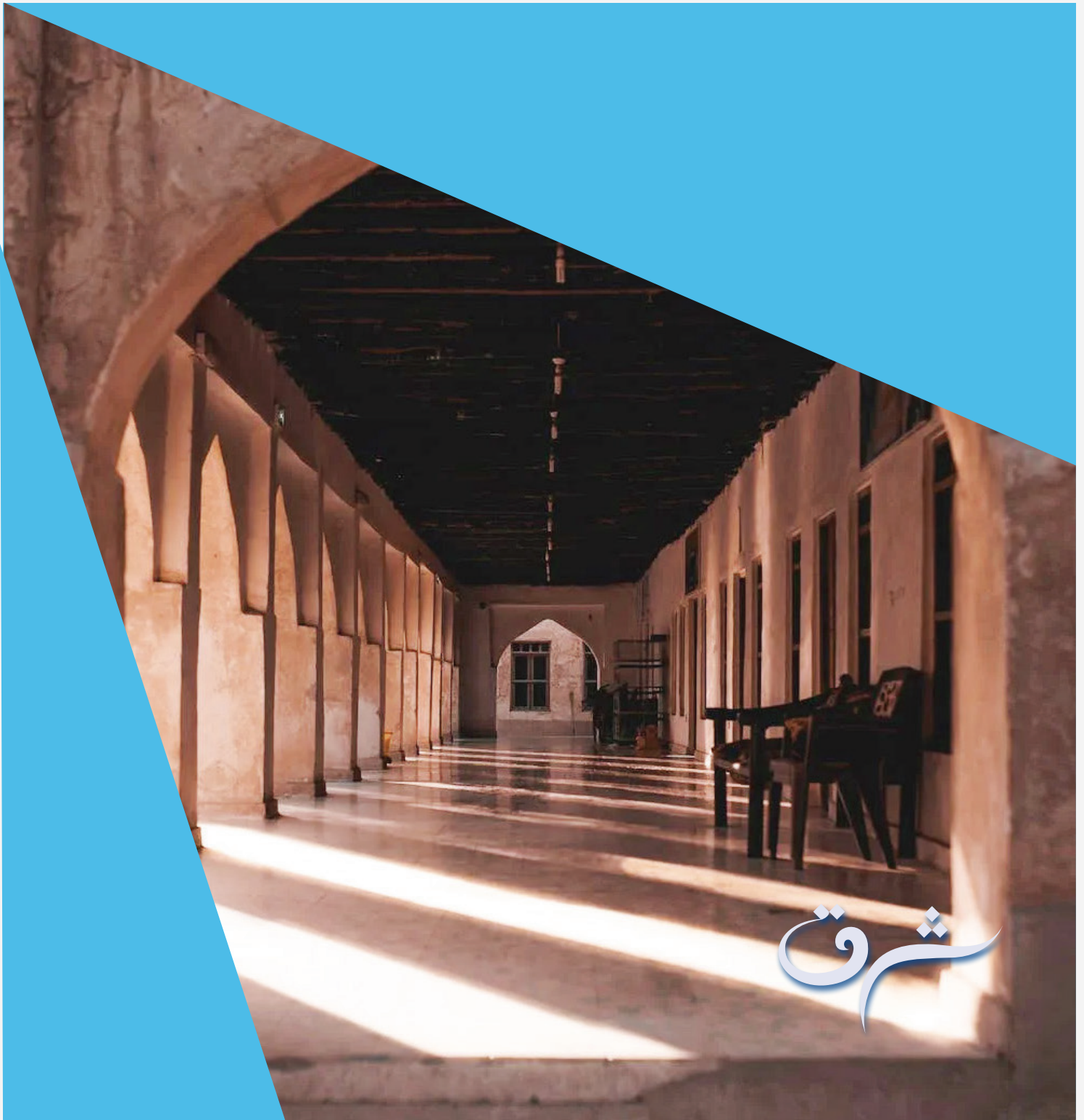


THE CRIME OF GIVING A CHECK WITHOUT BALANCE IN QATARI LAW

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The crime of giving a **check** without balance in Qatari law and its extent

Liability for the security **check**

The principle is that the financial obligations are fulfilled by paying an amount of money as a legal and customary transaction instrument. If we envisioned the size and enormity of financial transactions, and the necessity of keeping a large amount of cash, we would be able to see the extent to which the bearer is exposed to financial troubles in carrying it, in addition to the risks of theft and loss. Hence, the practical necessity required finding a way to avoid all the previous defects, and at the same time take the place of money in payment.

Thus was the beginning of the emergence and establishment of the cheque as an instrument for transaction, and it supersedes money in payment and settlement, it would be like the creditor collects his right with the debtor through a third person who has in his hands an amount of money that is sufficient for the debtor to fulfill its value. In view of the importance of the cheque as a payment instrument like money, and it also plays a very important role in economic life and daily commercial transactions, the Qatari legislator was keen to provide criminal protection for the cheque more than other commercial papers; So that it is not misused as a means to seize the money of others, and to strengthen confidence therein, as well as protecting its dealers. Civil penalties may not be sufficient or useless, especially if the drawer of the cheque is bankrupt or insolvent. For this reason, it was necessary to stipulate a criminal penalty for whoever breaches confidence in the cheque.

The Qatari legislator has criminalized "Writing a bad cheque" in Article (357) of the Qatari Penal Code, which stipulates that "whoever maliciously commits the following acts:

1. Writing a cheque, without sufficient funds to cover its face value.
2. Withdrawing all or some of the funds from an account after giving a cheque in a way that leaves insufficient funds to cover the amount of the cheque.
3. Ordering the recipient of the cheque not to exchange or deposit it.
4. Intending to write or sign the cheque in a way that prevents its exchange.
5. Delivering a due cheque knowing that it is uncovered or not exchangeable.

Shall be punished with imprisonment for a term of no less than three months and not exceeding three years, and a fine of no less than three thousand (QR 3.000) Qatari Riyals and not exceeding ten thousand (QR 10.000) Qatari Riyals." Through the previous stipulation, we found that the offence of writing a bad cheque is based on three pillars: the first is the subject of the crime, which is the "cheque", second: the material element of the crime, and finally the moral element represented in the form of criminal intent.



First: the Subject of Crime "The Cheque"

The Qatari legislator defined the cheque in Article (452) of Law No. (27) of 2006 promulgating the Trading Regulation Law by saying, "A cheque is a security which includes an order issued by the drawer to the drawee bank to pay on the given date a certain amount of money to a third party, who is the beneficiary, or to the bearer thereof. Thus, the cheque assumes a relationship between three parties. First: The drawer, he is the one who issues and signs the cheque. Second, the drawee: He is the one who undertakes to pay the amount specified in the cheque (the bank). Third, the beneficiary or the bearer: he is the one for whom the cheque is issued.

But it may happen in some cases that the beneficiary is the drawer himself, if he withdraws a cheque in his favor as a means of receiving all or some of the sums owed by the drawee. The validity of the cheque requires two types of conditions to be met, substantive conditions and formal conditions.



Substantive conditions for the cheque

Substantive conditions are the conditions decided by the general rules for the validity of the obligation in general, and these conditions are the valid consent which requires first the presence of the drawer's civil eligibility to issue the cheque, in addition to the absence of defects in his consent, and finally the subject and cause of the obligation. The absence of valid consent leads to the invalidity of the drawer's obligation to pay the value of the cheque, and he can plea the civil lawsuit filed against him to claim the value of the cheque by invalidating his obligation to do so, taking into account that the invalidity of the civil obligation to pay has no effect on the criminal lawsuit filed against the drawer for the crime of writing a bad cheque, except in the event that the lack of consent or its invalidity results in the denial of the materiality of the crime or the absence of criminal intent.

The fixed obligation subject in the cheque is always a specific amount of money, as this fulfills its function of payment, and then if its subject is other than money or was unknown, the result is the invalidity of the instrument and its description as a "cheque", whether from a criminal or civil point of view. As for the reason for the cheque, it is inherent in itself as an abstract legal act, and the foregoing shall result that it is not permissible to search for the reason for issuing the cheque, or the absence of one of the conditions for the validity of the reason. Criminal responsibility for issuing a bounced cheque remains existing even if the reason for issuing the cheque was illegal. for example it is a gambling debt or an illegal relationship as long as it is proven that it was withdrawn without having any balance.

Cheque formal Conditions

Formal conditions mean the data that must be present in the instrument in order for it to have its legal status as a "cheque" and explain the characteristic of being a fulfillment instrument that supersedes money. The Qatari legislator stipulated in Article (430) of Law No. (16) of 1971 issuing the law of the Civil and Commercial Articles, these mandatory data, which are:

- 1- The word "cheque" written in the body of the instrument and in the language in which it was written. Otherwise, it is not a commercial cheque.
- 2- The date and place of issue of the cheque. It is the real date on which the cheque is written, and it is important in determining the eligibility of the drawer, and the start of the statute of limitations, in addition to its importance in determining the moment considered in determining whether the balance is available on the date of its issuance or not; as the date of the cheque is the date of its maturity as an instrument of payment.
- 3- Person/Entity committed for payment (drawee).
- 4- Who or to the order of whom the cheque shall be repaid.
- 5- An order not pending on a condition to repay a certain amount of money.
- 6- The place of payment.
- 7- Signature of cheque establisher/issuer (the drawer).



Second: The material element of the crime of writing a bad cheque

In Article (357) of the Penal Code, the Qatari legislator specified the forms of the material element that the crime of writing a bounced cheque takes place. Below we discuss these forms.

1. Giving a cheque that is not matched by an existing and withdrawable balance, or if the balance is less than the value of the cheque.

Giving here means handing over the cheque to the beneficiary, by removing it from the drawer's possession and entering the beneficiary's possession by putting it for circulation. It is required that the cheque's exit from the drawer's possession be voluntary, that is, with the intention of giving up his possession and ownership and acquiring it to the beneficiary. Losing the cheque, stealing it, coercing the drawer or forging it, then putting it into circulation is not considered giving the cheque in its criminal meaning.

The absence of a balance means that the drawer is not a creditor to the drawee at the time of issuing the cheque, even if he becomes his creditor later on; because the essence is the presence of consideration at the time of issuing the cheque as a result of being a payment instrument and not a credit instrument. This consideration must meet all its conditions in terms of existence, sufficiency, and the ability to withdraw. If one of these conditions fails, the crime occurs.

As for the second form, it is the one in which the drawer is a creditor to the drawee for an amount less than the value of the cheque. In this case, the bank (the drawee) may not partially pay the value of the cheque. The crime is considered existing even if the drawer had a balance that allows the cheque value to be collected, but he was prohibited from disposing of it, as if he was seized, for example, or for any other reason so that the remaining part does not meet the payment.



2- After giving the cheque the drawer withdraws all or some of the consideration, so that the remainder does not meet its value.

This form assumes that at the time of issuing the cheque, the balance was present and sufficient to fulfill the value of the cheque, but the drawer in the period between giving the cheque and presenting it to the bank by the beneficiary withdrew all or part of the balance, so that when the beneficiary presented to cash the cheque, there was no balance at all, or if it exists but it is insufficient to meet the value of the cheque.

3- If the drawer orders the bank not to cash the cheque

This form assumes that the cheque had, at the time of its issuance, an existing and withdrawable balance sufficient to meet its value, but the drawer issued an order to the bank not to pay the amount of the cheque to the beneficiary when it is submitted for encashment. It is equal that the order not to pay is issued before or after receiving the cheque, provided that it is issued by the drawer or his agent authorized to issue the cheques. But if this order was issued by a party that has nothing to do with the drawer or without his knowledge, then he is not liable therefor, as if the order was issued by a judicial or administrative party.

4- Deliberately writing or signing a cheque in a way that prevents it from being cashed

The crime is accomplished in this case despite the availability of an existing and withdrawable balance at the time of issuing the cheque, but the drawer deliberately did something that would result in the bank's refusal to pay the cheque. The practical applications of this form include the case if the drawer in bad faith signs the cheque in a way that is contrary to or does not conform to his signature specimen deposited with the bank, or that he writes the cheque on a different cheque form than the form he received previously from the bank.

5- He endorsed or handed to another person a cheque payable to its bearer, knowing that it does not have consideration to meet its full value or that it is not cashable.

The assumption here is that the one who committed the crime is the beneficiary of the cheque that he endorsed, put it into circulation, knowing that it has no consideration that meets its full value, or that it is not exchangeable. The reason for criminalization lies in protecting the dealers or other beneficiaries from the cheque. On the other hand, the drawer and the beneficiary may agree to harm others, so the drawer issues a cheque to the endorser without balance, then the latter endorses it to a bona fide person.

Third: The moral element of the crime of writing a bad cheque

The crime of writing a bounced cheque is an intentional crime, as the criminal intent is the form of the moral element therein. The Qatari legislator expressed this intention in Article (357) of the Penal Code by saying: “Whoever commits, in bad faith, one of the following acts”. The expression “in bad faith” has sparked a jurisprudential disagreement about the type of intent required to commit a crime. Does the legislator require special criminal intent, or is it sufficient for general criminal intent? The truth is that the most correct opinion in jurisprudence and judiciary considers that the general criminal intent that is available with knowledge and intent, without the need to require a special intent such as the intention to harm, for example is sufficient for the crime of writing a bounced cheque. The drawer must know that the document that he gives is a cheque, and that it is not matched at the time of giving it with an existing and withdrawable balance equivalent at least to the amount of the cheque, and his will must be directed to giving the cheque, handing it over to the beneficiary and then putting it into circulation. It goes without saying that the law does not require the drawer to be aware of the exact legal elements of the idea of the cheque, as his legal culture may not allow this knowledge, but it is sufficient for him to know that the paper is negotiable, and that it is payable upon sight or when it is presented to the bank on the written date.

Fourth: Penalty for the crime of writing a bad cheque in Qatari law

The Qatari legislator stipulated in Article (357) of the Penal Code the sanction of “imprisonment” as a penalty for the crime of writing a bad cheque, and therefore the legal description of the crime is that it is a offence, and the court can sentence the accused to imprisonment for a period of not less than three months and not exceeding three years, and a fine which is not less than three thousand riyals and not more than ten thousand riyals, or one of these two penalties.



Fifth: Initiating a criminal case for the crime of writing a bounced cheque

The Qatari legislator restricted the initiation of a criminal case for the crime of writing a bounced cheque to the necessity of filing a complaint from the victim or his representative within thirty days from the date of becoming aware of the crime and its perpetrator, and this is in accordance with the provisions of Articles (3) and (7) of the Qatari Criminal Procedure Law No. (23) of 2004. It is decided that the victim's knowledge of the crime and its perpetrator, from which the thirty-day period begins and after which the complaint will not be accepted pursuant to Article 7 of the Code of Criminal Procedure, must be definite knowledge, not presumptive or hypothetical, so the appointment is effective against the victim only from the day on which this certain knowledge is established, and that knowledge of the occurrence of the crime of giving a cheque without a balance is from the day the victim knew that the accused did not have a balance in the bank, i.e. the day the bank's statement was issued as a measure revealing the crime and not from the day the cheque was issued.

Sixth: Reconciliation is permissible in the crime of writing a bounced cheque

In Article (359) of the Penal Code, the Qatari legislator stipulated that it is permissible to reconcile in the crime of writing a bounced cheque so the victim and his special representative in the crimes stipulated in Article (357) may request the Public Prosecution or the court, as the case may be, in whatever status of the case, to prove his reconciliation with the accused, and the reconciliation results in the termination of the criminal case.





Seventh: The extent of criminal liability for the “security cheque”?

The criminal protection prescribed for the cheque in the Penal Code tempted many to misuse it, rather to circumvent its role and basic function, so they resorted to it not in order to consider it a payment instrument that takes the place of money, but rather because it is considered a guarantee instrument for the payment and fulfillment of some monetary and other obligations within the scope of various commercial and civil transactions. Let us take, for example, but not be limited to, when a person resorts to a bank to obtain a financial loan, or to obtain certain credit facilities, without having in-kind guarantees to provide, so the bank resorts to the customer writing cheques equivalent to the amount of the loan, with dates of the installments payment dates, and even more than that, the bank may obtain blank cheques from the customer, just for his signature, and keep these cheques and return them to him after the settlement of the loan amount. We note here that the aim of withdrawing cheques in such cases is not to present them to the drawee to collect their value, but rather to keep them as collateral, and threaten the customer with them, by initiating a criminal case against him for the crime of writing a bad cheque, when he breaches his obligations towards the beneficiary of the cheque, which is the bank, it is a method of putting pressure on the client, and ensuring that his obligations are met on time in order to avoid criminal liability. The same is the case when the lessor asks the lessee to issue cheques for him knowing that he does not have a balance, and also when car companies ask buyers for cheques for selling in installments.

Security cheques have sparked a great controversy in jurisprudence and judiciary about the extent of criminal liability for them, as a crime of writing a bounced cheque, in the event that the accused argues that the cheques were for security. It is noted that jurisprudence, and even the judiciary, is divided into two views:

The first: believes in the availability of criminal liability for security cheques, while the other view believes in the absence of criminal liability for them.

The first view: the availability of criminal liability for the security cheque

Proponents of this view argue that the responsibility for the crime of writing a bad cheque exists as soon as the drawer issues the cheque and delivers it to the beneficiary, knowing that there is no existing, sufficient and withdrawable balance to cover the value of the cheque. After that, there is no consideration for the reasons that prompted the drawer to issue the cheque, as all of this is like “motives” that have no effect on the availability and occurrence of the crime. It is recognized by jurisprudence that the motive for committing the crime has no effect on its occurrence and criminal responsibility for it. There is also no consideration for writing the phrase “security cheque” on the deed, as that does not change the nature of the deed; As long as it has fulfilled the objective and formal conditions required by the legislator to include the cheque in criminal protection as a payment instrument that takes the place of money. In addition, it is well established in jurisprudence that the crime of writing a bad cheque is one of the crimes in which it is not required that the perpetrator have a “special criminal intent”, but rather a “general criminal intent” which is available as soon as the drawer issues the cheque and delivers it to the beneficiary, knowing in the absence of an existing, sufficient and withdrawable balance to meet its value. Rather, some jurisprudence went to the fact that it is very permissible to consider the beneficiary who received this cheque as an accessory contributor to the crime whether by instigation, agreement or assistance in accordance with the general rules of criminal contribution



because at the time of issuing the cheque and receiving it from the drawer, he was aware that there was no balance to pay its value.

The second view: the absence of criminal liability for the security cheque

The proponents of this view argue that there is no criminal liability for the security cheque in the absence of a balance; This is due to the absence of the material element of the crime of writing a bounced cheque in the first place. The interpretation of this is that the meaning of the word “giving” as an element in the material element of the crime as previously stated means the final abandonment of possession of the cheque and its ownership to the beneficiary with the direction of the drawer’s intention to put it for circulation, and this matter is not achieved in the case of a security cheque, as the drawer issued the cheque and delivered it to the beneficiary as a way of “the deposit is a guarantee of his commitment”, whoever it is, and therefore if the beneficiary submits it to the court to claim its value, the matter does not deviate from being a civil guarantee subject to the provisions of the civil law and the provisions of the suretyship, and thus departs from the scope of the criminalization of the sinner in Article (357) of the Penal Code, and its editor in this case is not considered a perpetrator the crime of writing a bounced cheque due to the absence of the material element of the crime.

Conclusion

The truth is that we adopt the view that supports the existence of criminal liability for security cheques: on one hand, to protect trust in dealing with cheques, which are currently the backbone of commercial and financial transactions, and as a fulfillment instrument that supersedes money, so this importance must be preserved from any tampering that may lead it out or keep it away from performing its function drawn by the legislator. On the other hand, the beneficiary tried to invoke criminal protection for rights and interests that were not included or that the criminal legislator

deems worthy of his protection. The beneficiary here set himself up as a legislator, and circumvented the provisions of the law to guarantee his rights, by making these cheques a sword over the drawer and threatening him with imprisonment if he did not fulfill his obligations, and the truth is that the correct application of the rules of the law will make him an accessory contributor to the crime of writing a bad cheque in accordance with the rules of criminal contribution, because he incited the drawer, agreed with him, or assisted him in issuing the cheque whatever the reason he claims for that and then receiving it from him, knowing that it had no balance to fulfill its value, and therefore from the moment he receives the cheque from the drawer, he will certainly be an accessory contributor with him to the crime.

The legislator did not criminalize the act of giving to the beneficiary a cheque without a protection balance, but rather to protect trust in dealing with cheques as a fulfillment instrument that supersedes money. On a third aspect: that the drawer was fully aware from the beginning that he was writing a bounced cheque, and that he handed it over to the beneficiary to reassure him that he would fulfill his obligations on time, and he accepted from the beginning and was satisfied and expected that in the event of his breach of his obligations, the beneficiary might file a bad cheque lawsuit against him, but he hoped that he would carry out his obligations in order to recover the cheques that he wrote, but he failed to do so. After all that, it is not acceptable for him to plea the criminal liability for him because the cheque was a “guarantee” for the implementation of his obligations, as he was able to resort with the other party to other legal means, whether in civil or commercial law, and others, that ensured for each of the parties the fulfillment of his obligations and the maintenance of his rights, away from tampering with the provisions and rules of the criminal law.



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