50</sup> Barlow. Ibid No. 13.

sovereignty over this new borderless area as they previously agreed to do over high seas or the poles. Another school of thought, under Lawrence Lessig, argues for a compromise between real and virtual world laws. Lessig lays out four modes of regulation for the internet, describing different implications of internet standards such as the East Coast Code and the West Coast Code. These modes are: Law, Architecture, Norms and Markets.<sup>51</sup>

With Reference to such a problem, Lessig argued that:

*“The problem for law is to work out how the norms of the two communities are to apply given that the subject to whom they apply may be in both places at once”<sup>52</sup>*

Regardless of their contrasting opinions, Barlow, Lessig and others agree on the importance and the necessity of dealing with sovereignty in the internet age. The most important challenge is the creation of jurisdiction rules which form a distinguished signal to countries' sovereignty in and over their main powers: legislative, judicial and enforcement power, the last possibly incorporated into a administrative structure.

This research perspective is that the problem of jurisdiction types and conflict of laws legislation differ in effectiveness depending on the kinds of obstacles and challenges they face in cyber sovereignty. Territorial rules appear to be impotent to manage the borderless nature of cyberspace, leading to the premise that if there are to be laws

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<sup>51</sup> Lessig, Lawrence. *Code and Other Laws of Cyberspace* (Basic books, New Year 1999). P 16.

<sup>52</sup> Lessig, Lawrence. *Free Culture: how big media uses technology and the law to lock down culture and control creativity* (Penguin Press, New York 2004). P 47.

capable of governing and solving sovereignty and jurisdiction disputes in cyberspace, these laws should be essentially different than the national geographic laws used today.<sup>53</sup> There is also a good argument for an international convention over the internet, rather than the claims of single national laws, given that the internet is a borderless land belonging to everyone.<sup>54</sup>

Furthermore, the rules of personal jurisdiction in internet sovereignty disputes have encountered the same fate as discussed previously. These rules form the link between countries and their nationals everywhere around the world. One severe censure against these rules has been the non-physical existence of nationals in one place, particularly territories that are under their state's sovereignty, in addition to difficulties of finding the hidden nature of net users, e.g. human or machines (robots); genders or ages.<sup>55</sup> However, ignoring the said principle, other issues can benefit from the impact of cyberspace in defying personal rules: those who seek freedom of speech, better observation of human rights, the ability to show opposition while a national abroad, might benefit from the lack of restraints offered by another country's policy such as the asylum seeker policy. Such cyberspace freedoms and policy obstacles can unquestionably work against the application of personal jurisdiction and conflict rules over cyber sovereignty disputes.<sup>56</sup>

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<sup>53</sup> Johnson and Post. Ibid No. 32.

<sup>54</sup> Svantesson. Ibid No. 6.

<sup>55</sup> Goldsmith, Jack and Wu, Tim. *Who Controls the Internet? Illusion of a Borderless World* (OUP. Oxford 2006). P 30.

<sup>56</sup> Martin, James. 'Personal Jurisdiction and Choice of Law' [May 1980] MLR 78 (6) pp. 872-888. <[www.jstor.org/stable/1288344](http://www.jstor.org/stable/1288344)>. Accessed: December 2013.

The current situation of sovereignty problems in cyberspace is that there is a clash of laws and an absence of a related comprehensive cyber convention imposing the adoption of a unique solution structured on subject matter jurisdiction rules.<sup>57</sup> The lack of territory in cyber territorial rules, the anonymous and unidentified nature of internet users in cyber personal rules; the partial and comprehensive feature in subject rules are norms to an initial solution of sovereignty and jurisdiction cyber disputes. Accordingly, these rules are arguably able to absorb other jurisdiction rules which are known as individual matter clauses. These individual solutions are based on the nature and type of the dispute in deciding which country's laws shall be applied or which rules should be used. This would be arguably more effective when each case is treated in accordance with a specific legislation or agreement.<sup>58</sup>

To sum up, in the light of the points addressed above, it seems that countries' sovereignty over cyberspace is limited to the strengths or weakness of their territoriality and nationality principles. However, this research point in this area is that the solutions found in subject matter rules may be argued as highly acceptable as functionally logical in their adaption to internet conditions. These rules may better consider and protect a country's sovereignty, guarantee a mutual single solution in cyberspace, and deal with cyber jurisdiction and conflict of laws issues individually.

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<sup>57</sup> Jouvenel, Bertrand. *Sovereignty: an inquiry into the political good* (CUP, Cambridge 1963). P 18.

<sup>58</sup> Gray. *Ibid* No. 36.

## 5- Territorial jurisdiction rules on the internet

Earlier in this research, three trends in cyber space jurisdiction were reviewed: first, the implementation of new internet laws and conventions, or comprehensive amendments to current legislation and regulations; second, the application of a number of jurisdiction types already in existence to a new cyber case context, and, subject to certain amendments, the application of improvements and refinements of jurisdiction clauses, particularly in domestic legislation and international private laws; third, the continued use of traditional jurisdiction rules on the basis that they still have the capacity to govern and control the impact of the internet on cyber cases.

Theoretically, such trends might work concurrently and flexibly in so far as they are perceived to meet the needs of different countries to legislate over cyber activities in order to protect the rights of their citizens. However, in practice, there seems to be a considerable gap between national processes of legislation and the processes followed by international conventions. Such a gap is partly attributable to an absence of suitable international internet laws and conventions applicable at a local level and partly to political and diplomatic sensitivity over the handling of international internet issues. That is, although current trends in dealing with cyber jurisdiction phenomena do exist, their potentiality for meeting all exigencies is debatable. One of the core reasons for arguing such trends as inadequate is that specialised internet and cyber laws are conspicuously lacking in terms of jurisdiction and conflict of laws rules, notwithstanding numerous attempts to find solutions at local level in the use of traditional rules, and at international level by related international bodies.

In this respect, this section will mainly discuss the “geopolitical weight”<sup>59</sup> of using traditional rules, in accordance with territorial jurisdiction rules, to deal with internet issues. A brief highlighting is offered of the appearance of these rules in cyberspace disputes.

It was established in the previous chapter that territorial jurisdiction describes a country’s authority over all persons and events within its territories. This exclusive authority is based on the “physicality of the parties” and the conducting of “activities” within the country’s territories.<sup>60</sup> Generally, a country’s power, in accordance with territorial jurisdiction authority, is premised on its right to control activities occurring within its lands under subjective territorial rules. In dealing with the effects of external activities and affairs under objective territorial jurisdiction,<sup>61</sup> objective jurisdiction rules may include defence rules for addressing external threats and dangers, such as terrorism against national security. The defence rules are located in most countries’ legislation under criminal jurisdiction rules.<sup>62</sup>

A major question arising from the use of such a range of subjective territorial rules is how far these kinds of territorial jurisdiction, necessarily based upon the concept of physical and geographical boundaries, can be considered as relevant to activities occurring in cyberspace.<sup>63</sup> It could be argued that the lack of any physical boundaries in the activities of internet users around the world may affect a national court’s

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<sup>59</sup> The term “geopolitical weight” here refers to a country’s political policies in addition to their sovereignty over their territories. This weight is measured normally by such a country’s ability to manage its internal and external affairs without any interference or leads from another political source.

<sup>60</sup> Gray, *Ibid.* No 36. P 90.

<sup>61</sup> Menthe, Darrel. ‘Jurisdiction In Cyberspace: A Theory of International Spaces’ [1998] MTTLR 69 <<http://www.mttl.org/volfour/menthe.html>>. Accessed: December 2013.

<sup>62</sup> *United States v. Ivanov*, 175 F. Supp.2d 367 (D. Conn. 2001).

<sup>63</sup> Reed, Chris. *Internet Law* (Law in Context, Butterworths, London 2000). P 28.

authority to assert territorial jurisdiction rules over internet affairs,<sup>64</sup> particularly if complications arise over enforcement of that court's judgments abroad. This issue of unclear or missing borders highlights the importance of applying objective territorial jurisdiction rules over the internet rather than limited subjective territorial jurisdiction rules.<sup>65</sup> But this position is in itself contentious, given that territorial jurisdiction rules are often critiqued as unsuitable for managing cyber disputes, on the basis that the extension of activities into cyberspace renders the concept of territorial boundaries meaningless.<sup>66</sup>

In response to the challenge posed by the borderless nature of internet activities, significant changes in legal situations have already been made in terms of which law should be applied; after all, the basic question arising in cyber territorial jurisdiction is where precisely to sue. In practical terms, there exist several territorial criteria and standards, formed historically as a consequence of extending national legal relationships to cross-borders relationships. Additionally, the subject matter in individual legal relations differs, as both criminal and civil cases have their own characteristics. That is, these standards are divided in accordance with the legislation of each conflicted state.

However, a literature review of different legal systems reveals that the most important criteria used in traditional territorial jurisdiction rules to determine jurisdiction have been: the court of the place of a defendant; the place of a plaintiff in certain cases;

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<sup>64</sup> Comments on Jurisdiction in Cyberspace < <http://www.articlecompilation.com/Article/JURISDICTION-IN-CYBER-SPACE/121079>>. Accessed: January 2014.

<sup>65</sup> Two Aspects of the Territorial Principle. Ibid No. 4.

<sup>66</sup> SEMCOM Cyber Law Clinic. 'Cyber Law' [2009] Pp 1-2. Available at: <<http://www.cyberlawclinic.org/cyberlaw.htm>>. Accessed: December 2013.

the place in which the damage, harm or effects had impact (also known as the place of destination);<sup>67</sup> the place of performance; the place of establishing, signing or breaching a contract (the place or country of origin);<sup>68</sup> and finally a special place for certain cases such as property location.

In spite of such a wealth of rules, ongoing issues arising from internet use have brought about the creation of many more recent criteria. For example, new criteria have been established in precedence cyber cases, as a result of judges and courts' careful consideration of potential impacts of cyberspace conditions before issuing their orders. Such considerations have included the international nature of cyber space, the impact of comity principles, and the rules of fair play and substantial justice.<sup>69</sup> On the other hand, it would seem that considering the rules of foreign judgment enforcement before issuing judgements at a national level in such cases has proven at times to be a double edged sword. That is, whilst court orders may have an international effect in requiring their application to be valid in other countries' territories, at the same time, such courts are reciprocally obliged to accept the recognition and the application of foreign judgements into their own jurisdictional territory, under the power of comity rules.

Based on findings from reviewing the current literature and previous cyber cases, it is argued in this research that there is a need to focus on the place of targeting; the place of servers or internet service providers (ISPs); the place where internet access

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<sup>67</sup> Kohl, *Ibid.* No. 2. P 24.

<sup>68</sup> Kohl, *Ibid.* No. 2. P 25.

<sup>69</sup> Wang, Faye. *Internet Jurisdiction and Choice of Law: Legal Practice in the EU, US and China* (CUP, Cambridge 2010). P8.

is available; the place of download; the place of uploading; and the standards mentioned above from traditional territorial jurisdiction rules. The application of a number of such jurisdiction principles can be found in the Italian case of *Corte di Cassazione*<sup>70</sup>, and in the German case of *CompueServer v Patterson*.

The Italian case illustrates how domestic jurisdiction rules of a particular country may have the capacity to address cyber activities committed outside of that country, if materials which offend that country's constitution are readable from a website accessible within that country. Such was the case situated in Italy, involving case parties of an Italian man and his Israeli wife. Although both these individuals had been awarded the right of child care after divorce, the wife took the children and moved to Israel, subsequently marrying an Israeli leader. This action was considered to be in breach of the Italian child custody agreement so that the Israeli authorities returned the children to their father in Italy. As a response, the mother began to send messages and photographs, through a website accessible in Italy, defaming her ex-husband and inciting the Italian Jewish community to liberate her children. The father brought a case of defamation before a first degree Italian court on March 1<sup>st</sup>, 2000. The court dismissed the case on the grounds that a server user based outside of Italy could not be held responsible under Italian law, and that the Italian jurisdiction rules were not applicable in this instance.

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<sup>70</sup> The Italian case *Corte di Cassazione*, closed sez., 27 Dec. 2000, n.4741, V. The English translation available at: <<http://www.cdt.org/speech/international/20001227italiandecision.pdf>>. Accessed January 2013. Found in Alsaeid, Maher. *Internet and E-Contract in Arab Word*. Cairo University, P 900-917.

An Italian appeal court however, overruled this judgement and argued that cyber defamation should be considered as similar to traditional defamation, and as such, subject to articles 594 and 595 of the Italian Criminal Code. The court justified its order by saying that it was an offence to publish any unlawful images or information on the internet, which would be visible to anyone in any place around the earth, and that such offences should be punished from the time that they became readable to others and not from the time of broadcasting. The court returned the jurisdiction to the Italian courts in accordance with article 6 of the Italian criminal court, stating the principle that the crime could be presented as having been committed anywhere and as such, this could be said to include Italian territory. In this respect, it was argued that this crime should be considered as having been committed on Italian territory.

An analysis of the decision of the Italian Appeal court, in terms of this research's perspective, is that the court was justified in arguing that a defamation message should be considered from the time when other people see it rather than only the defamed person. The Appeal Court's decision to award jurisdiction authority to the Italian court is valid, on the grounds that it could consider the internet as part of the country's territory. By this criterion, it can be argued here that the Italian court would have been correct in positively referring to effect and harm approaches, and in perceiving the intention of the defendant to be insulting and defamatory in regard to the claimant.

The second case mentioned above is the German case of *CompueServer v Patterson*.<sup>71</sup> This case further illustrates issues related to territorial jurisdiction principles, in this instance within the terms of the judiciary of Germany. In its application of the Multimedia Act of 1997, the German judiciary moved towards the application of German laws on broadcasting events related to Germany territories. In this case the Munich Court concluded in favour of the responsibility of CompuServe Ger. in acting as a service receiver and provider for disseminating pornography websites from the central internet service provider in the USA. It was determined that this central internet service provider should be considered as a means of routing traffic to the subsidiary internet service providers around the world, including that located in Germany.

The interesting aspect of this case from this research point of view is that the court applied its authority in accordance with German territorial jurisdiction rules. That is, so long as the broadcasting was reaching Germany, Germany did not accept that jurisdictional authority should be awarded to an American court. This position was strengthened by the argument that the German server served only as a branch for disseminating information rather than constituting the source. Here it could be argued that the German position was coherent with its effect and harm approaches under the power of the territorial jurisdiction rules and as such, the American courts were not authorised for jurisdiction over the dispute because the disputed norms were all located on German territory.

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<sup>71</sup> *CompueServer v Patterson*. 1996 FED App. 0228P (6th Cir).

The above examples serve to illustrate the state of territorial jurisdiction rules as applied to the internet in general. Below a further discussion is offered on the use of personal jurisdiction rules in cyberspace.

## 6- Personal Jurisdiction Rules on the Internet:

In the previous section, this research focused on cyber jurisdiction disputes in respect of traditional territorial jurisdiction rules, and discussed the key approaches based on those rules, whether at national legislation level, or in international agreements or conventions. This was to illustrate not only how far the lack of physical borders in cyber space is contentious, but also to examine what types of solutions have been attempted in achieving consensus over the application of territorial approaches to cyber cases. To this end, the chapter presented trends that have been adopted in different countries in regard to individual jurisdictions.

There are several arguments as to the role of current territorial jurisdiction rules in respect of crimes committed on the internet. The position taken in this research is that territorial jurisdiction rules are inadequate for cyber cases in their current framework. As such, it is argued that amendments to existing jurisdiction rules are urgently required, as well as supporting legislation. Such legislation could include modern international conventions for solving individual cyber cases, drawing on precedents of existing agreements such as the European Community in Brussels and the Rome Conventions.<sup>72</sup> Although these well-established conventions have already

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<sup>72</sup> - Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968.

addressed cyber issues in accordance with their private regulation concerning jurisdiction and conflict of laws, it is nevertheless important to question the broader scope of existing legal and political opinions regarding internet challenges and their global impact on jurisdiction rules. In addition, a discussion of jurisdiction rules is needed in order to continue the expansion of personal jurisdiction rules, since these form a parallel set of jurisdiction rules alongside territorial jurisdiction rules.

It has previously been explained that the term “personal jurisdiction” refers to a court’s power to determine natural and legal persons’ rights by making orders against another person. A court’s personal jurisdiction is based on certain principles such as the principle of “nationality”<sup>73</sup> and the principle of residency, which create a particular level of nexus between a court and case parties. For instance, most countries’ laws include clauses regarding the application of domestic laws to those of their citizens located in other countries, in accordance with the nationality principle. However, the function of personal jurisdiction has undergone several interpretations in regard to the physical location of citizens, types of legal systems and geographical divisions. For example, the terms “positive and negative” personal jurisdiction have appeared in modern legal systems to justify the application of a country’s laws over activities

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- Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

- Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

<sup>73</sup> Article 15 of *the Universal Declaration of Human Rights* states that "Everyone has the right to a nationality," and "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality".

committed outside its jurisdictional territories, by or against its nationals.<sup>74</sup> These two jurisdiction types have been widely discussed in the introductory chapter.

Unquestionably, personal jurisdiction has been used as a key standard by courts to deal with forum issues at national and international levels. Functionally, it gives courts clear direction to exercise jurisdiction over, for instance, a non-resident being sued for illegal activity outside the country's territory. Several trends can be noted in the adaptation of countries' personal rules in accordance with their political systems and geographical divisions. Federal countries for example, have double circular rules for applying subunit or regional personal jurisdiction rules alongside national personal jurisdiction rules as a single unit, such as can be found in the USA. This approach to jurisdiction forms the basis of another trend, which is to deal with a country's personal jurisdiction rules as a single unit when considering extraterritorial issues, such as is the case in Jordan and France.<sup>75</sup> However, it is clear that while both approaches to jurisdiction involve comprehensive and systematic processes, they do differ in the mechanisms by means of which they achieve their goals, particularly at international level.

Personal jurisdiction rules are undeniably important for determining jurisdiction, whether in their national or international functions. Such rules are intended as a means of protecting nationals and their country's interests under international private and public laws, including those which expand into extraterritorial matters. Countries may claim jurisdiction in accordance with personal rules since these form strong

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<sup>74</sup> Al-Masri, Mohammad. *Explain the Jordanian Civil Procedure Law* (Dar Qandeel Publishing, Amman 2003). P19.

<sup>75</sup> Price, Vedder. 'Long-Arm Statutes: A Fifty-State Survey' <[www.vedderprice.com](http://www.vedderprice.com)>. Accessed: Dec 2014.

defence principles against foreign threats, especially from criminal concerns. This refers to the broadest possible jurisdictional principles.<sup>76</sup> In such applications related political questions such as sovereignty have come to the surface in modern internet challenge and debates.<sup>77</sup>

The nationality standard has been a key norm in most domestic legislation and international agreements, since nationality is a link between a country and its nationals, granting them political and civil rights such as the right to vote or to receive education. According to this standard, nationals are comprehensively subject to their countries' laws within their borders, and partially subject, in certain cases, to the same laws outside these borders. The standard equally applies to natural and legal persons such as companies, courts and educational centres. Such standards aim to find a balance between the obligation to supply nationals with protection and the right to subject nationals to the country's legislation and rules. Countries differ in their application of nationality standard rules, mainly in adopting one of two nationality principles, either the "active personality principle" or the "passive personality principle" although in some developed countries both principles are applied.<sup>78</sup>

According to these nationality principles, a country has the right to claim personal jurisdiction over a multiple nationality case or dispute. This claim will be based on one

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<sup>76</sup> Post, David, 'An Outline for the Perplexed' [1998]. Paperwork presented at the Conference on Computer Law and Policy, Cornell University July 8-10/ 1998. Paper available online at: < [http://www.temple.edu/lawschool/dpost/outline.htm#N\\_1](http://www.temple.edu/lawschool/dpost/outline.htm#N_1) >. Accessed February "2014.

<sup>77</sup> Comments on Jurisdiction in Cyberspace < <http://www.articlecompilation.com/Article/JURISDICTION-IN-CYBER-SPACE/121079>>. Accessed: January 2014.

<sup>78</sup> Saqf Al-Hait, Adel. *The Crimes of Libel, Slander and Defame Committed Via Electronic Means: Internet and Mobile Networks & Via Traditional, Mechanical Tools and Press, A Comparative Legal Study* (Dar Althaqafa, Amman 2011). P 52.

of the such principles whether the active or the passive.<sup>79</sup> In the active case, a country intentionally applies its laws to a dispute when the defendant is recognised as one of its nationals, or an activity engaged in by the defendant is deemed to have national impact. This is in accordance with the positive authority based on the active personality jurisdiction rules. This position has been adopted by most countries, as it gives the power of jurisdiction over their nationals. On the passive side, a country may show protection to its nationals by claiming jurisdiction over cases where the injured party is deemed to be a national, for example a plaintiff or victim in a criminal case. Countries which have adopted such principles mostly enjoy a strong legal system supported by agreements and conventions, as for example in America and Britain, where legislation operates in accordance with passive personality jurisdiction rules, as stated in domestic legislation and international private laws.<sup>80</sup> These two sets of personal rules may be applied internally and externally as well as individually and alongside other personal jurisdiction rules.

By the same measure, it has been explained earlier (under positive jurisdiction rules) that countries have, with some exceptions, a jurisdictional right over all persons inside their territories. This application is predictable in personal jurisdiction in accordance with the domicile and residency rules over case parties (including a third party if such exists). In addition to the active and passive principles above, personal jurisdiction rules in cross border cases or disputes may be awarded to a court in accordance with the place of domicile and residency. Such rules have been

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<sup>79</sup> Abu Younis, Omar. *Crimes are rising from using the internet* (A PhD thesis in criminal law. University of Ain Shams, Cairo 2004). Chapter 2, Pp 62-64.

<sup>80</sup> Abu Younis. *Ibid.*

extensively discussed in a previous section; but it is useful to reiterate that what distinguishes these personal rules is the balance achieved between nationals' or citizens' right of protection by their countries, and their responsibility to be subject to their national legislation.

Furthermore, while some countries such as France claim comprehensive personal jurisdiction over their nationals abroad, others such as the UK and Jordan accept a limited application of personal rules over certain types of their nationals' activities which are connected to the country's laws.<sup>81</sup> On the other hand, other countries such as America have developed their own approaches, whether through the constitution or through an international agreement.<sup>82</sup> Arguably, the American approach might be classified among those described as comprehensive. In spite of differences, the countries given above, and many others, have built their legislation in terms of personal jurisdiction principles, using general and specific definitions as recognised in traditional jurisdiction rules. Civil and common systems have been used to fulfil the balance between protecting national sovereignty and protecting the rights of nationals.

Traditionally, the main function of general personal jurisdiction and specific personal jurisdiction rules is to subject persons to their country's legislation in accordance with certain personal jurisdiction justifications and international private laws.<sup>83</sup> General personal jurisdiction rules are applied over people either physically present in a forum

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<sup>81</sup> Russell, Charles. 'Guide to Jurisdiction' [2008] <[http://www.charlesrussell.co.uk/UserFiles/file/pdf/Insurance/Guide\\_-\\_Insurance\\_Reinsurance\\_-\\_Guide\\_to\\_Jurisdiction.pdf](http://www.charlesrussell.co.uk/UserFiles/file/pdf/Insurance/Guide_-_Insurance_Reinsurance_-_Guide_to_Jurisdiction.pdf)>. Accessed: December 2011.

<sup>82</sup> See: *International Shoe Co. v Washington*. 326 US. 310, 66 S. Ct. 154, 90 L. Ed. 95.

<sup>83</sup> Cross, John. *Civil Procedure: Keyed to Yeazell* (7<sup>th</sup> ed. Aspen Publishers. New York 2009) P23.

jurisdiction, or having continuous and systematic activities proper to the establishment of jurisdiction with the involved forum jurisdiction.<sup>84</sup> Despite some differences in general personal rule requirements at domestic level, these rules function to deal with various claims and disputes, particularly if a foreign norm is present. In addition, countries share the process of applying these rules in the case of physical presence of persons in their territories. In spite of such similarities of process, it appears that there does not yet exist any single commonly agreed definition of the term “continuous”; nor have any connections between systems led to common ways of determining competence in the designation of jurisdiction or court.<sup>85</sup>

In contrast, specific personal jurisdiction rules allow the exercising of jurisdiction over persons located outside their forum jurisdiction while at the same time respecting other notions such as fair play and substantial justice.<sup>86</sup> Specific personal jurisdiction rules are complex and have an interchangeable application, especially in their international dimension. They apply particularly to criminal concerns and national security operations which have led countries to claim jurisdiction over extraterritorial activities in accordance with specific personal jurisdiction approaches. An example of this is the American test of minimum contact level. Although specific personal jurisdiction rules have been used in domestic and international legislation aiming to grant jurisdiction to a certain legal reference, this has created huge disputes over the appropriate jurisdictional country and the applicable law. This may be because

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<sup>84</sup>Donovan, Richard and Jackson, Veronica. ‘Personal Jurisdiction and the internet’ [2010] Kelley Drye & Warren < <http://us.practicallaw.com/6-501-4555?q=&qp=&qo=&qe=> >. Accessed: January 2014.

<sup>85</sup> Donovan and Jackson. Ibid

<sup>86</sup> Fair Play and Substantial Justice: a requirement or standard of fairness which a court’s assertion of personal jurisdiction over a non-resident defendant must meet in order to avoid a violation of the defendant’s right to due process. See: *International Shoe Co. v Washington*. 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95.

specific personal jurisdiction rules seem to be similar in most countries' framework of legal justifications and claims. It is important to note that such rules are located also in international private laws.

In cyberspace, however, the impact of such rules remains to be established. Personal jurisdiction rules have presented serious obstacles since the appearance of the internet with its stateless nature. In fact, since the internet is arguably free of sovereignty to any single person or state, nationality or background, it could be said to belong to all and to anyone using it. The application of personal rules on the internet, frequently referred to as cyber personal rules, is currently vague and formless, as is the relevance, in this context, of traditional rules based on the nationality standard. Such traditional principles are by no means as effective in cyber space as in their traditional real world context. For instance, the stateless nature of cyber space has rendered general rules over net users invalid as it has demolished the mainly national foundations of such rules. Similarly, regardless of their effectiveness in specific issues, and the reach of specific personal rules over virtual residents on the internet, is limited.<sup>87</sup> A clear example of this is demonstrated in the lack for global agreements on certain issues that are subject to specific jurisdiction rules.

Under these personal jurisdiction rules, most countries are theoretically capable, in accordance with active and specific personality jurisdiction, of claiming and declining jurisdiction over cyber cases. But from this research perspective, it appears that these rules in their current forms have come under fire for many legal and logical

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<sup>87</sup> Jolly v Weber Hotels, 977 F. Supp. 327 (D NJ 1997).

reasons, some relating to the nature of the internet, others to the nature and characteristics of the rules applied. For instance, it is clear that while general rules require as their first condition the physical presence of a person in a country's area of authority, such a condition is meaningless in regard to the internet, which in its very nature can only be regarded as a virtual medium populated by virtual presences. Similarly, it is difficult to establish any continuous and systematic characteristics in the contact with the forum state. Although specific personal jurisdiction rules do exist, they are incapable of determining the level of contact necessary to establish jurisdiction, since basically the claim or the result has to arise as a result of contact with the forum state. This is in addition to the lack of contact bases, which definitely differ between civil, commercial and criminal cases.

In order to resolve such obstacles, significant attempts have been made to clarify and justify the application of personal jurisdiction rules in cyberspace. One of the most notable attempts is the case from which the famous "sliding scale test" originated. This popular case involved *Zippo Manufacturing Co. v. Zippo Dot Com, Inc. Case*.<sup>88</sup> The importance of this case in terms of the current research is that it illustrates the application of personal jurisdiction rules in its use of the "sliding scale test" over internet activities. The decision on this case, issued by the US District Court of the Western District of Pennsylvania, was for a stricter control of personal jurisdiction applications on the internet.<sup>89</sup>

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<sup>88</sup> *Zippo Manufacturing Co. v Zippo Dot Com, Inc*, 952 F. Supp. 1119 (W.D. Pa. Jan 16, 1997).

<sup>89</sup> *Zippo Manufacturing Co. v Zippo Dot Com, Inc*, 952 F. Supp. 1119 (W.D.Pa., Jan 16, 1997).

The details of this case are that it took place in the US, specifically in the states of California and Pennsylvania where the Zippo Company was situated. The plaintiff operated under the domain name of the Zippo Manufacturing Company, a Pennsylvanian corporation manufacturing the well established brand, Zippo lighters. The opponent operated under the domain name of “Zippo Dot Com” a Californian corporation facilitating access to the USENET Newsgroups. Zippo Dot Com owned the domain names zippo.com, zippo.net and zipponews.com. Although the offices, servers or employees of this company had a virtual rather than physical presence on the web, the company’s website advertisements were accessible to and believed to be exclusive to Pennsylvanians,<sup>90</sup> in that people from this region could subscribe to Dot Com and through this contract, pay regular subscriptions fees for the right to access USENET websites. Zippo Dot Com held several contractual agreements with Pennsylvanian internet providers to ensure access for its subscribers to the USENET websites.

However, the Zippo Manufacturing Company claimed that Zippo Dot Com had infringed their rights to the trademark “Zippo” in the use of several domain name phrases on its website. As such, the plaintiff was claiming infringement, false designation and dilution of its trademark. The defendant moved to dismiss these claims for lack of personal jurisdiction in Pennsylvania.<sup>91</sup> The court denied the motion to defendant Zippo Dot Com and granted jurisdiction to Pennsylvania, since the defendant had created continuous and systematic contacts with Pennsylvanians

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<sup>90</sup> Zippo Manufacturing Company v Zippo Dot Com, Inc. 952 F. Supp. 1119 (W.D.Pa., Jan 16, 1997).

<sup>91</sup> Zippo Manufacturing Company v Zippo Dot Com, Inc. 952 F. Supp. 1119 (W.D.Pa., Jan 16, 1997).

in the course of their functioning as a company. The court based its judgment mainly on the defendant's having made contracts and agreements with Pennsylvanian residents and internet service providers, arguing that these agreements were intentional in establishing business and that the company availed itself of benefits arising from this activity. In evaluating the level of contact, the court proposed a spectrum test called the "sliding scale".

The purpose of the sliding scale was to evaluate the nature and level of internet contact in an activity carried out between a defendant and a foreign website. Put simply, situated at one end of the scale would be websites classified as passive in having no interaction facility, and situated at the other end would be websites classified as proactive. For websites between these polarities, a sliding scale would define the degree of interactivity of any particular website. An example of an active website would be defined as one where a defendant was clearly launching a business via the internet within a particular forum jurisdiction, and was going on to enter into contact with persons from foreign forums. In doing so, the defendant would be understood to be subjecting himself to the jurisdiction of this foreign forum. The hypothesis that the defendant would knowingly do this would have to be supported by evidence of systematic and continuous contact.<sup>92</sup>

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<sup>92</sup> A clear application of this theory can be seen in the case of *CompuServe, Inc. v Patterson*. In this case the court held that the Texas defendant (Patterson) had purposefully established business and entered into contacts with Ohio (the plaintiff CompuServe forum), thus subjecting himself to Ohio jurisdiction through his deliberate and repeated file transmissions. *CompuServe v Patterson*. 1996 FED App. 0228P (6th Cir).

At the other end of the spectrum, the court defined a passive website as one which contained data posted by a person to the web in such a way as merely to be accessible and available in foreign forum jurisdictions. The nature of passive websites is merely to allow those interested to read and browse their contents. In defining such websites as passive, the court would be in a position to declare that there were no grounds for exercising foreign personal jurisdiction, regardless of there being accessibility and availability of data.<sup>93</sup> Between these two poles falls the definition of interactive websites, the court hypothesising that interactive websites could be seen as constituting a middle ground between active and passive websites.<sup>94</sup> In interactive websites, it was understood that website users would be capable of interchanging data with the website contents. In such cases, the court attributed the application of personal jurisdiction rules over interactive websites to the “level of interactivity and commercial nature of the operations between the website and the user.”<sup>95</sup>

In considering the importance of this case to the current research focus, it could be argued that the 1997 court decision, resting on “the sliding scale test”, took into

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<sup>93</sup> For instance, in the *Bensusan Restaurant Corp. v King* case; the court refused the claim for a trademark infringement by the New York plaintiff (Bensusan) against the Missouri defendant. The court reasoned its judgement by saying that the defendant website’s contents consisted merely of general information regarding the club and its activity. The court considered the nature of the defendant’s website as passive, given that its contents did not allow users to establish contact or to launch any activity in relation to the website; for instance, users who required ticket information were able to obtain this from the website. But in order to actually purchase tickets, users had to go to Missouri to buy them directly from the defendant’s club. The court did not apply the New York personal jurisdiction, and rejected the plaintiff’s claim that the defendant availed themselves of benefits from the contact with its jurisdiction forum. *Bensusan Restaurant Corp. v King*, 937 F. Supp. 295 (S.D.N.Y. 1996).

<sup>94</sup> Post, David, ‘An Outline for the Perplexed’ [1998]. Paperwork presented at the Conference on Computer Law and Policy, Cornell University July 8-10/ 1998. Paper available online at: < [http://www.temple.edu/lawschool/dpost/outline.htm#N\\_1](http://www.temple.edu/lawschool/dpost/outline.htm#N_1) >. Accessed February “2014.

<sup>95</sup> Post. Ibid.

consideration the nature and levels of activity which may operate on a website, and the extent of its being subject to foreign jurisdiction.<sup>96</sup> The research position in that the court ruling on the Zippo case and in its application of certain jurisdiction approaches, was valid, mainly in the way it related claim to nature of activity, purposeful availment, and reasonableness principles.

Yet another obstacle arising from the principles of personal jurisdiction rules is the application of personal jurisdiction rules over foreign internet service providers. Disputes may arise over the location of an ISP branch being used, and over what constitutes a forum state. For instance, the issue may be whether jurisdiction can be applied in a particular country which hosts an ISP but receives its service from another server located in another country, or acts as a branch for other ISPs. In some cases, websites may be broadcast from a country where freedom of speech allows the expression of certain views, which may however be punishable in a branch country where no such freedom of speech exists. In such cases it is unclear what the ISP responsibility of the branches located in different countries is. Also unclear is which country has jurisdiction, whether the central or the branch countries. This research on one hand strongly supports an argument to limit the application of personal jurisdiction rules over a branch but on the other hand it recognises that both countries –the branch provider and the central provider- may claim jurisdiction in shared disputes or disputes related to a central sponsor.

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<sup>96</sup> Reed, Chris. *Internet Law* (Law in Context, Butterworths, London 2000). P.43.

To give specific example, the German judiciary in its application to the Multimedia Act of 1997 has moved towards the application of German laws where the broadcasting is related to Germany territories. To illustrate this, the Munich Court in respect of CompuServe Ger., a branch of a US company in America trading in pornography websites. concluded in “CompuServe in 1998”<sup>97</sup> in favour of the responsibility of the German branch. The court determined that the German server should be considered as a service receiver and provider in accordance with its relation to the central internet service provider in the USA (attributed to its subsidiary), and that the central internet service provider should be considered as a means of routing traffic to the subsidiary internet service providers around the world. Similarly, in France the same considerations were applied in the case of Yahoo! v Jewish Student,<sup>98</sup> when the French judiciary awarded the jurisdiction to the French courts even though Yahoo France was a branch of the central server in the USA. It was deemed that as long as the broadcasting was reaching France and the website was accessible in France, that Yahoo was responsible.<sup>99</sup>

## 7- Conclusion

This chapter has explored certain definitions of cyber jurisdiction, examined how internet activities impact on traditional rules, and discussed the relationship of cyber jurisdiction to political issues. In its first part, the chapter presented debates regarding cyber jurisdiction disputes, demonstrating different positions taken on the ability of

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<sup>97</sup> CompuServer v Patterson. 1996 FED App. 0228P (6th Cir).

<sup>98</sup> LICRA & UEJF v Yahoo! Inc & Yahoo France. May 22, 2000. See also: United States Court of Appeals, Ninth Circuit. - 433 F.3d 1199. Argued and Submitted March 24, 2005 Filed January 12, 2006

<sup>99</sup> Gray, Ibid No 36. P 93.

current rules to govern cyber disputes with or without amendments, and arguing the need for new cyber rules over cyberspace. In relation to this, one important argument supported by this research, is that advanced for new cyber legislation, to establish rights and obligations in cyber jurisdiction. In some measure this would be similar to the foundations of traditional subject matter jurisdiction rules.<sup>100</sup> This research supports the argument that cyber activities may be controlled by applying amended subject matter rules, regardless of obstacles among different legal systems.

In the final two sections of this chapter, the use of territorial and personal jurisdiction rules in cyberspace was briefly revisited, in order to illustrate the application of these rules on the internet, but also with a view to preparing for the next chapter which will intensively cover the domestic and international jurisdiction rules in the Jordanian legal system.

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<sup>100</sup> Oberding and Norderhaug. Ibid No. 14.

## Chapter 4: Jordanian Legislation and the Internet

### 1- Introduction:

The previous two chapters have provided a discussion of the term “jurisdiction” in its traditional use and the most applicable jurisdiction approaches found in Jordan and in foreign legal systems. The third chapter discussed the challenges which activities in cyberspace increasingly impose on the range of jurisdiction rules as most currently used by different countries. In this chapter, the discussion will specifically give attention to the case study chosen in this research to exemplify such issues. This case study is that of the Jordanian legal system.

Firstly, the chapter will discuss Jordanian legislation and in particular its jurisdiction rules, then go on to explore the way in which the Jordanian legal system addresses internet issues and their regulation within the structure of Jordanian courts. To fulfil the requirements of this study, and to support this chapter, the discussion has included detailed information on the Jordanian legal system, its court structures and their jurisdictional authorities.

Secondly, the chapter will discuss the domestic and international jurisdiction rules used in the Jordanian legal system. As stated in the introductory chapter, the overall aim of this research is to examine the ways in which internet rules and jurisdiction rules currently apply to the Jordanian legal system and to evaluate the capability of Jordanian legislation to absorb cyber jurisdiction disputes. In order to fulfil this aim, the domestic and international jurisdiction rules used in Jordan are discussed in

separate chapters. It is hoped that this structure will help to clarify the difference between disputes which occur between Jordanian courts within the country, for instance passive and negative jurisdiction disputes, and disputes which occur between Jordanian authorities and external legal bodies, such as determining which applicable law or jurisdictional body should be chosen to judge an international dispute.

Thirdly, since the intention of this research is to explore the functions and applications of jurisdiction approaches in Jordan as this research case study, this chapter will go on to explain the Jordanian legal system and the structure of its courts. This includes a consideration of external effects which might deprive Jordanian courts of their jurisdictional authority, such as observation of treaties and agreements. This section of the chapter will serve as preparation to succeeding chapters illustrating the international and domestic functions of Jordanian jurisdiction principles. Finally, this chapter will clarify problematic issues such as the interference of the State Security Court in regular courts' powers, which has arguably been considered as an abuse of the responsibilities of regular courts in Jordan.

## 2- A History of the Jordanian legal system

The Hashemite Kingdom of Jordan (HKJ) is an independent country located in the Middle East. Jordan has its own sovereignty and occupies a significant as well as important position in the history of the Arab League and in the current world

community. The population of Jordan has steadily increased, to an estimated 6,250,000 in July 2010.<sup>1</sup> The Jordanian government system is parliamentary with a hereditary monarchy. The reigning head of the state since 1999 is King Abdullah II Bin Al-Hussein.<sup>2</sup> The Jordanian constitution published in the Official Gazette, Issue No. 1093, on 8 January 1952, lays out the rights and duties of Jordanian citizens and declares the three main powers as: Legislative Power, Executive Power and Judicial Power, laid out in sections 25, 26, 97 respectively of the constitution.

Jordanian legislation is derived from three main resources: the Constitution, *Shariah Law* (the Islamic law) and customary law.<sup>3</sup> As a consequence of the British mandate in Jordan between 1921 and 1946, the law system in Jordan (known at the time as the Emirate of Transjordan) reflected during that period various provisions derived from the British law system, such as common and criminal laws, but with a basis grounded in Ottoman legislation.<sup>4</sup> More recently, laws have been derived from some European law systems, especially those of France. For these reasons Jordan may be considered a country legislated by civil rather than common law.<sup>5</sup>

From the beginnings of the Emirate of Transjordan in 1921 until it was proclaimed the Hashemite Kingdom of Jordan,<sup>6</sup> the Judiciary in Jordan has been independent,

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<sup>1</sup> Department of Statistics (DOS), Jordan <[http://www.dos.gov.jo/home\\_e.htm](http://www.dos.gov.jo/home_e.htm)>. Accessed: December 2011.

<sup>2</sup> Al-Aqaileh, Zaid. *Terminology of Law* (Dar Althaqafa, Amman 2004). P 71.

<sup>3</sup> Al-Aqaileh, Ibid. P77.

<sup>4</sup> Al-Aqaileh, Ibid. P79.

<sup>5</sup> Ministry of Justice, General info <[www.en.moj.gov.jo/](http://www.en.moj.gov.jo/)>. Accessed: December 2011.

<sup>6</sup> Jordan has been governed under three constitutions: firstly, the Organic Constitution of 1928, under the title of the constitution of the Emirate of Transjordan and during the reign of Prince Abdullah Bin Al-Husain. The constitution of 1928 remained in effect until the second constitution came into force in 1946, after the independence of Jordan on the 25th on May of that year. At this point the country gained the new title of

in that judges may exercise their powers with no outside influence or interference. Article 97 of the Constitution states that “judges are independent, and in the exercise of their judicial function, subject to no authority but that of the law”. Courts exercise their power and pronounce their judgements in the name of the king (A.27 C 1952). Also courts are open to all and their sittings are public unless a court considers that it should sit in private for the interest of public order and morals (A. 101 C 1952).

### 3- Courts Structures

Court structures in the Jordanian judicial system are based on the French system.<sup>7</sup> Accordingly, article 99 of the constitution refers to different types of Jordanian courts: “The courts shall be divided into three categories: Civil Courts, Religious Courts, and Special Courts”. The types in article 99 have been defined by the constitution, while the details have been left to their special laws and regulations. Article 100 states that “The establishment of the various courts, their categories, their divisions, their jurisdiction and their administration shall be by virtue of a special law, provided that such law provides for the establishment of a High Court of Justice” (C 1952).

It is important to say here in that in discussing the structure of the courts in this chapter, the aim is to clarify and understand more fully the jurisdictional authority of these courts, as discussed in the two chapters following. Jordanian courts are

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Hashemite Kingdom of Jordan. This second constitution was used for legislation during the transitional period between the reigns of Prince Abdullah and his son King Talal Bin Abdullah. In 1952, the third constitution was adopted and is still in force today. That is, the first and second constitutions were abrogated by the constitution of 1952 which is in force at the time this research is being undertaken. It is very important to mention here that the newest amendment of the constitution is the amended constitution of 2012, which has been considered by the researcher in some parts on the revised thesis.

<sup>7</sup> El-Qudah, Mefleh. *Civil Procedure and Judicial Organisation* (Dar Althaqafa, Amman 2004). P36.

awarded their powers in accordance with the jurisdiction rules in the Jordanian legal system which are: personal, territorial and subject matter jurisdiction. Consequently, the understanding of Jordanian court power in relation to each type of jurisdiction is essential, in order to determine which courts in Jordan should be given jurisdiction over different types of disputes occurring on the internet.

### **A - Civil Courts**

Civil or Regular Courts are the courts of general jurisdiction, authorised to hear all civil and penal cases in Jordan. In addition, regular courts have the jurisdiction to cover claims for or against the government.<sup>8</sup> Any other cases should be referred to the religious and the special courts under the provision of the constitution or other legislation in force, such as personal statutes or state security (Article 102). Regular courts are divided in accordance with the constitution into three levels: the first level comprises the first degree courts which include the first instance courts and the magistrates' courts. The second level comprises the second degree courts which are the appellate courts.<sup>9</sup> The third and the highest judicial body is the Cassation Court. Finally, there is an administrative court named the Supreme Court of Justice which is mainly specialised in administrative disputes in the country.<sup>10</sup>

#### **1 - The First Degree Courts**

The first degree courts are divided into two types: the first is the magistrates' courts and the second is the first instance courts. Articles 3 and 4 of the Law of Formation

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<sup>8</sup> El-Qudah, Ibid. P39.

<sup>9</sup> Jordan Legal System based on a couple of legal principles. One of these principles is the principle of litigation on two degrees. See: Al-Aqaileh, Ibid. No 2. P91.

<sup>10</sup> The Law of Formation the Regular Courts No. 17 of 2001 and its amendments.

of the Regular Courts No. 17 of the year 2001 as amended in the law No. 31 of the year 2008,<sup>11</sup> established the first degree courts as the first litigation degree in the judicial system. Article 3 recognises the establishment of magistrates' courts in each province, district and any other place in accordance with the territorial jurisdiction for each court. According to articles, 2, 3 and 4 from the Regulation No. 42 of the year 2004, issued by the Cabinet in accordance with article 3 of the Law of Formation of the Regular Courts, there are 44 magistrates' courts in Jordan at the time of writing.<sup>12</sup> These courts are located according to territorial jurisdiction, in the Magistrates' Courts Law No. 15 of the year 1952 and its amendment,<sup>13</sup> in addition to the jurisdiction rules in the Code of Civil Procedures.<sup>14</sup> Magistrates' courts exercise their power over lower cases in Jordan according to certain jurisdiction rules and they consist of a single judge (Articles 3 – 4 of the Magistrate's Courts Law). Magistrates' courts have authority over other types of cases in accordance with some private laws in force, such as labour disputes.<sup>15</sup>

The second type of regular court is the first instance court. Article 4 recognises the establishment of this type of court in various rural provinces and districts. According to Regulation No. 42 of 2005, based on the Law of Formation of the Regular Courts, there are sixteen first instance courts in Jordan, distributed over the twelve Jordanian mayors (five in the capital Amman and one in each other Mayoral

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<sup>11</sup> The Law Number 71/1951 Published on the Official Gazette 1071/16-06-1971.

<sup>12</sup> Al-Masri, Mohammad. *Explain the Civil Procedures Code: A Comparative Study*. (Dar Kndeel Publishing, Amman 2003). P42.

<sup>13</sup> The Law number 15/1952 published on the Official Gazette 1102/01-01-1952.

<sup>14</sup> The Law number 43/1976 published on the Official Gazette 2645/01-08-1976.

<sup>15</sup> El-Qudah, Ibid. No. 8. P138.

regions). However, the courts are managed by a special regulation issued by the Cabinet and based on the provision of the Law of Formation of the Regular Court.<sup>16</sup>

First instance courts are recognised as valid in exercising their jurisdictions in cases as a first instance court and as an appellate court. Consequently, these courts are commonly known as the courts of general jurisdiction because they have jurisdiction over all legal proceedings and criminal proceedings which have not been delegated to any other courts. In addition, they have jurisdiction over urgent requests, and all applications associated with an original request of whatever value or kind. The First Instance Courts also hear appeals on decisions made by the magistrates' courts, and on some other court appeals in accordance with their private laws.<sup>17</sup>

In terms of hearing magistrates' judgements as an appeal court: firstly, article 10/a-1 states that " the judgements of Magistrates' Court in irregularities will be appealed to the court of first instance unless the judgement has issued a fine, in which case the judgement will be decisive, taking into account the right to object". Secondly, in criminal cases, regardless of the level of the fine, appeals against the judgements of the magistrates' court are referred to the court of first instance, if the judgement given is a sentence not exceeding three months imprisonment.<sup>18</sup> Thirdly, in civil cases, magistrates' judgements in civil cases not exceeding a fine of one thousand Jordanian Dinars (1000JD) may appeal to the first instance court (Article 10/3-a Law of Magistrates' Courts).

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<sup>16</sup> El-Qudah, Ibid. No 8. P58.

<sup>17</sup> El-Qudah, Ibid. No. 8. P139.

<sup>18</sup> The sentence was one month until it modified in the amendment No. 30 of the year 2008.

First instance courts are made up of a president and from a single to a number of judges as needed when considering legal proceedings outside the jurisdiction of the magistrate court. On the other hand, the court may consist of two judges when considering criminal cases beyond the power of the Major Felonies Court under its law (Major Felonies Court is clarified below). In addition, the court may consist of three judges when hearing criminal cases that are punishable by a legal penalty such as hard labour for life, imprisonment, temporary detention, or imprisonment with hard labour for not less than fifteen years, beyond the power of the Major felonies Court.<sup>19</sup>

## **2 - The Second Degree Courts (the Appellate Courts)**

The Jordanian judicial system guarantees the right of prosecution by allowing litigation in two degrees. The first degree as formerly discussed takes place in the magistrates' and the first instance courts. The second degree takes place in the Appellate Courts. According to article six of the Law of Formation of the Regular Courts, the courts of appeal shall be established in three cities in Jordan: Amman (the capital- middle Jordan), Ma'an (south) and Irbid (north). The Jordanian territory is thus divided between these three courts, in accordance with article 4 of regulation No. 42 of 2005, which is based on article 6/b of the Law of Formation of the Regular Courts.

The Appeal court is divided in chambers, each generally consisting of three judges. Appeal courts accept appeals from the lower regular courts (first degree courts) and

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<sup>19</sup> El-Qudah, Ibid. No. 8. P139.

any other private courts' judgements in accordance to their laws.<sup>20</sup> For instance, the court considers appeals handed on by the magistrates' courts as provided by magistrates' courts law. Article 10 of the Magistrates' Court Law outlines which appeals to courts judgments can be referred to the appellate court. According to article 10/a, appeals against penal judgments are referred to the appeal court if an awarded sentence carries a penalty of more than three months imprisonment. Moreover, appeals against magistrates' judgements in civil cases may be referred to the appeal court if the decision amount is over than one thousands Jordanian dinars (1000JD).

Appeal court jurisdiction in accepting judgements submitted by the first instance courts in civil and penal cases. In the first instance the court decides in appeals submitted thereto in the sentenced issued as a prima facie by the first instance courts if the value of the lawsuit is less than thirty thousand dinars, unless the court decides to plead by its own decision or at the request of a liability and agreed to this request (JCCP A.182/1).<sup>21</sup> On the other hand, the Appeal Court pleads the appeals submitted thereto regarding the judgements which are worth over thirty dinars once asked by one of the liabilities, without the need for approval (JCCP A.182/2). In accordance with the judgements referred by the Cassation Court, the Appeal Court decides the pleading of the lawsuit that is referred thereto to the Court of Cassation (JCCP A.182/4).

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<sup>20</sup> Al-Masri, Ibid. No. 13. P335.

<sup>21</sup> Article 182 of the Jordanian Code of Civil Procedure No. 24 of the year 1988. For details see: Al-Masri, Ibid. No. 13.P335.

In cases of appeal in criminal lawsuits, article 260/2 of the Code of Criminal Procedure (JCCrP)<sup>22</sup> recognises the right of appeal against penal judgements, and outlines who has the right to appeal. Article 260/2 states that “Criminal and misdemeanour Appeal issued by the court of First Instance will be appealed to the Appeal Court. In terms of who has the right to appeal; article 260/2 states that “the right to appeal in criminal lawsuits is for the public prosecution; the defendant; the sentenced person and the financial official”. However, the same article, in provision 3, refers to the appeal imprisonment limit; that is, judgements of death or criminal penalties for a period over five years shall inevitably succeed to appeal even if the sentenced party did not ask for this.

Trials are appellate lawsuits if the sentence is of death, hard labour for life or life imprisonment, otherwise the appeal will be considered in scrutiny unless the court decides that the lawsuit should be prosecuted and convicted or the prosecutor request this, and the court agrees to the request (JCCrP A.264).<sup>23</sup>

### **3- The Court of Cassation<sup>24</sup>**

The highest judicial body in Jordan is the Cassation Court. The cassation court is formed of panels of five judges at regular sittings, and of a president with eight judges at special sittings, which occur when considering events of public importance, or when cases are complex. For example special sittings may occur when one of the

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<sup>22</sup> The Law number 16/1960 published on the Official Gazette 1487/01-01-1960.

<sup>23</sup> Article 264 of the Jordanian Code of Criminal Procedures No. 9 of the year 1961 and its amendments.

<sup>24</sup> The term Cassation means: “Abrogation or annulment by a higher authority”, a Latin term used in French Judiciary. See: Terrill, Richard. *World Criminal Justice System: A Comparative Survey* (8<sup>th</sup> edi. Anderson Publishing, Waltham, 2012). P 152.

Cassation Court regular panels has withdrawn from a former principle established in a previous decision on a case, or when a case is pleading a decision referred by the appeal court after it has insisted on its previous decision, or when a case is revolving around a new point of law (A.9/1. LFRC).<sup>25</sup>

However, the cassation court does not count as a litigation degree (see the previous two sections regarding litigation degrees) nor is it a court of subject. That is, the function of this court is to adjudicate cases in reviewing law provision, rather than to hear whole processes again unless it has been decided by public panel or when considering cassation referred by private courts such as the State Security Court, the Court of Police and the Major Felonies Court (A.9. LFRC).<sup>26</sup>

But above all, one of the most important responsibilities of the cassation court is to hear issues arising from a conflict of laws, and positive or negative jurisdictional conflicts between first degree courts that do not follow a single appeal court, or between appeal courts. This part will be discussed in the next section of the study. (C 99,102,103).

There is one cassation court in Jordan based in the Palace of Justice in the Capital Amman,<sup>27</sup> and the President of the cassation court is the Chief of the Judicial Council as this court form the head of the Jordanian judicial system. However, the function of this cassation court, in accordance with the new amendments of the

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<sup>25</sup> Al-Masri, Ibid. No. 13. P358.

<sup>26</sup> Al-Masri, Ibid. No. 13. P360.

<sup>27</sup> Al-Masri, Ibid. No. 13. P359.

Code of Civil Procedure, is to consider judgements submitted by the appeal courts and other private courts judgements. Civil judgements coming before this court are those involving more than ten thousands Jordanian Dinars; if it judges cases involving less than ten thousands dinars, it requires the permission of the president of the cassation court or his representative (JCCP A,191).<sup>28</sup>

In penal judgements, the cassation court is specialised in considering appeals to decisions made by the court of appeal in criminal cases, in addition to the judgements of prevent prosecutions, as issued by the public prosecutor in panel cases (A. 270 JCCrP). Moreover, the duty of this court is to consider panel judgements submitted by other private courts as provided in their laws, such as appeals against decisions of the state security court and the major felonies court. This also includes judgements involving the legal penalty of execution. Imprisonment for life and hard labour for life on the other hand, shall be cassated without need of request from the sentenced person (A. 275/2 JCCrP).<sup>29</sup>

To conclude, the Cassation Court as the highest legal body in Jordan has been considered a legal reference to Jordanian courts; that is, the opinions of tis judges, and its judgments are taken as precedents to be followed by lower court judges. In discussions of new issues, for instance such as come before Jordanian courts in regard to internet disputes, there is a precedence for following the opinions and judgements of Cassation Courts judges.

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<sup>28</sup> The Law number 24/1988 published on the Official Gazette 3545/02-04-1988.

<sup>29</sup> Al-Masri, Ibid. No. 13. P359.

## **B - Religious Courts**

According to article 99 of the Jordanian Constitution, after the Civil courts comes the second type of court in Jordan, comprising the Religious Courts. Religious Courts are managed chiefly by three laws and some other specific regulations. These three laws are the Law of Formation of the Religious Courts No. 19 of the year 1972 and its amendments,<sup>30</sup> the Personal Status Law No 61 of the year 1976<sup>31</sup> and the Law of Shariah Procedure No. 31 of the year 1959.<sup>32</sup> Litigation in the religious courts is situated in the first instance courts and the appellate court.

The courts are divided into two main types, Shariah Courts for Muslims, and Religious Tribunals or the Board of Non-Muslim Communities, well-known as the Ecclesiastical Courts, for the minority Christian communities.<sup>33</sup> Shariah Courts and Religious Courts are responsible for issues not covered by regular courts jurisdictions. These issues are mainly relative to individuals' personal status: for instance, in matters pertaining to marriage, divorce, inheritance and child custody. In addition these courts may deal with disputes concerning communal endowment among their respective communities.<sup>34</sup> The Shariah and Ecclesiastical Courts deal with the above issues, exercising the Islamic law rules located in the Personal Status Code for Muslims as well as rules as interpreted by Christians in their community

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<sup>30</sup> The law number 19/1972 published on the Official Gazette 2357/06-05-1972. P834.

<sup>31</sup> The law number 61/1976 published on the Official Gazette 2668/01-12-1976. P2756.

<sup>32</sup> The law number 31/1951 published on the Official Gazette 1941/01-12-1959. P931.

<sup>33</sup> Christians comprise 4.5% of the Jordan population and they are divided into groups such as: Greek Orthodox, Greek Catholic, Roman Catholic, Latin Patriarch, Protestant and Armenian churches. See: Jordan Department of Statistics <[http://www.dos.gov.jo/dos\\_home\\_e/main/index.htm](http://www.dos.gov.jo/dos_home_e/main/index.htm)>. Accessed: December 2013.

<sup>34</sup> Al-Aqaileh. Ibid No 2. P. 75.

codes (Muslims in Jordan form 95% of the population, Christian 4.2%, the rest coming from mixed backgrounds).

In cases of conflict in applying Shariah rules, or if the disputes involve different religious communities, or the personal status of foreign nationals, the civil courts have jurisdiction over the dispute unless the parties mutually agree to submit to the jurisdiction of one of the religious courts. The issues of conflict in applicable law and jurisdictions will be discussed in a following chapter.<sup>35</sup> Suffice it to say here that the Shariah Appeal Court has the authority to hear cases and appeals referred by the Shariah Courts, and also by religious courts which present their appeals to the Ecclesiastical Appellate Courts. (C 104-106).

Finally, it is important to understand that religious courts above are not divided in respect to territorial rules. Rather they are divided in accordance with personal and subject matter jurisdiction rules; these rules determine who has jurisdiction over the cases, and which disputes can be brought before religious courts.

### **C - Private Courts (Courts with Special Jurisdiction)**

According to article 99 of the Jordanian Constitution, the third court type in the Jordanian Legal System comprises the Private Courts, also known as Courts with special Jurisdiction. In most cases, Special Courts act as appeal courts for many considerations; in terms of the case types under their jurisdiction, these courts

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<sup>35</sup> Al-Aqaileh. Ibid No 2. P 73.

consider sensitive issues such as crimes committed against state security, which fall under the jurisdiction of the State Security Court. These courts may also act where special consideration needs to be exercised, for example in terms of age; thus one special court is the juvenile court. The function of special courts is to consider issues related to civil servant groups such as policemen, who are subject to the Police Court.<sup>36</sup>

Special courts can be divided into three main types according to their membership. The first comprises judges working within juvenile courts and the supreme court of justice. The second comprises judges from regular courts alongside non regular court judges such as the High Council of trying Ministers which has members from legislative powers.<sup>37</sup> The third type comprises courts with non regular judges, such as military courts. The special courts are not just distinctive in their identity, but in their exceptional jurisdiction. Because of the special nature of their issues, they function apart from general jurisdiction under the rules of the regular courts.

There are many such special courts in Jordan. Following are given brief explanations of major courts with special jurisdiction in Jordan:

### **1- The Supreme Court of Justice**

The Supreme Court of Justice is an administrative court specialised exclusively in handling administrative disputes in accordance with the Supreme Court Law No. 12

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<sup>36</sup> Shorari, Salah. *Special Courts: Formation, Jurisdiction and the Objections* (Amman, Dar Althakafa of Publishing. 2001) p.75.

<sup>37</sup> It is important to say here that this council is not exist anymore according to the Constitution amendment of 2011.

of the year 1992, and the amended law No 2 of the year 2000.<sup>38</sup> The court considers appeals in regard to elections of boards such as municipalities, trade unions and associations. In addition to appeals presented against final administrative decisions of appointment in public office or on the annual increase, these exclusive issues has been defined by article 9 of the Supreme Court Law. The court decisions are implemented as of issuance and do not accept any objections or review in any way, thus the Supreme Court of Justice' decisions are peremptory (article 26/b).

The court sits by a decision from the Judicial Council and is assisted by a president and a number of judges, normally four. It sits however as one body of judges, which could comprise more judges as needed. The members of this court must hold the rank of the Cassation Court Judges, and they have the same rights as cassation judges. The court members and the Director of Public Prosecutions and also the assistants shall be appointed by a royal decree upon recommendation from the Judicial Council (A. 6). The Supreme Court of Justice exercises in the judicial system the role of the Constitution Court in comparative regulations, as under its own power it can stop any unconstitutional law or regulation.<sup>39</sup>

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<sup>38</sup> The Supreme Court of Justice Law No. 12 of the year 1992 amended in 2000 by the law No. 2, the amended law published on page 318 of the Official Gazette No. 4408 dated 01.02.2000.

<sup>39</sup> Kashakesh, Kreem. "Elimination of The Jordanian Supreme Court of Justice". Almanarah Magazine 3(2) . 15.01.2012. p16-29.

## **2- The Major Felonies Court**

The Major Felonies Court clearly derives its name from its specialist role in dealing with major crimes, or any attempt to commit those crimes. The jurisdiction of the Major Felonies Court is stated in article 4 of its law. Article 4 enumerates crimes such as: murder, rape, sodomy and kidnapping, or the attempts to commit those crimes. The previous crimes are based in accordance with articles 326, 327, 328, 330, 338 of the Penal Code in force. The law in article 3 refers to the privacy of the court and stipulates that the court shall be convened under three judges, the head judge of whom should rank as higher than second degree, while the other two members should rank at no lower than third degree (A. 3/a).<sup>40</sup>

This court is continuously under criticism as it deals with sensitive and often controversial issues related to crimes which may necessitate a death sentence; such criticism is normally levied by human rights associations and other bodies who are against the death penalty. However, this court is distinct from other courts which may sit in first instance courts, and which deal with crimes incurring lesser penalties, such as misdemeanour crimes.<sup>41</sup>

## **3- Special Labour Courts:**

The Special Labour Courts are established under the Minister of Labour. These courts specialise in collective labour disputes and their cases are prioritised to proceed for a period of not more than seven days. The court sits within the Ministry

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<sup>40</sup> Al-Masri, Ibid. No. 13. P55.

<sup>41</sup> Al-Masri, Ibid. No. 13. P56.

of Labour and follows procedures laid down in accordance with Labour Law No. 8 of 1996.<sup>42</sup> Article 2 from the said law defines the court authority as having the right to deal with “every dispute which arises between a group of workers or workers’ union and an employers or employers’ union, in regard to the application and interpretation of a collective labour contract, or relating to working conditions and terms”.<sup>43</sup>

#### **4- The State Security Court:**

The State Security Court is a special military court located in Amman. The court consists of three judges from civil and/or military judges, the panel being formed according to the recommendation of the Minister of Justice for the civil judges, and of the Chief of Joint Staff for the military judges. The State Security Court has the authority to apply its jurisdiction over crimes set out in accordance to the Law of the State Security Court No. 17 of the year 1959 and its amendments.

Crimes tried in this court are mainly those committed against the security of the country. However, article 3 of the Law of State Security Court refers exclusively to eleven types of crimes, for instance: crimes against the internal and external security of the state, crimes of counterfeiting banknotes and coins, crimes against the law of Narcotics and Psychotropic substances, and any other crimes related to economic security, with reference from the Prime Minister. The court judgements and decision are subject to appeal to the Cassation Court, the Cassation Court in this case being considered as a subject court rather than a law court; the implication being that it

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<sup>42</sup> The Law number 8/1996 published on the Official Gazette 4113/16-04-1996. P1173.

<sup>43</sup> Kamal, Ahmad. *The New Labour Law* (Dar Althakafa, Amman 2011). P165.

can then review the facts of a case rather than being restricted to application of law by the State Court.

### **5- The Juvenile Court:**

The Juvenile Court is a special court exercising its jurisdiction over individuals defined as juveniles by reference to their being below a specific age, under the law of the Juvenile Court. There are four categories to this definition: juvenile, boy, adolescent and youth. According to article two of the Juvenile Law No. 24 of the year 1968 and its amendments,<sup>44</sup> a juvenile is “any person male or female over seven years of age and less than eighteen years of age. A boy is any person who is over seven years and less than twelve years of age. An adolescent is any person who is twelve years or above and less than fifteen years of age. A youth is any person who is fifteen years or above and less than eighteen years of age. However, any person less than seven years of age is not to be prosecuted and criminally charged with any committed crimes”.

Individuals in these categories are tried in accordance with the Juvenile Law before the magistrates’ courts or the court of first instance, the jurisdictional court being determined according to the nature of the sentence for the committed crimes. According to article 31 of the Juvenile Law, the magistrates’ court shall have jurisdiction over all infractions and misdemeanours committed by juveniles, in addition to jurisdiction over cases related to the custody and protection of juveniles. The first instance courts in their capacity as juvenile courts have the authority to

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<sup>44</sup> The Law number 24/1968 published on the Official Gazette 2089/16-04-1968. P555.

exercise their jurisdiction if the crimes committed are awarded sentences with more than three years of imprisonment.

In terms of the juvenile court jurisdiction, in issues related to juveniles' protection, the law has set out a number of cases to be considered before the court such as the custody and the intentional abuse of parents (A. 31). In crimes committed by participation between juveniles and adults, they will be tried with the adults before the competent court, provided that the rules followed by the juvenile courts towards the juveniles are observed.<sup>45</sup>

The former courts are the main types of special court and the most authorised bodies upon courts with special jurisdiction type. In addition to the courts addressed above, there are many other courts which fall under the categories of special court such as: Police Courts, the Income Tax Appeal Court, the State Properties Preservation Court, the Land and Water Settlement Court, the Councils Courts, the Customs Appeal Court, the State Properties Court and the Military Appeal Court. In the light of the discussion above, the most important courts among these are the State Security Court and the Major Felonies Court. The importance of these two courts is attributed to the long arm jurisdictions of their authorities and the kinds of the crimes they hear under their laws.

Finally, an important point related to the authorities of these courts is that these courts have been awarded their authorities in accordance with subject matter and

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<sup>45</sup> Yaseen, Abdu Alazeez. *The Juveniles Courts* (Dar Qandeel, Amman 2009). P42.

personal jurisdiction rules rather than territorial rules. The implication of this for cyber cases is that such rules serve to give the above courts stronger powers over cyber disputes instead of interpreting their jurisdiction in accordance with territorial jurisdiction rules or subject these authorities to the regular courts powers.

The next section will identify discuss the international treaties and agreements with which Jordan is engaged, and discuss the power which external jurisdiction rules from such treaties and agreements exercise on the Jordanian Constitution, in particular where they are taken to have priority over Jordan's domestic laws and regulations for dealing with traditional and cyber jurisdiction cases.

#### 4- Treaties Jurisdiction Rules Ranking within the Jordanian Legal System:

The previous section had outlined jurisdiction authorities that are mainly internally which are subject to the laws and regulations of Jordanian courts. The main two types under the said categorisation were regular courts and courts with special jurisdiction. But there are some other jurisdiction rules that come from external sources; these sources are mainly treaties and agreements that Jordan is part in.

However, the Jordanian constitution does not as yet hold a clear article regarding application of treaties and agreements in Jordan, nor any clear idea of any precedence of these conventions over the constitution. Article 33 of the Jordan constitution states that "(i) The King declares war, concludes peace and ratifies

treaties and agreements. (ii) Treaties and agreements which involve financial commitments to the Treasury or affect the public or private rights of Jordanians shall not be valid unless approved by the National Assembly. In no circumstances shall any secret terms contained in any treaty or agreement be contrary to their overt terms”.

The said article does not clarify which legal body has precedence, whether the constitution or the treaties and agreements. This issue has come before the Supreme Council for the Interpretation of the Constitution, the Council which distinguishes between treaties and agreements; this Council acknowledged that while the aim of such treaties was to protect political and economic rights, such rights may at the same time affect the Jordanian budget and the country's public or private interests. Even agreements created for non political rights might affect Jordanian interests. Accordingly, agreements should be exempted from ratification only if they do not affect Jordanians interests.<sup>46</sup>

However, the Court of Cassation, as the highest judicial court in Jordan, has ruled that un-ratified treaties or agreements which affect Jordanian citizens' rights are unconstitutional and are not applicable to Jordanian courts.<sup>47</sup> The Court has adopted an attitude that the constitution should take precedence over treaties, and that there will be no exercising of treaty provisions in the event that these conflict with

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<sup>46</sup> The Supreme Council for the Interpretation of the Constitution, Decision 1/1962 and 2/1955. Found in Alqudah, Fayyad . “The Legal Protection of Database: a Study of Jordanian Law”. Arab Law Quarter 22 (2008), 359-386. P 363-364.

<sup>47</sup> Court of Cassation decision No. 844/1999 and 762/1996. Found in Alqudah, Fayyad . “The Legal Protection of Database: a Study of Jordanian Law”. Arab Law Quarter 22 (2008), 359-386. P 364.

constitutional provision. This approach accords with that of the Higher Council for the Interpretation of the Constitution.<sup>48</sup>

In contrast to the vagueness of the relationship between the constitution and the treaties, the constitution and civil law contain clear articles regarding precedence of treaties over domestic laws. First of all, articles 21 and 103 explicitly require application of international convention rules over specific issues, article 21/2 states that “extradition of ordinary criminals shall be regulated by international agreements and laws”. Article 103 declares that “(i) The Civil Courts shall exercise their jurisdiction in respect of civil and criminal matters in accordance with the law for the time being in force in the Kingdom, provided that in matters affecting the personal status of foreigners or in matters of a civil or commercial nature which in accordance with international usage are governed by the law of another country, such law shall be applied in the manner designated by the law”.

In terms of Jordanian Civil Law, article 24 states that “the provisions of the preceding section shall not apply if there is a provision repugnant thereto in a special law or in an international treaty in effect in the Hashemite Kingdom of Jordan”. This article clearly shows that the priority in application is to international conventions over domestic laws. This approach has been adopted by the Jordanian Cassation Courts. For example, in its judgment No. 38/91 issued on April 18, 1991, the Cassation Court gave international conventions the priority of application over national laws and the same approach has been upheld by the Supreme Court of Justice.

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<sup>48</sup> El-Qudah, Ibid. P39.

Consequently, to summarise the above points; if there is any clash of conflict on jurisdiction between Jordanian domestic laws and treaties (mainly jurisdiction rules), the treaties and agreements have precedence in Jordanian territory, that is, Jordan respects international relationships and reciprocity.<sup>49</sup> But if this clash was with the Constitution; the Constitution provisions shall have the priority over treaties articles. From this research point of view, this systematic category should be respected while considering disputes occur on the internet; this will be discussed in chapter in seven when illustrating internet cases before Jordanian courts and the applicable laws over such cases.

## 5- The World of the Internet and cyber regulations in Jordan:

The previous sections have identified the main features of the Jordanian legal system and court categorisations as well as discussing the ranking system for treaties and agreement rules influencing the Jordanian legal system. In the next section will be reviewed the impact of the international technological revolution on Jordanian law, and in particular on Jordan's regulation of cyber activities. Also within the next two chapters the way in which Jordan governs its jurisdiction rules over cyber jurisdiction disputes will also be discussed.

Like any other Arab nation, Jordan is changing as a result of a global technological revolution. However, it has gained the reputation of being one of the more

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<sup>49</sup> Al-Tabaa, Tawfeq. 'Copyrights Protection in the Internet' (2009) paperwork presented on the King Abdullah Centre of IP. Also, Alqudah, Fayyad. "The Legal Protection of Database: a Study of Jordanian Law". Arab Law Quarter 22 (2008), 359-386. P 365.

technologically advanced of the developing countries of the Middle East.<sup>50</sup> In spite of this favourable status, the Jordanian government is still refining measures for improving its technological, economic and legal structures in order to participate in global development and to attract international investments to the country. One of the earliest measures taken was the establishment of the Telecommunications Regulatory Commission (TRC), set up in 1995. Later, the amended Communication Law No. (8) of 2002 was legislated and passed with a view to improving the regulatory framework of the 1995 law.<sup>51</sup>

Technological communication is a growth area in Jordan. According to the most recent statistics of October 2011, Jordan's population is estimated at 6,220,791.<sup>52</sup> Although the average annual income in Jordan is quite low, the country is served by a landline company serving 634,000 customers. In addition there are four mobile phone companies with customers numbering approximately four and a half million. This suggests that mobile phone users comprise 85.7% of the country's population.<sup>53</sup>

Huge changes have been effected in the last twenty years. Internet services were first offered in Jordan in 1995, by the Jordanian National Information Technology

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<sup>50</sup> Wheeler, Deborah. 'The Internet in the Arab World: Digital divides and culture connections' [June 16, 2004] Lecture presented at the Jordan's Royal Institute for Inter-Faith Studies <[http://www.riifs.org/guest/lecture\\_text/Internet\\_n\\_arabworld\\_all\\_text.htm](http://www.riifs.org/guest/lecture_text/Internet_n_arabworld_all_text.htm)>. Accessed: December 2014. P.16

<sup>51</sup> The Law number 15/1995 amended on the Law number 21/2001 published on the Official Gazette 4072/01-10-1995. P20.

<sup>52</sup> Jordan Department of Statistics <[http://www.dos.gov.jo/dos\\_home\\_e/main/index.htm](http://www.dos.gov.jo/dos_home_e/main/index.htm)>. Accessed: December 2013.

<sup>53</sup> Telecommunications Regulatory Commission statistics of June 2008.

<[http://www.trc.gov.jo/index.php?option=com\\_content&task=view&id=1563&lang=arabic](http://www.trc.gov.jo/index.php?option=com_content&task=view&id=1563&lang=arabic)>. Accessed: December 2013.

Centre (JNITC). This centre was the first Internet Service Provider (ISP) to the public sector in Jordan, offering communication lines such as Asymmetric digital subscriber line (ADSL), Dial Up, Fiber Optics and leased lines.<sup>54</sup> Currently, in addition to NITC, there are many other ISPs in Jordan such as Orange and Telecom Egypt (TE.Data).<sup>55</sup> According to the second quarterly statistics for 2008 provided by the Telecommunication Recommendation Council (TRC), Jordan has an estimated 1,215,000 of internet users, representing 20.5% of the population. This percentage is much higher than that of internet users in other Arab countries , and in the Middle Eastin general.<sup>56</sup>

Jordan is notable in being one of few Arab countries to establish an early Electronic Transaction Law (JETL), which it did in 2000.<sup>57</sup> To further improve its legislation, Jordan has recently issued the Information System Crime Law (Cyber Crime Law) of 2010,<sup>58</sup> which came into force in September 2011 after being approved by the cabinet in August of the same year. The newest piece of legislation is the amended Press and Publication Law No. 32 of the year 2012, which majorly amends the Press and Publication Law No. 8 of the year 1998.<sup>59</sup> At the external level, Jordan has continued its cooperation with the international community to develop laws in line with the development of cyber activities; such cooperation in 2012, for instance,

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<sup>54</sup>NITC <<http://www.nitc.gov.jo/En/faq.htm>>. Accessed: December 2013.

<sup>55</sup> TE.Data is the biggest Internet Provider in Egypt, started providing its services in Jordan on 2004. TE.data Jordan <[http://www.tedata.net.jo/Arabic/Arabic/news\\_itm.aspID=11](http://www.tedata.net.jo/Arabic/Arabic/news_itm.aspID=11)

<sup>56</sup> The Initiative for an Open Arab Internet <<http://www.openarab.net/ar/node>>. Accessed: January 2014.

<sup>57</sup> Law number 81/2001 published on the Official Gazette 4524/31-12-2000. P 6010.

<sup>58</sup> **This research** has reconsidered some points in according with the new established law as it contained articles the researcher was calling for them in its final recommendations. Law number --/2012.

<sup>59</sup> Law No. 32 of 2012 published on the Official Gazette 5179/19-09-2012. P 4264.

features Jordan's regional joining of the Arab Convention for Suppression of Information System Crimes.

In addition, further amendments have been added to current laws while at the same time, special laws have been developed as attempts to manage internet activities within Jordan. At present, internet activities and cyber jurisdiction cases are subject to the Constitution articles and controlled by certain main laws and supporting regulations, to include: the Electronic Transaction Law; the Civil Code; the Penal Code; the Civil Procedures Law; the Criminal Procedures Law; the Telecommunication Law and the most recent, the Information Systems Crime and Press and Publication Laws of 2011.<sup>60</sup>

Looking from this research analysis perspective, these types of legislation, and any supporting regulations, can be classified into two theoretical categories: the first type is positioned to deal with conventional cases which indirectly include internet cases such as the Civil Code articles; the second type is positioned to deal directly with cyber cases or activities arising from or on the internet. Comprising these laws are the Electronic Transaction Law, the Information Systems Crime Law, and the amended Criminal and the Criminal Procedures Law.

From this research point of view, the establishment of such laws reflects the considerable legal and technical development of Jordan in the past two decades.

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<sup>60</sup> Saqf Al-Hait, Adel. *The Crimes of Libel, Slander and Defame Committed Via Electronic Means: Internet and Mobile Networks & Via Traditional, Mechanical Tools and Press, A Comparative Legal Study* (Dar Althaqafa, Amman 2011). P 348.

However, the country's existing laws require further amendment, and at the same time other laws need to be established, in order to make provision for unconventional cases coming about or anticipated to come about through changes in technology (and predominantly in use of the internet). It is recognised that there is a need for Jordanian legislation to devise means of protecting and promoting rapid growth developments, and at the same time to anticipate gaps in economic and education developments arising from recent technological innovation.<sup>61</sup> It is understood that internet activities must be protected, and offences committed on or via the internet or through other technological media must be prevented. Consequently, Jordan has begun to implement systems for improving trust and security in the usage of the internet, for instance in amending its Criminal Code while establishing the Electronic Transactions Law, as a further step to the 2010 the Information Systems Crime Law.

Among the many issues addressed in the course of amending laws and creating new laws, consideration of jurisdiction and conflict rules has been at the foreground of most cases. It is important to state here that jurisdiction rules in the Jordanian legal system are subject to three categories of rules, each differing in importance according to their sources; the first category having formed the provisions of the Constitution, the second representing the agreements and treaties to which Jordan is party, and the third being the basis of the country's domestic laws. These three categories will form the core discussion points of the following sections.

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<sup>61</sup> Saqf Al-Hait, Ibid. P 398.

The rules represented in the Constitution are of the highest ranking and legal strength, to be respected by all courts which should give them precedence over any other rules. It was explained in the previous section that these constitutional articles carry a legal weight higher than any other legislation, whether external rules such as those located in treaties and agreements or domestic rules represented in the country's laws and regulations. However, these rules are mainly located in chapter seven of the Constitution under the judiciary articles. Consequently, courts when receiving a jurisdictional dispute are obliged to begin by observing the Constitution articles before being free to move on to narrower jurisdiction rules such as those represented in agreements or treaties that are related to the dispute subject.

Thus, after the Constitutional rules, the next set of jurisdiction rules to which courts are subject to are those located in agreements, conventions or treaties related to the dispute. Jurisdiction rules in this case are located in international, regional or bilateral agreements. This research perspective is that where there are clear provisions between case parties the courts will normally observe the rules closest to the dispute matter. However, if there are no clear roles, then courts need to give priority first to international agreements, then to regional agreement and lastly to located in bilateral agreements.

To clarify what such a sequence might mean in practice, let us consider a scenario where there is an international jurisdictional dispute over a specific theme: in this instance the judge is primarily locked into an international agreement, or agreements

which may organise this issue while considering at the same time Jordan's signature and ratification of this agreement, as is the case for instance with the UN Convention on the Use of Electronic Communications in International Contracts.<sup>62</sup> Subsequently, the court is free to move on to a narrower convention, mainly a regional one, a good example of which, in this research context, might be the Arab Convention for the Suppression of Information Technology Crimes.<sup>63</sup> Finally, external jurisdiction rules under bilateral agreements are considered, such as the Agreement for judicial Cooperation between Jordan and Egypt, or the Extradition Agreement between Jordan and France.<sup>64</sup>

After the Constitution and agreements roles comes the role of Jordanian legislation, which organises domestic and international jurisdiction disputes. The provisions for these are mainly located in the Civil Code which is the legal background of all laws and regulations in Jordan.<sup>65</sup> However, given that the importance of jurisdiction rules in any law are mainly to clarify the legislative, judicial and enforced powers of the law, these rules differ according to the level and type of this law, such as public or private laws.

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<sup>62</sup> See Articles 1-2/ paragraph 5-7 of the UN Convention on the use of Electronic Communications in International Contract of 2005, Available at: <  
[http://www.uncitral.org/uncitral/uncitral\\_texts/electronic\\_commerce/2005Convention.html](http://www.uncitral.org/uncitral/uncitral_texts/electronic_commerce/2005Convention.html)>.

<sup>63</sup> Jordan has joined and signed this convention on December, 21<sup>st</sup> of 2010 and has ratified it on May, 28<sup>th</sup> of 2012 according to the Law No. 19 of 2012. Published on the Official Gazette No. 5162/07.06.2012, P 2580-2606.

The researcher has added this convention to fulfil the viva committee comments in 2012.

<sup>64</sup> Jordan has signed a criminal extradition agreement with France in 2012 and cyber activities are subject to the provisions of this agreement. The ratification Law No.5 of 2012, published on the Official Gazette No. 5141/16-02-2012, P 517.

<sup>65</sup> Al-Masri. Ibid P13. P 58.

Since the aim of this research at this point is to identify the legislation most relevant to internet jurisdiction disputes, the next two chapters will intensively illustrate these rules as divided into domestic and international rules. These rules are located in the Civil Code (articles 1-29, 90-102); the Criminal Code (articles 3-13); the Civil Procedures Act (articles 2, 17-20, 27-50); the Criminal Procedures Act (articles 5, 140); the Electronic Transaction Law (articles 4-9, 18, 35-38); the Formulation of Regular Courts Law (articles 2, 12); the Information System Crime Law (articles 3,6-11, 16); the Telecommunication Law (articles 71, 75); and lastly the amended Press and Publications Law of 2012.

Since the laws mentioned above are those most related to this research, they will be discussed widely in the next chapters in order to clarify their functions and their importance in terms of to internet linked jurisdiction disputes in Jordan. This research in the following paragraphs will discuss the most recent laws and amendments that the Jordanian legislature has passed in order to deal with cyber activities, mainly linked to jurisdictional disputes.

In order to achieve objectives in dealing with cyber crimes in Jordan, the most important changes have been the criminalisation of certain acts carried out by means of the internet, or committed in cyberspace. The main aim of such changes has been to extend the power of Jordanian jurisdiction rules over internet disputes. In 2004, following a recommendation by the Jordanian parliament and government, the national legislature added a provision to article 5 of the criminal procedure code

related to crimes committed on the internet. Article 5 is that which deals with insufficient territorial jurisdiction of Jordanian courts regarding perpetrators' domiciles.

In order to deal with electronic and internet crimes and challenges which postdate the electronic revolution in the country and its technical links to the wider world, provision 4 of article 5 now states that "crimes committed by electronic means outside the Kingdom shall be subject to the Jordanian Judiciary, if the results of these crimes impact on the Kingdom or on its citizens particularly or entirely". This research perspective is that the Jordanian legislature has given the effects test in this article a high consideration regardless of the perpetrator's nationality or place. Moreover, it has extended the protection for the Jordanian citizens, if the act results impact on them whether partly or comprehensively. These jurisdiction tests will be discussed widely in the next chapters.

Furthermore, the legislature as mentioned above has also issued the ISCL and amended the Press and Publication Law to cover cyber crime in Jordan, and/or to deal with internet activities that are not settled in the existing laws. Although the new laws have faced huge criticism in Jordan, they have been partially effective in focusing on activities which involve the use of information systems as means of committing a crime, and activities which target information systems, their contents or

information networks.<sup>66</sup> For instance, the ISCL is held to be capable of “protecting electronic trading and boosting the investment climate in the information technology sector”,<sup>67</sup> as well as criminalising such acts as “piracy, service blockage, unauthorised access to information system or information network, transmission of destructive programs such as viruses, damaging information systems from a distance, theft of information, impersonation of the owner of a website, alteration of information, and infringement of secrecy”.<sup>68</sup>

Regarding the authority of the Jordanian Jurisdiction rules over the matters addressed above, article 16 of the ISCL states that: “it is permissible to bring a public or private right of proceedings against the defendant before the Jordanian judiciary, if any of the crimes stipulated in this Law were committed by using information systems within the Kingdom or causing damage to any of its interests, or its residents, or if the consequences of such crime were realised within the Kingdom, whether partially or fully, or if committed by any of its residents”.

In addition to the ISCL, the Electronic Transaction Law (ETL) was created in order to keep pace with new developments in “electronic transaction; electronic records; electronic signatures and electronic data messages”.<sup>69</sup> This legislation mainly covers

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<sup>66</sup> The Ministry of Information and Communications Technology – Jordan, The Raison D’être for the Information Systems Crime Law <[http://www.moict.gov.jo/MoICT\\_kanonjurm.aspx](http://www.moict.gov.jo/MoICT_kanonjurm.aspx)>. Accessed: January 2014.

<sup>67</sup> Faqir, Raed. “Cyber Crime in Jordan: A Legal Assessment on the Effectiveness of Information System Crime Law No (30) of 2010”. [January - June 2013] International Journal of Cyber Criminology (IJCC). 7 (1). Available at ISSN. Pp 81 – 90.

<sup>68</sup> MOICT, Jordan. Explanatory Memorandum on the Information Systems Crimes Law <[http://www.moict.gov.jo/pdf\\_files/ME.pdf](http://www.moict.gov.jo/pdf_files/ME.pdf)>. Accessed: December 2013.

<sup>69</sup> Article 4/1. The Jordan Electronic Transaction law No. 85 of 2001.

cyber commercial activities and their related penalties under the rules of this law. It has emphasised the importance of considering already accepted international commercial practices when applying the provisions of law. The law by facilitating the use of electronic means in transactions' procedures<sup>70</sup> permits these commercial activities and their cyber jurisdiction disputes to be subjected to Jordanian rules.

It is important to acknowledge here that the capability of the Civil Code articles to support the E.T.L articles in terms of ruling on electronic contracts and related jurisdiction disputes or on the applicable law over the dispute, has become increasingly open to question in Jordan during the past decade mainly regarding the applicable law over e-contracts. The main articles addressed here are articles 101 and 102 from the civil code and articles 15-18 in the ETL; these articles deal with the place in which a contract offer or acceptance was made; this serves to nominate the applicable law or the authorised court over the contract dispute. However, rather than discuss the applicability of these rules over cyber disputes, the intention in this research is to refer to the existence of such attempts to deal with cyber jurisdiction disputes according to the country's existing laws (civil code) and to the new established laws (ETL).

Another second law which has become increasingly contentious and problematic is the amended Press and Publications Law of 2012, an amendment of the original law, number 8 of 1998. The amended law has left the country in a messy condition far from clear position in terms of the government's stance towards electronic

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<sup>70</sup> Article 3/1. The Jordan Electronic Transaction law No. 85 of 2001.

newspapers and social websites. The law has been criticised for its strict penalties and the limits it is seen to impose on freedom of speech and expression.<sup>71</sup> In this research context, this means that the law is being criticised for limiting the jurisdictional authorities on First Instance Court powers,<sup>72</sup> and for restricting the liabilities of website owners over whatever may be published on their website alongside the work of the publisher and of the writer or author (articles 43, see footnotes No. 71).<sup>73</sup>

If Jordanian law has been criticised for its current solutions for enhancing its legislation, that creating new laws and amending existing ones is not yet satisfactory, it has also been criticised for failing to encompass the full scope of internet activities and for failing to provide balanced protection of internet users. In addition, it is also seen as limited in its capacity to establish a clear basis for determining jurisdiction to one party.<sup>74</sup> These points converge on the main argument, that Jordan as yet lacks fully comprehensive legislation over the internet

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<sup>71</sup> Article 43 states that :” Owners of the printing press, bookshop (bookstore), publishing and distributing house, studies and research house and public opinion poll house shall be jointly liable for the personal rights and trial expenses inflicted on their employees in cases of publications to which the provisions of this Law apply”.

<sup>72</sup> Article 42 states that:”

A) The Court of First Instance shall have jurisdiction over all crimes committed in contravention of the provisions of this Law with the proviso that publication cases be dealt with summarily.

B) Public right legal proceedings pertaining to crimes committed by periodical publication shall be instituted against the responsible editor-in-chief, writer and preparer of the press material as original offenders. And the owner of the publication shall be held jointly and severally liable for personal rights ensuing from these crimes and for trial expenses. However, s/he shall not be involvement in the crime has been proven.

C) Public right legal proceedings pertaining to crimes committed by non-periodical publications shall be instituted against its author as original offender and its publisher as accomplice. And if the author or publisher is persona incognito (unknown), legal action shall be taken against both the owner and managing director of the printing press”.

<sup>73</sup> It is important to refer here to the fact that this part of the research has been added to the revised thesis as the previous thesis was discussed in June 2012 , which was submitted before the approving of the Press and Publications Law. This part is in response to one of the comments suggested by the viva exam committee.

<sup>74</sup> Lucas, Russell. “Press Laws as a Survival Strategy in Jordan” [2003] Middle Eastern Studies. 39 (4). Last update 04 Jun 2010. Accessed: January 2014.

and the internet use<sup>75</sup>, which will be capable of accommodating all aspects of E-crime (cyber, computer and internet crimes), E-trade (e-contract, digital IP and transactions), and other cyber jurisdiction and conflict of laws issues on the internet. That such criticism is still being levied is illustrated, for instance, by the newest governmental issue of the ISCL as an attempt to control cyber crime; this has been criticised as undermining “freedom of expression and the right to information”.<sup>76</sup> Such criticisms demonstrate that these practices, as currently subject to the normal legislation in Jordan, are not fully satisfactory for meeting the needs of citizens in general and nor of the legal bodies which serve to protect them. While some see the current laws as suitable for dealing with new internet issues after the creation and approval of the ISCL,<sup>77</sup> others believe that such issues are of a nature unique to the virtual environment, and as such should be governed by private legislation or at least have some special provision under the current legislation.<sup>78</sup>

Whether these current legislative amendments and newly formed laws in the Jordanian legal system, and particularly in Jordanian jurisdiction principles, have the capacity to cover and address competently the full range of internet challenges, is a main question investigated through this research.

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<sup>75</sup> Reporters Without Borders, ‘Internet Under Surveillance 2004: Jordan’ <[http://rsf.org/article.php3?id\\_article=10737](http://rsf.org/article.php3?id_article=10737)>. Accessed: January 2014.

<sup>76</sup> Faqir, Raed. Ibid. 67.

<sup>77</sup> Al-Shoraifat, Mahmud. *The Consent in the Contracting Through the Internet* (Dar Alhamed Publishing Amman 2005). P 40.

<sup>78</sup> The Initiative for an Open Arab Internet <<http://www.openarab.net/>>. Accessed: Jan 2014.

To illustrate the historical nature of this dilemma, let us consider that it was in 1996 that Jordan declared its first internet case. At the time it became obvious that specific legislation was lacking that might control internet matters and problems in cases related to Jordan. The particular case in 1996 concerned a young Syrian man who was arrested and detained for sending a message to be disseminated through the Jordanian Information Centre, threatening to blow up atheist meeting places. This was considered a particular threat to the General Intelligence Department (JGID) in Jordan. Subsequently, the man was sentenced to two and half years in prison for this crime. The case was heard by a private military court, named the State Security Court (one of the courts with special jurisdiction), but raised a number of questions in regard to court interference from the regular court authorities under the Jordanian legal system.<sup>79</sup> It was particularly questioned why the court considered the case according to Criminal laws rather than to the Electronic Transaction Law (notwithstanding the exceptions appointed in article 6). This case forced both legislatures and politicians to review the capacity of the existing legislation in Jordan to deal with internet issues. The conclusion was that there was a need for a new and private code of law to deal with internet crimes relating to multi-activities, which code of law would balance the spreading jurisdiction rules in the country's rules and set them out in one strong and clear code.<sup>80</sup>

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<sup>79</sup> The National Centre of Human Rights. The State of Human Rights in the Hashemite Kingdom of Jordan [May 2005] <<http://www.nchr.org.jo/uploads/nchr-report.pdf>>. Accessed: December 2011.

<sup>80</sup> Haloush, Haitham. 'Jurisdictional Dilemma in Online Disputes: Rethinking Traditional Approaches' (fall 2008) IL 42, 1129-1146.

This historical case served to open up a wider set of arguments in regard to the nature and extent of internet censorship; it is one of sovereign foundations in Jordanian law that citizens have the right to access information even though this may create tensions if conflicting with the right of the State to guarantee its citizens' security.<sup>81</sup> This case led to some claiming that the internet in Jordan is under state censorship,<sup>82</sup> whilst others argued that the internet in Jordan is free and that individuals should be allowed their privacy and private actions without any constraints.<sup>83</sup> This argument had appeared in a report published by the Reporters Without Borders (RWBs 2006), the report stated that "all internet service providers in Jordan have to pass through the governmental network in order to connect to the internet, which means they may be exposed to censorship by governmental bodies at any time".<sup>84</sup>

## 6- Conclusion;

This chapter has reviewed the Jordanian legal system, focusing mainly on its court structures and civil systems. The chapter went on to discuss the impact of the technical revolution on Jordanian legislation, and the laws and amendments which were created and added to the legal system in order to deal with cyber activities mainly in regard to jurisdiction disputes. The purpose of this chapter was to show

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<sup>81</sup> Jordan Law on Guaranteeing Access to Information of 2007.

<sup>82</sup> Reporters Without Borders, 'Internet Under Surveillance 2004: Jordan' <[http://rsf.org/article.php3?id\\_article=10737](http://rsf.org/article.php3?id_article=10737)>. Accessed: November 2011.

<sup>83</sup> The Jordanian Public Security Directorate (PSD) [2010] < [www.psd.gov.jo/arabic/index.php?option=0](http://www.psd.gov.jo/arabic/index.php?option=0)>. Accessed: December 2011.

<sup>84</sup> Reporters Without Borders (RWBs). 'Jordan Internet under surveillance' Published 14.05.2006. <[http://www.rsf.org/article.php3?id\\_article=10737](http://www.rsf.org/article.php3?id_article=10737)>. Accessed: September 2011.

how some jurisdiction rules have been replaced by other rules, such as jurisdiction authorities given to private courts as explained in section 5 of this chapter.

The position adopted in this research is to argue that by taking such steps, Jordanian courts are competent to absorb cyber jurisdiction disputes in accordance with the subject matter jurisdiction rules and supported by the rules located in personal and territorial jurisdiction rules, whether located internally in the Constitution and domestic laws or externally by way of treaties and agreements. But, this position also takes into account that while making such notable efforts to deal with cyber activities, Jordan needs to face up to a major criticism, that there is a shortage in the balance of internet laws or of laws which presume to deal with internet cases.

However, section 5 of this chapter had considered the Jordanian law relating to the jurisdictional claims of Jordan vis a vis other states over cases which have an international element due to the use of the internet and tried to consider which international jurisdictional principles have been used in Jordan (this point is the core point for chapter 6). Nevertheless, this is only the first element of the Jordanian process for determining jurisdiction over a case as there is also an internal allocation process which divides cases among the Jordanian courts, which we will be considering in the next chapter (chapter 4).

When considering how to reform the Jordanian law with regard to internet jurisdiction it is vitally important to understand these internal aspects for the following reasons:

- Firstly, the Jordanian allocation may classify cases in a different manner to other states and therefore apply different legal standard and court procedures – for example defamation is a criminal matter in Jordan. Not only does this difference have important implications for choice of law with regard to this issue but, more importantly for the purposes of this thesis, the adoption of appropriate international standards to aid in reform of the Jordanian system for determining jurisdiction would have to take account of a map these kinds of differences. It is also to be hoped that such a project could aid both Jordan and the international community in improving the legitimacy of the allocation system. (Some have expressed concerns about the allocation of cases to the Security Court for example.)<sup>85</sup>

- Secondly; as a corollary of the above if we are to demonstrate the appropriateness of international norms for Jordan then the nature of the Jordanian rules needs to be completely clear.

To conclude, in giving a general overview regarding the current situation in Jordan, this chapter served as an opening to further discussions in the next two chapters dealing with Jordanian attempts to deal with cyber jurisdiction disputes at the domestic level (chapter 5), and then at international level (chapter 6). However, the discussion in chapter seven will mainly evaluate the application of jurisdiction rules over domestic and international jurisdiction disputes in cyberspace, and will consider

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<sup>85</sup> See for example Human Rights Watch “Jordan: End Protestor Trials in the Security Court” <http://www.hrw.org/news/2012/11/30/jordan-end-protester-trials-state-security-courts>

## Chapter 4: Jordanian Legislation and the Internet

jurisdiction cases from foreign legal systems which have been addressed by Jordanian judges and other experts.

## Chapter 5: The Application of Jordan Laws over Internal Jurisdiction Disputes on the Internet.

### - Introduction

Internal jurisdiction rules applying to domestic disputes have a special mechanism in determining jurisdiction over activities occurring either inside a country or outside a country but leaving their effects inside the country and subject to its law. It is well known thus that domestic rules, as working under the power of a country's legislation, have the function specifically of determining jurisdictional authority between laws and legal bodies inside the country.

The previous chapter discussed issues related to Jordanian traditional jurisdiction rules under the country's legal system and its courts structure. It explained the means by which Jordan has to date attempted to deal with jurisdiction disputes on the internet, whether by amending its existing laws or by creating new laws, such as the Cyber System Crimes Law of 2010. However, this chapter aims more specifically to address jurisdiction authority by highlighting current Jordanian jurisdiction rules and their capability to absorb domestic jurisdiction disputes on the internet. Regarding the international jurisdiction disputes or disputes that have foreign norms, these will be discussed in the next chapter.

The study of domestic jurisdiction rules helps us to assess their capacity as applicable over law cases such as *renvoi* cases. In this, the Jordanian legislature

does not accept the application of foreign laws to its international private laws.<sup>1</sup> Moreover, in considering the relationships between jurisdiction types, it is important also to understand the relation between jurisdiction and attribution rules and their roles in determining jurisdiction in cyberspace.

As explained earlier, there the regular court functions in Jordan have had some difficulty in transferring certain particular cases to private or special courts (e.g. the State Security Court). This chapter therefore aims to clarify in some detail the domestic role of Jordanian jurisdiction rules and their capacity to solve internet jurisdiction disputes established or related to the country's legislation. In doing this, it is useful to highlight the capacity of domestic rules to deal with related issues, for instance the capacity of value jurisdiction rules to assess cyber cases, forum shopping and enforcement of judgments.

This chapter will specifically focus on the capacity of cyber domestic roles of Jordanian jurisdiction rules over civil and criminal activities, considering first of all, personal, territorial, subject matter and the value standards that are used to categorise Jordanian laws and bodies, and then the functions that these categories have over internet activity inside Jordan. Consequently, one of this research aims in discussing domestic rules is to clarify how courts apply distinctive jurisdiction tests in order to hear disputes brought before them. This point will be widely supported by the discussion through chapter seven. This

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<sup>1</sup> Article 28 of the Civil Code states: "If it is determined that a foreign law should be applicable, the national nation provisions thereof to the exclusion of those relating to private international law shall be applicable".

research also aims to show how courts are following substantive rules and mechanisms in applying jurisdiction tests, in accordance with the three jurisdiction types discussed in the previous chapter, that is to say, personal, territorial and subject matter jurisdiction rules.

This research further aims to illustrate differences in dealing with civil and criminal cyber disputes in Jordan, and to examine whether their related jurisdiction rules have the capacity to accommodate disputes occurring on the internet.. In addition, another important aim is to explain how the amended and newly created laws have dealt with domestic jurisdiction disputes related to cyber jurisdiction cases, and to examine whether the Jordanian legislative approach to establishing this number of laws is competent to cover cyber jurisdiction disputes. The question will be discussed as to whether a better approach would be for Jordan to organise these rules into a single specialised and strong code that primarily covers jurisdiction disputes on the internet. In addition, the question will also be mooted as to whether Jordan should establish a special internet court in order to deal with internet jurisdiction disputes, rather than leaving these disputes to its existing courts. In this regard, this chapter will also address the role of court jurisdiction authority in accordance with the civil and criminal categorisations as followed in Jordan's judiciary system.

## A- Jurisdiction tests on civil jurisdiction disputes

### 1- Civil subject matter jurisdiction

Subject matter jurisdiction involves consideration of rules for distributing judicial jurisdictions between the first litigation degree courts in terms of the matter of the case, without attention to the value of the matter under dispute (case values are subject to the value jurisdiction rules).<sup>2</sup> This section will generally discuss the subject matter rules in Jordan's jurisdictional system. The aim of this section is to clarify the types of court authority in accordance with the subject matter rules, and also the courts' ability to apply these classification rules over cyber obligations.

Subject matter jurisdiction rules in the Jordanian legal system are mainly stated in the Conciliation Court Law, the Law of Formulation Regular Courts, Civil Code and Civil Procedure Code. Moreover, subject matter jurisdiction is considered to be a part of the public order. Consequently, individuals do not have the right to violate this jurisdiction, in which case courts shall issue the jurisdiction by their authority, and parties shall have the right to raise jurisdiction at any stage of the trial.<sup>3</sup>

The subject matter jurisdiction rules are very important at national and international levels. Nationally, the importance as formerly explained is to appoint

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<sup>2</sup> AlHadawi, Hassan. *Conflict of Laws: General Principles and Perspective Solution under Jordanian Laws. A Comparative Study* (Dar Althaqafa, Amman 2005). P 80.

<sup>3</sup> Riyad, Foad and Rashid, Samia. *Conflict of laws and the International Jurisdiction* (Dar Al-Nahda, Cairo 1994). P 65.

a jurisdictional court to preside over the case in accordance with the subject matter rules and the legislation in force. At international level, the importance of these increases in cases involving foreign parties or norms, since in such cases these rules, in line with the attribution rules in international private law, help the public attorney or the judge to nominate the authorised legal body. These rules will be discussed more fully in the next chapter. However, it suffices here to say that in cases involving foreign parties or norms these rules follow principles for determining the appropriate jurisdictional body or system, for instance avoiding such disputes between regular, religious and special courts in Jordan.<sup>4</sup>

However, in the virtual world, and as a consequence of technology challenges, the rules for establishing legal obligations have changed. Appointing the main subject matter in a dispute involves the re-examination of procedures, since subject matter rules face a serious challenge in meeting the requirements of their original functions.<sup>5</sup> The legal process to which courts are subject in characterizing the case is legislated to deal with traditional matters, and so it does. However, such processes have been arguably found inadequate in meeting the challenges of cyber cases, since the technological aspect of such cases frequently means that they comprise more than one matter.<sup>6</sup>

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<sup>4</sup> Al-Masri, Mohammad. *Explain the Civil Procedures Code: A Comparative Study*. (Dar Kndeel Publishing, Amman 2003). P 110.

<sup>5</sup> Arab, Younis. *Cyber Law* (Union of Arab Banks Publisher, Beirut 2001). P 45.

<sup>6</sup> Al-Momany, Omar. *Electronic Signature and Electronic Commerce Law* (Dar Wael Publisher, Amman 2003). P 23.

From this research point of view; establishing legal obligation on the internet is not merely a matter of creating new versions of already existing obligations. Rather, it would seem that there is a difference in procedures for establishing these obligations. Thus, already established legal obligations regarding subject matter rules may or may not have the capacity to accommodate cyber obligations. In Jordan, the absence of a comprehensive and strong set of internet codes makes this a challenge.

Subject matter jurisdiction rules of the conciliation courts are located in the provisions of the Conciliation Courts Law No. 15 of the year 1952,<sup>7</sup> which has been amended dramatically during the last twenty years. The last amendment was the amended law No. 30 of the year 2008, article 3 of the Conciliation Courts Law numbers cases that are exclusively subject to the conciliation courts' jurisdiction.<sup>8</sup> These cases include: trade and right cases related to a debit, movable or immovable estate; correspondence cases; cases where owners have been deprived of their rights; estate cases; cases concerned with the division and sale of movable money and "dividing conjoint immovable money"<sup>9</sup> and labour cases.<sup>10</sup> The importance of referring to these cases here is to discuss their

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<sup>7</sup> Law number 15/1952 published on the Official Gazette 1102/01-01-1952.

<sup>8</sup> The Amended Conciliation Courts Law No. 30 of 2008 issued in the 1<sup>st</sup> of June, 2008 and published in the Official Gazette No 4910.

<sup>9</sup> Civil cassation decision No. 1056/92 of the year 1994.

<sup>10</sup> Article 3 of the Conciliation Court Law states that:

“1-Trade and right cases related to a debit, movable or immovable estate, the claimed right in these cases should be less than seven thousand Jordanian dinars;

2-Regardless of their value, any correspondence cases;

3-Damage, harm and tort cases of less than seven thousand Jordanian dinars;

4-The corresponding damage and harm cases related to the original case which should be under the conciliation court jurisdiction, no matter what their value;

relation with the exceptions located in article 6 of the E.T.L, as will be discussed later in this chapter.

In regard to the subject matter jurisdiction of the First Instance Courts, the legislature gives these courts general jurisdiction over all cases or disputes not subject to the authority of any other laws or courts' power.<sup>11</sup> Moreover, the first instance courts have exclusive jurisdiction over specific type of cases and disputes. This specificity reflects the importance attributed to these kinds of issues. However, exclusive jurisdiction is given with consideration to the importance of these cases and the impacts of the courts' decisions on the parties' rights.<sup>12</sup>

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5-Cases where owners have been deprived of their rights which include: the right of drink cases, the right of water ravine cases and the right of away cases;

6-Restitution cases regardless of their value; in such cases, the court shall not decide as to the estate itself;

7-Estates lease rescission cases and estates evacuation cases if the annual rent is less than seven thousand dinars. In addition, the conciliation judge in such cases has the authority to hear cases related to estate rents, regardless of their value;

8-Notwithstanding the provisions of the Cities Regulation Law, the Cases related to dividing conjoint immovable money, regardless of their value;

9-Cases concerned with the division and sale of movable money, regardless of their value if division is possible;

-Jurisdiction over labour cases which arise from a single labour contract. This jurisdiction was awarded to the conciliation courts in accordance with article 37/a. of the Labour Law No. 8 of the year 1996 and its amendments".

<sup>11</sup> Article 30 of the civil procedure code states that "the first instance courts shall have jurisdiction to hear and decide in all cases not subject to any other courts in accordance with the laws in force". The Cassation court adopted this attitude in its civil cassation decision No. 37 of the year 1975 and gave the component first instance court the general jurisdiction over civil cases if the law does refer to these specifically. In the same meaning, civil cassation decisions, 193 of 1973 and 2766/98 of year 2000.

<sup>12</sup> Cases under the exclusive subject matter of the First Instance Courts include:

- Cases relating to bankruptcy, such as the bankruptcy case in articles 290, 317/a and 317/4 of the Trade Law,

- Cases related to pre-emption and preference rights (Article 2 of the Immovable Money Law No. 51 of the year 1958).

- Cases of correcting or altering the name in a passport.

- Cases of enforcing foreign judgements and decisions (Article 2 of the Law of Enforcing Foreign Judgements No. 8 of the year 1952).

- Personal statutes case arising between two different parties in accordance with the Non-Muslim Groups Law No. 2 of the year 1938 and its amendments.

To conclude, in the light of the courts' authority on case types as addressed above, this research perspective is that not all issues are imaginable on the internet as also had been criticized by others in Jordan.<sup>13</sup> This is especially so for activities requiring certain formats or special measures (such as those numbered in article six of the Information Transaction Law), or those related to immovable property. However, the researcher believes that some of the cases mentioned and their jurisdiction disputes could be expected to be occurring by means or by way of internet activities, with respect to the fact that some of the said activities are requiring certain format or legal procedures. Such cases should be reviewed for inclusion and treatment under existing jurisdiction rules or by means of new rules established to cope with their specialized nature. It would seem at present that subject matter rules in their current form are insufficiently comprehensive in their capacity to support the existing legal system, or to enable the courts to classify cyber cases and allocate the appropriate jurisdictional courts. Where this is the case, such rules require revision and redrafting.

## 2- Territorial Jurisdiction of the Jordanian courts:

Despite the importance of territorial rules within the Jordanian legal system, these rules face the biggest legal challenge since their creation, since they are now being tested by cases related to a hitherto unimaginable borderless virtual world, that of cyberspace and the internet. In the non-cyberspace world, territorial

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- Cases related to companies which have appointed a liquidator (article 2 of the Companies Law No. 22 of the year 1997 and its amendments).

<sup>13</sup> Arab, Ibid No. 5. P 458.

rules have always been based mainly on established and agreed geographical or political borders on land, and have served as an authorised framework for awarding jurisdiction to a country according to the place of establishing or executing obligations.<sup>14</sup>

Judges have traditionally resorted to territorial rules when deciding on jurisdictional courts or which court may claim jurisdiction, since these rules are located in the procedure laws and litigation legislation at national level.<sup>15</sup> However, in cyberspace, applicable rules may only achieve their function with reference to the traditional rules. But at the same time, the borderless nature of the internet makes it difficult to apply these rules to internet activities, unless there is evidence of, or reference to the location of one of the obligation norms such as the defendant's or the claimant's domicile. As is often the case in the way the law changes, the deficit in cyber rules, or cyber territory rules which are fit to govern internet disputes, has only become apparent in Jordan after a notable increase in cyber jurisdiction cases. This lack of rules results in considerable time pressure for the Jordanian legislator to find a way towards prompt action, to achieve a balance between national and international laws, and also to amend domestic legislation to meet the demands of cyber cases.

Traditionally, it is in accordance within the rules of territorial jurisdiction that Jordanian courts should be geographically distributed evenly between cities and

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<sup>14</sup> Al-Masri, Ibid No. 4. P 130.

<sup>15</sup> Al-Masri, Ibid No. 4. P 130.

districts, the legislative rationale being to simplify access to the courts nearest to residents' respective areas, and also to ensure high quality of legal services by distributing the work between numbers of legal bodies.<sup>16</sup> The importance of territorial jurisdiction rules is primarily based on their governance of activities around the country's regions, and in their function in appointing an authorised jurisdictional court over disputes as appropriate.<sup>17</sup>

It is necessary to bear in mind here that some professionals and scholars see that there is a division in the legislature between original basic and exceptional basic rules.<sup>18</sup> This attitude supposes that the main or original basic rule is that jurisdiction will be given to the court where the defendant is domiciled; this follows the legal principle, with some exceptions, that "the claimant follows the defendant to his domicile". Others argue that the legislature does not distinguish between or separate these rules, since if it did, this would be clearly stated in the legislation or their amendments in force.<sup>19</sup>

However, if jurisdiction is not awarded to any court in accordance with the territorial jurisdiction rules (below), then article 47 of the civil procedure code clarifies that if the defendant has no domicile or residence in Jordan, and it has not been possible to locate the court that has jurisdiction over the case, then the

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<sup>16</sup> Riyadh, *Ibid* No. 3, the exclusive subject matter of the First Instance Courts. P 26.

<sup>17</sup> The legislature states these rules in the civil procedure codes and partly in the Jordan civil code. Articles 36 to 47 of the civil procedure code clarify certain territorial jurisdiction rules in accordance with the type of each dispute.

<sup>18</sup> El-Qudah, Mefleh; Khalil, Ahmad and Al-Shorari, Salah.

<sup>19</sup> Al-Masri, *Ibid* No. 4 The exclusive subject matter of the First Instance Courts. P 83.

court with jurisdiction over the case will be the court where the plaintiff resides or works. If the plaintiff has no domicile or residence in Jordan, then the Amman court would have jurisdiction over the case as the central court of the country.

The provisions of the civil procedure code have categorised the territorial jurisdiction rules as follows:

- Jurisdiction over cases related to personal and movable disputes is awarded to the court nearest to the defendant's domicile. Article 36 has illustrated three criteria in regard to the defendant court: the jurisdiction is to the defendant's domicile court, but if the defendant has no domicile in Jordan, then the jurisdiction is to the court of the defendant's temporary place of residence. In the case of there being more than one defendant, the legislature in division three of article 36 gives the jurisdiction to the court where one of the parties has their domicile or work. Compensation cases are an illustration of this. The legislature in articles 17 to 20 of the civil procedure code and article 39 of the civil code have clarified the meaning of domicile and its types in terms such as the temporary domicile, work domicile and the chosen domicile.

- Jurisdiction in cases related to real rights and possession disputes is awarded to the court where the estate is located if the case is related to a real right. If the case is related to a part of this estate, then the jurisdiction is to the court where this part is located. The court also has jurisdiction if one of many estates forming part of the dispute is located in its authorised area. In cases related to personal

real estate disputes, the legislature gives the jurisdiction to the court according to the location of the estate as well as to the court where the defendant is domiciled.<sup>20</sup>

- In cases related to companies, institutions and associations- known as legal persons – the main consideration is given to the place where the central department is located. The legislature distinguishes between disputes related to the headquarters of a company and disputes related to one of its branches. In division one of part 8, the jurisdiction is given to the court where the headquarters are located, for all the related cases such as cases against the company, cases against their partners, members or cases from the same against the company or against each other. In cases related to the branch of these legal persons, the jurisdiction is given to the court where the branch is located.<sup>21</sup>

- In cases regarding inheritance issues, this may be between inheritors disputing the division of an inheritance, or may be a case brought against a debtor for the indebted inheritance before it has been divided. The jurisdictional court in accordance with article 39 of the civil procedure code is the court where the inheritance deed is to be opened. Jurisprudence considers that the open place of

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<sup>20</sup> An example of real right case law involves real estate distribution; an example of a personal real estate case is one regarding rent payment disputes. The Cassation Court refers to the importance given in the jurisdiction to the located or domicile court over these cases, which is that the court may need to detect and explore the estate, so it is better to give the jurisdiction to a court close to the estate under dispute. The civil cassation decision No. 2553/98 of 2000 and 1323/97 of 1997.

<sup>21</sup> Article 38/2 of the Civil Procedure Law.

the inheritance is the last domicile of the inheritance owner unless there is a will written by that party indicating otherwise.

- Cases related to contracts have been clarified in article 40, where the legislature gives the choice to the claimant to decide where to sue his opponent in civil and trade contracts cases. The jurisdiction is given to the court located where the defendant is domiciled or to the court where the parties have chosen to execute the contract.

- For cases related to bankruptcy disputes, in accordance with article 41 of the civil procedure code, the jurisdictional court is the court which has issued such a ruling. However, article 317/1 of the trade law gives the jurisdiction in issuing bankruptcy or civil insolvency to the court located nearest to the main centre of the trader.

- In cases relating to disputes over supplies, work, housing fees and employees' wages, according to article 42, the claimant has the choice to present his request to the court where the defendant is domiciled, or to the court where the agreement was concluded or executed.

- In cases related to insurance requests, the legislature in article 43 gives the jurisdiction to the court where the insured person's domicile is located as well as to the court where the insured property is located.

- In cases related to commercial item disputes, the jurisdiction over these cases has been given by article 44 to three courts: the first is the court where the defendant is domiciled, the second is the court where the agreement was concluded and where the goods should be delivered and the third is the court of the place where the price of the goods is to be paid.

- According to article 45, jurisdiction over cases that include temporary or speedy measure requests is given to the court in the place where the defendant is domiciled or to the court where such measures are requested to be executed. In the case of speedy disputes relating to the execution of judgments and bonds, the court with jurisdiction over such disputes would be the court where the execution is to take place.

- In disputes relating to court and attorney fees, notwithstanding the rules stated in the Bar Association Law, the court with jurisdiction over such disputes would be the court that adjudicated the original case.

The previous list illustrates the main principles of the territorial jurisdiction rules which have been created mainly to deal with traditional disputes or cases, the location of which would clearly indicate which court might be awarded or declined jurisdiction. However, such territorial rules may and may not be suitable to apply over cyber cases, although it could be argued that they might be more effective if

used alongside attribution rules in international private law.<sup>22</sup> Moreover, in the absence of sufficient clear internet legislation in Jordan and considering the weak status of existing laws, there is an urgent need to subject the current rules of territorial jurisdiction to a comprehensive review, in order suitably to amend and update them. In this way a strong legal system may be created in order to cope with internet activity.

### 3- Value jurisdiction of the Jordanian courts:

The value jurisdiction rules as a part of the adjudicative jurisdiction are a set of rules created by the legislature and law makers to help in distributing jurisdictions of the Jordanian courts according to the value or the assessment of various cases.<sup>23</sup> The importance of this jurisdiction is to fill the gaps which could occur in applying any other jurisdiction rules over national and international disputes, in addition to sending the case to the appropriate court. For example, applying the territorial jurisdiction rules alone could give the jurisdiction to unsuitable courts over cases having a high legal importance.<sup>24</sup> In the event, the legislature in the civil procedure law in addition to other legislation in force has set up a system to judge the value of a case and possible limitations of court jurisdiction over certain cases types. However, for the purpose of this research, the jurisdiction value

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<sup>22</sup> Al-Sharari, Saleh. 'Intellectual Property Rights Legislation and Computer Software Piracy in Jordan' (2006) 2 ISSN 7, 12. P 14.

<sup>23</sup> Al-Masri, Ibid No. 4. P 116.

<sup>24</sup> Al-Masri, Ibid No. 4. P 77.

standard may be considered as the standard that categorises cases in accordance with their monetary estimations.<sup>25</sup>

Moreover, in addition to their importance in allocating cases to various jurisdictional courts, these rules aim to put out the allowance limitations to appellate and cassate cases. It should be noted here that there is a difference between the limitation of jurisdiction and the limitation of appellate and cassation: the first is to decide the jurisdictional court and the second is to decide if the case can be appealed against or send to cassation. Another importance of estimating cases is to decide the judicial fees and any other procedure fees.<sup>26</sup>

Value rules confront the same challenges as territorial rules. These rules have been created to deal with traditional cases, resorting where necessary to attribution rules. However, value rules in internet cases may have less influence than the territorial rules; that is, the assessments of the subject matter in internet cases are only imaginable if rules are amended or new rules created to cope with the global and unbounded nature of the internet. This nature is such that cyber cases may be spread over different countries' legal systems, and as such, subject to different territorial assessment criteria. Moreover, the importance of the case matter, if interchangeable around the world, will affect the value of the case itself.

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<sup>25</sup> Al-Aqaileh, Zaid. *Terminology of Law* (Dar Althaqafa, Amman 2004). P 90.

<sup>26</sup> Articles 182 and 191 states on the required limitations of appellate and cassation.

On the other hand, value rules do not have the importance of personal or subject matter rules, which are attributed to the private functions of the value rules. The value of internet case matter is one of the most sensitive issues between online agreement provisions, because many related issues are dependent on this estimation, such as is the case in insurance or compensation issues. However, these rules have come into force in the absence of any agreement regarding the matter of an internet case. Such rules have been applied recently in cases related to digital intellectual property (DIP) in particular and to rights on the internet in general. It is a given that traditional principles might or might not be suitable to be applied to these activities.

In terms of estimating the cases to decide the competent reference, the legislature has drawn upon a number of principles to be followed by the court, and by parties involved. The aim of these principles is to ensure a correct case value as well as to ensure that the case should be presented to the appropriate judicial reference.<sup>27</sup>

Firstly, the right to estimate a case is given to the claimants' request rather than to the decision of the judge. That is, the legislature awards the claimant the right to assess his request, so as a consequence to his claim, the case shall come before the conciliation or the first instance court, even if the judgment was issued on a value less than the requested value. However, the legislature in article 49/2

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<sup>27</sup> Articles 48 to 55 of the civil procedure code refer to these principles and draw a number of relationships between these rules.

gives the court the right to reassess the case if it has doubts as to the case value or if the claimant overestimates his case. Secondly, principle two of article 48 outlines the significance of date of case registration in estimating the value of a case, insofar as any changes in the value of a case after it has been registered cannot influence the case being transferred to another court.

Thirdly, according to article 50, the due supplements and annexure at the date of presenting a case shall be added to the case value.<sup>28</sup> Fourthly, the significance in estimating a case is related to that part of the dispute requested by the claimant and not to the original dispute unless the claimant has referred to the whole original right. Also if the case has many requests belonging to one legal cause, then the significance relates to the whole value of these requests. However, if they belong to different legal causes then each request shall be assessed separately (Articles 50-54).<sup>29</sup>

Finally, article 55 gives the jurisdiction to the first instance court over cases which could not be estimated according to the former evaluation principles, as well as some private principles stated in articles 51, 52 and 53 which relate to estates and contract disputes.

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<sup>28</sup> The principle was adopted by the Cassation court in its civil decision No. 597 of 1990.

<sup>29</sup> Civil cassation decision No. 1185/94 of the year 1996.

The legislature has given the conciliation courts a value jurisdiction over civil cases estimated at less than 7000 Jordanian dinars (7000 JD).<sup>30</sup> The conciliation courts have this authority in accordance with article 3 of the conciliation courts law and the amended law No. 30 of 2008. In addition to the general value jurisdiction rules of the conciliation courts, the legislature has made some exceptions over these general rules, stated in article 3 of the conciliation courts law and its amendments. Such exceptions may include correspondence cases, and damage, harm and tort cases valued at less than 7000JD.

In terms of the value jurisdiction of the first instance courts, the first instance courts have general jurisdiction over any cases not subject to the authority of any other courts or any other law in force. However, the legislature has no specific ruling as to the limitation of the value jurisdiction of the first instance courts; even though article 55 of the civil procedure code states that “the case shall be considered over the limit of the conciliation courts’ value jurisdiction if the case is worthless in accordance with former rules”. Thus, the courts have value jurisdiction over cases estimated at more than 7000JD or any cases not subject to valuation.

In the light of the assessment rules and the information addressed outlined above, it is clear that the first degree courts - conciliation and first instance – have their value jurisdictions in accordance with harmonised principles under a general limit of 7000JD. However, it is noticeable also that these cases depend

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<sup>30</sup> The limit was 3000JD, and before that it was 750JD.

on the estimations of cases parties and the reassessment by the court in certain cases, which means that these rules are not part of the public order. Also they are not brought to courts as general jurisdiction rules or as dealing with the problem of conflict of jurisdiction independently.

Generally, value rules are not considered as a main resource for helping the court to solve jurisdiction issues or to determine the jurisdictional legal body over the case. However, in some instances as numbered in the exceptional jurisdictional rules, the case has to be brought to a specific court for reasons related to the importance of the case matter, to the judge's experiences or to estimation issues. Nevertheless, in internet cases involving foreign parties, value rules are not the first conflict rules to be applied. This is because the aim of applying conflict of law rules is to decline or appoint the jurisdictional court, The problem is of course that these rules – value – function mainly at national level. This means that their capacity to be applied is considered after applying the other adjudicates jurisdiction types either at the domestic or the international level.

## **B- Jurisdiction tests on criminal jurisdiction disputes**

The previous section has highlighted the jurisdiction rules under Jordanian civil law. It was noticeable how important subject matter, territorial and value rules are for organising and appointing the appropriate jurisdictional legal body over a case. In this section; this research will illustrate the domestic jurisdiction disputes under the criminal laws in the Jordanian system according to the governed legislation and last amendments of the Jordanian laws. The discussion of the

domestic criminal rules below is important as cyber crimes are continuously increasing in Jordan and a major obstacle is in applying traditional jurisdiction rules over these activities and their disputes. Thus, this research will intensively clarify criminal jurisdiction rules in order to achieve the overall aim which is to evaluate the Jordanian rules over cyber activities.

Jordanian legislature divides domestic criminal jurisdiction rules into a number of related standards such as those related to judges who are determining the case; those related to the offenders and to the nature of the crimes; and lastly those based on geographic boundaries.<sup>31</sup> First of all, as discussed in chapter three, it is useful to recall here that courts in Jordan are divided into two main divisions. The first is a common division, consisting of regular litigations courts constituted by first litigation degree courts (conciliation and first instance courts), and by a second litigation degree court (the appellate court). The second is an exceptional division consisting of a diversity of private criminal courts applying their jurisdiction in accordance with their private laws, as well as the principle of personal, subject matter and territorial jurisdiction rules.<sup>32</sup>

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However, because of the complexity of criminal jurisdiction rules accompanying these divisions of jurisdiction rules courts, the judges of such courts are obliged

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<sup>31</sup> Al-Kelani, Farouk. *Lectures in the Jordanian Criminal Code* (Part 2, 3<sup>rd</sup> edn Dar Al-Moroj Publishing, Beirut 1995). P 15.

<sup>32</sup> Alsaeed, Kamel. *Explain the General Principles in the Criminal Code : A Comparative Study*. (Dar Althakafa Publisher, Amman 2002) P11.

to review these rules in each case in order to bring it to the most appropriate court. This requires in some cases the application of different jurisdiction types over the dispute in order to determine which court is the most suitable.<sup>33</sup> Following is a discussion for these criminal jurisdiction rules in accordance with the personal rules, subject matter rules and the territorial rules. The discussion below aims as stated earlier to evaluate the application of jurisdiction types on the internet and the functions of each jurisdiction types, this evaluation will clearly be explained in chapter seven.

#### 1- Courts' penal jurisdiction based on personal jurisdiction rules:

According to the personal jurisdiction rules, a case is allocated to one of a number of jurisdictional courts depending on the status of the person who committed the crime. In such cases, although it may seem that the focus is on territorial rules, the fact is that courts in the following issues have the jurisdiction to apply their authority in accordance with personal jurisdiction, regardless of the nature of the crime or the place of commission.

Jordanian courts have the authority to apply their powers over cases and disputes involving a Jordanian party, whether plaintiff or offender.<sup>34</sup> However, more specifically, the courts have authority to take into consideration when exercising their jurisdiction an offender's individual situation in respect of factors such as age, employment and social status; this may explain the reason for

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<sup>33</sup> Alokaily, Aziz. *Explain the Criminal Procedures Code*. (Alatek Publishing, Cairo 2008). P 45.

<sup>34</sup> Alokaily, Ibid. P 22.

calling such courts as “courts with special jurisdiction”.<sup>35</sup> It is important here to note that courts exercise this authority in line with general jurisdiction principles but in such a way as to avoid contravention of criminal procedure rules. Personal jurisdictions are divided mainly into the following courts:

### 1. a- The Juvenile Courts:

The Juvenile courts were discussed earlier in chapter two, where “juvenile” was defined as “any person male or female over seven years of age and less than eighteen years of age”.<sup>36</sup> Also, it was clarified that criminal jurisdiction over juveniles is awarded exclusively to Juvenile Courts, regardless of the nature or severity of the crime.<sup>37</sup>

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This research point of view is that juvenile courts shall have jurisdictional authority also over cyber activities committed by juveniles, who should be prosecuted for their crimes before a normal court or judge, and sharing the same general jurisdictional considerations for cybercrimes. Nevertheless, those special considerations given to juveniles in the commitment of normal crimes will also apply to their commitment of cybercrimes, even if those require a different legal approach.

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<sup>35</sup> Hosni, Mahmoud. *Explain the Criminal Law – the Public Section*. (Dar Alnahda Alarabia Publisher, Cairo 1989) P19.

<sup>36</sup> Article 2 of the Juvenile Law number 24/1968 published on the Official Gazette 2089/16-04-1968. P555

<sup>37</sup> Owen, Zainab. *Juvenile Judiciary* (Dar Althaqafa, Amman 2009). P 19.

Moreover, this research perspective is that juveniles and youths aged 14-17 are mostly involved in cyber crimes intentionally or accidentally; for instance a common crime is to enter, or continue illegal access to a website; illegal access (unauthorised ) is punishable under security and privacy rules. In spite of their youth, it may be considered that some young offenders are deemed sufficiently developed in their intelligence to knowingly commit cyber crimes, although also taken into consideration will be their lack of maturity or the influence of peer pressure in their lives. Nevertheless; this research had not found any application of these rules in Jordan, one reason being that generally youth cases are resolved at the investigation level rather than going through before the courts. Another reason is that lawyers may try to describe youth activities in accordance with certain articles to avoid more serious and higher penalties.

#### 1. b- Military and police courts:

Another type of court with special jurisdiction is the military and police courts, which have been separated from the jurisdiction of regular courts to ensure a fair trial for a specific group of people in relation to their jobs, and to prosecute them before special judges in accordance with strict jurisdiction rules.<sup>38</sup>

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<sup>38</sup> Namoor, Mohammad. *Crimes Committed over Persons in the Jordanian Criminal Law* (Dar Amman Publisher, Amman 1998) P 45.

Jurisdiction of military courts is stated in the Law of Formulation of Military Courts No. 23 of 2002,<sup>39</sup> that is that military courts shall be authorised to apply their jurisdiction over all members and different ranks of the Jordanian Armed Forces, in addition to members serving under civil contracts in the Army.<sup>40</sup>

However, In recognition of the important functions of the Jordanian Public Security Directorate (PSD) and the differences between the job status of police and that of individuals in the armed forces, the legislature awards criminal jurisdiction over PSD members of all ranks to special courts named as police courts. Police courts were formed by order of the head of the PSD in accordance with PSD Law No. 38 of the year 1965 and its amendments.<sup>41</sup> Such courts have personal jurisdiction over all in-service crimes committed by employees of this department. It is important to note here that criminal personal jurisdiction is offered to the police courts over crimes punishable under the military, criminal and the PSD laws.<sup>42</sup>

As there are no relevant provisions for cyber crimes committed by military and police members (as said previously in terms of youth activities), military and police courts should normally be responsible over the said cyber crimes in

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<sup>39</sup> The last amended law is law number 23/2006, published on the Official Gazette No. 4715/16-03-2006, P 791.

<sup>40</sup> Although jurisdictions of military courts are similar to other courts in the provision of their law, a different significance may be given to the status of the offender at the time of commission the crime. That is, military courts are jurisdictional over crimes stated in military legislation and criminal laws, in accordance with personal criminal jurisdiction rules, given that the offender is employed in a military job at the time of committing the crime.

<sup>41</sup> Law no 38/1965 published on the Official Gazette 1873/ 16-09-1965, P 1427.

<sup>42</sup> Srour, Ahmad. *Middles in Criminal Procedure Laws* (2<sup>nd</sup> Edn Dar Alnahda Alarabia, 1980). P52.

accordance with the status of the offender. Such cyber crimes committed by military or police personnel may be related to their employment status, for example, espionage cyber crimes; equally, they may relate to cyber crimes committed outside of the job framework, such as e-defamation crimes. However, jurisdiction over cyber crimes committed by such members is a special jurisdiction, in that work-related cyber cases are assigned directly to the military courts without reference to the first degree courts.<sup>43</sup>

## 2- Penal subject matter jurisdictions rules:

It has been mentioned earlier that subject matter ruling in adjudicative jurisdiction is urgently required in regard to internet practices, especially in respect of the borderless and statelessness nature of this medium. The lack of subject matter rules in adjudicative jurisdiction related to cyber crimes, has come into salience as a consequence of modern theories such as the theory of “the most related matter” in e-crimes.<sup>44</sup> The importance of subject matter rules is generally that they are based on the matter of an obligation related to the results or the impacts of an action, rather than to any place, or persons at that place, when awarding, claiming or declining jurisdiction.<sup>45</sup>

The functions of these rules are not limited to deciding between the jurisdictional regular or private courts, but extend to indicating the appropriate level at which a

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<sup>43</sup> Srour, Ibid. P 112.

<sup>44</sup> Saqf Al-Hait, Adel. *The Crimes of Libel, Slander and Defame Committed Via Electronic Means: Internet and Mobile Networks & Via Traditional, Mechanical Tools and Press, A Comparative Legal Study* (Dar Althaqafa, Amman 2011). P 183.

<sup>45</sup> Hosni, Ibid No. 35. P 22.

case should be tried in the first litigation courts, whether in a conciliation or first instance court.<sup>46</sup> The issue of location and means of commission is pertinent to most cyber crimes and virtual world actions, in that while cyber crimes can be regarded as parallel to the traditional types of crime committed in the non-virtual world, the means of establishing jurisdiction over location and means of commission may be very different. Moreover, a court when receiving a case will set out to categorise a crime according to the nature of crime and its penalty (e.g. felony or misdemeanour). This categorisation mainly depends on the subject matter rules for awarding jurisdiction to the most appropriate court. Subject matter rules need most importantly to be in relation to dangerous or sensitive acts such as murder, or crimes against state security.

Despite the benefits and the importance given to subject matter rules in traditional cases, it is debatable as to how far such rules may be equally applicable to cyber activity. Taking a positive view, it might be argued that these rules are already suitable for use in regard to internet activities, subject to adaptation to suit specific features of internet cases. On the other hand, taking the negative view, it might equally be argued that there may be some instances where such rules are quite unsuitable for regulating internet activities, the implication being that the virtual world requires an independent set of laws and subject matter rules. Whichever position is taken, it is nevertheless the case that it requires deep expertise and consideration of normal categorisation standards in accordance with subject matter rules to be able to appoint an appropriate

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<sup>46</sup> Hosni, Ibid No. 35. P40.

jurisdictional court over cyber cases. This research holds the position that the categorisations of cyber cases may need further considerations as to whether they have been committed on the internet or by the internet.

In the Jordanian judiciary of this jurisdiction type, the standard for jurisdictional judgements is based on the subject matter of the crime and its levels of severity under the crime divisions in the Jordanian penal codes. In this case, the judiciary system in Jordan follows a general legal categorisation of crimes into three types: felonies, misdemeanours and petit misdemeanours. In order to bring the rules of the subject matter jurisdiction into force, the crime or case must be categorised as to type before the court. This function is the responsibility of the court receiving the case and is unlimited in the description it gives to decide the type of the crime.<sup>47</sup>

To sum up, under penal jurisdiction rules based on subject matter jurisdictions in Jordan, courts are divided into two main types: firstly regular courts, secondly special courts or court with special jurisdiction. The discussion of these jurisdiction rules was pertinent to the argument that subject matter rules are the most qualified rules in solving cyber disputes. This research in the next part will illustrate court jurisdictions in accordance with the subject matter rules as stated in the Jordanian judiciary and criminal legislation. This evidence will serve to illustrate how subject matter rules are functioning and for what level these rules

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<sup>47</sup> Articles 14-16 of the Jordanian Criminal Code No. 16 of 1960 (published on the Official Gazette 1487/01-01-1960, P 374) and its amendments. The last amendment was the law No. 8 of 2011, published on the Official Gazette 5090/02-05-2011, P 1758.

should be amended if they are not fully accepted to deal with jurisdiction disputes on the internet.

## 2. a- Regular court subject matter jurisdiction:

According to Jordanian criminal jurisdiction rules based on subject matter divisions, criminal jurisdiction is distributed between the first litigation degree courts, that is, the conciliation and first instance courts. Penal jurisdiction of second litigation degree courts is granted to appellate courts.

### 2. a. 1- Penal jurisdictions of the first degree courts:

First of all, according to the subject matter rules appointed in the conciliation court law and the penal code, conciliation courts are jurisdictional over all petit misdemeanours crimes, perjury and false testimony crimes, misdemeanour crimes punished by imprisonment for a period not in excess of two years, and any other misdemeanours under the jurisdiction of any other court in accordance with private provisions.

First instance courts, or general jurisdictional courts, in Jordan are jurisdictional in accordance with article 140 of the criminal procedure code also over all misdemeanours transferred to them by the Public Prosecutor or by his representatives, in crimes not subject to the authorities of conciliation courts. Moreover, according to the subject matter jurisdiction rules of the first degree courts, first instance courts are jurisdictional in their felonious function over all

felony crimes, in addition to parallel misdemeanour crimes sent to them in accordance with the indictment judgments.<sup>48</sup>

Applications of subject matter jurisdiction of the first instance courts are carried out in reference to deception and religious crimes. A deception crime is categorised as a misdemeanour crime and is subject to the authority of the first instance courts in accordance with the penal legislation in force. In relation specifically to electronically based crimes, the Amman criminal first instance court has jurisdiction over a deception crime committed by electronic means in accordance with article 38 of the Electronic Transaction law. For instance, in the criminal case number 2291/2006,<sup>49</sup> the court punished the perpetrator by awarding a penalty of three years imprisonment and a fine of a hundred Jordanian Dinars for illegally use a hacked computer programme. In another case, number 1171/2007, dated 31.10.2007, the criminal judge of the Amman first instance criminal court issued his judgement against the perpetrator (Gehad) for publishing a picture and effigy of a religious subject, on the grounds that this action had outraged the feelings and beliefs of others. This decision was based on article 278/1 of the criminal code.<sup>50</sup> (Both cases are widely discussed in chapter seven).

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<sup>48</sup> Alsaeed, Ibid No. 32. P 19.

<sup>49</sup> Amman Criminal First Instance Court judgment No. 2291/2006 issued on the 21<sup>st</sup> of May, 2006. Jordan Bar Association Journal No. 69 of 2007. Pp 1931-1937.

<sup>50</sup> Both cases will be discussed widely in chapter 6.

In referring to the above two examples this research intends to clarify the distribution of jurisdictional authorities in accordance with the subject matter rules, rather than exploring the nature of the crimes themselves. In issuing the two judgements mentioned above, the courts did not classify the crimes as electronic, nor were terms used such as 'electronic deception' or 'electronic publishing'. Rather, reference was made to article 38 of the ETL which governs crimes committed by electronic means. It is important to note here that when penalising an offender in the case of multiple potential penalties, the court shall normally refer to article 72 of the criminal code and punish the offender by awarding the greatest penalty.

## 2. a. 2- Penal jurisdictions of the second degree courts:

It has been mentioned earlier that there are three appellate courts in Jordan, each court covering a specific and limited territory within which it may apply its powers over all lower courts' decisions. In accordance with subject matter rules, appellate courts apply their jurisdiction over appeals against or related to conciliation courts. In accordance with the provisions of conciliation court laws, appeals such as imprisonment judgements and decisions over three months are allowed to go to appeal before the appellate court directly without processing in the first instance courts.<sup>51</sup> Additionally, appellate courts are jurisdictional over decisions brought before them by the first instance court in its functions as a first degree court and as an appellate court. In addition, appellate courts are

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<sup>51</sup> Alsaeed, Alsaeed, Ibid No. 32. P60.

jurisdictional in accordance with the subject matter rules over criminal appellate judgements, brought before them in accordance with the provisions of any other legislation.<sup>52</sup>

However, the Jordanian legislature gives the first instance courts criminal jurisdictions over appeal cases brought before them by the conciliation courts in accordance with amendments to conciliation court law. Specifically, article 10 of the amended conciliation court law of the year 2008 encloses a number of judgements which can be appealed against in a first instance court as an appeal court. These judgements include petit-misdemeanour judgements without fines, misdemeanour judgements stated in paragraph 1 of article 421 of the penal code, judgements punished by imprisonment for a period not exceeding three months regardless of the amount of their fines, and misdemeanour judgements regardless of the amount of fine. Moreover, according to the penal subject matter rules, first instance courts shall have criminal jurisdiction over judgements and decisions brought before them by private courts in accordance with their legislation. For instance labour cases are eligible for appeal to the first instance courts.

It has been explained earlier that, in terms of criminal jurisdiction, the Cassation Court is the highest judiciary body in the Jordanian judiciary system, functioning also in itself as a general court of law. Exceptionally in accordance with article 270 of the criminal procedure code, it may also act as a court of subject matter in

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<sup>52</sup> Alsaeed, Alsaeed, Ibid No. 32. P60.

dealing with certain types of cases and criminal appeal judgements and decisions. As such it may prevent trial decisions issued by the public prosecutors in criminal cases, and overturn objections to great felonies court judgements, as well as criminal judgements issued by the police courts. Moreover, it may be considered as a subject matter court when trying and hearing objections against any state security court decisions.

## 2. b- Special courts subject matter jurisdiction:

Regular courts in Jordan have general jurisdiction over all persons in civil and criminal matters except matters that are subject to religious or private court jurisdiction. Article 110 of the constitution addresses exceptional jurisdiction of the special courts over certain sets of matters in accordance with the rules of subject matters jurisdiction, as well as the provisions of these special court laws. However, in accordance with penal subject matter rules, there are four special courts authorised over certain types of matters: the major felonies court, the state security court, the customs court and councils' courts.<sup>53</sup>

First of all, criminal subject matter jurisdictions of the Major Felonies Court are laid out in article 4 of the court law. Article 4 enumerates crimes of murder, rape, sodomy and kidnapping, or the attempts to commit those crimes, as well as parallel crimes of these felonies. These crimes are referred to in articles 326,

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<sup>53</sup> The High Council has been majorly amended according to article 55 of the amended Constitution of 2011 as the following: Article 55 of the amended Constitution No 11 of 2011:

- Ministers shall be tried for crimes attributed to them resulting from the performance of their duties before the Court of Appeal in the Capital. These cases are heard by a panel of five judges appointed by the Judicial Council. Decisions of the court shall be taken by a majority vote.

327, 328, 330, 338 of the Penal Code in force. Obviously, subject matter jurisdictions of the major felonies court must be narrowed down in such dangerous types of crimes.

In the absence of previous applications of the said crimes on the internet in Jordan, this research will not focus on the nature of these crimes or the ways in which they committed. However, although from the logical perspective , physical crimes such as murder, rape or kidnapping are not easily imaginable as committable in the virtual world of the internet, it may be argued that murder could be committed by electronic means such as 'murdering' through identity theft; for instance destroying an individual's computer by use of a distant internet virus. Nevertheless, the point here is to clarify that any nature of crime committed on the internet or by electronic means, is apparently subject to the court in accordance with the subject matter rules.

The State Security Court is a special military court established in accordance with the State Security Court Law No. 17 of the year 1959. According to the subject matter jurisdiction rules, crimes tried before this court are mainly those committed against the security of the country.

There are several examples of the application of this court's authority over cyber cases: for instance, cases numbered 1558/2007 dated 07.08.2007, and 1168/2006, dated 10.10.2006. In the first case, the case theme was the

establishment of an internet website through which crimes were committed against the reputation, standing and security of the king and the state. These offences were subject to the provisions of the criminal code and the jurisdictions of the state security court. In case number 1168/2006, the court exercised its authority over an offender who committed a crime in sending an email threatening the King and public order in Jordan. The judgement was issued in accordance with articles 147/1, 148/2 and 195/1/b from the criminal code. The case was sent to the state security court in accordance with the traditional rules of subject matter jurisdiction in the penal legislation.

The third special court is the Customs Court, established in accordance with the Customs Law No. 1 of 1963. The legislature awards the customs court penal subject matter jurisdiction over crimes related mainly to smuggling and crimes committed against customs, import and export laws. The court also has subject matter jurisdiction in criminal issues over objections against fining decisions, and resolutions of the arrest and release decisions in crimes and breaches of customs law provisions. Moreover, disputes established by trade agreements subscribed to the country, are subject to the powers of the customs court.

Internet subject matter jurisdiction of customs courts can be accepted over issues related to the said authorities but not over the matter itself, such as an e-agreement established on the internet for delivering prohibited goods to Jordan. In such cases, the court has authority to exercise its power over the agreement

as it relates to a custom case. Moreover, taking into considerations related IP laws, delivering prohibited products to Jordan via the internet, such as forbidden software or programs, may be considered as a violation of the customs law and shall be subject to the power of the customs court.

### 3- Criminal jurisdiction in accordance with territorial rules:

Courts have penal jurisdiction over crimes committed in their territories and places where they have authority to exercise their powers geographically in accordance with three main standards: firstly the place where the crime was committed, secondly the place where the offender is domiciled and thirdly the place where the offender has been caught or arrested.

However, it is important to recall here that Jordan is a single legal unit system, which means the entire country is governed by a single penal code (unlike that of a federation or a union). Moreover, it has been highlighted earlier in this research that under its civil system, Jordan has constructed its territorial jurisdiction rules mainly for the purposes of controlling the criminal activities around the country and to simplify access to courts in any part of the country. Needless to say, in the case of acts carried out in the borderless virtual world of the internet, territorial rules are dramatically challenged. Traditional rules which have hitherto been based mainly in the local and political will find little purchase in cyberspace,

where theoretically any domestic and international acts may be encompassed in its networks with no consideration for any national borders.<sup>54</sup>

### 3. a- Jurisdictions of the court in the territory where the crime was committed:

Courts have authority over crimes committed in the territory for which they are responsible, against people or properties in general. These penal powers are distributed according to geographical separations of the modern penal system, each court granted power in accordance with certain geographical considerations. However, decisions over which court should be awarded authority may be subject to other legal considerations, depending on whether the evidence to be monitored and collected is taken from the same territory where the crime was committed.<sup>55</sup>

That is to say, although it is unlikely that any legal conflicts may arise in terms of the territorial jurisdictional court allocation, it may be that in the case of commission of a simple crime in one place, with impact only in that place, difficulties may well arise in applying territorial penal jurisdiction rules, given that a crime committed in one territory may have impact on other territories.<sup>56</sup> In such a case, it is necessary to determine which courts have authority over which crimes. There are broadly three scholarly views on this issue: firstly, that

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<sup>54</sup> Saqf Al-Hait, Ibid No. 44. P 379.

<sup>55</sup> Alsaeed, Alsaeed, Ibid No. 32. P 40.

<sup>56</sup> Alsaeed, Alsaeed, Ibid No. 32. P 44.

jurisdiction should be awarded to the courts in both territories, this is to the court where the crime was committed or the results place court; secondly, to the court only where the crime was committed, thirdly, to the court in the territory where the crime left its impact.<sup>57</sup>

In cases where courts have been awarded authority over crimes committed in different places or crimes premeditated in different places, these issues have been clarified in Article Five of the penal procedure code, which distinguishes between the attempts to commit a crime continually, and following crimes. In the first case, penal jurisdiction shall be awarded to each court where attempts to commit the crime have been carried out. But in regard to continual crimes, the court is awarded jurisdiction in each territory where the crime has been continually committed. In habitual crimes and crimes of succession the court where the crime is committed is awarded jurisdiction over the crime.<sup>58</sup>

### 3. b- Penal jurisdictions of the court where the offender is domiciled:

The offender's domicile is deemed the place where he/she normally lives and from which the offender normally leaves to conduct his or her daily affairs. The term has a number of definitions and is explained under many provisions of the civil code, such as a living domicile, a working domicile or a temporary domicile. However, the court which has jurisdiction over the crime is the court based in that

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<sup>57</sup> Saqf Al-Hait, Ibid No. 44 P 379.

<sup>58</sup> Article 5 of the Penal Procedure Code.

territory where the offender lives, in accordance with the territorial jurisdiction rules and regardless of the place where the crime was committed.

The offender's domicile in such cases is defined as the place where he/she is resident at the time at which legal proceedings are launched against him/her. However, another scholarly view suggests that jurisdiction be given to the court in the territory where the offender has a temporary rather than permanent domicile, to award jurisdiction over the case.<sup>59</sup>

### 3. c- Penal jurisdictions of the court in the place where the offender is arrested:

Legislature awards authority to the court where the offender is arrested or caught in the act of perpetrating a crime, taking into consideration evidence related to the offender's domicile or property. It may also be the case that the crime is straightforward and does not require transferring the offender to another court. Moreover, the court will be given jurisdiction subject to consideration of the place where the offender has been arrested and subject to any evidence as to the offender's surroundings and neighbourhood.<sup>60</sup>

It is useful to mention here an example where the Cassation Court in its criminal decision on case No. 218 of the year 1998, deemed that jurisdiction be given to the court where the offender had been arrested. In this case, the court issued its

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<sup>59</sup> Saqf Al-Hait, Ibid No. 44. P 384.

<sup>60</sup> Alsaeed, Alsaeed, Ibid No. 32. P 16.

decision to punish a Pakistani offender who had committed a crime targeted at a Jordanian (the defendant crime was issuing a cheque without enough credit). The crime was penalised in accordance with the penal jurisdiction of the Jordanian courts and their penal internal rules of territorial jurisdiction. In the decision, regardless of the nationality of the offender, of his being domiciled outside of Jordan, or of the cheque's being issued or not by a bank in Jordan, the court awarded authority in accordance with article 5/3 of the criminal procedure code to the Amman first instance court, on the basis that the offender had been arrested at the Regency Hotel in Amman.

- The priority between these three courts:

Article 5/1 of the criminal procedure code prevents jurisdictional conflicts between these three courts (where the crime was committed, where the offender is domiciled or where the offender is arrested) by giving the priority to the court where the case or legal procedures were "first launched". Neither the court situated in the territory where the crime is committed nor the court where the offender is domiciled, nor the court where the offender is arrested, has precedence in the right to apply their powers or claim jurisdiction according to the date on which the first court has received the case. However, in cases of crimes committed by a group of people, the legislature is balanced to take all offenders' circumstances into consideration, which means that jurisdictional court authority over one offender shall be extended to other offenders in the group in accordance with the previous rules.

Taking an overview of territorial jurisdiction rules as they might apply to the internet, it has been discussed above that despite the borderless reality of the virtual world, Jordanian legal bodies have had to base their judgements in accordance with traditional criteria. How such rules are used can be illustrated in the case of the Danish cartoonist, state security court case number 1558/2007, and in the Amman General Prosecutor's decision number 6638/2008. In these cases, the court adopted the territorial rule in respect to the place where the offence left its impact. In addition, the court adopted two standards: the place where the offender was domiciled and the place where the offence left its impact. It is important to point out here that hitherto in cyber jurisdiction disputes, the attitude in Jordan has been to focus mainly on the place where the crime left its impacts, an approach known as the "place of effects under jurisdiction".<sup>61</sup>

### C- Conclusion:

Taking everything into account and regardless of the difficulty and obstacles faced in this research as explained in chapter one; this chapter has aimed mainly to explore civil and criminal domestic jurisdiction rules in Jordanian law and their capacity to govern cyber jurisdiction issues.

In the light of the previous addressed points, the most suitable research work plan has been to subdivide this research into different issues in relation to the

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<sup>61</sup> Saqf Al-Hait, Ibid No. 44. P 379.

national functions of jurisdiction rules in the Jordanian judiciary. However, this research has demonstrated that Jordan authorities have jurisdiction over all people holding Jordanian nationality or located in its territories. Moreover, this research has shown that Jordan as a single legal unit may apply its rules over all civil and criminal activities that take place or have impact in Jordan over its citizens or benefits.

This research finds that the courts' territorial rules at national level cannot easily be exercised over cyber cases, as each rule is related to a certain issue such as property, company and personal domicile. The final research theme under the civil rules has addressed value jurisdiction rules, the purpose of which is to appoint a competent reference in accordance with the case estimations, and also to decide the appellate reference.

In the light of the discussion of the value rules section, it has become clear that these rules are less important than personal and subject matter rules, and that the narrow applicability of their function to national levels renders their current role unacceptable over cyber cases.

Under criminal domestic jurisdiction rules, this research has described the personal rules of some important courts and the powers of these courts over certain groups of people. Subsequently this research has sought to clarify the authority and rights of regular and special courts in accordance with subject

matter rules and the functions of these courts. Lastly, this research has highlighted types of jurisdiction such as territorial rules, reaching the conclusion that priority should be given to the court situated in the place where the case or the legal procedures were first launched, this with reference to the fact that there is a legal trend in Jordan to accept the court of the impact place as the authorised court. This conclusion is based on an analysis of article 5 of the criminal procedure code.

To summarise, this research without reservation has shown that national jurisdiction rules are typical domestic rules with a major function of distinguishing between courts and legal bodies authorities. This will lead this research to the fact that domestic rules are closer to the adjudicative jurisdiction category than the legislative one, as it deals with the authorised body rather than the applicable law. However, this research argues that these rules currently are partly inadequate to deal with cyber jurisdiction disputes. Thus, to be functional over cyber cases, the creation of some new rules, as well as amendments to existing rules is necessary, such as to existing articles 5 and 6 of the Electronic Transactions Law and the new categories under the Information Systems Crime Law of the 2010.

Before moving to the next chapter which will evaluate the jurisdiction rules in Jordan over external jurisdiction disputes on the internet; it is important to record

here that at the time of finalising this research (including the revision period), Jordan has been witnessing the impact of the Arab spring revolution on the wider Arab World, which may lead the country to amend and/or create major legislation in relation to internet activities such as cyber crimes, e-press and the freedom of expression. This may for instance affect current courts authorities such as the State Security Court and some major laws articles such as the Press and Publication Law and will force the legislature and decision makers to review these authorities and laws and amend them majorly. In the worst case scenario, the solution may be to erase them completely from the country's legal system and set of laws.

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## Chapter 6: The Application of Jordan Legislation over External Jurisdiction Disputes on the Internet.

### 1- Introduction:

The aim of the previous chapter was to illustrate the efforts of Jordanian legislature to guarantee jurisdictional authority over its courts in domestic disputes. The aim of this chapter is to clarify the international role of Jordanian jurisdiction rules, concentrating in particular on the rules of the civil and criminal procedure codes, and also to examine the role of certain other rules in international laws and of attribution rules in Jordan civil law. In this section will be analysed the capacity and capability of Jordanian jurisdiction to rule over internet activities, particularly over cyber jurisdiction disputes that involve international elements. It is hypothesised that such an analysis will clarify the need for the establishment of new rules, and/or the amendment of existing rules in order better to accommodate cases involving activity committed on the internet or through use of the internet.

First of all, it has been explained earlier that the main civil function of international rules is to govern issues and disputes related to civil and commercial matters such as contract, companies, civil damages and claims.<sup>1</sup> The purpose of civil jurisdiction rules for Jordan has been clarified in the country's litigation laws, in international private law and in international conventions. The Jordanian civil jurisdiction rules are located mainly in the Civil Procedure Code, although they also appear in some other

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<sup>1</sup> AlHadawi, Hassan. *Conflict of Laws: General Principles and Perspective Solution under Jordanian Laws, a Comparative Study* (Dar Althaqafa, Amman 2005). P 68.

provisions within the Constitution and the Civil Code, as well as in parts of the Electronic Transaction Law. Articles 27 - 42 of the Civil Procedure Code address. They clarify jurisdiction rules over civil issues and the Jordanian courts' authority in applying power over these kinds of cases.

Moreover, there are two types of international jurisdiction which Jordanian courts exercise in regard to criminal issues. The first is personal jurisdiction; the second is subject matter jurisdiction. Critically, there is no expectation that territorial jurisdiction rules would be exercised here, since they are incompatible with the international dimension. International jurisdiction is a right given to countries to protect their own rights and securities when dealing with issues which influence or might influence their sovereignties or their benefits in matters outside of the country's borders or territories.<sup>2</sup> This protection is legislated in order to allow a country to apply its powers abroad for the protection of its internal sovereignty, the intention being both to safeguard the country's reputation abroad, and to function harmoniously with the sovereignty of any other country involved. However, it is crucial to this research to understand that the application of such territorial rules, even at international level, may encounter serious obstacles on the internet, given the borderless nature of the virtual world.

The legislature in the Criminal Code of the year 1960 and its amendments gives Jordanian courts the right to apply their authority over a number of cases, subject to

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<sup>2</sup> Al-Bahar, Mamdouh. *The principle of the Jordanian Criminal Procedure Code* (Dar Althaqafa, Amman 1998). P 48.

certain considerations stated in article 9 of the code. However, although the effect of article 9 is to narrow down the potential scope of the courts' authority, some jurists argue that the intended reading of the application is not necessarily exclusive to such cases, and it might be extended to similar cases.<sup>3</sup> Moreover, article 10 in the same law contains illustrative examples of cases in which Jordanian court authority has been exercised over criminal activities committed outside of the country. Such activities, understood as acting against Jordanian rights or sovereignty, have been deemed punishable under Jordanian legislation. This is clearly stated in this law as also in other penal laws such as the Prevention of Terrorism Law and the Information Systems Crime Law of 2010. Nevertheless, there is a view that the legislature does not set out to specify examples of international cases where Jordanian courts may apply their powers. Rather, the specification in the legislature is intended to clarify the main types of crime against the country, which can include all minor and lower crimes under their categorisations.

Finally, it is important to clarify here that the purpose of dividing the chapter in this way is firstly to fulfil research methods as discussed in the methodology chapter, and secondly to examine the capacity and the capability of jurisdiction rules to resolve new challenges and related issues in internet cyber contexts. To follow up, this section will discuss international jurisdiction rules in accordance with Jordanian civil and criminal laws and other related conventions and agreements to which Jordan is party.

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<sup>3</sup> Al-Bahar. Ibid 2 P 50.

## 2- Jurisdiction tests on civil jurisdiction disputes

Generally speaking, international jurisdiction of a country's courts is based on the most popular legal theories. These may comprise traditional theory, modern theory, personal theory or objective theory. Such theories may be applied on different occasions; such flexibility is important in that in some circumstances one or another theoretical position may be considered as more or as less appropriate. This may also be important depending on whether a country's judicial system is based on civil or on common law. For instance the legal structures of already developed countries may interface problematically with those of developing countries at internal level; in such cases, different countries may disagree with the international principle of national sovereignties and may wish to make their own decisions in determining their interests and benefits.<sup>4</sup> It is important to mention at this stage that this research does not aim to review the historical roots of any above mentioned theories, such as the historical foundation of the personal theory in the French jurisprudence system, rather it aims only to discuss their applicability to jurisdiction rules on the internet as will be discussed in this chapter and the following chapter.

Obviously, there is no question as to the authority of a country's courts ruling over nationally based disputes which threaten the country's public interests, nor as to that authority activating the principles of sovereignty. In Jordan, the Jordanian court authority is laid out in the Jordanian Constitution. Provision 103/ of the constitution states that:

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<sup>4</sup> AlHadawi, Ibid No. 1. P 30.

“(I) The Civil Courts shall exercise their jurisdiction in respect of civil and criminal matters in accordance with the law for the time being in force in the Kingdom, provided that in matters affecting the personal status of foreigners or in matters of a civil or commercial nature which in accordance with international usage are governed by the law of another country, such law shall be applied in the manner designated by the law”.<sup>5</sup>

It is important before embarking on discussion of international jurisdiction topics, to recall here that Jordanian legislature is based on a consideration of the jurisdiction of regular rules in modern and comparative legislation. In establishing these rules the legislature has tried to strike a balance between two main approaches: first the nature of the subject matter and private relationship between parties, second a guarantee of respectful enforcement of Jordanian judgements abroad.<sup>6</sup> To maintain this balance, the legislature distributes the jurisdiction rules on the one hand between the constitution and the civil code, and on the other hand between domestic laws and attribution rules in international private law.

Accordingly, international jurisdiction given to the Jordanian courts includes civil, commercial and criminal matters. Civil and commercial matters will form the central points of the discussion of this section, and criminal issues will be examined in the next section. Nevertheless, it is important at this point to signal that within those Jordanian courts existing primarily to apply Jordanian laws over disputes involving

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<sup>5</sup> This provision amended in the 4<sup>th</sup> of May 1958 and published in the Official Gazette No.1380.

<sup>6</sup> Madee, Ramzi and Abu-Baker, Mohammad. *Civil Procedure Code* (Dar Althaqafa, Amman 2002). P 26.

foreign norms, the aim of international jurisdiction is to bring disputes before Jordanian courts, or to subject the dispute relationship to Jordanian powers. It is important to clarify here that this research at this level will be limited to studying the jurisdiction rules in Jordanian law and their application over internet and cyberspace issues.

This section of this research is therefore restricted to international civil jurisdiction of the Jordanian courts relative to the following main points: personam jurisdiction, territorial jurisdiction, jurisdiction based on intentional submissions, jurisdiction based on the Jordanian international public system, courts' jurisdiction on initial matters, and contingency claims and jurisdiction based on Jordanian civil security considerations.

#### a- International *in Personal* Jurisdiction Rules

Jordanian courts apply international jurisdiction in accordance with personal jurisdiction rules where one of the disputing parties is Jordanian, and whether this party is defendant or claimant in normal cases, or third party or interference in special cases.<sup>7</sup> According to the nationality standard, the personal rules are more effective over Jordanian defendant cases than claimant cases. In the case of claiming authority in relation to citizenship standards, courts may apply the sovereignty principle over the country's citizens, while the two principles together may give the Jordanian court a right to claim jurisdiction over a Jordanian defendant living outside

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<sup>7</sup> Al-Masri, Mohammad. *Explain the Civil Procedures Code: A Comparative Study*. (Dar Kndeel Publishing, Amman 2003). P 95.

the country. However, to clarify, the definition of *Jordanian* is stated in article two of the Jordanian Nationality Law No. 6 of 1954 and its amendments, as “anyone who holds Jordanian nationality in accordance with the provisions of this law”.<sup>8</sup>

The authority to process a case may be granted by a process of agreement between the obligation parties or by a foreign country’s agreement to award the Jordanian courts the authority over their Jordanian nationals as living outside of the geographical borders of the country. This might be for reasons related to proving the right or the preference of performing judgement against a Jordanian defendant in Jordan. For instance, the application for granting jurisdiction by an agreement between the parties may be found in article 20 of the Civil Code, which refers to the parties’ freedom to choose the applicable law over the contract. Article 20/1 states that: “contractual obligation shall be governed by the law of the state of the common domicile of the two contractual parties if they are of the same domicile”. However, if these are different, the applicable law shall be that of the state in which the contract was made, **unless otherwise agreed by the two contracting parties**”.

The Jordanian legislature does not refer explicitly to personal jurisdiction as a type of international jurisdiction; rather, these rules are derived and understood implicitly as part of the provisions of the civil procedure code. Jordanian courts have authority over disputes if the defendant is Jordanian; this is called *negative personal jurisdiction*.<sup>9</sup> This negative personal jurisdiction<sup>9</sup> is based on general and traditional

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<sup>8</sup> The law number 6/1954 published in the Official Gazette 1171/17-02-1954, P 105.

<sup>9</sup> Al-Bahar . Ibid No. 2. P68.

“notions of fair play and substantial justice”. In this the Jordanian legislature is influenced to give the Jordanian defendant higher protection than that granted to the Jordanian claimant. According to Jordanian civil law, the defendant is considered free from liability until the claimant can furnish proof of his claims (article 73 of the Civil Code states that “the fundamental principle is freedom from liability in that the creditor may prove his right and the debtor may revoke it”).

However, the said protection above, whether of defendants or claimants, is not clear in some Jordanian legislation. The Jordanian legislature in article 27 of the civil procedure code does not refer explicitly to Jordanians by their nationality, instead referring to all citizens regardless of their nationality. Article 27 states that:

*“For the regular courts in the Hashemite Kingdom of Jordan, the right of judicial jurisdiction upon all persons in the civil articles, except for those articles which may be empowered to the religious courts or to special courts according to the rules of any other law”.*

Article 27 outlines the general authority of Jordanian courts over all citizens, with no overt reference to these being Jordanian citizens; however, this leaves the article somewhat vague. If we compare Jordanian law in this respect with similar laws in other countries, such as the Egyptian or the Iraqi civil laws, it can be seen that these national laws refer clearly to their citizens by nationality, with an explicitness missing from the Jordanian law.<sup>10</sup>

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<sup>10</sup> Article 28 of the Egyptian Litigation Code has given the Egyptian courts the authority to hear any disputes if the defendant is Egyptian regardless of his domicile. This is similar in regard to article 14 of the Iraqi Civil Code.

On the other hand, personal rules in the event of bilateral or multilateral agreements of the nationality standard have appeared on many occasions, such as the Jordan – Egypt Judicial Corporation Agreement.<sup>11</sup> In accordance with such agreement articles, Jordanian courts have authority to hear cases against Jordanian defendants residing in Egyptian territories.

Nevertheless, in certain circumstances, the Jordanian courts do have authority to apply their jurisdiction over particular disputes. Examples of such consideration are offered below:

- It is recognised as the citizen's right when being sued before their country's courts to be guaranteed a just trial proceeding, as well as to have their litigation rights protected. Equally they have a right of defence, especially if they are not resident in Jordan. This gives the Jordanian courts the capacity to apply their powers over their citizens even at the extraterritorial level.<sup>12</sup> For example, in regard to disputes concerning marriage contracts, the Jordanian civil law in article 15 gives the priority to the Jordanian law if one of the contract parties is Jordanian. Article 15 states that "if in the cases mentioned in the preceding two sections, one of the two spouses shall be a Jordanian at the time of celebrating the marriage, the Jordanian law shall alone be applicable except in respect of the condition of capacity for marriage".<sup>13</sup>

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<sup>11</sup> Agreement for Judicial Cooperation between Jordan and Egypt, No. 3/1987. Available at MOJ <<http://www.moj.gov.jo/>>.

<sup>12</sup> AlHadawi, Ibid No. 1. P 80.

<sup>13</sup> Article 13: "1. The substantive conditions of the validity of marriage shall be governed by the law of each spouse. 2. But in respect of form marriage between two foreigners or a foreigner and a Jordanian shall be considered valid if made in accordance with the conditions prevailing in the country where it was celebrated, or if the conditions prescribed by the law of each of the two spouses have been complied with".

Article 14: "1. The law of the state to which the husband belongs at the time of celebrating the marriage shall be applicable to the consequences of the marriage contract including financial consequences.

- Article 27 gives the Jordanian courts “the judiciary right” over all people in civil issues unless there is legislation excluding this jurisdiction. This means that cases involving citizens along with foreigners who are resident in Jordan, are subject to the courts’ jurisdiction. The consideration here, for application of the judiciary right over a Jordanian defendant, is based on the public authority which deals with the legal principle that “the claimant follows the defendant”.<sup>14</sup>

- Article 28 lays out Jordanian courts’ jurisdiction over cases involving foreigners in particular matters. It is worthwhile to maintain this authority over Jordanian citizens regardless of place of domicile or residence. This gives the Jordanian judicial system power over Jordanians living outside of the country.<sup>15</sup> With reference to article 15 of the civil code mentioned above, the article includes a general principle which states that in cases involving a Jordanian party, the Jordanian law is the applicable law. Moreover, article 13 and 14 shall be considered as attribution rules in disputes between foreigners brought before the Jordanian courts.

On the other hand, if a claimant is Jordanian, the Jordanian courts have international jurisdiction in relation to personal jurisdiction. This type of jurisdiction is known as *positive personal jurisdiction* and could be offered for reasons such as:

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2. But divorce shall be governed by the law of the state of the husband to which he belongs at the time of divorce. And divorce and separation shall be governed by the law of the state to which the husband belongs at the time the case is started”.

<sup>14</sup> Silehdar, Salah. *Civil litigations in Civil and Commercial Matters* (Aleppo University Press, Aleppo 1985). P 16.

<sup>15</sup> AlHadawi. *Ibid* No 1. P73.

I - The nationality standard has been used under countries' private laws to protect their citizens through their courts and to subject them to the law. The use of this standard appears clearly in developed countries' legislation, such as in French law.<sup>16</sup>

II- It is a right of citizens to seek protection from their country's courts if they have not found a jurisdictional foreign law to hear their dispute, or if they do not have sufficient funds to travel in order to sue their opponents outside of the country. This right is clearly stated in the Jordanian constitution in article 101/2 which states that "(I) the courts shall be open to all and shall be free from any interference in their affairs".<sup>17</sup>

III- The defendant may possibly have money or estates in Jordan; in this instance, it is a Jordanian claimant's prerogative to sue this party within the country and to have recourse to and enforce a national judgement over ownership of the money or estates, instead of attempting to litigate outside of the country.<sup>18</sup>

IV- Jurisdiction right before the Jordanian courts is a right given to Jordanian claimants; they may use or waive this right according to whether it is more advantageous to prosecute their opponent before the Jordanian courts or before foreign courts.<sup>19</sup>

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<sup>16</sup> See article 15 of the amended French Litigation Code No. 75-1123 of 1975. Last amendment was issued in December, the 28<sup>th</sup> 1998 and came into force in March 1999.

<sup>17</sup> Mabrouk, Ashour. *Appearance before Civil Courts* (Al-Jala' Library, Cairo 1988). P 49.

<sup>18</sup> Al-Masri, Ibid No. 7. P 102.

<sup>19</sup> See Article 28 / chapter 1 – section 1 of the Egyptian Litigation Code No. 76 of the year 2007 and its amendments.

To sum up, Jordanian courts shall have jurisdiction over a dispute if: first, the defendant has no particular domicile or an unknown domicile, in which case application of the nationality standard will be considered the best way to prosecute the defendant under Jordanian law. Second, it shall have jurisdiction if the Jordanian law is the applicable law over the subject matter of the case, such as by the parties' agreement or as awarded by national agreement. Third, this will also be the case where a Jordanian claimant has not found a suitable foreign judiciary with which to work. In terms of this research focus in this work, this last case raises some questions for further discussion related to internet and cyberspace disputes.

**b - International territorial jurisdiction rules:**

In terms of national sovereignties, international jurisdiction may be considered a sensitive issue, in that it may involve applying the power of one country within a territory subject to a sovereignty of another country. International jurisdiction and related issues in accordance with the territorial rules have been clarified in international agreements and in individual countries' international private laws. However, despite attempts to organise issues regarding international territorial jurisdiction, many countries still struggle in dealing with problems involving foreign norms.<sup>20</sup>

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<sup>20</sup> Saqf Al-Hait, Adel. *The Crimes of Libel, Slander and Defame Committed Via Electronic Means: Internet and Mobile Networks & Via Traditional, Mechanical Tools and Press, A Comparative Legal Study* (Dar Althaqafa, Amman 2011). P 210.

Generally, the aim of international private laws is to award a country the jurisdictional rights over all people and things inside their geographical borders, in addition to those territories occupied by that country's army.<sup>21</sup> Nevertheless, countries can apply their legal powers over disputes involving a foreign defendant in certain cases and under specific legislation. The purpose of this application is to prevent countries from declining jurisdictional rights without providing any legal reason, and at the same time to prevent other countries from applying their authority in that country's territories.<sup>22</sup> Most cases arising in such instances are related to property locations, places in which contracts are concluded, goods transportation and consumer or seller domiciles.

In the case of Jordanian courts, the right to claim jurisdiction over international disputes with their territorial rules is based on the attribution rules in the civil code, in addition to the provisions of the civil procedure code in force. The aim of the attribution rules is to clarify in what instances Jordanian courts may have authority over extraterritorial disputes. For example, issues related to the applicable law over international contract are located mainly in article 20 of the civil code. However, it is important to note that former laws work in co-operation with the Electronic Transactions Law (ETL), but that some issues based on this cooperation have been excluded from the ETL in accordance with article 6, specifically in relation to issues such as wills and personal status on the internet.<sup>23</sup>

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<sup>21</sup> Al-Masri, Ibid No. 7. P 94.

<sup>22</sup> Al-Masri, Ibid No. 7. P 104.

<sup>23</sup> Abdulkareem, Mamdouh. *Private International Law: Conflict of law, enforcement of foreign judgments and the judicial international jurisdiction* (Dar Althaqafa, Amman 2005). P 60.

However, article 20 states that “1. Contractual obligations shall be governed by the law of the state of the common domicile of the two contracting parties if they are of the same domicile. However, if they are of different domiciles, the applicable law shall be that of the state in which the contract was made, unless otherwise agreed by the two contracting parties. 2. The law of the place where the immovable property is located shall be applicable to contracts made in respect of the property”. Applying such statements to this research focus in hand, we can say that Article 20 can arguably be applied over e-contracts in respect of three attribution rules: firstly the contracted parties’ agreement or intention, secondly the domicile of each of the contracted parties, and thirdly, the application of the law of place to the place where the contract was made.

This research perspective in regard to contracts taking place by means of the internet, application of this law is seemingly problematic. In the borderless context of the internet, rules which may be acceptably applied to traditional and territorially-based disputes are unsuitable or unimaginable when applied to most internet commercial activities. For instance, in the case of the second and the third rules in article 20 above, since there are no domicile or political borders on the internet (virtual places), it is difficult to imagine how courts could claim jurisdiction based on this article. This research here also is referring to the Electronic Transaction Law provisions which had placed to help in sorting problems such as the place of the contract parties in cyberspace. This research attitudes is that these rules are partly

acceptable on the internet but they still require further amendments to cope comprehensively with e-contracts disputes.

To accommodate such obstacles, the legislature in Jordan has set out a specific international jurisdiction to award on certain occasions to the Jordanian courts in accordance with territorial jurisdiction rules. The Jordanian courts have international jurisdiction over a number of cases such as those concerning foreign defendants resident in Jordan or who have a chosen domicile there; those concerning foreign defendants who have no domicile or are not resident in Jordan; and those cases with special legal requirements, such as issues related to immovable property.

b. a - The foreign defendant residing in Jordan or with a chosen domicile there:

The Jordanian court has authority over a foreign defendant who lives within Jordanian territory, in accordance with article 27 of the civil procedure code, which gives jurisdiction to the Jordanian courts over all people resident in Jordanian territory.<sup>24</sup> Although there is no explicit mention in Jordanian legislation of application of court jurisdiction to foreigners in particular, this authority appears in comparative and international private law provisions which give preference to the state courts over the country's residents.<sup>25</sup>

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<sup>24</sup> Al-Masri, *Ibid* No. 7. P 99.

<sup>25</sup> See article 15 of the amended French Litigation Code No. 75-1123 of 1975 and article 28 of the Egyptian Litigation Code No. 76 of 2007.

The foreign defendant who decides on Jordan as his chosen domicile is subject to the jurisdiction of the Jordanian courts in accordance with article 28/1. The chosen domicile is defined in civil procedure law as the place which the non-resident foreign defendant has undertaken certain legal procedures such as receiving legal notifications or compulsory enforcement procedures on his address in Jordan.<sup>26</sup>

This is problematic in the case of internet acts. It seems difficult to apply these rules over the internet activities themselves, because of the borderless nature of the virtual world. However, the said article might be applicable over cases related to internet activities or over traditional disputes which are based on acts committed by electronic means or through the internet. The former provisions of article 27 and 28 can be considered from two points of view: firstly, in cases where an offender has confirmed his/her domicile as in Jordanian territory, and the confirmation has been approved by the defendant himself/ herself or by the claimant, the status of resident shall apply in cases committed on the internet or by electronic means via the internet. Secondly, in cases shared between the general rules and the Jordanian legislation in force, such as the attribution rules and the civil and I.T laws; for instance where the court has been forced to renvoi its judgements to the provision of a foreign law, and yet the Jordanian legislator has refused the renvoi criteria of a foreign law in article 28 of the civil law.

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<sup>26</sup> Article 19 of the Jordan Civil Procedure Code.

This research position here is that given the borderless nature of cyberspace, it seems more acceptable to apply the rule of the defendant nomination of Jordan as chosen domicile than to apply the rule of mere physical residence inside Jordanian territory. This position is based on the idea that approving the domicile for the net-user requires internet-based evidence and advanced technical procedures for lodging the information on the web. The position is also based on the view that in spite of the borderless and therefore potentially limitless spread of the offender's action on the internet; the offender may still be subject to one country's legislation, in having chosen that country as domicile.

**b. b- The foreign defendant having no residence or domicile in Jordan:**

Article 28/2 of the civil procedure code covers a number of cases where the Jordanian courts may have jurisdiction over a foreign defendant who has no domicile or residence in Jordan. These cases are:

- Where the case relates to money in Jordan: jurisdiction is based on the idea or the principle of state sovereignty over money and estates in Jordanian territory, regardless of the nationalities of the disputing parties. The wide definition of the term *money* includes movable and immovable properties. The legislature in the case of contracts relating to properties has adopted a certain attribution rule based on article 20/2 of the civil code: A20/2 states that "the law of the place where the immovable property is located shall be applicable to contracts made in respect of the property". Accordingly, the Jordanian court may assert or demand jurisdiction over internet cases involving a foreign party if related to property located in Jordanian territories.

The Cassation Court in its civil decision No 548/93 of the year 1994 looked to article 28/2 to make the judgement that there was no difference whether disputed money in a case was temporarily or permanently held in Jordan. For the case to be granted or deprived of the jurisdiction of the Jordanian courts, it was ruled that it should at least exist in Jordan at the time of the case arising.

- If the dispute is related to an obligation established, implemented or enforced in Jordan, the legislature involves three basic criteria: the place where the obligation is established, the place where the obligation is implemented, and the place where the obligation is enforced. Thus, the Jordanian courts have jurisdiction over cases against a defendant foreigner if he has no residence in Jordan and if the case is related to an obligation established in Jordan, such as honouring a work contract in Jordan, or leaving a will signed in Jordan, or causing damage to others in a car accident. It must be noted here that some issues above are subject to Jordanian authority in accordance with the attribution rules in the civil code and without reference to the E.T.L. Such issues normally require certain formats or specific measures.<sup>27</sup> For instance, the Cassation Court took a civil decision in a precedent

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<sup>27</sup> Article 6 of the Jordanian Electronic Transaction Law states that:

“The provisions of this law shall not apply to:

A- Contracts, instruments or documents that are drafted in accordance with special legislation in a certain format or in accordance with specific measures, such as the following:

- 1- Establishing and emending wills.
- 2- Establishing and amending the conditions of the Waqf.
- 3- Transactions disposing of immovable property, including agencies pertaining thereof, their title deeds, and establishing real rights, excluding lease contracts.
- 4- Agencies and transactions relating to civil status.
- 5- Notices relating to cancelling or revoking water, electricity health insurance and life insurance contracts.
- 6- Bills of indictment, court proceedings, judicial notification notices and courts decisions.

case that the Jordanian court should have jurisdiction because the obligation was established in the free zone of Alzarqa city, which meant that it was established on Jordanian territory.<sup>28</sup>

Jordanian courts are also jurisdictional in cases against a non-resident foreign defendant if the dispute is related to an obligation enforced in Jordan, for instance, if the foreigner is obligated to deliver goods in Jordan as enforcement to a sale contract established outside Jordan.<sup>29</sup> Moreover, the Jordanian courts have the jurisdiction in disputes relative to obligations which should be enforced in Jordan, such as a case against a foreign company which has breached its obligation to deliver goods to Jordan.<sup>30</sup>

- The Jordanian courts have jurisdiction to hear and determine disputes in cases against a group of foreigners when one party owns at least one residence or domicile in Jordan. This jurisdiction is given by article 28/3 of the civil procedure code and is based on the legal principle “not to divide the dispute”; that is, to protect claimants’ rights to proceed without being obliged to bring many cases in different places

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B- Securities, unless provided under special regulations issued by the computer authorities in accordance with the Securities Law in force”.

<sup>28</sup>In the Civil cassation judgement No. 1043/93 – 09-12-1993, published on the Jordanian Bar Association Magazine v. 1-4 of 1995, P 269: the court issued this decision, based on articles 2 and 3 from the Free Zones Corporation Law No.22 of the year 1984 and its amendments. This law authorises the Jordanian court to see the disputes relative to free zones obligation because these areas are part of the Jordanian territory even if the defendant has no domicile in Jordan.

<sup>29</sup> Civil cassation decision No. 1354/92 , date 26-01-1993. Published in the Jordanian Bar Association Magazine v. 10-12 of 1993, P 2077.

<sup>30</sup> Civil cassation decision No. 1586/94, date 20-04-1995. Published in the Jordanian Bar Association Magazine v.5-8 of 1995. P 2175.

against their opponents. The Cassation Court has adopted this attitude in more than one of its civil decisions.<sup>31</sup>

- The most recent case of Jordanian court jurisdiction against a foreigner without domicile or residence in Jordan, involved a dispute over a bankruptcy decision issued previously against this foreigner by a Jordanian court. Article 28/2, in line with article 317/4 of the Trade Law, gives authority to the court issuing the judgement to hear and determine all cases related to this judgement.

In the light of the points addressed above, it is clear that in most cases, rights are awarded on the basis of there being a relationship between the defendant and the case subject matter or the parties. However, in a cyber case it is apparently considered acceptable,<sup>32</sup> whilst applying the above rules, to disregard the issue of the defendant's domicile. This disregarding of the defendant's non-residence in Jordan, in addition to one of the relations in the cases above, allows for the awarding of jurisdiction to the Jordanian courts over internet cases involving non-domiciled parties. This may apply in such cases as IP violation or e-contract disputes on the internet.

In spite of such cases, the lack of clarity in the relationship between the exercise of domestic laws and international private laws or attribution rules in the civil code, has

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<sup>31</sup> Civil cassation decisions No.533/94, date 05-01-1995 JBAM v. 1-2 of 1997, P. 111. And decision No. 119/99, date 23-09-1999 JBAM 09/1999, P 639.

<sup>32</sup> Faqir, Raed. "Cyber Crime in Jordan: A Legal Assessment on the Effectiveness of Information System Crime Law No (30) of 2010". [January - June 2013] International Journal of Cyber Criminology (IJCC). 7 (1). Available at ISSN. Pp 81 – 90.

been an obstacle to claiming jurisdictional authority in regard to internet jurisdiction disputes. Nevertheless, one may take the perspective that the standards in article 28 are more appropriate and more efficacious in controlling or covering internet cases than those in article 27. Even so, managing authority over foreigners on internet issues, in accordance with the above points is not enough yet and it is more useful to operate this management by specific legislation mainly aims to fill the gap left by the absence of effective internet legislation in Jordan.

b. c- Courts' international jurisdiction based on intentional submission:

The combination of international private laws and modern domestic laws has imposed a certain level of respect to the agreement of obligation and contract parties in terms of awarding right of jurisdiction to any one judicial authority. Thus parties may agree to give jurisdiction over particular aspects of a dispute, or the dispute in entirety, according to a specified country's law. Even if this country is not authorised primarily to hear the dispute, it must agree to comply with the jurisdiction rules in force.<sup>33</sup> Jordanian legislature follows this principle in article 27/2 of the civil procedure code, which states that: "The Jordanian courts have the jurisdiction to hear and determine judgment of cases not subject to its jurisdiction if the opponents have authorised their power explicitly or implicitly".

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<sup>33</sup> Abdulkareem, Ibid No. 23. P 163.

The said article clearly accepts the right of jurisdiction of Jordanian courts over the dispute, and the obligation of the foreign defendant to accept this jurisdiction implicitly or explicitly. If explicitly, this would involve agreement to give jurisdiction to the Jordanian courts over any disputes. If implicitly, this might involve the defendant attending the trial and refraining from objecting to or refusing the court jurisdiction over the case.<sup>34</sup>

Notwithstanding the provision stated in article 27 of the civil procedure code, any acceptance of the international jurisdiction of Jordanian courts over a dispute involving intentional submission rules should be subject to two conditions: the first is to establish a relationship between the dispute and the Jordanian legal system, and the second is to give jurisdiction to the Jordanian court in accordance with the intended submission.<sup>35</sup>

In terms of the first condition, it is necessary to establish a convincing link between the dispute and the Jordanian courts, such as establishing the claimant's nationality, or foreign resident status in Jordan. This condition is designed to prevent any party unlawfully leaving the original jurisdictional courts concerned with the case subject matter. Moreover, this condition ensures the effectiveness of Jordanian judgements, and their power to be enforced abroad when there is a relationship with the case subject matter. In regard to the second condition, the recognition of intentional

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<sup>34</sup> Al-Masri, Ibid No. 7. P. 103.

<sup>35</sup> Abdulkareem. Ibid. No . P 165.

submission shall lead to jurisdiction being given to the Jordanian courts and not the opposite, that is, not to deprive the courts of authority over the dispute.

In general, parties' intention may be seen in internet issues related to electronic contract disputes. Article 20 of the civil code has categorised parties' agreement as the first attribution rule in terms of electronic contract disputes. Article 20/1 states that: "contractual obligation shall be governed by the law of the state of the common domicile of the two contractual parties if they are of the same domicile". But if they are of different domicile, then the applicable law shall be that of the state in which the contract was made, **unless otherwise agreed by the two contracting parties**".

In regard to this research focus on international jurisdictions over cyberspace, it could be argued that Jordanian courts might be considered to have authority over internet cases in accordance with the rules of international jurisdiction, based on the rules of intentional submission. The respect given to parties' intentions or decisions in such respect might be considered as an adaptation of the rules of "Personal Theory" which sets out mainly to establish the intention or will of a party.

On the other hand, evidence for the establishment of intention to engage in online activities has hitherto been accepted as intention to engage in these by electronic means, such as means of electronic messages. The E.T.L in article 13 states that

“The electronic message shall be considered as a means of expressing the will legally admissible for offer or acceptance for contractual intent”.<sup>36</sup>

This provision however, fails to take into account one problematic factor: in the case, for example, of accepting online terms and conditions, a common required process is for the person accepting to click a button marked “I agree”, “I accept” or “Submit”, to express intention and agreement. This act underpins the fact that most online obligations are established or arranged to be established by electronic offers and acceptances. In using a website advertising goods or services, a user is given details which are considered as part of the offer process, including clicking on a specific button which indicates acceptance. Normally this button may take one of the forms as described above.

A problem with such a transaction process is that no one process for indicating acceptance of goods or services currently exists. Moreover, no clear argument has been established as to how in the case of such web sales and purchases, the website information should be presented in order to display the goods, or to offer a part in an obligation. Currently it is common for the prospective net-purchaser to indicate intention to buy by clicking a button marked “I accept” or words to that effect. This action indicates an agreement to participate in the obligation to pay as part of the transaction, and to conform to any related obligations. And yet, to date there are

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<sup>36</sup> See Article 7 of the UNCITRAL 2005 ( United Nations Convention on the Use of Electronic Communications in International Contracts.).

no provisions under current Jordanian law for dealing with transgressions of this kind of online agreement.

However, the general principle that Jordanian courts will respect the will of the contracting parties does not mean that the parties are unlimited in their option to select the applicable law over the dispute. That is, decisions made by a party are restricted by public order and morality considerations specific to particular countries, in addition to the provisions of international private law.<sup>37</sup> In cases of a party decision, article 29 of the civil code states that “The provisions of a foreign law determined by virtue of the preceding provisions shall not be applicable if those provisions contravene the public order or morality in the Hashemite Kingdom of Jordan”. Moreover, the example of following the rules of the international private law is clear by refusing the Jordanian legislator to the renvoi criteria.

Yet in Jordan as elsewhere, legislation on many vague and modern issues peculiar to the virtual legal world is subject to intensive legal canvassing processes in efforts to bring about clarity. The general tendency in such efforts is towards the establishment of a comprehensive electronic legislation, to include issues of cyber jurisdiction, conflicts of laws in Jordanian online activities, issues related to parties' intentions and choice of laws and awarding power to Jordanian courts to hear cyber cases. This research has referred to these uncompleted efforts in chapters eight as part of its recommendations to establish and develop these efforts.

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<sup>37</sup> Al-Masri, Ibid No. 7. P 105.

b. d - International jurisdiction based on Jordanian International Public Order:

Currently, in the absence of the rules mentioned in article 28 of the civil procedure code (notwithstanding the attribution rules in international private law) the legislator gives direct jurisdiction to the Jordanian courts over certain acts for considerations related to Jordanian public order and the country's high policy issues.

The first act gives exclusive jurisdiction to the Jordanian courts over disputes arising from issues related to maritime transport and their documents. This jurisdiction gives Jordanian courts power over disputes between Jordanians and foreigners, and disputes between Jordanians with foreigners. This jurisdiction is stated in article 215 of the Jordanian Maritime Trade Law which states that "notwithstanding the provision stated in any other laws, any condition or agreement which prevents the Jordanian court jurisdiction from seeing disputes arising from issues related to maritime transport or transport documents will be regarded as null".<sup>38</sup> The Cassation court has defined this consideration as a legal principle which aims to protect the citizen's rights within the national judicial system rather than within any foreign system. Given that citizens' benefits are part of the country's priority, these are considered as public principle givens, of which no citizen may be deprived other than by agreement between the relationship parties.

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<sup>38</sup> Law number 12 of 1972 published on the Official Gazette 2357/ 06-05-1972, as amended on the law number 35/1983.

The second act is stated in the Trade Agents and Brokers Law No. 21 of the year 2001 and its amendments.<sup>39</sup> The said law lays out the Jordanian courts' jurisdiction over any disputes arising from trade proxy contracts or from applying the provision of this law. This plenipotentiary jurisdiction is considered to be a part of the public order so that no individual has a right to agree to different jurisdiction. The Cassation Court follows the provision of article 20 of the Trade Agents and Brokers Law in its decision and gives the Amman court jurisdiction over company trade contracts because the company has its trade activities in Jordan.<sup>40</sup>

Nevertheless, applying the above two cases to internet activities has been a challenge because of the nature of these activities; for example, while the maritime transport is not physically imaginable on the internet, documents related to these activities may arguably be considered as electronic documents which may be located in electronic contracts, that as such should be subject to the jurisdiction of the Jordanian courts according to the above articles. However, it should be noted that if the said cases or their documents require special measures or formats, then they are excluded from the provision of the E.T.L in accordance with article 6 from the said law. If not, internet disputes related to the two cases above should be subject to the Jordanian jurisdiction rules.

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<sup>39</sup> The law number 28/2001 published on the Official Gazette 4496/16-07-2001, P 2787.

<sup>40</sup> Civil cassation decision No. 47/91, date 28/08/1991, JBAM v. 1-5/1993, P 193.

b. e- International jurisdiction on prejudicial questions, initial matters and contingency claims:

The legislature gives the Jordanian courts international jurisdiction over matters issued against a foreign defendant which are related to the original case. Principally, the courts do not have the authority to apply their jurisdiction over these issues if the case comes before them separately; that is, any Jordanian court which is hearing a case against a foreign defendant has the jurisdiction also over any other related questions or issues which could be used against this defendant. However, the idea of this jurisdiction deals with the legal principles “Judge of subject matters is the Judge of rebuttals” and “branch follows the original”.<sup>41</sup> These two principles mean that a judge has the authority to hear any future issues which may arise as a consequence of his concluded case or as a related issue.

The prejudicial question is the question which comes before the court and has a relation to the subject matter of the dispute; the court should determine such questions in order fully to take into account the subject matter of a dispute. For example, any issues of interpretation in regards to the international conventions which may arise before concluding a dispute should be heard before the start of the trial. Although this is not the original function of the court, nevertheless to ensure the jurisdiction is accepted and the dispute heard, the court should decide on this issue before hearing the dispute.<sup>42</sup>

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<sup>41</sup> Obead, Mohammad. ‘The Independence of the Judicial System-comparative study’. (Workshop paper, The University of Jordan, Amman 1991).

<sup>42</sup> Al-Masri, Ibid No. 7. P 107.

The Jordanian courts have jurisdiction over indirect claims or claims related to the original case. These claims are mainly raised after the court opens the case and relate to the subject matter of the dispute. Beyond giving authority to the courts to accept these claims, the importance of these claims is to guarantee protection of the parties' right in the original plea, such the judicial clearing claims.<sup>43</sup>

However, international jurisdiction over the above points as they apply to the internet has been a point of debate. For instance, in a concluded contract case and during the performance of the court judgement, if the parties fail to agree on the means of converting their traditionally written contract into an electronic version, and other related issues that may require performance abroad, then this case may be considered as an international cyber case. At the same time if it is a case related to a previous case heard by a Jordanian judge, this will give him the right to hear this new dispute. Thus, the case brought before him will be considered a related case rather than new.

In the case of contingency claims, if a court's function is to find the law applicable to an internet case, this does not necessarily guarantee jurisdiction over the core dispute, since problems discerning the applicable law might arise from case norms, parties or the place of performance. In such cases the judge hearing the case will refer to the attribution rules or the provisions of the international private law. The aim

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<sup>43</sup> Article 27/3 of the Jordanian Civil Procedure Code.

is to accept and claim the jurisdiction if the case presents to another court inside or outside the country, even it is a cyber case or a related cyber case.

b. f- International jurisdiction based on Jordanian civil security considerations:

Article 27/3 of the Civil Procedure Code refers to the international jurisdiction of the Jordanian court over foreign defendants for considerations related to the country's civil security. This legislature functions according to the country's sovereignty principles and the nature of the procedures under this type of jurisdiction. The Jordanian courts are jurisdictional in these issues even if the original case does not enter into their authority. Article 27/3 states that: "the Jordanian courts have jurisdiction over temporary and custody procedures which are executed in Jordan, even if they have no jurisdiction over the original case".

In temporary procedures, a case may be heard by a foreign court even if the Jordanian courts have the authority to take a decision in this procedure. This may apply for example to a temporary alimony case establishing the living costs for a divorced wife, in order to ensure an interim income resource for the wife during the processing of the case. Another example of temporary procedures is when Jordanian courts have authority to order detective procedures to verify the quality and the

quantity of the goods of a case, for instance as to their ability to spoil, and also to identify the party in the dispute who was responsible for preserving the goods.<sup>44</sup>

However, it is possible to see, in examples such as the alimony case discussed above, the way in which cyber issues might become implicated in such procedures, in that for instance an electronic contract related to the case might have been drawn up outside of Jordanian territory. Likewise, temporary cyber procedures might be applied to a detective investigation into a violation of digital intellectual property (DIP) case, or to suspicious internet service provision (ISP), or to a defendant's being located in Jordan or related to a person living in Jordan. Here the Jordanian authority would take action to claim jurisdiction over the secondary case (cyber case) even if it were not jurisdictional over the original case, which might be directly or indirectly linked to Jordanian National Security.

### 3- International jurisdiction under criminal jurisdiction rules:

The international jurisdiction of Jordanian courts on criminal issues is of two main types: the first is personal jurisdiction; the second is subject matter or material jurisdiction. Critically, territorial jurisdiction rules are unexpected here, in that these are unacceptable in the international dimension, because international jurisdiction is a right given to countries to protect their own rights and securities when dealing with issues which influence, or might influence, their sovereignties or their benefits in matters outside of the country's borders or territories. This protection is legislated in

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<sup>44</sup>AlHadawi. Ibid. No. 1. P 121. And Al-Masri, Ibid No. 7. P 109.

order to allow a country to apply its powers abroad and to protect its internal sovereignty. The intention is both to safeguard the country's reputation abroad, and to function harmoniously with the sovereignty of any other country involved.

This protection aims to safeguard the country's interests both inside and outside of its territories, such interests embracing political, economic, social and most importantly, national security.<sup>45</sup> Conversely, territorial rules allow courts to enforce laws which are territorially within their authority. These laws have limited powers internally and exceptional powers extraterritorially. However, it is crucial to this research to understand that the application of such territorial rules may encounter serious obstacles on the internet, given the borderless nature of the virtual world.

The legislature in the Criminal Code of the year 1960 and its amendments, gives Jordanian courts the right to apply their authority over a number of cases in certain circumstances; these crimes are stated in article 9 of the code. Notwithstanding article 9 of the said law, some jurists see that the legislature's intention is not so much to narrow down or restrict the international jurisdiction of the Jordanian courts exclusively to these types of cases. However, it would appear that the provision of article 9 clashes with other aspects of Jordanian legislature in that it while it specifies certain kinds of crimes that may be justifiably linked to one another, at the same time article 10 also contains illustrative examples of cases in which the Jordanian court authority has been exercised over crimes committed outside of the country. Such

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<sup>45</sup> Namoor, Mohammad. *Crimes Committed over Persons in the Jordanian Criminal Law* (Dar Amman Publisher, Amman 1998) P 40.

crimes are seen as being against Jordanian rights or sovereignty, and deemed punishable under Jordanian legislation. This is clearly stated in this law as also in other penal laws such as the Preventing of Terrorism Law.

However, there is another view that the legislature does not set out to specify examples of international cases where Jordanian courts may apply their powers. Rather, the specification in the legislature is intended to clarify the main types of crime against the country, which can include all minor and lower crimes under their categorisations.<sup>46</sup> This position has been supported by new laws in Jordan such as the new Information Systems Crime Law of 2010, and the Amended Publication Law of 2012, laws which have expanded the criminalising circle to include crimes not yet punishable under previous laws, and to include conventional crimes committed on or through the internet.

A clear example that may clarify the previous point is that in recent times and especially after the Amman explosion event in 2006, the Jordanian government launched a security plan to protect the country against any internal or external acts of terrorism which might threaten the country or endanger its security or citizens. The Prevention of Terrorism Law of 2006<sup>47</sup> was created in such a way as to function alongside the existing criminal legislation, and to fill gaps in legislative areas covering existing penal laws. This more severe penal law of 2006 extended the authority of the State Security Court to criminalize a number of acts, including digital-terrorism crimes

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<sup>46</sup> Srour, Ahmad. *Middles in Criminal Procedure Laws* (2<sup>nd</sup> Edn Dar Alnahda Alarabia, 1980). P 41.

<sup>47</sup> Law number 55/2006 published on the Official Gazette 4790/01-11-2006, P4264.

(one of the latest cybercrimes). This research will undertake to discuss the relationships of crimes related to digital-terrorism, and the jurisdictions of Jordanian courts made in accordance with the 2006 terrorism law.

### 3.1- International jurisdictions in accordance with criminal rules of material jurisdiction:

In terms of material jurisdictions of Jordanian courts, article 9 refers to some important types of crimes which impact directly on the country's security and sovereignty. However, the legislature does not limit jurisdiction to these types only; rather, as explained in the previous paragraph, such crimes are examples of categorised major crimes to include the minor ones. In order to attribute importance to the impact of certain types of crimes, the law refers to some types individually.

Article 9 states that:

“the provision of this law applies to every Jordanian or foreigner – whether perpetrator, partner, abettor or accessory – who has committed a felony or misdemeanour, outside the Kingdom, against the state security or has counterfeited the state seal, currency, banknotes or Jordanian or foreign bank securities which are legally traded or circulated in the Kingdom”.

Whatever the nationality of the perpetrator, article 9 refers to crimes infringing on state security, including any premeditation to commit these crimes. Such crimes might be committed by Jordanians or foreigners either within or outside the country, to include for example, holding arms with an enemy against the country. This act is

considered as treason when perpetrated by a Jordanian citizen who lives outside Jordan. Even if not resident there, he is subject to the country's court jurisdictions because the threat he poses to the country's security is in accordance with material rules and not with his nationality.<sup>48</sup>

Another type of crime stated in article 9 is counterfeiting the state seal. The legislature considers seal counterfeiting and any other related crimes, as economic crimes against the country, punishable under Jordanian law. Some crimes related to counterfeiting may also come before the Jordanian courts as separate crimes. For instance, using a counterfeiting seal in issuing Jordanian legal documents such as a passport, or authorisation of a legal proxy, can be charged as a counterfeiting crime, as can also issuing illegal documents, either separately or together with counterfeiting. In addition to counterfeiting the state seal, related crimes may include counterfeiting Jordanian currency, Jordanian banknotes and Jordanian or foreign bank securities.<sup>49</sup>

When crimes related to money have been perpetrated on the internet, this may pose legal challenges in cases related for example to money laundering and their jurisdiction disputes on the internet. Notwithstanding the provisions of the Jordan Money Laundering Act No. 46 of the year 2007<sup>50</sup> (and any provisions in related international conventions to which Jordan is party), Jordanian courts have the

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<sup>48</sup> Namoor, Ibid No. 44. P 16.

<sup>49</sup> Namoor, Ibid No. 44. P 62.

<sup>50</sup> Published on the Official Gazette 4831/17-06-2007, P 4130. And amended by the law number 8/2010, published on the Official Gazette 5028/02-05-2010, P 2383.

authority to apply their jurisdiction to money laundering on the internet, as a crime against the country's currency. One type of money laundering involves transactions in e-money; that is, transferring money online in unjustified ways. However, committing such a crime using electronic means inside or outside of the country, with impacts inside the country or influencing the country's international interests; shall give international jurisdiction in accordance with material jurisdiction. This is based on article 5 of the amendment of the criminal procedure code, over crimes committed by electronic means.

As described earlier, provision 4 of article 5 of the criminal procedure code allows for a defendant to be sued before the Jordanian courts over crimes committed by electronic means outside of the country's territory, which nevertheless impact negatively on the interests of the country or its citizens partially or entirely, and as such are deemed punishable under Jordanian laws. In recent times, the said article was strongly invoked in the case of a Danish cartoonist publishing work which was found in the Muslim world to have offensively depicted the Prophet Mohammad. In this case in Jordan, the General Prosecutor of the Amman First Instance Court issued an order to the Dutch cartoonist Kurt Fester Gurt in addition to 19 defendants, to appear before the court. The Prosecutor's decision, based on article 5 above, was taken after these cartoons has been published on the internet (i.e. e-press, e-forums) and had been deemed to have a negative influence on the Islamic World and the religious rights of Jordanian citizens.

In this context, from this research point of view, the idea of protecting individual freedom of expression is subject to different religious, political, social or ethical belief systems. That is, the degree of permissible freedom may vary from country to country, and from culture to culture, depending on specific beliefs as to whether an act or event is interpreted as potentially safe or harmful. Such interpretations may influence for instance what is seen as threatening to the security of a country; by the same token, differences in ethical or religious issues tend also to require sensitive consideration, being seen as important as, and sometimes more important than political issues. These considerations obviously extend to the impact of electronic press and internet websites which may exercise huge influence in making materials freely available on an unrestrained global level, rather than restricting them, and their impact, to any one country's territories where their impact will not contravene local belief systems and rules.

In the case of the Dutch cartoonist, the artist's claim was that his right of expression in disseminating his drawings was protected under the freedom of expression rules of Danish Law. However, this claim was repudiated by international human rights groups and by Muslim groups, who shared a position that a right of expression must simultaneously be respectful, and refrain from violating others' beliefs and attitudes, in this case with reference to Muslim creeds. Although the actions in this case were considered to be lawful in Denmark, they were punishable under the laws of certain other countries, including Jordan. Accordingly, in this case the Jordanian courts

declined jurisdiction over the Dutch published works, considering this publication as a crime punishable under Jordanian laws.

To claim the jurisdiction of the Jordanian courts over the addressed case, the prosecutor, in addition to article 5 of the criminal procedure law, referred to articles 18, 19 and 20 of the International convention on Civil and Politics Rights,<sup>51</sup> and also to article 38 of the Jordanian Electronic Transaction Law. According to the indictment, the defendant was considered punishable under Jordanian laws for crimes based on Chapter One of Title Six of the Jordanian criminal code, which holds that it is a crime to slander prophets, or to disseminate offensive publication and manuscripts, or to disseminate drawings that would offend the religious sentiments of Muslims. These also include libel and slandering by publication and abuse of the Prophet Mohammad by writing, drawing or fabricating images. While subjectively different cultural positions are clearly possible on such issues, the point being made here in terms of this research is that this case illustrates that Jordanian courts assumed the right to award jurisdiction over crimes committed outside the country, in accordance with the material rules of the penal jurisdiction.

Extraterritorial jurisdiction has appeared also in the new Information Systems Crime Law which aims to increase the protection of Jordanian citizens and interests from cyber crimes that are committed abroad through use of information systems. Article 16 of the Information Systems Crime Law states that: "it is permissible to bring a public or private right proceedings against a defendant before the Jordanian judiciary

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<sup>51</sup> The Convention of 1966 available at < <http://www2.ohchr.org/english/law/ccpr.htm>>.

if any of the crimes stipulated in this Law were committed by using information systems within the Kingdom, or caused damage to any of its interests, or any of its residents, or if the consequences of such crime were realised in Jordan, whether partially or fully, or if the crime was committed by any of its residents”.

### 3.2- International jurisdiction in accordance with criminal rules of personal jurisdiction:

Jordanian courts have the authority to apply their powers over crimes which have been committed outside the country, and have been deemed punishable under Jordanian legislation in accordance with the principle of nationality. Article 10 of the criminal procedure code enumerates cases where courts shall have authority over Jordanian citizens' resident outside of the country, and shall have the right to prosecute them for crimes committed abroad as Jordanian nationality holders, either as perpetrators, accomplices, abettors or aiders.<sup>52</sup>

The legislature in this case accords significance to the nationality of the perpetrator at the time of committing the crime, since this would determine to what degree that person would be punishable under Jordanian laws. Thus, if a Jordanian offender committed a crime punishable under Jordanian law outside of the country, and subsequently lost their nationality after the commission of the crime, then that offender would still be subject to the Jordanian court powers. By the same principle,

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<sup>52</sup> Srour, Ibid. No. 45. P 93.

an offender who committed a crime then acquired Jordanian nationality would similarly be subject to Jordanian laws. Commission of the crime would be punishable under Jordanian law, regardless of its type, whether felonies or misdemeanours.<sup>53</sup>

Moreover, Jordanian courts have international criminal jurisdiction in accordance with personal jurisdiction rules over crimes committed by Jordanian officials in the course of their duties outside the Kingdom. Besides this, Jordanian courts are jurisdictional over crimes committed outside the country by Foreign Service officials, or by Jordanian consuls who enjoy immunity conferred on them by public international law. It is necessary to mention here that article 11 prohibits applying the provisions of this law over foreign services officials and consuls enjoying immunity conferred on them by public international law. In such cases any crimes committed in Jordan are presented for consideration in line with principles of reciprocity.

Finally, it is important to note from now on that Jordanian legislature gives more consideration to the influences and impacts of the crime on the country than it does to the nationalities of the offenders. Thus, tracing an international crime depends on its effects in accordance with the material jurisdiction rules, and then it is possible to claim authority over international crimes in accordance with personal jurisdiction rules.

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<sup>53</sup> Srour, Ibid No. 45. P 98.

### 3.3- Expansion of Jurisdiction under criminal jurisdiction rules:

The nature of crimes and how this relates to the perpetrator(s) has in particular cases allowed the legislature jurisdiction to bring a case before a court which is not originally authorised to deal with the case. Authority for hearing and tracing these kinds of cases may relate to crimes committed both inside and outside the country. In addition, this kind of jurisdiction has a number of descriptions in accordance with the use context; for example it can mean the long arm jurisdiction of the court, the extra jurisdiction or the extent of the jurisdiction.<sup>54</sup> Different factors may give courts the right to go over another court's authority or to extend its jurisdiction over disputes at international and domestic levels. Courts may be able to extend their jurisdiction nationally and internationally for reasons such as impacts of crimes and threats over state security, links between crimes, the comprehensive jurisdiction of the great felonies court, trial crimes, primarily issues and transfer cases between courts.<sup>55</sup>

The importance of this kind of extension is based on justice principles which sometimes force a court to accept cases outside of its jurisdiction in order to be able to process the original case or to deal with issues before it. Although authority awarded in such cases may be out with the original legal rules, the legislature may be justified, as mentioned above, in giving a court legal right to go over these issues. Such application of rules in exceptional circumstances may be important over internet and cyberspace acts, as these may be subject to applications of a country's jurisdictions abroad, or over activities that are not primarily subject to their powers.

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<sup>54</sup> Saqf Al-Hait, Ibid No. 20. P 345.

<sup>55</sup> Namoor, Ibid No. 44. P181.

This section will highlight these issues to clarify the occasions of extending court jurisdiction and authority over virtual world activities.

In the light of the discussion above on the functions of jurisdiction types, it is clear that each court has the right to apply its authority over certain types of crimes or cases. These sets of legislation complement each other in such a way as to determine the jurisdictional court appropriate to each case, and to avoid any legal conflicts or disputes which may arise between courts when using one of the previous rules independently or separately. This however is not the case over internet disputes, this research here is recalling the fact that the above jurisdiction rules are partly functional on the internet which require certain supported legislation or amendments to make these rules comprehensively adequate to jurisdiction disputes on the internet.

The first part of this section has highlighted the issues of international jurisdiction of the Jordanian courts in accordance with the main types of jurisdiction. Moreover, expanding jurisdiction of the Jordanian courts to international crimes means expanding their ability to prosecute a foreign defendant before the Jordanian courts for crimes committed abroad, and this will be the cases at least partly on the internet. To accept the idea of applying Jordanian court powers over these crimes, it is important to have a legal reference or basis for this authorisation. In the case of territorial rules, it has been clarified previously that territorial rules are dispreferred at international level, since their function is mostly confined to covering cases in a

specific country's territories (here Jordanian). However, there is a view that it is important to have rules in regard to determining the place at which a crime has taken place, or where it has left its impact. This leaves open the question as to how such rules should be applied to internet activities.

In terms of personal jurisdiction rules, it is clear that the principle of these rules stands on the nationality of offenders or defendants. However, applying Jordanian laws over Jordanian residents outside of the country for crimes punishable under the Jordanian laws, does not justify expanding Jordanian judicial jurisdictions outside of the country; that is, extending the Jordanian courts' powers requires legal references to domestic laws or international conventions over crimes committed outside of Jordanian territories. However, the courts are given powers in expanding the powers in cases which involve a link between the crime and the interests of a country or its citizens and this will be also the case over internet disputes as will be discussed later in this section.

The relation (link) in the previous paragraph is normally based on subject matter or material rules. Claims related to extending Jordanian legal authority, known as long arm jurisdiction, might be logically and reasonably found under the international functions of material jurisdiction rules in issues related to penal crimes. These functions are addressed in the section on international jurisdiction of the Jordanian courts. Consequently, in accordance with the material jurisdiction rules, Jordanian

courts have jurisdiction over crimes committed outside of the country's territories and which impact on its interests or citizens.

In terms of cybercrimes or crimes committed by electronic means, it must be recognised that the legislature gives the right in article 5/ provision 4 of the criminal procedure code and article 16 of the Information Systems Crime Law; to the Jordanian courts to accept prosecutions and cases against offenders and defendants who have committed crimes by electronic means outside of the Jordanian territories, and which impact on the interests of Jordan or its citizens. It is a serious challenge to apply Jordanian laws abroad to crimes committed by electronic means, especially cybercrimes forms which are critically possible in accordance with subject matter rules. The application of this extra jurisdiction applied in the previously mentioned Dutch cartoons case under the subject matter rules.

To sum up, this section has explored issues related to expanding jurisdiction over cases in national and international levels. However, it is important to remember here that Jordan follows the civil law system in its judicial system, which subjects all activities inside the country and some related cases at international level to one single criminal code. Nevertheless, to cope with the modern technological revolution, the country has been forced mainly over the last ten years to adopt some common laws, such as the Electronic Transaction Law and the information Systems Crime Law. These new laws have come about as a consequence of the need to control and deal with gaps arising from applying civil laws and judicial jurisdiction, the particular

focus of this research. Despite these changes, and as a consequence of the absence of clear international jurisdiction rules, the expansion of Jordanian court authorities to accommodate crimes committed abroad is still weak and vague. It is argued here that this requires an intensive revision of the existing regulations. Such a revision is expected to be achieved in this research.

#### 4 - Conclusion;

This chapter has aimed mainly to evaluate and explore international jurisdiction rules in the Jordanian laws and their capability to govern cyber jurisdiction issues. Its main goal has been to explicate Jordanian jurisdiction rules in depth, for the purposes of exploring the capacity of these rules over cyber activities as well as the obstacles which this might pose. In the light of the previous addressed points, the most suitable research work plan has been to subdivide this research into different issues related to the civil and criminal categories in the Jordanian judiciary. In its first section, this chapter has illustrated the international jurisdiction of the Jordanian rules in accordance with the civil jurisdiction rules, and in the second section, this research has highlighted the international functions of the Jordanian criminal rules over international disputes.

In the first section, the chapter started off by exploring civil jurisdiction rules at international level in accordance with six main principles: personal, territorial, subject matters, intention and wills, prejudicial questions and national security considerations. However, the most important point of this section is that the Jordanian courts in

accordance with personal rules may have jurisdiction over cyber disputes involving a Jordanian party. This research has shown that the Jordanian legislature does not refer to personal rules as part of international rules, but considers that there may be circumstances where Jordanian courts will be given the right to rule over disputes in the absence of any agreement by the disputing parties, or in legal agreements that concern Jordan. This research has found instances where existing rules have the capacity to govern some cyber jurisdiction disputes, for example in appointing the applicable law in regard to the dispute, or in joining a convention which grants this right to the Jordanian courts.

Additionally, this research finds that the courts' civil territorial rules at national level cannot easily be exercised over cyber cases, regardless of the wide authority given by the Jordanian legislature, as each rule is related to a certain issue such as property, company and personal domicile. For example the acceptance theory adopted by the Jordanian legislature is not suitable over e-contracts in terms of the applicable law or the place of the acceptance, so such issues would need to be reconsidered.

In terms of the criminal function of Jordanian international jurisdiction rules, it has been shown that Jordan can claim jurisdiction rights to punish violations to its penal laws whether these violations occur in Jordanian territories, or abroad in ways which impact in Jordan. This claim reflects application of the theories of "wide jurisdiction" and "long arm authority". This research has established that existing international

jurisdiction rules may grant power to Jordanian courts over cases involving foreign norms. However, in the instance that a Jordanian court might decline jurisdiction over a case, the justifications of these claims are missing. This goes against the international trend to reject the idea of “world wide jurisdiction” over the internet.

On the one hand, it has been shown that jurisdiction based on material rules is located mainly in article 9 of the criminal procedure law. Article 9 numbers some examples of crimes committed in Jordan or abroad which have had impact on Jordanian interests. In accordance with the provision of article 5 of the said law, such crimes are subject to Jordanian powers even if committed on the internet. Moreover, this research discusses the point of international jurisdiction in accordance with personal rules, it has been illustrated that Jordanian courts have international jurisdiction over nationals who have committed crimes abroad which have an impact in Jordan. This research has also referred to the case of territorial rules and the difficulties of applying these rules at international level and in this research field over cyber disputes.

It is important to re-iterate here that the Jordanian court, as exemplified in the case of “the Danish cartoonist”, bases its judgement on domestic material rules, with reference to some other articles. In the Danish case, the court used the criterion of impact on place as is, for referral to a particular court in Jordan. However, this reasoning does not appear to accord with international trends to reject the idea of world wide jurisdiction. In this case it was noted critically that countries in the wider

Islamic world other than Jordan were also influenced by these cartoons. However, it is important that Jordan considers the nature of international laws and culture when declining jurisdiction over cyber activities which have impact on Jordan.

For example, there are two current obstacles to Jordan's enforcing its court's decision against the Dutch offender cited previously. The first obstacle is that while the crime under consideration was considered unlawful in Jordan, it was considered lawful in Denmark. The second obstacle is that there was, and is, no agreement between Jordan and Denmark or Holland to surrender the person in question to undergo the penalty awarded.

Finally, since no country has absolute authority to govern or apply its jurisdictional rules over the virtual world, this part of this research has been undertaken with a view to informing developing countries of perspectives that may redirect their attempts to resolve cyber jurisdiction issues, through a case study analysis of Jordan as a developing country facing similar issues. A future aim of this research is to draft a model law to be of use in other countries. A further aim is to investigate the possibility of evolving a model international convention for the purposes of regulating cyber activities, which would have also the capacity to deal with other cyber matters such as the obstacles of sovereignty over iCloud.

## Chapter 7: An Evaluation of the application of Jurisdiction Rules over Internet Jurisdiction Cases in Jordan.

### 1- Introduction

The previous three chapters of this research considered ways in which increased global use of the internet has given rise to various issues related to legal jurisdiction. It has been useful for the purposes of the study to consider how such issues have impacted on various countries and regions, with different legal systems and cultures. This study incorporates a perspective on how the internet has impacted on the Islamic cultures of the Middle East, with a specific focus on Jordan as a case study.

The rationale for choosing Jordan is that, as a developing country, Jordan is still evolving an appropriate set of jurisdiction rules at domestic and international levels with the capacity and flexibility to deal with internet-related jurisdiction issues. Jordan is also considered appropriate as a case study, in that its current and ongoing response process to the demands of internet-based crime may serve as illustrative for other similarly developing countries, especially in the Middle East, looking to evolve their own laws for dealing with internet-based issues. Thus the study will review the challenges which Jordan has faced in updating its legal system, the adaptations and changes it has made to its laws, the lessons it has learned as to ineffectual changes, and the changes it will still need to make to protect the future rights of its citizens engaged in virtual world transactions. This research goal of this present chapter is critically to evaluate the application of traditional jurisdiction rules

over internet cases in Jordan, and to examine the decision-making processes of appointing jurisdictional authority to one specific court over others when it comes to non-terrestrial crime. This evaluation merits an extension of the narrative as to how internet cases have to date been dealt with in Jordan, whether they have been uniquely domestic cases or cases involving international norms. The chapter will go on to discuss the current Jordanian position on the criteria currently used for claiming jurisdiction authority in Jordan, and will illustrate how these criteria have been arrived at in practice. This will be illustrated by means of a sampling of cases involving norms foreign to Jordan; with particular discussion of one case involving a Dutch cartoonist who had published images of the prophet Mohammad (PBUH). Also to illustrate the discussion of jurisdiction rules there is offered in parallel a sampling of international jurisdiction cases which have been discussed in the literature, and addressed by Jordanian and Arab judges, legal experts and legal writers. This will follow on from the discussions in Chapter three where sections 5 and 6 were devoted to detailing a number of related international cases as a means of explaining further jurisdiction rules in cyberspace.

The literature discussion in this chapter will draw both on the formal documentation available from court judgements and legal studies, and on various kinds of informal documentation derived from current website chat rooms and news websites (this research having carefully considered the academic rules while researching such sources). The overall value of highlighting data derived from such documentation is that it serves to demonstrate the position generally taken by Jordanian legislation in considering international internet cases, to illuminate the processes followed in

nominating jurisdiction approaches or rules over Jordanian cases, and to help us evaluate the appropriateness and consistency of such processes.

The presentation of this literature serves as an addendum to chapters previously submitted, and has been undertaken to amplify our understanding of how case law is evolving in Jordan. Although the cases featuring in this chapter have been discussed in previous chapters of this thesis, the intention here is to extend and fine tune the discussion of Jordanian jurisdiction rules, in order better to determine Jordan's position in applying its traditional and cyber laws over jurisdiction disputes. In this, the aim of this research is to evaluate the capacity of these rules to accommodate cyber disputes in general, but also to consider specifically how jurisdiction may ultimately be determined in such disputes, whether internal or external to Jordan.

At this point it is useful to clarify certain points revisited throughout this research. The first point concerns the nature of internal and external jurisdiction disputes: in regard to internal jurisdiction disputes in Jordan, the discussion has highlighted the efforts taken to date by Jordanian legislation to appoint the appropriate jurisdictional court over any dispute, as well as the applicable law. In regard to external or foreign jurisdiction disputes (disputes involving foreign norms), the discussion has illustrated a variety of jurisdiction approaches and tests upon which Jordan may draw in asserting or claiming jurisdiction authority for its courts.

The second point addresses the importance of sovereignty rules in determining right of jurisdiction; for instance, the Jordanian legislature rejects any type of agreement

between disputing parties in criminal cases within Jordan that might deprive Jordanian courts of the right of jurisdiction. This includes any treaties or agreements that may disrupt or cancel the provisions of the Constitution. Such agreements would be considered null, given that the Constitution is awarded priority over any dispute (as reported comprehensively in chapter three, along with a discussion of the ranking of treaty rules in Jordan).

The third point, on the subject of jurisdictional courts, is that highly systematic rules exist to underpin Jordan's system for resolving jurisdiction disputes between its courts; that is, disputes between Jordanian courts, as to which should be the jurisdictional court, are referred either positively or negatively to the Appeal and Cassation Courts. This process has been recently better supported by the establishment in 2012 of a new Constitutional Court, the objective of which is to interpret legislation provisions in Jordan, such as the functions of the Civil Code articles, or their scope of application over certain disputes. As mentioned previously, the importance of this court is in its potential to clarify the scope of traditional laws over cyber disputes, mainly involving jurisdiction cases on the internet.

On the other hand, as explained earlier, when receiving a case, Jordanian courts are obliged to check their jurisdictional authority over the case matter. As clarified earlier, the importance of this is that if a court proceeds with a case or later concludes a case without such checks, its judgment may be nullified if it is found that that court is not jurisdictionally authorised to deal with the case. It is after all crucial to have clarity on jurisdiction, since if it happens that a court hears a case that does not fall under its jurisdiction, there is the risk that its judgment will be considered null,

that court time will be wasted, and that the parties involved may risk loss of rights and obligations.

To offset such risks, the Jordanian legislature has considered this issue by amending certain articles such as article No. 30 of the Civil Procedures Law. Previously the Jordanian procedure had been to reject cases if filed before non-jurisdictional courts. However, after the amendment of article 30 and certain other articles, cases now must be transferred to jurisdictional courts. In the case of any dispute which does not fall under the jurisdiction of any other court in Jordan, the article serves to determine that jurisdiction will be awarded to the First Instance Court, regardless of the case type or value estimation. Such amendments have helped to protect disputing parties' interests and to save time and costs.

In another instance, an important amendment to the Constitution regarding jurisdiction issues was carried out in 2011, in regard to courts with special jurisdictional authority; for example the State Security Court as a court with special jurisdiction on military matters cannot now hear cases against parties engaged in civil disputes.

Finally, this chapter will draw on illustrations from internet cases which have appeared before Jordanian courts or before the department of the Attorney General, in order to demonstrate the types of challenges which have beset the Jordanian legislature in regard to internet-linked cases. It can be seen that the early wave of internet-linked cases in Jordan was affected by misapplication of jurisdictional authority over such cases, and by a failure to integrate this process into normal legal

procedures. A possible reason for this was a lack of internet laws at the time, and an over-reliance on courts with special jurisdiction, such as the State Security Court, to hear internet disputes.

The following wave of Jordanian internet cases was subjected to the new internet laws which meanwhile had been established in Jordan, or fell under the new amendments to the country's existing legislation. The current framework for trying internet cases includes these new amendments, but these have been affected by a legislation monopoly which has occurred as a consequence of the country signing up to international agreements. Also impacting on the current situation are political conditions, such as the Arab spring movements as experienced in Jordan. Such conditions have for example forced the government to review its new established Publication and Press Act several times, mainly in regard to provisions dealing with jurisdiction disputes and with authorising the court appropriate to the dispute.

The following section will offer a review of ten cases related to cyber activities that had already been brought before the Jordanian courts prior to the writing of this revised thesis. Nevertheless, it is important to acknowledge that these ten cases are only a precursor to the many cases still currently before the Jordanian courts, cases that for confidentiality reasons, are not yet accessible in detail, and as such, inappropriate to offer as further evidence in this research. Consequently, in order to achieve this research goals, the ten cases in point are offered as case study examples only, on the grounds that they may prove to be typical of or similar to other cases and giving rise to generalizable and transferable principles of precedence in law.

## 2- Cyber Jurisdiction Cases coming before Jordanian Courts

In 1996, at a time when Jordan was witnessing an enormous technical revolution in all fields and experiencing a lack of appropriate laws to control specific internet activities, the country declared what was believed to be its first internet case.<sup>1</sup> The case concerned a young Syrian man who had been arrested and detained for sending an electronic message (by email) to the Jordanian Information Centre. His crime was to have expressed intent to blow up atheist meeting places in Jordan<sup>2</sup>. Since the email was considered as a threat to the Jordanian General Intelligence Department (JGID), the man was sentenced to two and half years in prison for the crime.

The first point being made at this juncture is one of allocation of jurisdiction: that is, this case was heard by a private military court, rather than by a regular court such as the Magistrate or First Instance Court. Instead, the case was heard by the State Security Court, functioning as a court with a special jurisdiction (see Chapter Three: courts with private jurisdiction). This choice of court underpins the issue referred to back in chapter Three, in regard to the phenomenon of court interference in regular courts' authority, as allowed under the Jordanian legal system.<sup>3</sup> In this particular case, the point of interest is that even at the time of trial, it was questioned why the court considered the case as belonging to the jurisdiction of the State Security Court

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<sup>1</sup>Jordan Bar Association (JBA). "Crimes of Slander and Liabile committed via Electronic Means". (JBA Reports, Amman 2010) Available at: <<http://www.jba.org.jo/LegalCorner/Research.aspx>>. Accessed: January 2014.

<sup>2</sup>Jordan Bar Association (JBA). "Crimes of Slander and Liabile committed via Electronic Means". (JBA Reports, Amman 2010) Available at: <<http://www.jba.org.jo/LegalCorner/Research.aspx>>. Accessed: January 2014.

<sup>3</sup> The National Centre of Human Rights. The State of Human Rights in the Hashemite Kingdom of Jordan [May 2005] <<http://www.nchr.org.jo/uploads/nchr-report.pdf>>. Accessed: December 2013.

rather than of the Criminal law courts.<sup>4</sup> The research viewpoint on the above case is that there seemed to be lack of clarity of jurisdiction as to which was the appropriate court because of a confusion in applied criteria.

A second important point concerns clarity of criteria around the issue of freedom of information or internet censorship, as expressed in Jordanian law: that is, while one of the sovereign foundations of Jordanian law is that citizens have the right to access information,<sup>5</sup> the case cited above served to force both law and decision makers in Jordan to review the capacity of their existing legislation to deal with internet issues that might threaten the rights of citizens even while allowing one person individual freedom of expression. A neutral conclusion was that there was an urgent need for an intensive revision of the country's existing legislation to deal with such issues, and that a new and private code of law was needed in order to deal with internet crimes relating to multi-activities.<sup>6</sup> In fact, the first piece of legislation in Jordan which directly covered internet activities in Jordan was the Electronic Transactions Law of 2000, although even then it could be argued that there was some interference of the regular courts' functions by other courts with special jurisdiction, such as the State Security Courts.

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<sup>4</sup> The National Centre of Human Rights. The State of Human Rights in the Hashemite Kingdom of Jordan [May 2005] <<http://www.nchr.org.jo/uploads/nchr-report.pdf>>. Accessed: December 2013.

<sup>5</sup> Jordan Law on Guaranteeing Access to Information of 2007.

<sup>6</sup> Haloush, Haitham. 'Jurisdictional Dilemma in Online Disputes: Rethinking Traditional Approaches' (fall 2008) IL 42, 1129-1146.

A different case which illustrates this type of interference occurred on the 1<sup>st</sup> of September, 1999.<sup>7</sup> It is believed that this case was the first internet criminal case of its type in Jordan, involving a Jordanian-American engineer (Mohammad Nizami, 24 years old) who was accused of slandering His Majesty King Abdullah II. This case was brought before the State Security Court. Mr. Nizami, arrested at Amman airport in Jordan, on a journey back from Florida USA, denied the charge of slander, claiming he had been “raised to be loyal to the king and the homeland” and could not understand the situation he was in.<sup>8</sup>

Although Nizami was born in Jerash, a Jordanian city, he held both US and Jordanian nationalities and was politically active as a member of an Arab Community confronting Jewish groups in the U.S. According to a report by Al-Hayat, an Arabic newspaper published in London UK,<sup>9</sup> Nizami had been arrested for using the internet to criticize the Jordanian political system, mainly the Jordanian relationship and normalisation with Israel. The Court Public Prosecutor in Jordan, Ibrahim Abu Qaoud, deemed that Nizami had slandered his Majesty the King of Jordan by means of the internet when he was exchanging his political views with other internet users.

The court stood on its right to judgment and jurisdictional authority over Nizami’s case, on the basis that Nizami was a Jordanian citizen. A penalty of three years’

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<sup>7</sup> Jordan Times Newspaper. “Court Examine First Internet Crime”. 1<sup>st</sup> Sep 1999. The report available at: <[www.jordantimes.com](http://www.jordantimes.com)>. The case also was discussed on the JBA Reports of 2011. Available at: <<http://www.jba.org.jo/LegalCorner/Research.aspx>>.

<sup>8</sup> Jordan Times Newspaper. “Court Examine First Internet Crime”. 1<sup>st</sup> Sep 1999. The report available at: <[www.jordantimes.com](http://www.jordantimes.com)>. The case also was discussed on the JBA Reports of 2011. Available at: <<http://www.jba.org.jo/LegalCorner/Research.aspx>>.

<sup>9</sup> Al-Hayat Newspaper Report. “Jordan First Internet Crime” (March, 2000) Vol. 1. [www.alhayat.com](http://www.alhayat.com).

imprisonment was issued against Nizami, but of note to this research is that the case attracted a great deal of public criticism of the State Security Court's claim to authority for hearing the case over any of the country's regular courts.<sup>10</sup> The picture was rendered even more controversial in that this court over-rode Nizami's attempt to seek protection under his American nationality, arguing that as Nizami held Jordanian nationality, and that as he had committed a cyber crime on an internet site which was readable in Jordan, and had chosen a website which was accessible in Jordan, he was subject in this respect to Jordanian law.

Contextualising this court judgment within the focus of this research, we note that the court in this instance considered the internet activity as taking place on Jordanian territory because the offending material was accessible and readable in Jordan, thus leading to the crime being considered punishable under Jordanian laws. It must be understood however that the judgement of this court was in accordance with the legislation available at the time, in that Jordan had only recently amended its Criminal Act (Article 5 provision 4) to include crimes committed on the internet or by electronic means and was also in the process of establishing the Information Systems Cyber Crimes Act of 2010. Given these circumstances, it may be argued that in prosecuting Nizami before its courts, the Jordanian position at the time was justifiable, given that no other legal principles had been invoked, such as fair play and substantial justice.

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<sup>10</sup> Marcum, C. and others. "Doing Time for Cyber Crime: An Examination of the Correlates of Sentence Length on the Internet" *International Journal of Cyber Criminology*. 5 (2) July – December 2011. 824-835.

A third internet-based case is illustrative of the interference of courts with special jurisdiction over regular courts. This was a case brought before the State Security Court in 2006. An Arab Community College student named Mamoon Mahmoud, aged 20 years, was arrested in 2006 for sending two electronic letters (emails) from an internet café called Maxim in Amman, threatening the Jordanian authorities and insulting his Majesty the King.<sup>11</sup> The police received a warning from the Jordanian Intelligence Department, and arrested Mamoon on the 16<sup>th</sup> of May 2006 while he was using the internet café. The court explained that Mamoon had used a search engine on the internet to locate the Jordanian public catalogue and in particular the General Intelligence Department website. Using the pen-name of “Al-Mahde Leader” he had then sent the department an email threatening to blow up its building, and also threatening the king and the government by saying that he would blow up other high security locations, including the royal palaces, if they did not change their policies.<sup>12</sup> In a first email on the 14<sup>th</sup> of May, Mamoon wrote “a warning of death to the king and the Jordanian government”. Two days later, on the 16<sup>th</sup> of May, he sent another email from the same internet café, sending “a warning to the king and the Jordanian government from the Al-Mahde Leader”. His message went on to say: “if you do not change your American and Jewish occupation policies, the Al-Mahde leader will begin attacking the royal palaces by means of a series of rockets”. In the same emails, the man also threatened to blow up places of corruption in Jordan, such as places where prostitutes worked or people drank alcohol.<sup>13</sup>

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<sup>11</sup> The State Security Court judgment No. 1168 of 2006 issued on 10-10-2006, unpublished.

<sup>12</sup> The State Security Court judgment No. 1168 of 2006 issued on 10-10-2006, unpublished.

<sup>13</sup> The State Security Court judgment No. 1168 of 2006 issued on 10-10-2006, unpublished.

An Intelligence department officer as a witness to this case reported opening department emails on that day to find the emails, delivered from [Mahde-86-2005@yahoo.com](mailto:Mahde-86-2005@yahoo.com). Relevant authorities were immediately instructed to follow the emails' source and to take the required actions as well as to put into place protective procedures such as doubling security on the places mentioned in Mamoon's emails. This investigation subsequently led to the source of the emails, and the arrest of Mamoon at the café. Mamoon offered by way of intention that he wished only to remind the government of the negative consequences of its liberal policies and relationships with America and Israel, but denied the charges of threat and slander. The court refused to accept this plea and sentenced the defendant to two and a half years of imprisonment with hard labour, in accordance with the law standing on articles 147, 148 and 195 of the Criminal Code.<sup>14</sup> In addition to the effects and target jurisdiction approaches, the court mainly referred to the bad faith and intention of the defendant in committing his cyber activity (the electronic threats).<sup>15</sup>

From this research point of view, the most interesting facet of this case is the consideration of the defendant's perceived intention (and bad faith) in committing the crime. The threatening emails he had sent were taken as evidence of his wish to affect criminal consequences as a follow-up of such threats. On this basis, the court supported an application of target and effect approaches. Moreover, in bringing the case under its jurisdiction, the court opted to apply subject matter jurisdiction rules rather than personal and territorial jurisdiction rules; the last two jurisdiction types

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<sup>14</sup> The State Security Court judgment No. 1168 of 2006 issued on 10-10-2006, unpublished.

<sup>15</sup> The State Security Court judgment No. 1168 of 2006 issued on 10-10-2006, unpublished.

applied being the defendant's domicile in Jordan and the defendant's Jordanian nationality.

It is important here to refer to the fact that in respect of the three cases mentioned above, the Jordanian courts had arrived at their judgments in accordance with major jurisdiction approaches. For instance, the jurisdiction test of place of harm and effects was invoked, which test is considered one of the most important in most of these cases. This test is based on the criterion that the defendants' activities were seen to have left their impact within Jordan. Another jurisdiction approach identifiable in the cited cases is the target approach. The target approach in the field of internet law is based on the idea that a court of a particular place which has been targeted by cyber activities should have jurisdiction over the cyber case involved.<sup>16</sup> In the parameters of this test, "to target" means to carry out an activity directed towards a particular place, or towards a person located in that place. There are many possible criteria which may identify a place as targeted, such as language, currency, damage or harm, access and delivery.<sup>17</sup> For example, in the cases above, the courts determined that the defendants had intentionally targeted the claimants when committing their crimes, such as sending emails to insult his Majesty the King of Jordan.

Moving on to the fourth case brought to illustrate this discussion, No. 4011/2006, this involved civil internet activity related to copyright infringement. In this case, brought

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<sup>16</sup> Wimmer, Kurt and Pogoriler, Eve. 'International jurisdiction and the internet' [2006] (Covington & Burling, Washington D.C. <<http://euro.ecom.cmu.edu/program/law/08-732/Jurisdiction/InternationalJurisdiction.pdf>>.

<sup>17</sup> Bretonniere, JF and Cailac, Cecile. 'France, Online Trademark Infringement' [2008] (Baker and McKenzie SCP) 127 – 131 < <http://www.docstoc.com/docs/35341299/France-Online-trademark-infringement-key-issues-before-the-French> >.

before the Amman First Instance Criminal Court in 2006,<sup>18</sup> the defendant was a Jordanian company based in Amman. This company, known as the Alnajar Company, was being sued by another company named “TEKLA”, for illegal use of TEKLA software. The claimant company explained to the court that it had warned the defendant company about its illegal use of a hacked version of TEKLA’s programme, but claimed that the defendant company had continued to use the programme. The defendant company denied the charge and claimed that a member of its staff had downloaded the software from a Syrian website before starting work with Alnajar. In its judgement, the court rejected the defence and applied its authority as the jurisdictional court, charging the defendant a fine of three thousand Dinars for illegal activity according to Articles 51 and 54 of the Copyright Law No. 22 of 1992 and its amendments; moreover, following article 46 of the said law, the court ordered the defendant to refrain henceforth from using the software, and to delete software copy immediately.<sup>19</sup>

In this case, it can be understood that the court was claiming its jurisdictional authority in accordance with the principle of location; that is, that the parties were located in Jordan, as were the effects and damages of the act. In addition the impact of the perceived malicious intent of the defendant in using the hacked programme was deemed to have impact in Jordan.<sup>20</sup> In this case it was the criterion of intention which was called upon to determine jurisdiction, in that the defendant was believed to have known that the software he had downloaded was hacked, and belonged to

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<sup>18</sup> The Amman First Instance Court criminal judgment N. 4011 of 2006.

<sup>19</sup> Amman Criminal First Instance Court judgment No. 2291/2006 issued on the 21<sup>st</sup> of May, 2006. Jordan Bar Association Journal No. 69 of 2007. Pp 1931-1937.

<sup>20</sup> Amman Criminal First Instance Court judgment No. 2291/2006 issued on the 21<sup>st</sup> of May, 2006. Jordan Bar Association Journal No. 69 of 2007. Pp 1931-1937.

the claimant. The crime was that even with this knowledge, he intentionally continued to use it and by this, failed to respond to the claimant's request to delete the software from the company computers. The main point being made on this case is that the court had applied its jurisdiction in accordance with personal and territorial jurisdiction rules, supported by target and harm approaches, on the basis of the defendant having knowingly used an illegal programme belonging to an authorised owner without that company's licence. In this respect, the defendant company was found to have acted in bad faith.

The fifth case offered here is important for reasons related to perceptions of the right to freedom of speech in Jordan, and concerns the application of Jordan's jurisdiction rules to an article published in London. In this case, labelled State Security Court Case No. 1558/2007, a man named Ahmad Al-Abadi was sentenced to imprisonment for two years and payment of a 30JD fine for harming the state's standing and national feeling (A. 130-132 of the Criminal Act); also for establishing an unlawful association (A. 159 of the Criminal Act), and for insulting his Majesty the King and the Royal Family.

The details of the case are as follows: Al-Abadi was arrested on the 1<sup>st</sup> of July 2007, and charged with spreading deceitful news outside of Jordan by means of the website [www.jordannationalmovement.com](http://www.jordannationalmovement.com). The website belongs to an unauthorised association in Jordan called the Jordanian National Movement Association;<sup>21</sup> Al-Abadi had joined the association in 1983, and in 2005 became its president. He frequently wrote articles and sent emails representing this

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<sup>21</sup> The State Security Court was the Case No. 1558 of 2007. Unpublished.

organisation, in addition to unlawful leaflets criticizing Jordanian policies and calling for changes to the Constitution and the Governor System in the country. Al-Abadi also intentionally sent some emails to the American Senator Harry Reed, seeking his help in achieving the association goals, mainly his advice on how to change the system and constitution in Jordan. Additionally, he sent emails to the American President George Bush and his government as well as to the US Congress, informing them of his negative views on aspects of political, economic and social life in Jordan, and making false or exaggerated claims that Jordan was witnessing its worst period in history because of the King and his government policies.<sup>22</sup>

When charged with illegal activities inside the country or outside, Al-Abadi rejected the charges, admitting only that he was leading an unauthorised and unregistered association in Jordan. He defended himself in saying that he was the only one living in Jordan out of 50-60 thousand members living outside the country because of banning orders inside Jordan. Al-Abadi justified his written pieces as motivated by willingness on his part and on the part of his association to help the country in changing government policies for the nation's best interest.<sup>23</sup>

This research finds this case illustrative of the fact that, given the defendant's having Jordanian nationality, a Jordanian court felt justified in extending its jurisdiction authority to the defendant's activity on a website based in and operated from London. The rationale for this position was that the website was accessible and readable in Jordan, in addition to the fact that the defendant was clearly targeting

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<sup>22</sup> The State Security Court was the Case No. 1558 of 2007. Unpublished.

<sup>23</sup> The State Security Court judgment No. 1558/2007 issued in the 7<sup>th</sup> of August, 2007. Unpublished.

Jordan (the target approach discussed above). In addition its cyber activities were considered to have caused harm and left effects in Jordan.

However, it is important to note that this case also illustrates some controversy over the question of freedom of speech: at the time of the judgement, some voices were raised in objection to Al-Abadi's arrest, and called upon Jordan to respect the citizen's right of expression. Without taking any moral stance on this question, this research position is that Jordan did not breach the freedom of speech principle when subjecting Al-Abadi to its court authority, but rather that it perceived the defendant as far exceeding his right of freedom of speech in threatening the rights of others, that is, posing a threat to the safety of the country and of the King.

Moving on to the sixth case evidenced in this discussion, the Amman General Prosecutor judgment No. 6638 of 2008<sup>24</sup> involved five Nigerian men living in Jordan, who were arrested for committing electronic fraud crimes according to articles 70, 76 and 417 of the Criminal Code and article 38 of the Electronic Transaction Law. The General Prosecutor charged the men with deception and fraud crime on the basis that they had used electronic means for deception to make others deliver money for them. The defendants had obtained visas to enter Jordan by contacting claimant 1 (Mona) by email, saying that they would like to come to Jordan for study reasons and to participate in an academic exhibition. On their arrival in Jordan, they did not participate in the exhibition, but instead began emailing people randomly until they met claimant 2 (Hazem Dhamrah). The defendants attempted to convince claimant 2

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<sup>24</sup> The Amman General Prosecutor judgment No. 6638 of 2008.

that they were foreign investors interested in extending their investments into Jordan. But this claimant did not trust them and did not contact them again.<sup>25</sup>

In an email received by claimant 3 (Ashraf Hrahsha), the defendants introduced themselves as Ecuadorian investors with company branches in the UK and America, interested in investing in Jordan. These Nigerian men asked claimant 3 Hrahsha to open a bank account in a Jordanian Bank and to send them both his personal details and his ID by email. After Hrahsha (claimant 3) opened the account, the defendants informed him by email that they would accept him as representative of their interests in Jordan, and would pay him monthly salary of \$30,000 for these services. In the meantime, the defendants informed the claimant that they had attracted a customer in Jordan who was ready to deposit a sum of 1200 JD in their newly established bank account. The defendants asked the claimant to withdraw the money and send it to an address in the UK, and also asked him to find them a suitable plot of land to buy in Jordan. Moreover, the defendants told the claimant that he would receive a call from a British diplomatic who would pay him one million dollars to buy the land and to cover all other expenses. But this would also require the claimant to transfer a sum of 2000JD to an account in UK, in order to receive the password which would access the account containing the one million dollars. Luckily for this claimant, he did not believe their request was genuine and refused to transfer the money.<sup>26</sup>

Undeterred, the defendants continued their internet criminal activities in Jordan by creating a fake website; that is, a mirroring webpage which simulated the Bank of

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<sup>25</sup> The Amman General Prosecutor judgment No. 6638 of 2008.

<sup>26</sup> The Amman General Prosecutor judgment No. 6638 of 2008.

Jordan website, through which they began emailing people randomly asking them to update their bank details. One of these emails reached claimant 4 (Abdu Allateef Alsharbene) who did actually update his details online as he believed that the email he received was from the bank department. After accessing Allateef Alsharbene's personal details through their fake website, they managed to transfer a sum of 2000JD to claimant 2 (Hazem) who was to transfer this money to Canada for them. In the event, Hazem did not transfer the money but returned it after receiving a letter from the bank and realising he had been duped.<sup>27</sup>

The defendants were arrested in an internet café in Amman while attempting further fraud. The police found the telephones they had used in their operations, and identified the laptops and computers they had used in the café, along with the email addresses they had used. The men were charged with committing deceptive crimes via the internet and also deceptive crimes using electronic means. They were sent for prosecution to the Amman First Instance Criminal Court, as the jurisdictional court over the case.<sup>28</sup>

This case is illustrative of Jordan's having jurisdiction over the case, regardless of the defendants' nationalities. This position was seen as justifiable on the basis that the court was deemed to have a right to protect the interests of Jordanian nationals (the claimants) and that the crimes committed were punishable as taking place inside the country's territory. Additionally, the case was sent to the Amman First Instance Court as the defendants were of unknown domicile place, regardless of the

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<sup>27</sup> The Amman General Prosecutor judgment No. 6638 of 2008

<sup>28</sup> The Amman General Prosecutor judgment No. 6638 of 2008

place where they had been arrested in Jordan (the amended article 30 of the Civil Procedures Code discussed in this chapter's introduction above). Moreover; the jurisdiction test of place of harm and effects was invoked, under the criterion that defendants' activities were seen to have left their impact within Jordan. The research however is referring to the fact that the court position regarding the defendants' bad intention was legally acceptable as the intention test can be clearly identified in this case. The court considered the intention of the defendants in committing crimes in Jordan and it was decided that the defendant had intentionally committed their crimes and they were fully aware with their activities.

The seventh case is one of the most interesting and controversial cases representing internet activities deemed illegal in Jordan; this is the 2008 case of a Danish cartoonist who was accused of publishing work which offensively depicted images of the Prophet Mohammad (PBUH).<sup>29</sup> In this case, the General Prosecutor of the Amman First Instance Court issued an order to the Dutch cartoonist Kurt Fester Gurt in addition to 19 other defendants, to appear before the court. The Prosecutor's decision, based on article 5 of the criminal code, was taken after the Dutch artist's cartoons had been published on the internet, and had been deemed to have a negative influence on the Islamic World and the religious rights of Jordanian citizens.

In order to claim jurisdiction of the Jordanian courts over this case, the Jordanian prosecutor referred to article 5 of the criminal procedure law, and in addition to articles 18, 19 and 20 of the International Convention on Civil and Politics Rights, and also to article 38 of the Jordanian Electronic Transaction Law. According to the

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<sup>29</sup> The General Prosecutor order number 1231 of 2008.

indictment, the defendants were considered punishable under Jordanian laws for crimes based on Chapter One of Title Six of the Jordanian criminal code.<sup>30</sup> The most important point in this case is that the Jordanian courts claimed the right to be awarded jurisdiction over this case in accordance with the material rules of its penal jurisdiction, even though the crimes had been committed outside the country.<sup>31</sup> This case will be further discussed separately, and in more detail, in section three below, since as a leading and precedent case in the Jordanian legal system, it has had far reaching implications for future legislation in general, and for jurisdiction principles in particular.

In the meantime, two further cases, eighth and ninth in this sampling of cases, will be mentioned here as relating to the seventh case mentioned above. Both these cases were brought against a single defendant Gehad Al-Momani: these were case No. 900/2006, and case No. 1171/2007. The first case was brought before Amman Magistrates Court, and the second case was brought before Amman First Instance Court.

In the first of these two cases, (Amman Magistrates Court case No. 900/2006), and the eighth case in this sampling under discussion, the defendant (Gehad Al-Momani) was charged with republishing the images produced by the Dutch cartoonist discussed above, according to article 278/1 from the Criminal Act. The charges against the defendant were issued according to his occupational status rather than his personal status, based on article 87 of the Criminal Act. The court explained that

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<sup>30</sup> Charges included in the indictment were slandering prophets, dissemination of offensive publication and manuscripts, drawings that would offend the religious sentiments of Muslims, libel and slandering by publication, and abuse of the Prophet Mohammad by writing, drawing or fabricating images.

<sup>31</sup> The General Prosecutor order number 1231 of 2008.

as the manager of the “Shihan Newspaper” the defendant had authorised the publishing of the Dutch Cartoons in its Jordanian newspaper, volume number 1112, dated 2/2/2006. As such, the defendant was deemed to have committed a crime punishable under Jordanian law. The court rejected the defendant’s account that his intention was merely to bring the Dutch defendants’ crimes to the attention of his readers. The defendant was sentenced to two months’ imprisonment with obligation to pay the case fees. In this case, the court based its judgment on jurisdiction approaches of nationality, effects and harm, and intention, as well as on the location of the defendant in accordance with territorial jurisdiction rules.<sup>32</sup>

The ninth case was brought against the defendant Gehad Al-Momani, this time in the Amman First Instance Criminal Court (case No. 1171/2007). This case was finally concluded on the grounds of article 58/1 of the Criminal Code which states that “A single criminal act can only be prosecuted once”. However, the importance of these two cases from the research perspective is that in each instance, the court ignored the defendant’s defence. The defendant’s defence was that there was no intention to breach any law but rather to republish the images as a means of explaining the nature of the Dutch crimes against the Prophet Mohammad (PBUH). The court did not refer to the target approach in this case, as the newspaper was considered accessible from around the world and not limited only to Jordanian readers. The court explained that because the case norms were all located in Jordan, there were no grounds for agreeing to the rejection of the court jurisdiction authority over the case.

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<sup>32</sup> The Amman Magistrates Court case No. 900 of 2006.

Case ten and the final internet case in this discussion of case samples is the Cassation Court criminal case number 1572 of 2011.<sup>33</sup> This case was brought before the court to cassate the Great Felonies Court judgment on the case numbered 435 of 2011.<sup>34</sup> The judgment, which was partly based on the newly drafted Information Systems Crime Law (Article.4), involved a Jordanian defendant (Mohammad) who was living in Amman / Jordan, and a Palestinian claimant (Palestine) who was living in Nablus / Palestine at the time. The defendant met the claimant in a social forum on the internet, became friends and engaged in chatting online using a webcam facility. The claimant freely and intentionally used to strip in front of the camera to show the defendant that she had no problems with her body image. Unknown to her, however, the defendant took the opportunity to record a video and to save images of the claimant while she was naked.

The defendant later on told the claimant that her images were with another person and that this person was asking for some money in order not to publish the images. Consequently, the claimant sent the defendant a sum of seventeen thousand Jordanian dinars (17,000.00 JD) over three transactions, with instructions to give the money to the person who held the images, to prevent them being published. But finally, the claimant divulged this sequence of events to a relative, who contacted a lawyer in Jordan to sue the defendant in Jordan. The case came before the Great

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<sup>33</sup> The Cassation Court judgment No. 1572/2011 issued on the 31<sup>st</sup> of October, 2011. It is important to mention here that this case was provided by the External Examiner Prof. Fayyad in order to achieve the required comments in the examination committee report and to direct the researcher to this important case in this research field.

<sup>34</sup> The Great Felonies Court judgment No. 435/2011 issued on the 31<sup>st</sup> of May, 2011. Available at: [www.adaleh.com](http://www.adaleh.com)

Felonies Court and the defendant was charged with the crimes of indecent assault (A. 279), threatening (A. 415), and deception (A. 417), as well as article 4 of the Information System Crime Law of 2010. The case parties did not accept the court conclusion and brought the case to the Cassation Court which confirmed the first and third charges above, and rejected the threatening charge and the crime against A.4 of the ISCL. This rejection was supported on the grounds that these crimes fell under the Amnesty Law No. 15 of 2011. The Cassation Court affirmed the jurisdiction right of the Great Felonies Court over this case, as the defendant's domicile was Jordan, the crime was committed in Jordan and the nationality of the defendant was Jordanian.<sup>35</sup>

The research perspective on this case is that the General Prosecutor had proceeded correctly in sending the case to the Great Felonies Court in the first instance, as the defendant's crimes were punishable under that court's jurisdiction authority (as a court with special jurisdiction as certain types of activities). This authority was awarded to the court in accordance with subject matter jurisdiction rules, in addition to territorial and personal rules. It is important to register that this case was heard first by the Great Felonies Court as the court awarded jurisdiction over the defendant's cyber activity. However, following a rejection of the Great Felonies Court judgment by the case parties, the case was then sent to the Cassation Court. It should be acknowledged here that a Palestinian court could equally claim right of jurisdiction over the case, applying criteria according to target and harm approaches and to the claimant's domicile being in Palestine. An important jurisdiction approach

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<sup>35</sup> The Cassation Court judgment No. 1572/2011.

that can also be identified in this case is the defendant intention approach. The courts in question considered the intention of the defendant in committing a crime on the internet and decided that he had intentionally committed his crimes in order to harm the claimant's reputation, and to threaten her safety and reputation.

To sum up, the ten cases cited above are intended to serve as illustration of Jordanian courts (whether the General Prosecutor or court judges) giving careful consideration to cases occurring via the new medium of the internet, or by other electronic means. It could be argued here that in instances where cases were sent to the State Security Court, it was because at the time this was seen as an immediate practical solution for avoiding any obstacles regarding the assertion of jurisdiction authority, since the State Security Court has the widest and most powerful jurisdiction rules of all courts in Jordan. This referral to the State Security Court has been discussed at several points earlier in this research, in respect of the right of special courts to override the jurisdictional authority of regular courts.

By summarising the cases above, it can be demonstrated that the courts in these cases applied several jurisdictional approaches or tests. Whether these tests were understood explicitly or implicitly, it may have depended on the opinion of the prevailing judges and experts as to which legal rules should apply. The tests applied can be summarised according to the criteria of personal or territorial status, effects, harm, and intention, as well as website accessibility and availability in Jordan. In order to assert jurisdiction, the courts in these cases were seen first to depend on the nationality of one or more of the case parties; this can be illustrated by case 2, where in spite of holding two nationalities (Jordanian and American) and regardless

of his place of domicile, the defendant was prosecuted under Jordanian law. In this case, the court drew upon territorial jurisdiction rules to declare its right of jurisdiction. This is also reflected case 10, where the defendant was both living in Jordan and had committed a crime based in Jordan.

In conclusion, this section above has discussed a range of jurisdiction tests and approaches that have been applied by Jordanian courts in claiming jurisdictional authority over international cases, and in appointing the appropriate jurisdictional legal body over internal cases. In making such information available for consideration in other developing countries dealing with internet activities, it is useful to note that in Jordan the process of asserting jurisdiction over cyber jurisdiction disputes has changed, mainly after recent amendments to the country's laws and the establishment of new codes such as the Information System Crimes Law. Other changes include Jordan's signing up for membership to new treaties, such as "the Arab Convention for Suppression of Information System Crimes" in 2012. It is a subject for future research to monitor such changes, as and when legal challenges arise in regard to information system crimes.

As mentioned earlier, in addition to the overall discussion regarding the sample of 10 Jordanian cases dealing with Internet crime, a more detailed discussion is offered on case seven, that of the Dutch cartoonist. Section three below discusses in more detail how this particular case has impacted on the Arab and Islamic worlds in general, and specifically how it has influenced the ways in which Jordanian courts have come to consider the application of their jurisdiction rules. The discussion will also refer to international internet cases or cases from foreign jurisdiction that have

been discussed or mention in Jordanian and Arab literatures related to the Dutch case.

### 3- The Jordanian General Prosecutor Decision No. 1231 of 2008 over the case of the Dutch Cartoons v Prophet Mohammad (PBUH) case:

This section will discuss in greater depth the seventh case mentioned in the previous section; this case refers to the cartoons created by a Dutch cartoonist in 2008, which were deemed to be offensive to the Islamic concept of the Prophet Mohammad.

The 2008 case pertained to certain cartoon images depicting images of the Prophet Mohammad and his followers (PBUH), first published in 2005 by the Danish newspaper “Jyllands-Posten”. The images were published both in paper form and in PDF on its website.<sup>36</sup> These images subsequently provoked a highly negative response from the Islamic world. They were found offensive to the Islamic religion not just in their content, but in the very fact of their existence, given that creating images of the Prophet is not allowed in Islamic Sharia law.<sup>37</sup>

The issue that makes this case one of most interesting and controversial in relation to this thesis is that, although in creating these images the Dutch cartoonist’s

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<sup>36</sup> The Danish Newspaper “Jyllands-Posten”, on September, 30<sup>th</sup>, 2005, published on page 3 of its culture section a PDF accessible article entitled “Muhammeds ansigt”. This article contained cartoons images of the Prophet Mohammad and his companions. This action was deemed as insulting and offensive to those following Prophet Muhammed’s Islamic teachings, which are that graven images should be avoided in relation to religious subjects.

<sup>37</sup> It is important to say here that a full **reference** for this article is provided in the interests of research transparency and accountability; however no direct link is provided since for the researcher to do so would involve him in actions which countermand his religious beliefs. That is, whilst the source is provided for those who need to consult it, it should be noted that the researcher wishes to distance himself from the content of the sources and its images.

purpose may not expressly have been to offend Muslims, nor to flout Sharia Law, his work being seen unwittingly or unwillingly by Muslims would have led precisely to this effect. And since this current research is about investigating aspects of internet law in the Muslim world, the case is very pertinent to the question as to whether downloading culturally offending images constitutes or not an offence in law (as may for instance be the case in some countries but not others to download ambiguously naked pictures of young children). Certainly making this cartoonist's work available for download to servers in Islamic countries such as Jordan would be seen to represent an internet activity deemed illegal in those countries.

In the case of Jordan specifically, the Danish cartoonist was accused of publishing work which offensively depicted images of the Prophet Mohammad.<sup>38</sup> In this case, the General Prosecutor of the Amman First Instance Court issued an order to the Dutch cartoonist Kurt Faster Gurt, in addition to 19 other defendants, to appear before the Amman court. The Prosecutor's decision, based on article 5 of the criminal code, was taken after these cartoons had been published on the internet and had been deemed to have a negative influence on the Islamic World in general, and to ignore the religious rights of Jordanian citizens in particular, under Jordanian law.

This brings us to the question of jurisdiction in this case: in order to claim jurisdiction of the Jordanian courts over the named publications, the Jordanian prosecutor referred to article 5 of the criminal procedure law, to articles 18, 19 and 20 of the International Convention on Civil and Political Rights, and also to article 38 of the

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<sup>38</sup> The General Prosecutor order number 1231 of 2008.

Jordanian Electronic Transaction Law of 2000. According to the indictment, the defendants were considered punishable under Jordanian law for crimes based on Chapter One of Title Six of the Jordanian criminal code.<sup>39</sup>

The most important point in this case is that a Jordanian court, by acting thus, was taking upon itself to extend its jurisdictional authority and to claim jurisdiction over crimes committed outside the country, in accordance with the material rules of its penal jurisdiction.<sup>40</sup> In the event, the case was found to fall under the Amnesty Law No. 15 of 2011 and was closed, the rationale being that the complaint was in regard to a criminal offence (material damage) but did not contain a civil compensation claim of for moral damage as a result of the defendants' crime.

Even though this 2008 case in regard to static images did not include any claims of moral damage alongside material damage, a further case which did make such claims, No. 1171/2007, was filed in 2011 before the Amman First Instance Court , in regard to a film entitled "The Innocence of Islam".<sup>41</sup>The claim was similar to that against the Dutch cartoonist's images, in that the film was said to contain images which were found by Muslims to be insulting to the Prophet Mohammad (PBUH) and his companions.<sup>42</sup> In this later case, based on film images, the claimants included both material and moral damages in their complaint against the writer, publisher, producer and all actors in the film. In this way we can say that the initial 2008 case

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<sup>39</sup> Charges included in the indictment were slandering prophets, dissemination of offensive publication and manuscripts, drawings that would offend the religious sentiments of Muslims, libel and slandering by publication, and abuse of the Prophet Mohammad by writing, drawing or fabricating images.

<sup>40</sup> The General Prosecutor order number 1231 of 2008.

<sup>41</sup> A 74 minutes movie that produced in America and broadcasted on youtube.com

<sup>42</sup> The General Prosecution Department, the General Prosecutor indictment decision No.7025 of 2012. Issued on the 28<sup>th</sup> of April 2013 and the case currently is hearing by the Amman First Instance Court.

had given precedence to this subsequent case and potentially others that would be more detailed in the scope of their complaints.

From the research perspective of this study, the case is important in being the first case of its type to be put before a court in the Islamic world.<sup>43</sup> Although the case happened to be established in Jordan, by right of being seen to have affected Jordanian citizens, it is obvious that the impact of such a case was not restricted only to Jordanian Muslims but could be replicated in any Islamic country. Thus it could be said that the Jordanian Court's decision to prosecute was based by implication on an assumption that any non-Jordanian Muslims would equally be affected by the defendant's publications.

What is equally important is that this case opened the door to further potential prosecution of any internet publication made accessible to Jordan and involving cyber activities that might be seen to violate Jordanian laws, to include the amended article 5 of the Penal Code, and article 38 of the Electronic Transaction Law. Also it cannot be ignored that the Jordanian action against the published cartoon images in the 2008 case was the first legal action of its type, after violent demonstrations had spread around the Islamic world.<sup>44</sup> The position taken by Jordan in this case reverberated across the world but with the greatest impact in Islamic and Arabic countries.

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<sup>43</sup> Samson, Elizabeth. "Jordan Indicts 12 Europeans, Including Geert Wilders, for Demanding Islam". Wall Street Journal Europe, September 10, 2008. Available at: < <http://www.amnation.com/vfr/archives/011396.html> >. Accessed February 2014.

<sup>44</sup> As a consequence of publishing the Dutch cartoons against Prophet Mohammad; huge demonstrations were spread in Arab and Islamic countries to refuse the said publications against the Prophet of Islam. The demonstrations mainly targeted Denmark and the Netherlands embassies in Islamic countries and they also reached American and other western embassies.

However, it is important at this point to discuss the court attitude in adopting the accessibility and availability approaches over this case, which also appear in the cited Jordanian cases. The court stood by its position that the defendants' materials, being published on a website accessible and readable in Jordan, by any person who was able to download them from a server in Jordan, constituted a crime in relation to the rules of access and download. In taking this position, the General Prosecutor did not limit his judgement as only applicable locally to Jordan, but sought to support his position that this case was internationally relevant by referring to articles of the International Convention on Civil and Politics Rights as to the violation of human rights.

However, the fundamental argument in these two approaches is simply that a court may find jurisdiction present where a website is available and can be accessed in the court forum state.<sup>45</sup> Generally speaking, this approach was most prevalent during the early stages of internet development, when courts were struggling to interpret conditions in the new virtual world and were discovering the difficulty of subjecting cyberspace to traditional jurisdiction rules. Thus, courts adopted the access approach as a justification for establishing jurisdiction, where the defendant's website could be deemed to be accessible, or the internet available, in a forum country.<sup>46</sup> To clarify, the availability of the internet means that the plaintiff or a third party involved in a cyber case may have access to the internet, and that through this

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<sup>45</sup> Edwards, Lilian and Waelde, Charlotte. *Law & the Interne: Regulating Cyberspace* (Hart Publishing, oxford 1997). P 61-63.

<sup>46</sup> Arab, Cyber Law (Union of Arab Banks Publisher, Beirut 2001). P 47.

access; the party will be able to engage with a defendant's website.<sup>47</sup> In such cases, there is no difference between civil, commercial or criminal cases, as long as the merits and the cause arising from a defendant's internet activity can be located by direct or indirect means on a specific website. Examples can clearly be seen in cases involving intellectual property infringement on the internet, and libel or defamation cases in cyberspace.<sup>48</sup>

The claimants in this case had asked the court to consider internet cases subject to foreign jurisdiction that had applied these two jurisdiction approaches. One of the cases considered, pertained to a French court of law, was *La Ligue Contre le Racisme Et L'Antisemitisme (LICRA) & L'union des Etudiants Juifs de France (UEJF) v Yahoo! Inc & Yahoo France. 2000*.<sup>49</sup> In this instance, LICRA & UEJF filed a case before the Paris High Court against the Yahoo Company for selling memorabilia from the Nazi period (e.g. images, logos, etc.) by means of internet auction; the claimants argued that Yahoo's internet action contravened the French Criminal Code under which they lived.<sup>50</sup> In this case, the French judiciary awarded

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<sup>47</sup> *Inset System, Inc. v. Instruction Set, Inc.* 937 F. Supp. 161 (D. Conn. 1996). And *US v. Truesdale*, 152 F. 3d 443 - CA 5th Circuit 1998.

<sup>48</sup> Fink, Benjamin and Wagner, Steven. 'Personal Jurisdiction and the Internet' [2004] Law Journal Newsletters <[http://www.lawjournalnewsletters.com/issues/ljn\\_internetlaw/2\\_10A/news/143491-1.html](http://www.lawjournalnewsletters.com/issues/ljn_internetlaw/2_10A/news/143491-1.html)>.

<sup>49</sup> *LICRA & UEJF v Yahoo! Inc & Yahoo France*.

<sup>50</sup> See Article R645-1 of the French Criminal Code:

"Article R645-1 of the French Criminal Code prohibits to "wear or exhibit" in public uniforms, insignias and emblems which "recall those used" by

- an organisation declared illegal in application of Art. 9 of the Nuremberg Statute, or by

- a person found guilty of crimes against humanity as defined by Arts. L211-1 to L212-3 or by the Law № 64-1326 of 1964-12-26.

. Display is allowed for the purposes of films, theatrical productions and historical exhibitions.

. The penalty is a 5th class fine (up to 1,500 EUR), to which can be added one or more complementary penalties among:

- withdrawal of the right to possess or hold any regulated weapon for up to three years;

- confiscation of one or more regulated weapon either possessed by the convict or to which he has a free access;

- confiscation of the objects concerned;

jurisdiction to the French courts, even though Yahoo France was accepted as a branch of the central server in the USA. Even if this were so, the main criterion for jurisdiction was that the broadcasting was accessible in France and to French people.<sup>51</sup> The court clarified the position in deeming that the auction of Nazi memorabilia had the capacity to affect people from all countries, including French citizens but specifically in relation to the rights of its own citizens, the fact of including offending articles in the auction could be taken to be an offense against French Criminal Law. The French court moreover claimed jurisdictional authority on the basis that the website was accessible in France and targeted French citizens, in that it used the French language in its advertisements on the website. Yahoo was also found to be using French lawyers for its administration and to own 70% of the French Company shares (Yahoo! France).

In May 22<sup>nd</sup>, 2000, the court which had been awarded jurisdiction ordered that within a period of three months Yahoo should remove the memorabilia and any related materials from its website, and take measures to prevent their auction sites from being accessible in France. Failure to comply after the grace period of three months would incur a fine to the company of 100.000 Francs per day. Yahoo responded to the court by arguing that it would be unable to effectuate the required technical measures in a period shorter than six months and that it would incur costs of over half a million US dollars in making the changes. Nevertheless, the court rejected the Yahoo defence and referred to the opinion of French experts appointed to this case,

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- from 20 to 120 hours of community service”.

<sup>51</sup> Gray, Tricia. ‘Minimum Contact in Cyberspace: The Classic Jurisdiction Analysis in a New Setting’ (2002) 1 JHTL Pp 85-100.

whose findings were that the company had the capacity to suppress more than 70% of the offending domain names immediately, and that the remaining 30% could be resolved by taking certain measures such as requiring users of a website to declare their nationality before accessing the website. In this case, if users declared their nationality as French, then access to the contested web materials would be denied to them.

The Yahoo! Company decided not to appeal the French judgment in France, but to prevent the enforcement of the French court judgment in America. Thus, on January 10<sup>th</sup>, 2001, Yahoo filed a case before the US District Court of the Northern District of California in San Jose. In its requests, Yahoo! asked the court to rule that the French judgment was not applicable in the US. The court accepted this request and announced that the judgment was not applicable in the US, as inconsistent with the American Constitution and laws related to freedom of expression. Nevertheless, on August 23<sup>rd</sup>, 2004, LICRA and UEJF appealed the court decision before the US Court of Appeal of the 9<sup>th</sup> Circuit. In this instance, the court reversed the District Court's judgement, and found that that court did not have personal jurisdiction over the appellants LICRA and UEJF.

Although subsequently, Yahoo did carry out the required measures to prevent access to the offending websites, it is useful to speculate as to why Yahoo had not initially been prepared to accept these procedures as a response to the French order. It was only after pressure from US based groups and communities, such as

Jewish-American organisations, that the company was ready to comply.<sup>52</sup> From this research point of view, the import of this case is that it illustrates that countries can directly control their own national Internet Services Providers (ISPs) but have no direct control over foreign ISPs. The Yahoo! case exemplifies the kinds of difficulties that may emerge from attempts to apply domestic rules over foreign activities, in cases where these rules contravene or otherwise fall foul of other countries' laws. This is clearly demonstrated by the case of the Yahoo auction of Nazi memorabilia, an action illegal in France but lawful elsewhere, in this case under US law.<sup>53</sup> Considering the Yahoo case from the Jordanian perspective we could argue that in a parallel case, Jordan did not accept the Dutch defendant's argument that the newspaper website was in Denmark, but rather argued that so long as the website was accessible from Jordan, the defendant's activity was punishable under Jordanian laws. Ipso facto, the Jordanian court would have the jurisdictional right to hear the dispute, and future disputes arising under similar conditions.

Another precedence case presented here illustrates the application of domestic jurisdiction rules over a website broadcasting criminal activities against a country's laws, in this case Egypt. The case concerns an Egyptian judgment against Youtube.com. In 2013, an Egyptian judge, Hassouna Tawfiq, sent an order to the Egyptian government to block the website [www.youtube.com](http://www.youtube.com) for 30 days, after the website was found to be sharing a 14 minutes trailer for a film named "Innocence of

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<sup>52</sup> Perritt, Henry. 'Dispute Resolution in Cyberspace: Demand for New Forms of ADR' (2000) 15 Ohio State Journal on Dispute Resolution.

<sup>53</sup> Kissinger, Henry. 'The Pitfalls of Universal Jurisdiction' (Aug 2001) an article adapted from his latest book: Does America Need a Foreign Policy? Toward a Diplomacy for the 21st Century. <[http://www.icai-online.org/xp\\_resources/the\\_pitfalls\\_of\\_uj.pdf](http://www.icai-online.org/xp_resources/the_pitfalls_of_uj.pdf)>. Accessed: October 2013.

Islam” It was believed in Egypt that this trailer was insulting the Prophet Mohammad and the Islamic Creed.<sup>54</sup>

As an aside here, it is useful to say that this judgment was not the first order of its type; several courts in Egypt had previously issued such judgments against internet websites which were believed to contain episodes or entire films insulting to Islamic beliefs. Later films also came into the same category. For instance, in 2007, an Egyptian court ordered a ban on several human rights websites because of the contents of these websites were considered to contravene Egyptian laws. However, in this case the judgment was rejected by the Administrative Court in Egypt, since the court did not accept the government’s defence and considered its actions as a political tactic in attempting to control and fight freedom of speech for the Egyptian revolution.

A similar action was brought about in 2011, when as a consequence of disturbances arising from the Egyptian Revolution, the former Egyptian president (Hosni Mubarak) ordered the blocking of hundreds of human rights and social forums websites as a means of limiting Egyptian protesters’ capacity to use the internet to broadcast the country’s news abroad.<sup>55</sup>

To return to the 2013 case of the “Innocence of Islam”, the court’s judgement was based on the argument that the film contained “blasphemy and insults to religious messengers and prophets”, and as such, constituted a crime against the Egyptian 2012 Constitution. The court rejected the position held by some human rights groups

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<sup>54</sup> The Guardian Newspaper: " Egypt court bans YouTube over Innocence of Islam trailer"  
<http://www.guardian.co.uk/world/2013/feb/10/egypt-court-bans-youtube-muslims>

<sup>55</sup>Ibid.

that the court had no jurisdictional authority over this case, on the grounds that the film contained transparent acts and words which were considered a crime punishable under Egyptian laws. With reference to this research, this case left a major impact on the life of Egyptian citizens in regard to the use of media via the Internet. The ruling of the court was based on the jurisdictional principle that the website - youtube.com - was accessible in Egypt and that the person who made the film held Egyptian nationality, regardless of the film's being broadcast from a place in the US.

In addition to the two jurisdiction approaches above, the impact and effects approaches has also been recognised as valid for the Jordanian case cited above. It underpins the findings of this research that cases where the place of effects has been combined with the place of harm have resulted in damaging consequences to one of the case parties. For instance, in civil cases, breaching a contract is considered an effect whereas failing to deliver a product can be considered as harm done. Also in criminal cases, the effect in a cyber defamation case can be argued. For example, the damage may have been to a defamed person's reputation, while the harm done can be deemed as losing public trust or business interests.<sup>56</sup> The effects and harm approach is derived from the objective territorial theory, a theory which builds on the idea that an activity may take place under the jurisdiction of a

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<sup>56</sup> BBC News, UK. 'Online defamation cases in England and Wales 'double'' [2011] <<http://www.bbc.co.uk/news/uk-14684620>> Accessed: December 2013.

particular region, but also that the impact of this activity may extend beyond the forum jurisdiction to that of another country or countries.<sup>57</sup>

Other Jordanian and Arab researchers and literatures have also discussed the Dutch case in terms of extending domestic legislation over cyber activities and refer to the two cases below to justify the Jordanian attitude in claiming jurisdiction and prosecuting the Dutch defendants in Jordan.

A well-known case which serves to illustrate the obstacles that may arise when internal domestic laws are applied over externally committed cyber activities is that of *Olez Zezev vs the Bloomberg Company* in America. In this case, there was an attempt to apply US domestic laws outside of American territories in the instance of a cyber crime. In February 2000, an individual named Zezev, from Kazakhstan, hacked into the Bloomberg company website and, using advanced hacking programmes, copied the company's account files and other secret documents related to the company's operations such as customer data. Zezev then used the nick name "Elias Alex" to send an email, including attachments of the hacked information, back to the company as an attempt at blackmail. Zezev threatened to publish the information if \$200,000 was not transferred to his bank account. The company's dilemma was that public disclosure of the information would be a risk to the company's reputation and would potentially destroy the trust of its customers. Bloomberg requested the help of the American Federal Bureau of Investigation (FBI), which directed the company to send an email to Zezev saying that to get the

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<sup>57</sup> Wilske, Stephan and Schiller, Teresa. 'International jurisdiction in Cyberspace: which states may regulate the cyberspace?' [1999] < <http://www.law.indiana.edu/fclj/pubs/v50/no1/wilske.html>>. Accessed: December 2013.

money he would have to meet Maikel Bloomberg in the UK. The FBI arranged with the British General Prosecutor Office to arrest Zezev, so that when he came to Britain and started explaining how he had hacked the company's website, the British police arrested him and surrendered him to the FBI.<sup>58</sup>

This case is of interest in terms of the current research, in that the American laws were indeed deemed to be extendable outside of American territories, and that the court based its judgment in accordance with personal jurisdiction rules aiming to protect the interests of US citizens. Even though the defendant in this case was arrested in UK, and was not of American nationality, the US court considered his cyber activity to be a crime impacting upon American territory.

The second case cited in Jordanian research literature is the internet defamation case of Dow Jones and Gutnick before the Australian High Court in 2002.<sup>59</sup> This case illustrates the application of territorial and personal jurisdiction rules over internet defamation cases. In October 30<sup>th</sup>, 2000, Dow Jones published an article entitled "Unholy Gains" in a New Jersey website called Barron's Online. This article contained several references to the respondent Joseph Gutnick, who was living in Victoria, Australia. Gutnick argued that as the article had defamed him, he had the right to prosecute Jones in Victoria, Australia, as his place of residence and as the place where the defamed article had left its effects.

The High Court accepted Gutnick's argument and explained that Australian plaintiffs in internet defamation cases have the right to sue their opponent defendants

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<sup>58</sup> Olez Zezev vs the Bloomberg Company. Found in Alsaeid, Maher. Internet and E-Contract in Arab Word. Cairo University, P 900-917.

<sup>59</sup> Dow Jones and Company Inc v Gutnick (2002) HCA 56; 210 CLR 575; 194 ALR 433; 77 ALJR 255.

regardless of their location. The court also decided that the defamation would have taken place at the time when a third party had read the publication, rather than at the time of publishing. In 2004 Dow Jones settled the case and paid Gutnick \$580,000 for both fees and compensation.<sup>60</sup> The importance of this case from this research point of view is that the court awarded jurisdictional authority over the internet activity in accordance with the principle of the defamed person's domicile and nationality. The court also referred to the effect and harm approaches in awarding the Australian court the right of jurisdiction, and considered the time when the defamed information was readable by a third party as the time at which the crime occurred, rather than at the time of publishing the information.

The researcher agrees with the principle arising from this case: that is, that damage to reputation can be argued as occurring at the point when defamatory information becomes public, and that this damage may not be restricted only to the fact of notifying the defamed person of the information having been published. It is also argued that, following this principle, the right of jurisdiction in the above case was correctly given to the court presiding in the place where most of the damage occurred.

Returning once more to the Dutch case, it also serves to highlight a major issue in regard to international treaties and agreements. The issue specifically in this case was that Jordan had no surrender agreement with either Denmark or the Netherlands, as a consequence of which Jordan was powerless to order either country to surrender the defendants for prosecution before the Jordanian courts.

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<sup>60</sup> Dow Jones and Company Inc v Gutnick (2002) HCA 56; 210 CLR 575; 194 ALR 433; 77 ALJR 255.

This was the outcome even though the court had issued a final decision to punish the defendants for what were deemed as cyber crimes under Jordanian law. In order to overcome the legal obstacle constituted by lack of a surrender agreement, other Muslim lawyers argued that the Dutch defendants should be sued before their own country's courts or those of another country that had jurisdictional power to punish Dutch defendants, such as those in the UK.

The crux of the matter however is that currently, in terms of international agreements as to what constitutes a crime in Internet law, this case illustrates an important cultural and national divide as to what constitutes a crime locally or internationally. It also gives rise to the question as to whether prosecution in such contexts can lead to any satisfactory resolution. In this specific case, it could be seen as unprofitable to sue the defendants in Danish or Dutch courts, given that in those countries the defendants' publications (the cartoons) were lawful under Danish and Dutch law, mainly in regard to freedom of speech and the right to individual expression. How such cultural differences as to what constitutes freedom of speech, and what constitute a threat to citizen rights, can be resolved is a difficult but important issue in Internet law, and will continue to be a tension until a solution is found.

In the meantime, it is useful to reflect that in this particular case, even if no suite could be pursued leading to claimant benefit, the Jordanian Court stood by its decision to prosecute, and to claim extended jurisdiction of its rights in regard to the defendants' crimes as identified under Sharia law. That is, the General Prosecutor stood by his judgment that the crime was an offence against the Islamic creed of

Jordanian citizens and as such, was subject to the targeting and damage jurisdiction tests used in Jordanian law (such tests being discussed in chapter three).

To contextualise this within the current research perspective, it could be said that a precedent had been set in Jordanian law, in that the Prosecutor General did not limit his judgment to the country's domestic legislation, but was ready to extend it by referring to an international convention. It cannot be ignored that the jurisdiction tests or approaches used by the Jordanian courts in this case were identical to those national jurisdiction principles espoused by other countries with more advanced legal systems, such as the USA and the UK. The point here is that from a legal perspective, the Jordanian court's position was that it was legally qualified to prosecute the Dutch and Danish defendants in Jordan, regardless of the fact that the defendants' publications were considered lawful in their own countries. Moreover, this position and argument could be replicated for similar cases that might be conducted in countries other than Jordan.

Finally, it could be said that this type of case has set a precedent not confined to static images but to other media available via the Internet, as illustrated by the 2011 case brought by the Jordanian courts against the makers of the film "The Innocence of Islam". In this case the claimant was able to refer not only to the existing laws as mentioned above, but also to the new Jordanian Information Cyber Crime Law of 2010. The drafting of this law, to deal with cyber crimes, was directly influenced by the outcome of the Dutch cartoonist case. This reflects the reality that precedent cases do not only lead to future changes in jurisdiction, but also in the way that new laws are made.

## 4- Conclusion

This chapter has been divided into two main sections: the first discussing internet cases brought before Jordanian courts between 1996 and 2013, the second discussing the Jordanian case of the Dutch cartoons v Prophet Mohammad. The research purpose of considering the international cases in section two was to examine the general application of jurisdiction rules and to consider how these might relate specifically to Jordanian jurisdiction rules. A common outcome from both sections was firstly to demonstrate that in all these cases, disputes were mainly subject to three jurisdiction types: personal, territorial and subject matter jurisdiction rules. Moreover, the application of these three types can be seen to be have been supported by certain jurisdiction approaches and elements, which elements can be summarised as impact; target; damage; intention; place of disputing parties; place of ISP, or place where a case party is arrested.

From the research perspective, it is useful to note that in the cases discussed, every single element or approach was dependent upon a legal reference derived from a domestic source, such as the relevance of a country's laws and regulations, or from an international source such as a specific treaty or agreement. Clearly, whatever the source, it must serve to clarify and justify the application of an appropriate jurisdictional approach to the dispute. Clarification is particularly needed as to the criteria for establishing one approach as more appropriate than others in the light of specific cases, and also to ensure that the reason for the identified approach is

lawful, and that is not in contravention of any other rules such as the “fair play and substantial justice” principle.

Specifically in relation to Jordan’s position as to how jurisdiction rules should be applied over its internet cases, adjustments to the law have gone through two major periods: the first period can be identified as the legal situation in place prior to the establishment of laws specific to internet activity, such as the Electronic Transaction Law; the second period can be identified as the legal situation after the establishment of legislation and new amendments specifically for the purpose of dealing with internet activity, such as the amendment of article 5/4 of the Criminal Code. It is argued that as a result of bringing in such new legislation and amending existing laws, Jordan has demonstrated that its legislation has the capacity to bring cyber disputes before Jordanian courts with appropriate approaches, supported by provisions from external sources such as treaties and agreements. Having said this, this research findings of this study also indicate that in spite of such improvements in legal capacity, a number of amendments are still necessary to render the country’s jurisdiction rules better qualified to deal with cyber disputes, as understood from the principles arising from the cases cited above as taking place outside Jordan. Examples of such amendments might include, for instance, value jurisdiction rules, which must be revised in order to accommodate the high cost of dealing with cyber crimes, and in order to appoint the most competent jurisdictional court.

In addition to value jurisdiction rules, it is recommended that certain other major rules should be reviewed. For instance, the jurisdictional court over a criminal dispute in Jordan should be appointed in accordance with three main principles; the

first is the court of the place where a crime was committed; the second is the court of the defendant's domicile; and the third is the court of the place where the offender was arrested. However, the analysis of cases brought before Jordanian courts, and the discussion of non-Jordanian cases cited above served to generate a set of useful principles that might be applied to future Jordanian cyber law and cyber jurisdiction.

It must be said however, that principles serve only as guidelines for change, in that there will always be practical issues in regarding how to implement change. The position taken in this research is that these principles can be applied to cyber activities in Jordan only with great difficulty. Firstly, for example, jurisdiction may be given to a court of the place where an activity has been committed, but this does not solve the problem of how that court will be able to deal with continuous activity which has effects in multi-places.

In the second instance, in relation to the place of the defendant's domicile, there is jurisdictional difficulty in establishing clearly where this is in virtual space, unlike for instance terrestrial cases where an offender commits a crime in the south of a country such as Jordan which causes damage and offers case evidence in the north. The third, in regard to place where crime was committed, may also present similar issues.

It has been illustrated in the discussion of non-Jordanian cases covered in section two above, that judges, experts and researchers concur in the use of certain jurisdiction approaches taken in addressing international jurisdiction disputes (i.e.

target and harmful approaches). These may be helpful to inform the Jordanian legal position in accepting or declining jurisdiction in various kinds of cyber cases. Reviews such as this also are useful in clarifying the criteria upon which Jordanian courts may base their application of jurisdiction rules over disputes, and to appoint the legal reference of these rules either as a domestic law or an international treaty.

The discussion of cases outside of Jordan also may serve to clarify some other important issues which are relevant to Jordan. For example, the idea of protecting individual freedom of expression can be seen as culture specific to a degree, and constrained in its scope by reference to different religious, political, social or ethical elements which may vary from country to country. By extension, a similar range of parameters may affect the degree to which freedom of expression in different countries and cultures is perceived as allowable before it compromises the security of that country. In this respect it could be argued that regional differences in regard to perceptions of ethical or religious freedom are no less important than political issues. Whatever the position taken by any government in regard to freedom of expression, it is impossible to ignore the role and impact of electronic press and internet websites on the way information is disseminated. Nor can it be denied that such media exercise incalculable influence on society in the way they make materials freely available on a global level, rather than ensuring that they, along with their impact, remain restricted only to the countries and territories which welcome them and regard them as legal.

A case in point that clearly demonstrates how the unboundaried dissemination of information can impact on different cultures is the case of the Dutch cartoonist

depicting images of the Prophet Mohammed. On the one hand we can argue as totally justifiable the major claim of the defendant that in disseminating his drawings, he was exercising his right of expression, as protected under the freedom of expression rules as laid out in Danish Law. On the other hand, we could also argue this case from the perspective of international infringements of human rights and the rights of individuals to safeguard the security of their belief systems. The position taken on this by Jordan, as well as by a number of international human rights and Muslim groups, is that the right of expression must remain respectful and refrain from violating others' beliefs and attitudes, in this case with reference to Muslim creeds. Although the actions in this case were considered to be lawful in Denmark, they were punishable under the laws of different countries, including Jordan. Accordingly, in this case the General Prosecutor declined jurisdiction over the Dutch published work, considering this publication as a crime punishable in Jordan according to the effects and damages approaches as well as the availability and accessibility of the defendants' website in Jordan.

That such instances will continue to dog different countries' views is inevitable. However, the issue as to how such matters can legally be managed will continue to impact on various countries and to require solutions. Parallels can be made, for instance, between the dilemma of Jordan in dealing with the case of the Dutch cartoonist, and the dilemma of Egypt in dealing with the case of "youtube" blasphemy in 2013. In both cases, ideological or religious arguments can be made, with the Jordanian General Prosecutor's position on the issues in the cartoonist's case concurring with that taken by the Egyptian judge who called for an information

ban in his country of the “youtube” site. The only appreciable difference seems to be in the timing of case resolution, the Jordanian case being at an early stage while the Egyptian “youtube” matter is at a later stage of resolution. But in their reaction to the impact of internet published materials, whether cartoons in a Dutch newspaper, or podcasts/films on “youtube”, each country’s position is essentially similar. This research argument here is that the Jordanian position in the first case is positively supported by a similar case in Egypt, leading to the conclusion that the court of the place where a cyber criminal act leaves its effects shall be accepted as an appropriate jurisdictional court to hear the cyber disputes, regardless of any differences in enforcement of order or of arguments regarding freedom of expression or speech.

If we look back at the case of the Italian couple disputing custody of their children (chapter three / section 5) and then engaging in online defamation, in that instance the court accepted access to the website as part of its territorial jurisdictional authority. If we extend this trend to other countries, it could be argued from this research viewpoint that the criterion of access to websites should be adopted strongly by Jordanian legislation in applying its country’s territorial rules over websites accessible to Jordan. This can be demonstrated in the case of Al-Abadi who was charged with defamation after having written an article published on a website in London. In that case, as we saw, the court justified its jurisdictional authority over the defendant and his cyber act, on the grounds that the website in dispute was accessible in Jordan. This was backed up by the fact that the defendant

Al-Abadi was the only association member living in Jordan, and in possession of Jordanian nationality.

It should be noted that the above discussion aims to evaluate Jordanian attitudes from a non-Jordanian perspective and does not in any way pursue a comparison between Jordanian judgments and those in other countries. This research focus is on the findings resulting from investigation of international cases which support the Jordanian position on declining or accepting jurisdiction rights over cases coming before its courts. This chapter has sought to justify and clarify the perspective of those judges involved in the internet-based cases discussed above. The research position of this study is that this kind of investigation serves to illuminate how Jordan can improve its own legislation. It is also argued that Jordan stands to benefit from other foreign jurisdiction approaches such as the minimum contact test and the sliding scale approach (please see Yahoo! Case in chapter three / section 6), although keeping in mind the necessity of amending these rules to fit into the Jordanian legal system.

To conclude this chapter, this study finds that the Jordanian application of its jurisdiction rules at both national and international levels is acceptable and consistently based on legal references to both internal and external jurisdiction, rules such as the application of the articles of the International convention on Civil and Politics Rights and article 38 of the Jordanian Electronic Transaction Law. Nevertheless, at this point it would seem mandatory to insist on the need for Jordanian rules to undergo certain amendments and to generate further specialist laws in regard to internet activities, such as integrating criminal laws into one strong

and qualified act. It is also important to give further attention to the enforcement of jurisdiction rules at international level, bearing in mind that this research has not dwelt on discussing such rules. A final conclusion of this study is that the matter of jurisdictional authorisation is considerably complicated in internet-related cases, one reason being that as a virtual place, the internet does not easily lend itself to basic traditional jurisdiction principles, founded on concepts such as territories and nationalities. Thus, the trend in the past few years has been for all countries to give maximum attention to jurisdiction disputes on the internet.

The final chapter of this thesis will recommend certain amendments and suggestions for improving jurisdiction rules in Jordan. These recommendations will include the evaluation points addressed in this chapter.

## Chapter Eight: Summary of Research Findings & Recommendations

### A- The research summary and findings

The aim of this research was qualitatively to explore the means by which the legal systems of developing countries might deal with an increasingly complex set of issues related to Internet-related crime. In order to fulfil this aim within the scope of the given research, a case study method was chosen, with the rationale that an in-depth analysis of one developing country's challenges and solutions to Internet-linked legal issues might be illustrative for other countries, similarly developing their cyber legislation.

Jordan was chosen as the case study for this research, partly because the researcher is very familiar with Jordanian law and culture, but also because in many ways, Jordan's legal system is typical of neighbouring developing nations also in the process of reconsidering their legislation in the light of internet related activities. The common cause that links such countries is the need better to accord international laws and treaties with the best interests of their own citizens, given that there has historically been tension between local and international elements.

Thus the findings of this case study comprised firstly a thorough analysis of the Jordanian legislation system, and secondly how this system has to date dealt

with issues arising from cyberspace as a medium for human activities. There followed a discussion of different contested approaches to cyberspace legislation in general, and specifically an evaluation of Jordan's capacity to accommodate its legal system to the rapid diversification of activities in cyberspace. By means of this research, readers may arrive at an informed position on the future of cyberspace legislation in Jordan and elsewhere, most particularly in developing countries preparing to adapt their own cyberspace legislation with relation to a global internet environment. The in-depth analysis of the Jordanian legal system identified certain elements which to date have constituted the greatest obstacles to resolution of legal disputes concerning cyberspace activities, and then discussed the degree to which preferred solutions can be informed by international practice. The most salient issues were found to relate to resolving particular points of jurisdiction, and to appointing the most appropriate legal recourses for dealing with cases arising within the medium of the internet. It was then demonstrated how such disputes might be contextualised within a specific reworked legal framework.

The use of Jordanian law as a research case study serves not only as a means for demonstrating how the jurisdiction principles of one developing country might be adapted to deal with on-going international and domestic cyberspace issues, but also as a means for reflecting on the implications of such findings for other developing countries facing similar issues. Given that Jordan and its neighbours are of principally of Islamic culture, such implications also factored

in consideration of specific issues as pertinent to the interests of Islamic citizens.

Given the rapid changes in the domain of internet law, it was inevitable that certain research limitations would be encountered during this research, particularly in relation to a general paucity of sufficient previous literature studies, and to a particular absence of Jordanian landmark cases related to internet disputes, although such may be present in the history of other legal systems. In order to clarify the steps by which such obstacles were accommodated whilst fulfilling the aims of the study, the findings of the case study research were distributed through six chapters; some informing strategy and policy-making in regard to internet jurisdiction legislation in general, and others considering changes in regard to Jordanian internet jurisdiction legislation in particular.

The first section consisted of chapters two and three. Chapter two presented a definition of the term “jurisdiction” and its relation to the principles of conflict rules. This work fits firmly within the received framework of what jurisdiction is and thus the aim of this section was to offer highly practical and workable solutions in harmony with theories in the field. To this end, various types of jurisdiction were differentiated in order to clarify potential confusions in the use of terms in common and legal academic works. Chapter two in addition sought to demonstrate that jurisdiction and conflict rules can work cooperatively to

appoint the law and to authorise the court applicable to different cases. This section of the work certain introduced ideas which implicitly underpinned later recommendations of this research, such as how to develop legal policy at a macro level and how better to inform day to day operations of the court system.

Chapter three addressed the adjudicative jurisdiction types pertinent to the issues considered in this study, that is, personal, territorial and subject matter jurisdiction. The aim in focusing on these three types was to arrive at a better understanding of their traditional and local functions, as well as of how they might function at international level. The chapter also explored the definition of cyber jurisdiction as a concept, and examined how internet activities may impact on traditional rules. This led on to a discussion of the relationship between the legal mechanics of cyber jurisdiction to over-arching policy questions. The chapter then enlarged on a number of cyber jurisdiction disputes, examining different positions from the literature as to the capacity of current rules to govern cyber disputes, with or without amendment, and reflecting on the need for new cyber rules over cyberspace.

The case study presented in chapter four was developed in chapters five, six and seven. Chapter four sought to elucidate the current state of internet protection and internet regulation in Jordan. Taking into consideration the practical and academic legacy of this work and its future implementation, this section of the research highlighted major traditional jurisdiction approaches in

Jordan, such as domicile, target, effects and harmful places, with a view to illustrating the function of these approaches in supporting traditional jurisdictional types such as territorial, personal and subject matter jurisdiction rules. The chapter went on to demonstrate that the capacity of Jordanian laws to deal with evolving cyberspace issues is arguably acceptable but still vague and unresolved in some areas. Given that as in many developing countries, Jordan's existing traditional systems are in a state of relative flux, and that this research field of cyberspace jurisdiction is complex, the conclusion was that much work remains to be done in resolving jurisdictional issues and that this could benefit from current and future research seeking to clarify cyberspace jurisdiction.

Chapters five and six explored Jordan's domestic and international jurisdiction rules respectively, and their capacity to govern cyber jurisdiction issues. Each of these two chapters was subdivided into different issues in relation to the functions of various jurisdiction rules, demonstrating that Jordanian authorities have jurisdiction over all people holding Jordanian nationality or being located in its territories. The finding of this research was that the courts' territorial rules at national level cannot easily be exercised over cyber cases, as each rule is related to a certain issue such as property, company and personal domicile. The research position arrived at was that these traditional rules are not comprehensively applicable to cyber jurisdiction disputes as they have been

established in the first instance to deal with certain jurisdiction disputes under specific conditions.

This research also addressed value jurisdiction rules, the purpose of which is to appoint a competent reference in accordance with estimations of cases, and also to decide the appellate reference. This research illustrated that value rules are less important than personal and subject matter rules in such decisions, because value rules were established as a secondary rules to function only on certain occasions. Given this, the narrow applicability of the function of these rules at national level renders their current role unacceptable over cyber cases.

Moreover, this research has argued that national jurisdiction rules, typical domestic rules with the legislative function of distinguishing between first degree courts authorities, are only partly adequate for dealing with cyber jurisdiction disputes because of the global nature of the cyberspace. The implication of this is that to be functional over cyber cases, the legislature needs to develop certain new rules, as well as to amend existing rules.

In terms of Jordanian international jurisdiction rules and their capacity for governing cyber jurisdiction issues, the discussion highlighted issues faced by Jordan in regard to emergent cyberspace law. In this regard, this research showed that the Jordanian legislature does not refer to personal rules as part of international rules, but considers that there may be circumstances where

Jordanian courts will be given the right to rule over disputes in the absence of any agreement by the disputing parties, or in legal agreements that concern Jordan. This research found instances where existing rules have the capacity to govern some cyber jurisdiction disputes. It found also that the courts' civil territorial rules at national level cannot easily be exercised over cyber cases, regardless of the wide authority given by the Jordanian legislature, as each rule is related to a certain issue such as property. The findings of this research point to a position wherein both personal and territorial rules in Jordanian legislation should be comprehensively reviewed; for example domestic rules should be supported by jurisdiction principles such as the attribution rules located at the Civil Code. The revised version of the dissertation reflects a development of these jurisdiction rules and how these might be applicable over jurisdiction disputes on the internet, particularly those of an international nature which cannot be adequately accommodated within a narrow domestic framework.

Furthermore, this research has shown that Jordan can claim jurisdiction rights to punish violations to its penal laws whether these violations occur in Jordanian territories, or occur abroad in ways which impact in Jordan. This claim reflects application of the theories of "wide jurisdiction" and "long arm authority". However, although the existing international jurisdiction rules may grant power to Jordanian courts over cases involving foreign norms, acceptable justifications of these claims are inadequate or lacking, and from this research point of view, this goes against the international trend to reject the idea of "world wide

jurisdiction” over the internet. A clear example of the said missing justifications is illustrated by the Dutch cartoonist case, which was found to violate Jordanian laws. The weakness in this argument, making it difficult for Jordan to justify its position, was that Jordan was not the only country that had been violated as the same could have been said for any country in the whole of the Islamic world.

Moreover, this research showed that jurisdiction based on material rules of the Jordanian legislature is located mainly in article nine of the criminal procedure law, which enumerates examples of crimes that have impacted on Jordanian interests; these crimes are subject to Jordanian authorities if committed on the internet in accordance with article five of the said law. This research however suggests that the application of subject matter rules in cyberspace should be reviewed and be developed to cover other internet activities that have a special format, such as the examples numbered in article six of the Electronic Transaction Law.

Furthermore, points of personal international jurisdiction were discussed, illustrated with a number of brief case studies demonstrating how Jordanian courts have exercised international jurisdiction over nationals who have committed crimes abroad, which have been seen to have an impact in Jordan. This research finds the Jordanian position in applying such rules is acceptable, as long as there is a clear link between the person and his or her cyber act, its impact on Jordan, and his or her status in regard to Jordanian nationality.

In chapter seven this research discussed cyber cases that have come before Jordanian courts, in addition to several cyber cases which have been brought before non-Jordanian courts. This research aim in chapter seven was to evaluate the application of the Jordanian jurisdiction rules illustrated in chapters five and six and how Jordanian courts had dealt with cyber jurisdiction disputes before and after establishing the country's internet laws. In particular this chapter set out to evaluate the development on the Jordanian strategy for dealing with cyber jurisdiction rules and to measure the importance of new amendments and newly established laws in dealing directly with cyber activities. This research also discussed non-Jordanian cyber cases as sourced from formal and informal related research literature, explaining how such cases might usefully illuminate ways in which certain rules might be applied to Jordanian jurisdiction rules and approaches, and inform ways in which Jordanian rules might improve in their capacity to deal with cyber jurisdiction disputes.

Given the positions outlined above, the overall conclusion of this research is that the applications of current jurisdiction rules in their traditional forms, as exemplified in Jordanian legislation, appear only partly effectual in accommodating cyber jurisdiction disputes. A major argument presented in this research is that the majority of solutions presented by juries, or created through court cases relevant to this particular case study, have proven only partly

adequate for dealing with most jurisdiction disputes on the internet. This is not however to ignore that in the variety of cases and judgements taken by courts, considerable efforts have been made to apply traditional rules over cyber disputes, resulting in the creation of some innovative and useful approaches, this is made evident in the discussion of cyber foreign cases in chapter seven.

Moving on, in order to increase the functionality of Jordanian jurisdiction rules, this research supports the finding of solutions in the context of subject matter rules, since these rules are the most fundamental requirements for a valid judgement, and are based on a court's capacity to apply its powers over certain types of disputes and cases. An added benefit is that such rules cannot be waived and that a judgment is considered null if there is lack of subject matter jurisdiction.

This research argument for subject matter rules is supported by the position that such rules are crucial in clarifying vague issues such as self availment and person intentions, which are often determined by the court of jurisdiction on a case-by-case basis (cbc). For instance, one of the most complex rules is to be found in the intention effect. From this research point of view, subject matter rules under this test direct the court to considering disputed intentions related to cyber activities, and support a clear classification.

In using a case study approach, this research considered the relevance of the findings to Jordanian law in respect of its citizens' use of the Internet. To summarise this: firstly, it is evident from the study of pertinent cases that understanding interpretation and application of the function of jurisdiction rules over internet cases is not consistent. Such differences have given rise to considerable dispute. This research finds that while Jordanian law seems partly adequate to deal with such disputes there is still a clear need for certain reforms in order to deal with the challenges of cyber jurisdiction cases.

A temporary solution suggested earlier was that by adopting subject matter jurisdiction rules, Jordan might facilitate national and international cooperation. This general recommendation leads into the next section which offers recommendations for further research on Jordanian legal systems, on jurisdiction rules in particular and on the international dimension of these rules.

## B: Reflections on change: recommendations for Jordanian Legal Policy.

*“My words may fall on stony ground, but that is no reason for not making an attempt”.*

*Mr Justice Eady<sup>1</sup>*

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<sup>1</sup> Harrods Ltd v Dow Jones Inc [2003] EWHC 1162 (QB) para 36.

In the light of the findings and discussions addressed in this research, a number of recommendations or suggestions are offered below. This will be followed by reflection on potential further research topics for future study.

### 1. Recommended solutions to cyber jurisdiction problems at international level

Possibly the most widely sweeping and ambitious recommendation arising from this research is that there should be a comprehensive reconsideration and re-evaluation of current legislation related to internet issues in general, and to cyber jurisdiction disputes in particular, mainly arising in an international context. The argument arising from this research is that such legal revision should be undertaken by a professional committee, taking into consideration both international and domestic weight of the points addressed below.

On the basis of this research, which has considered various important historic attempts to establish global conventions related to internet disputes within a workable and effective international framework, it is argued that there appears to be no barrier to making comprehensive adjustments to existing conventions. However, it is also highly recommended that there is a need to establish a new international convention and/or conventions to deal with certain issues surrounding cyber jurisdiction disputes.

Such a new convention must prioritize global consensus on the most appropriate and applicable approaches to cyber jurisdiction disputes at

international level and also consider the most appropriate investigative and prosecutorial procedures for resolving these disputes. In order to achieve this goal, it is recommended that a neutral authority should be engaged which may impartially consider the rights and obligation positions of different countries and international bodies.<sup>2</sup> Although it is acknowledged that this recommendation is somewhat idealistic, given that in the current world of internet law it would take considerable efforts and time to implement such an idea at policy level, there is still a case for putting forward this recommendation as a conceptual and academic benchmark of good practice in the field.

On a more pragmatic level, taking an international perspective, this research has arrived at two related suggestions. The first is to resort to current international bodies as a means of dealing with jurisdiction disputes on the internet. The second is to establish a new international body which will regulate cyber issues. If the first recommendation were to be acted upon, it is suggested that the appointment of an existing international body to regulate cyber jurisdiction issues would be an acceptable and economical solution. Such a body might be an organisation such as the UN, the WTO or ICANN, or a special court such as the ICC or the ICJ. Given this recommendation, it is important to clarify that any one international body which assumed such a regulatory function might, as a result, require major amendments to its regulations. For instance, were the ICC, an organisation specialised in dealing with specific crimes, to take on the function of regulating cyber jurisdiction disputes, it would seem likely that this

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<sup>2</sup> See: Shannon L. Hopkins. "Cybercrime Convention: A Positive Beginning to a Long Road Ahead". HTLJ. 2 (101) 2003. Available at LexisNexis.

organisation would be obliged to amend and extend its current authority and jurisdiction in order to deal with cybercrimes.<sup>3</sup>

The second suggestion given above is the need to establish a new international internet organisation or an internet court. Such a new body, regardless of its name, would be specialised in hearing internet disputes in general, and matters related to cyber jurisdiction and the applicable laws in particular.

In the light of both suggestions above, this research argues that it would seem useful to stand on the categories or foundations of subject matter jurisdiction rules. That is to say, cyber jurisdiction cases and disputes might conceivably be split between existing bodies and established new bodies. For example while the WTO might be envisaged as appropriate for dealing with commercial cyber jurisdiction cases, the ICC might be equally suited to dealing with criminal cyber disputes; on the other hand, the ICANN might be seen as the best body for dealing with such civil jurisdiction disputes as the ownership of domain names.

In such instances, the adoption of subject matter classification is recommended. Subject matter classification would be useful, for instance, in helping to categorise internet activities as civil or criminal. This research argues that subject matter rules have been able to absorb and include personal and territorial rules, and as such would allow prioritisation of application over

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<sup>3</sup> Teresa Fuentes-Camacho edit, *The International Dimensions of Cyberspace Law* (Law of Cyberspace Series, UNISCO. Ashgate Publisher, Aldershot 2000). Pp 112-118.

cyberspace disputes. It might in this way be possible to arrive at a real categorisation of cyber cases and at clearer guidelines for defining issues such as currently arise in many disputed international cases. Moreover, this research recommendation of adopting subject matter rules has come as a consequence of a growing international rejection of the idea of world wide jurisdiction. What distinguishes subject matter rules is that they can function independently of territorial and national issues, and that their application can be flexibly adapted for separate jurisdiction disputes.

Moving on from this, it is recommended that a review of the intention element in cyber disputes is essential, since this element if used as a sole test in major cases mainly in cases with criminal nature. But the drawback is that the intention element is difficult to apply, and appears more so in relation to cyber activities. For instance, whilst human cultural differences are traditionally terrestrially enacted and boundaried, when they become freely intermingled in borderless cyberspace, this may give rise to hitherto unforeseen issues; in an unboundaried internet world, that gathers together users from different cultural backgrounds, an individual may innocently and unwillingly become embroiled in an internet activity which is variously interpreted as acceptable or unacceptable, legal or illegal, depending upon other individuals interpreting this person's intention. For this/these reason(s), it is recommended that the element of

intention be reviewed in order to ascertain how it may be applied in accordance with other approaches, such as the target and the harm approaches.<sup>4</sup>

This recommendation logically leads on to a further: that the use of current cyber tests, or approaches, should be reassessed at national and international levels. Two of the most important jurisdiction tests or approaches seem to be the accessibility approach and the harmful approach, the application of which should help in understanding and clarifying the intention of net users. For example, if a net user inadvertently trespasses into using a private website to which normally they should have no access, it might be taken as evidence of their good intentions that they left the website immediately on ascertaining their error in being there. On the other hand, if that person had continued wilfully to gain unauthorised access to the website, this could be evidenced by his further action, such as reading or copy classified details. Such cyber –based actions might be considered to reflect as bad faith, or deliberate wrongful intention on the part of this person.

In further reference to subject matter rules, this research argues that the regulation of cyber jurisdiction disputes by subject matter rules may help to clarify subsequent appropriate tests and approaches, since the position on this is currently vague. For example, if cyber activities were categorised and defined

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<sup>4</sup> For instance, activities committed by “hackers” differ from those committed by “crackers” in respect of the effects and results they cause. While hackers are mostly intent on satisfying their personal interest in hacking emails or stealing personal data with malicious intent eg exposing private content, crackers seek to prove their ability to carry out such activities without creating any harm.

under a clear international convention (to explain the freedom of expression in cyberspace for instance) this would help people from different legal system backgrounds to understand better the differences between different kinds of cyber activities, thus benefitting overall world justice.

Moreover, such rules may assist in terms of understanding the differences between complicated approaches such as the download and upload approaches mentioned earlier in this research. To recap, subject matter rules from this research point of view will help to understand when data is downloading into a website or conversely from a website when uploading data from the internet. This would be helpfully clarifying, since some disagreements have been identified to date regarding issues of download and upload definitions.

## 2. Recommended solutions to cyber jurisdiction problems at domestic level;

In the section above, the recommendations which are offered relate to solutions to cyber jurisdiction problems at international level. However, this research proposes in addition, a number of specific recommendations in regard to solutions applicable to domestic level, using the data arising from the specific case study of Jordan undertaken for this research. That is, recommended solutions

applying specifically to the Jordanian legal system and its jurisdiction rules may potentially be applicable to other developing countries.

In regard to the Jordanian legal system, it is firstly recommended that a comprehensive review of Jordan's existing internet legislation should be undertaken, mainly in regard to jurisdiction rules. This is because the research indicates a need to reform these rules in such a way as to improve their capacity to deal directly with cyber jurisdiction disputes, most importantly those containing elements at international level. It is strongly advocated that such revision should be undertaken by a professional committee consisting mainly of members from the Jordanian Bar Association, the Judicial Council, law schools, private sectors and a member or more representing foreign developed legal systems or foreign organisations such as the Europe Council.

This is not to imply that no progress has been made already in this regard; indeed in 2010 Jordan founded the Information Cyber Crime Act (ICC) as the first piece of special legislation designed directly to address issues arising from cyber crimes and activities. Nevertheless, the research position on recommending improvements is that the 2010 ICC act failed to encompass the full range of known current cyber crimes, such as cyber stalking or cyber threats. The readiness to review is essential, given that as use of the internet as a social medium evolves, so will the nature of the crimes on the internet.

It is argued above that on-going review of existing legislation in the rapidly evolving world of internet activity is essential, if developing countries such as Jordan are to avoid the shortcomings that have recently emerged within its legal system in respect to resolving internet crime. However, this is easier said than done. A useful finding of this research is that at least in Jordanian jurisdiction, resolution of cases can be complicated by conflict of interest between one authority and another. Such was the case for instance, discussed earlier in the dissertation, in respect of the Jordanian State Security Court's having a mandate to exert authority over the Regular Courts, which at times could lead to confusion and delay.

This conflict of interests, for instance, was also only too evident when the newly created ICC Act decided to award extra authority to judicial police to engage in duties such as personal and private information searches while investigating a claim regarding a cyber crime (A.12 of the ICC). Although such increased authority accorded with the ICC perspective, it did not entirely accord with the main duties vested in police officers and judicial police men as described in section 8 (1) of the Criminal Procedure Code, 1961; that is, the main duties of crime inquiry and evidence collection.<sup>5</sup> This lack of overall coherence amongst different investing bodies has in the past led to some ambiguity of responsibility and of jurisdiction.

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<sup>5</sup> Thunaibat, Ghazi. "Information System Crime Law Analysis". [2013] published on 28<sup>th</sup> of April 2013. Available at: < <http://www.dr-ghazi.com> >. Accessed January 2014.

It should be noted here that this particular recommendation also figured strongly in the first 2012 submission of this research, that is, a recommendation for the Jordanian Constitution and domestic legislation to be amended in order to diminish or avoid interference of one court's authority by another. Although some work has been done in this respect, in that the Legislator has partially amended the related legislation in order to prevent civil citizens from being tried by military juries before the State Security Court, more work needs to be done. The results of this research lead the author to advocate that the legislator should complete the process by preventing all civil disputes from being sent to the State Security Court, and ensuring that civil disputes should be heard exclusively in Regular Courts (see footnote 6 below).

Although this research advocates that the Jordanian legislature should balance and harmonise its subject matter jurisdiction rules and personal and territorial jurisdiction rules at both national and international levels, the most significant recommendation here is that these personal and territorial jurisdiction rules, although essentially domestic, should be modified and adapted for application over cyber jurisdiction. Such a review might usefully combine these rules with the attribution rules located in the Jordanian Civil Code. By the same token, its international private rules located in the Civil Code might usefully be adapted in such a way as to emulate the use of such rules in developed countries' laws, under the umbrella of subject matter jurisdiction rules.

In order for such a change to be effective, Jordan's domestic laws need to be balanced with its membership of international conventions. This research leads the author strongly to advocate that Jordan should focus its attention on joining international conventions rather than bilateral agreements, this in order to protect Jordanian rights abroad in regard to international jurisdiction and implementation of its court judgments. This revision should be applied not just to current Jordan memberships but also to any future membership of international conventions in accordance with subject matter jurisdiction rules. For instance, results of this research inform the suggestion that if Jordanian authorities were to turn to international conventions, both multiple and bilateral, this might increase the power of Jordanian extraterritorial rules. Such agreements would need particular specialisation in regard to internet issues.

Moreover, as the core point of this research, it is strongly recommended that a comprehensive revision should be undertaken of the entire body of Jordanian jurisdiction rules. This research found that there are a number of misallocated jurisdiction rules under the Jordanian legal system which together lack coherence and cause confusion for appointing the appropriate jurisdictional legal reference, mainly in disputes related to cyber jurisdiction.

The overall picture arising from the research is that the unnecessary and outdated complexity of the Jordanian legal situation has led to a current weakness in legal processes and to some confusion over the functions of

international and national jurisdiction rules. Examples of this weakness may be seen in cases where lawyers and opposition campaigners have rejected the *envoi* or transmission of cases to the State Security Court, instead of trying them in the regular courts.<sup>6</sup> In addition to these weaknesses, current law needs to accommodate new kinds of law to reflect current times. This is exemplified in the appearance of stricter penal legislation, such as the Prevention of Terrorists Law. This research suggests that lawmakers in Jordan must review current jurisdiction rules in order to establish a coherent legal body to hear jurisdiction conflicts involving internet cases, or to integrate the country's jurisdiction authority into one strong mechanism, for instance incorporating the Information System Cyber Crime law with the Criminal Code.

Regarding the previous recommendation, certain Jordanian court judgements, as exemplified in the case of the Dutch cartoon (discussed in chapter 7), have hitherto been based mainly on domestic material rules. In the case cited above, for instance, as discussed earlier in this thesis, the court used the criterion of impact on place as the basis for referral to a particular court in Jordan. However, the reasoning in this case did not appear to accord with an international trend towards rejecting the idea of world wide jurisdiction. In this case Jordan was criticised for going on the offensive since it was not the only country influenced by these cartoons. Not only was it argued that the cartoons would also have impacted on the wider Islamic world, Jordan's stance gave

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<sup>6</sup> It is important to mention here that while processing this research and as a consequence of the impact of the Arab Spring revolution on Jordan; an important constitutional amendment was proposed at the end of 2011 which aimed to prevent trying civilians before the State Security Court.

rise to some frank concern on the part of some European writers, as discussed in chapter seven, about Jordan's position on freedom of speech on the internet. Such voices also opposed the jurisdictional authority awarded by Jordanian Criminal Laws to its domestic courts to prosecute activities that violated Jordanian laws on websites accessible and readable from Jordan.<sup>7</sup>

Thus, this research strongly suggests that Jordan consider the nature of internet activities (e.g. the target approach and cultural issues) when declining or accepting jurisdiction over cyber activities which have specific impact on Jordan. This research argues that the more nations can understand each other's interests, the more disputes in cyberspace can be avoided. In terms of freedom of speech, Jordan is not the only country reviewing its position on freedom of speech as understood in its home territories. Many other countries are also having to reappraise their traditional systems after these have been challenged by activities arising in the borderless domain of the internet. That traditional positions on the freedom of speech and the freedom to act are being challenged also at international level, can be evidenced by obvious cases such as that of the Dutch cartoonist. Regarding the target approach, this research argues that international community in general and Jordan legislators should draft and find rules that clarify the intention of net-users, whether they are targeting mainly persons or nations in their activities. Cultural jurisdiction disputes however are matters for future research.

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<sup>7</sup> Samson, Elizabeth. "Jordan Indicts 12 Europeans, Including Geert Wilders, for Demanding Islam". Wall Street Journal Europe, September 10, 2008. Available at: < <http://www.amnation.com/vfr/archives/011396.html> >. Accessed February 2014.

As discussed in an earlier chapter, in future similar disputes over international cyber jurisdiction, Jordan should avoid attempting to enforce its courts' decisions against cases based outside of Jordan (as in the case of the Dutch offender). As will be recalled from earlier discussions of this particular case, the content of the cyber activity under consideration was deemed unlawful in Jordan, but deemed lawful in Denmark. Complications arose in the jurisdiction of this case from the fact that no agreement existed between Jordan and Denmark or Holland to surrender the person in question to undergo the penalty awarded. Thus, if jurisdiction and action in such cases are to be clarified for the future, it seems urgent to justify the "expansion of jurisdiction" at national and international level as a means of regulating cyber jurisdiction. This will require a review of these rules under current legislation, such as article 5/4 of the criminal code.

In terms of value jurisdiction, this research recommends a reform of value jurisdiction rules over cyber disputes, since the evaluation of cyber cases under such rules is different to that applied to traditional cases. This is due to the high costs of internet contents in addition to the costs that cyber activities may incur as a result of viruses. Other reasons for reform are also argued, such as the difficulty of estimating virtual currency or properties. However, it is important to refer here to the fact that under the new ICC act of 2010, it will be possible to impose more severe penalties, with fines ranging from 100 to 5000

thousand JD (Jordanian Dinars) for various information cyber crimes. This research suggests extending the range of such fines to all cyber activities, whether civil or criminal activities, since the current maximum fine of 5000 JD falls short of the expected damages arising from certain cyber activities. In the instance of the Danish Cartoons case discussed earlier in this research, for instance, it is difficult to estimate the amount of civil compensation which should be claimed for moral damage.

Moreover, as a consequence of the importance of electronic contracts and the rapid increase of related jurisdictional disputes, mainly where there is no agreement over the applicable law between the contracted parties, it is strongly recommended that a new acceptance principle be adopted. The current principle (as discussed in chapter four) is theoretically inadequate for dealing with the function of e-contracts or it is not clear enough at this stage.

A suggested principle for instance is that of an established system for information acceptance messages on websites ; this would serve to clarify the parties' agreement under related articles mainly articles 20, 21 and 101 of the civil code and articles 18 of the Information Transaction Code. The research argues here that the adoption of this recommendation will help to clarify some major differences between articles. For instance, this would help to ensure that article 18 of the Information Transaction Code did not conflict with article 101 of the Civil Code, or help to enable both articles to be applied to solve

jurisdiction disputes and applicable legal issues arising from e-contracts. This research also refers to the importance of considering articles 21-26 of the Electronic Transaction Law while adapting the above recommendation in addition to the said articles.

This research also recommends the use of alternative disputes resolutions (ADRs) such as arbitration and mediation to resolve e-contract jurisdiction disputes, mainly in cases of failure to agree over the applicable law. All previous suggestions should help to avoid jurisdiction disputes over e-contracts and help to appoint the applicable law at national and international levels.

### C- Conclusion and further research proposals;

As a final conclusion of this research, this chapter had summarised the research points in section A, and addressed some recommendations, both at international level and at local level pertinent to the Jordanian legal system as described in section B. It is important however to say here that the recommendations, whether functional at domestic or international levels, are being presented for consideration not just in terms of their academic acceptability but in terms of their related applicability to practical issues. Although such applicability may be limited, this research is seen as a first step towards highlighting certain issues and specific questions which will inform

further work in the creation of clearer cyber legislation, and more workable jurisdiction rules in cyberspace, both to benefit Jordan, and other countries working towards similar ends.

It is intended as a result of this research that the researcher engage in further separate and deeper investigations into issues related directly or indirectly to jurisdiction disputes as to applicable laws in cyberspace. The researcher aims to achieve this by participating in workshops and seminars and/or by publishing articles that discuss the points below:

- Future research is recommended into an in-depth study of the rules of enforcement jurisdiction and also into clarifying the relationship between jurisdiction rules in Jordan and similar rules as incorporated into international agreements and treaties.
- It is also recommended that the implications of extending Jordanian jurisdiction rules abroad, be studied in detail, entailing comparing Jordanian domestic rules with those from developed and modern legal systems, reflected in laws such as the American acts SOPA and ACTA, as well as the British Code of the Computer Misuse Act.
- It is further recommended that research be extended to evaluating the application of different jurisdiction types to the internet, mainly the main three types that are territorial, personal and subject matter jurisdiction. Studying these types more closely in separate works will help to clarify further issues

related to these types and to open the door for other research that will work to improving modifying these types.

- Further research can also be usefully considered in regard to the impact of Jordanian memberships in bilateral and international agreements related to cyberspace disputes. It would be interesting to explore the means by which the Jordanian Legislator might amend its domestic jurisdiction approach to accommodate agreements such as the Arab Convention of Cyber Crimes of 2010.

- Further research is recommended into means by which the various Jordanian jurisdiction rules can be amalgamated into a single code, and by integrating some private laws with common laws ( for instance integrating the Information Cyber Crime Code with the Criminal Act, and integrating the Information Transaction Code with the Trade Law or the Civil Law).

- A particular area of research, of interest to this researcher, is that of jurisdiction disputes and the applicable law in electronic contracts. It is intended that this be one of the researcher's main targets in future research, since currently the issue is argued in several different ways in Jordan and lacks coherence.

- A final planned proposal, and one of the most important, is to study the impact of nations' cultural differences and the effects of these on internet-related activity. As mentioned earlier, the borderless nature of the internet has already created major problems and led to international disputes, fuelled by

differences of perspective such as may exist for instance between Western and Muslim cultures.

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