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Abstract
Civil Law is considered to be one of the most important laws in the State; since it is the origin of all branches of private law. Civil Law traditionally consists of variety of rules and legal doctrines which can be viewed from a different angle, other than being related to legal personality and patrimonial transactions.

This study argues that Civil Law is closely related to human rights. To establish it’s argument, the study reviews Jordanian Civil Code rules, in order to highlight the close connections between some traditional Civil Law rules and human rights as drown up in the Universal Declaration of Human Rights and the Arab Charter on Human Rights, as well as the Constitution of the Hashemite Kingdom of Jordan.

In doing so, the study aims at affirming the importance of Civil Law as a legal tool by which human rights can be guaranteed, enhanced and protected.

1. Humanizing the Law
Human Rights are nowadays considered as a distinct part of legal studies after being usually linked to public law i.e. International Law and to certain extent to Constitutional Law and Criminal Law.

Civil law –by contrast- was traditionally characterized by its subjects related mainly to financial and property rights, civil transactions and tort. Therefore, this character dominated almost all researches in the field of Civil Law. However, the theory of private law in general and civil Law in particular is wide enough to be tackled from a different approach.

Public law is the body of rules that govern relationships in which the State act as a party that possesses authority and sovereignty, whereas private law govern relationships among individuals or between individuals and the state when the state act as an ordinary person

Some writers argue that: “private law should be able to apply, protect and enforce fundamental rights of private persons”. However, they admitted that “the traditional accent in private law on matters of patrimonial rights and dogmas may yet be a cause of an underrating of the fundamental rights at stake”. Therefore, they concluded that “the influence of fundamental rights in private law is merely a matter of a ‘border struggle’ between private law and public law”. For example, in some European countries an important source of private law is the Constitution. In those countries human rights do not only have a vertical effect (they may be invoked by citizens vis-à-vis the State) but also a horizontal one (they may be invoked by citizens vis-à-vis other citizens). There is growing evidence

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3 Ibid, p371
4 Ibid, p 371
that human rights as universal values contributes in bridging the gap between public and private law, and the denationalization process of the law.

The essence of civil law is the organization of human conducts so as to maintain public order, civil security and protect individuals’ private interests. In doing so, Civil Law explicitly or implicitly provides for some human rights and fundamental freedoms that the Universal Declaration on Human Rights and other regional and national legal instruments provide for.

The idea that civil law has a close connection with human rights can be proved with a brief look on some French Civil Code articles. One may notice that the Code provides for some basic human right by Stating that “Everyone has the right to respect for his private life”, and “Everyone has the right to respect of the presumption of innocence”, and also “Everyone has the right to respect for his body. The human body is inviolable.”

Having some human rights implications in civil law is not unique; since there is a growing humanization trend affecting almost all branches of law, and this trend appears more obviously in contemporary international law. But it still has tangible effects in civil law as well.

Historically Jordanian Civil Law was derived from Ottoman Majallah “The Civil Law of the Ottoman Empire which dominated the Arab World from Iraq in the east to Morocco in the west. The Ottoman Majallah was derived from Islamic Sharia’a represented by Holy Qur’an – Islamic Holy Book- and Glorious Prophetic Sunnah- Prophetic Traditions. Accordingly, the influence of Islamic conceptions is apparent throughout the Jordanian Civil Law.

Although the intention of this paper is not to provide an overview of the Islamic teachings governing human rights, some Articles from the Universal Islamic Declaration of Human Rights are cited in the due course to support the ideas and concepts mentioned hereafter.

2. Legal Personality
The Universal Declaration of Human Rights emphasizes the right of every human being to be recognized as a person. Article 6 of the UDHR reads as follows: “Everyone has the right to recognition everywhere as a person before the law”. The Arab Charter on Human Rights also mentions this right almost in the same wording by stating that “Everyone shall have the right to recognition as a person before the law”.

These legal texts show the significance of this basic human right, since it is the starting point of having legal personality and therefore enjoying other human rights and freedoms. This right also represents the main and fundamental legal tool in the struggle against slavery. Although strange and
inhuman\textsuperscript{17}, but, the soar fact is that slavery was officially existed and accepted until few decades ago; The Slavery Abolition Act 1833 was an Act of the Parliament of the United Kingdom abolishing slavery throughout most of the British Empire, except in Territories in the Possession of the East India Company, the Island of Ceylon, and "the Island of Saint Helena\textsuperscript{18}. Then the world moved a significant step forward in the struggle against slavery by adopting the UN Covenant on Civil and Political Rights which prohibits all kinds of slavery and servitude\textsuperscript{19}, and affirms the right for everyone to be recognized as a person before the law\textsuperscript{20}.

As for Jordanian legislations, and Jordanian Civil Law in Particular, there is no express provision tackling the prohibition of slavery. However, Islamic law is the main source for the Jordanian Civil Law, and slavery was strictly banned by the rules of Islam\textsuperscript{21}. Notably, Article 210 of the Ottoman Majallah no 100/1900 which was the Ottoman Civil Code and was applicable in Jordan until 1977 prohibits slavery and any transaction that is related to trafficking in humans\textsuperscript{22}.

Moreover, the Hashemite Kingdom of Jordan ratified the international Protocol amending the International Convention for Abolishing Slavery, and the additional International Convention regarding the Abolishing of Slavery, Slaves Trading, institutions and semi Slavery Practices. Further to this commitment, Jordan passed the Law for the Prevention of Trafficking in Humans no 9/2009. This Law criminalizes the exploitation of human by enslaving persons, or subjecting them to servitude, or forcing them to work in prostitution or any form of sexual exploitation\textsuperscript{23} and imposes punishments of at least 6 months imprisonment, and a fine ranging form 1000 JDs to 5000 JDs, or both\textsuperscript{24}.

2.1. Legal Personality and Capacity Rules

It is worth mentioning that, the Jordanian Civil Code admits legal personality for every human individual upon his/her birth, provided that his/her life is confirmed even for a while. Therefore, every human being enjoys legal personality from birth to death\textsuperscript{25}. According to this admission, persons enjoy legal capacity of different types depending on their age and mental sanity. Other rights are also assigned only for individuals or entities having legal personality, i.e. nationality, patrimony, domicile, the right to sue and be sued etc.

Two types of capacities were organized throughout the Jordanian Civil Law; the Capacity to hold rights and obligations, and the capacity to use these rights, namely the capacity to contract or dispose.

As many other Civil Laws, Jordanian Civil Code determines the age of 18 to be the majority age\textsuperscript{26}, any sane person who reach this age with full conscious and sound mental abilities has the legal capacity to contract and dispose\textsuperscript{27}. However, this capacity is to be restricted only in certain cases where it is proved that the person has a mental impediment, i.e. insanity, impertinent, good hearted and extravagance\textsuperscript{28}.

\textsuperscript{17} In the occasion of the International Year to Commemorate the Struggle against Slavery and its Abolition (2004), the Director-General of UNESCO wrote: “slave trade and slavery are challenging the very basis of the Universal Declaration of Human Rights”. Available at: http://unesdoc.unesco.org/images/0013/001337/133738e.pdf
\textsuperscript{18} In 1865, The U.S. House of Representatives passes the 13th Amendment to the Constitution, abolishing slavery in the United States by stating that, neither slavery, nor involuntary servitude...shall exist within the United States, or any place subject to their jurisdiction.
\textsuperscript{19} Article 8 of the UN Covenant on Civil and Political Rights
\textsuperscript{20} Article 16 of the UN Covenant on Civil and Political Rights
\textsuperscript{21} According to Article 2 of the Jordanian Constitution for the year 1952, “Islam is the religion of the State”. Moreover, Article 2 of the Jordanian Civil Law provides that “ The provisions of this law shall apply to all matters it deals with, and if the court do not find applicable provision, then it has to apply the rule of Islamic Jurisprudence "Fiqh", which is more “appropriate” to the rules of this law, then it has to apply the general principles of Islamic Sharia”, then by customary rules, then by natural law "principles of fairness".
\textsuperscript{22} The Ottoman Majallah represents the Ottoman Civil Law which is wholly derived for Islamic Jurisprudence “Islamic Fiqh”
\textsuperscript{23} Article 3 of the Jordanian Law for the Prevention of Trafficking in Humans no 9/2009
\textsuperscript{24} Article 8 of the Jordanian Law for the Prevention of Trafficking in Humans no 9/2009
\textsuperscript{25} Article 30/1 of the Jordanian Civil Law no 43/1976
\textsuperscript{26} Article 43/2 of the Jordanian Civil Law no 43/1976 adopted The Gregorian calendar to determine capacity age.
\textsuperscript{27} Article 116 of the Jordanian Civil Law no 43/1976
\textsuperscript{28} Article 127 of the Jordanian Civil Law no 43/1976
It is widely believed that such restrictions are determined in the interest of the interdicted person to protect him/her while transacting. Therefore, the law which imposes limitation on the person’s capacity entrusts another person appointed by the law or the court to act as a guardian for the interdicted person.

The legal organization for capacity rules is strongly connected to the concept of public order, which means that these rules are imperative and any agreement to alter or amend these rules is considered null and with no legal authority.

It is worth mentioning that, having legal personality means that individual shall have an identity which consists of name, family status, nationality, domicile, patrimony, legal capacity, and legal representation.

3. Freedom to Contract: (Full and Genuine Consent)

Freedom to contract is partly mentioned in the UDHR in Article 16 which states in its’ second paragraph that “Marriage shall be entered into only with the free and full consent of the intending spouses”. The ACHR also emphasis freedom to contract also in connection to marriage by stating in article 33 that “…. No marriage can take place without the full and free consent of both parties…”.

The importance of marriage is beyond doubt, since family in all jurisdictions is considered to be the natural and fundamental group unit of society. This importance illustrates the mentioning of marriage in connection to the freedom to contract. However, freedom to contract is not only related to marriage, but also related to all kinds of contracts. Therefore, the legislator of the Jordanian Civil Law provides rules to protect the individuals’ free will to conclude contracts of different kinds by regulating duress in the general rules applicable to all contracts.

Duress under the Jordanian Civil Law can be sever or light, sever or forcing duress is threatening individual with serious and imminent danger inflicted on his body or property or the body or property of his dears while light duress is less serious than sever one. In deciding the kind of duress that the individual undergone; the court shall have wide discretion to determine this issue according to facts and circumstances in a case by case manner; However, both kinds of duress have the same effect; Article 141 of the Jordan Civil Law provides that “contract concluded under any kind of duress shall have no effect unless the duress is removed and the victim of duress chose to ratify the contract thereafter; which means that, the victim of duress will not be forced by a court of law to execute the contract to which he is enforced to conclude before his ratification.

The unification of the rule of duress regardless of its’ kind, indicates the strong protection offered by the legislator to the freedom to contract. And how the term “full consent” is understood by the Law, bearing in mind that duress is directed not only against individual’s freedom to contract which is illegal under Civil Law rules, but also may involve an offence against individual’s right to bodily integrity or his reputation; The fact that may invoke Criminal Law rules against the perpetrator of the duress.

30 Article 128-131 of the Jordanian Civil Law no 43/1976
31 Article 47 of the Jordanian Civil Law no 43/1976
32 Article 38 of the Jordanian Civil Law no 43/1976
33 Articles 34-38 of the Jordanian Civil Law no 43/1976
34 Article 33 of the Jordanian Civil Law no 43/1976
35 Articles 39-42 of the Jordanian Civil Law no 43/1976
36 Articles 43-47 of the Jordanian Civil Law no 43/1976
37 Article 51/1/C of the Jordanian Civil Law no 43/1976
38 Freedom to contract means freedom to contract or not, freedom to choose the contracting party and the freedom to negotiate the contracts’ terms
39 Article 16/3 of the UDHR and Article 33 of the ACHR
40 Article 136 of the Jordanian Civil Law no 43/1976
41 Article 137 of the Jordanian Civil Law no 43/1976
It is worth mentioning that, the freedom to contract means that the consent of the contracting party shall be genuine, therefore, the freedom to contract was protected also against fraud that lead the individual to contract with false consent and therefore suffer gross loss as a result of such fraud.\(^\text{42}\)

The Jordanian Civil Code provides for special rules applicable only to what is known as adhesion contract, i.e. contracts that negotiating power of the contracting parties is not equal.\(^\text{43}\) Article 204 of the JCC reads as follows “if the contract concluded with adhesion and contains unfair terms, the weaker party shall have the right to apply to the court to amend or nullify the unfair terms according to fairness”. Moreover, while interpreting the term of adhesion contract, the courts are required to take the interest of the weaker party into consideration according to article 240 of the Jordanian Civil Code. These rules are intended to protect the freedom to contract, and to maintain fairness within civil transactions.

**4. Property Right**

The right to own property is one the basic human rights that has been confirmed in the UDHR and also in the ACHR. Article 17/1 of the Universal Declaration on Human Rights affirms that “Everyone has the right to own property alone as well as in association with others”. The full protection to this right is further extended in Paragraph 2 of the same article to include the prohibition of the arbitrary deprivation of one’s property.\(^\text{44}\)

In compliance with these rules, the Jordanian Civil Law in its’ widest Chapters regulates property rights in a very detailed manner.\(^\text{45}\) In Chapters three and four the Jordanian Civil Code defines ownership and specifies owners’ authorities, namely the right to use, the right to utilize and the right to dispose. Then it provides detailed rules governing the two kinds of ownership, i.e. individual and joint property.

The main rules for the protection of private property under the Jordanian Civil Law are:

1. Article 1020 of the Jordanian Civil Code which bans expropriation of private property except for the public interest and against fair compensation according to the rules of law. In this regard one can provide evidence of the significance of property rights, this evidence is to be found in Article 11 of the Jordanian Constitution for the year 1952 which prohibits all kinds of expropriation except for public utility and against fair compensation according to the law.\(^\text{46}\)

2. Article 256 of the Jordanian Civil Code which provides a general rule for civil liability for any injurious act or omission resulted in a damage inflicted on individual body or property. According to this article, civil remedy namely compensation is available for any person whose property was damaged as a result of another conduct.

3. Articles 275-287 of the Jordanian Civil Law which deal with certain wrongdoings against individual’s property, such as trespass, property infringement, theft, and indulging.\(^\text{47}\)

It is to be noted that, apart from Jordanian Civil Law, protection of private property is also guaranteed under other Jordanian legal instruments as follows:

4. There are many rules in the Amended Jordanian Criminal Code no 9/1960 to which criminalize certain act committed against individual’s property such as theft, fraud, embezzlement and breach of trust.\(^\text{48}\), \(^\text{49}\)

\(^{42}\) Articles 143- 164 of the Jordanian Civil Law no 43/1976

\(^{43}\) Article 104 of the Jordanian Civil Code defines Adhesion Contract as a contract in which one party set its terms, and the other party submit to these terms without negotiations

\(^{44}\) Article 31 of the Arab Charter on Human Rights has almost the same rules.

\(^{45}\) Namely Chapters 3 and 4 which consist articles from 1018 – 1447 of the Jordanian Civil Law no 43/1976

\(^{46}\) The Jordanian Expropriation Law no 12/1987 provides rules and procedures that should be followed in the case of expropriation and the legal guarantees available to the owner so as to ensure that expropriation is legitimate.

\(^{47}\) Liability rules also prohibits tort, which may result in death or bodily injury or even reputation (Articles 256- 274 of the Jordanian Civil Law)

\(^{48}\) Articles 399 – 416 of the Amended Jordanian Criminal Law no 9/1960

\(^{49}\) Articles 417 - 421 of the Amended Jordanian Criminal Law no 9/1960
5. Other legal rules may be related to the protection of private property such as the article 111 of the Jordanian Constitution which states that “No tax or duty may be imposed except by law... In imposing taxes, the Government shall be guided by the principles of progressive taxation, coupled with the attainment of equality and social justice, provided that taxation shall not exceed the capacity of tax-payers or the State’s requirements for funds.”

5. Right to a Fair Trial

Fair trial guarantees receive significant attention in the International Documents related to human rights. Therefore, Article 10 of the UDHR states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”\(^{51}\).

Likewise criminal liability, civil liability is also overwhelmed by human rights implications; the terms “the determination of his rights and obligations” used by the Declaration expressly refer to civil litigations. Therefore, fair trial guarantees are available under civil law provisions related to civil liability\(^ {52}\), these guarantees are:

1. The Right to be tried by an independent and impartial tribunal.
2. Publicity of judicial litigations
3. The Principle of Legality
4. The Presumption of Innocence
5. The Right of Defense

As for the Right to be tried by an independent and impartial tribunal, it is an essential characteristic of any fair and acceptable legal system. Therefore, this principle is referred to in the Jordanian Constitution. To this effect article 99 of the Constitution of the Hashemite Kingdom of Jordan provides that “Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law”\(^ {53}\). Moreover, paragraph 1 of the Article 101 of the constitution states that “The courts shall be open to all and shall be free from any interference in their affairs”. In a Jordanian landmark case, the Magistrate Court of Amman ruled out the Compulsory Insurance by-law, because the Court – rightly- found that Article 14 of the contradicted Article 101 of the Constitution which bestowed the right to sue upon every person while the unconstitutional by-law requires that the plaintiff refer first to the insurance company before filing a case. The Court Consider the right to sue as a fundamental constitutional right. Therefore uphold the constitution\(^ {54}\).

It is to be mentioned that although Jordanian Constitution allows the establishment of special tribunals\(^ {55}\), but these special tribunals shall have special jurisdiction, and shall apply the applicable laws and provide litigants which all legal guarantees available before the ordinary courts.

In application to the second fair trial guarantees, the Jordanian Constitution and the Jordanian Law of Civil Procedures stipulate that courts’ procedures shall be held in public unless the Court – upon its discretion or upon request of one party- decides to held it in private in the interest of public order or morals or family relations\(^ {56}\).

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\(^{50}\) Articles 422-424 of the Amended Jordanian Criminal Law no 9/1960

\(^{51}\) Approximately the same wording was used by Article 13 of the ACHR which reads as follows “1. Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights. 2. Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights”.

\(^{52}\) Fair trial guarantees were traditionally linked to criminal trials and criminal liability.

\(^{53}\) The same wording was used Article 3 of the Jordanian Law for the Independence of Judiciary no 15/2001

\(^{54}\) The Magistrate Court of Amman case no13/8/2010, date 10/2/2011, unpublished

\(^{55}\) Article 110 of the Jordanian Constitution provides that “Special Courts shall exercise their jurisdiction in accordance with the provisions of the laws constituting them”

\(^{56}\) Article 101/2 of the Jordanian constitution and Article 71/1 of the Jordanian Amended Law of Civil Procedures no 24/1988
These constitutional articles apply to all Jordanian Courts, be it ordinary, religious, special, criminal or civil. Accordingly, independence of judiciary, and publicity of litigations should be observed in any judicial process. Another important guarantee is the principle of legality, which means that person shall be held liability only for wrongful commissions or omissions prescribed by the law, any legitimate conduct shall not – in principle- entail liability. Although the principle of legality is closely related to criminal law, but certain applications for this principle can be found under civil law rules. The legislator of the Jordanian Civil Law provides for this principle in very general terms in Article 256 which – approximately- reads as follows “every tort shall render the perpetrator liable to compensate the victim for his damages”. This Article provides for a non-fault based liability regime, and it does not specify certain conduct that may trigger liability, so that, it applies to conducts resulted in damage to another person’s body or property. However, other Articles require negligence or at least recklessness in the defendant’s part in order to hold the perpetrator liable, examples of the articles which operate a fault-based liability regime can be found in vicarious liability norms, i.e. liability for the conduct of a third party, liability for the damage resulted from the conduct of an animal or things.

Regarding the presumption of innocence and its application in civil law and civil litigations, the Jordanian civil law affirms this principle in a civil law terminology by stating that the origin is clearance and the creditor shall submit proof establishing his proclaimed right or debt leaving the chance for the defendant to refute plaintiff’s claim. Moreover, the general rule in civil law concerning the burden of proof is that, the plaintiff bears the burden to establish his allegation before the court. And the defendant has the right to provide the contrary evidence. In this regard, the law provides for many defenses which absolve defendant from civil liability, these defenses are sever or forcing duress, self- defense, and obedience of an order issued from a competent reference.

6. Right to Work: (Labour Contract’s Rules)

Jordanian Civil law regulates labour Contract so as to provide optimal protection for the employees who used to be the weaker party in labour relationships. The second book of the Jordanian Civil Law in its Chapter three contains the legal framework for labour contract; this framework tackles the most important aspects of the labour relationship, kinds of labour contract, rights and obligations of its parties with due diligence to the employees’ rights, and the termination of labour contracts.

Moreover, the Jordanian legislator issued special act “Jordanian Labour Act No 8/1996 and its’ amendments” to provide more protection to employees in accordance with article 23 of the Jordanian Constitution which considers labour as a constitutional right for every citizen, and highlights the particular significance of the right to work for the national civil security and economy.
Therefore, the Constitution provides detailed article which positively responds to the Universal Declaration of Human Rights which deals with the right to work in articles 23 and 24 laying down the main ramifications of the such important right by stating in Article 23 that “Article 23 (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests”. And Article 24 which reads as follows: “Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay”\(^69\).

Moreover, Article 6/2 of the Jordanian Constitution obliged the State to ensure work and education within the limits of its possibilities. However, the development of the Jordanian economy indicates that private sector enterprises are getting stronger and employing the vast majority of the working power. Therefore, the State exercises a regulatory role in the labour market.

In this respect, the Jordanian Labour Law determines a minimum wage that any worker should receive\(^70\), and also eight hours to work daily\(^71\), and the conditions for working overtime\(^72\). The law also provides special rules and conditions to regulate employing women and adults and specially protecting these categories from being under waged, or arbitrarily dismissed\(^73\). Moreover, Article 13 of the Jordanian Labour Law and the Jordanian Law for the disabled Persons’ Rights determine a special quota of disabled persons that the employer is obliged to employ by 4% of the total number of workers\(^74\).

These Articles provide not only for the right to work, but also the list of rights conferred to the worker at work place. Therefore, guarantee appropriate standards of working conditions to satisfy the international labour standards.

It is worth mentioning that equality as a basic human right is observed throughout Jordanian Civil Law, and other Jordanian private laws. Therefore, discrimination between male and female is hardly existed, and to tell the truth one may cite some signs of what so called “positive discrimination”. For example, Jordanian law of personal affairs conferred the married woman the right custody on her children in the case of divorce. Another example is to be found in the Amended Jordanian Labour Law no 8/1996 which provides for rights and rules in favor of the female worker such as ten-week maternity leave with pay\(^75\), one-hour rest for breast-feeding working mother\(^76\), and also a baby sitting service in the working place\(^77\), and the duty on the employer not to dismiss the pregnant working woman starting from the sixth month of pregnancy upward\(^78\).

7. The Right to Marry and to Found a Family
Although these rights have not received the due attention in researches related to human rights, but these rights are importance to the very existence and stability of the society.
Historically, family affairs are regulated by Civil Law, but the advancement of legislation; family affairs developed into a special subject that is now regulated by special law. Therefore, a special law dealing with the organization of these rights has been enacted in Jordan to this effect namely the Jordanian Act for Personal Affairs no 61 /1976 amended many times and recently replaced by the Provisional Law no 2010. This Law is dealing with all family affairs such as marriage contract, custody, inheritance, and wills. The Jordanian Personal Affairs Law is also derived from Islamic law “sharia’a” to regulate family affairs within Jordanian Moslem community, leaving family affairs of non-Moslem Jordanians –namely Christians- to be regulated by their own religion. Therefore, the influence of Islamic Law can easily be traced by researchers throughout this law due to the fact that family affairs are one of the core issue organized by Islamic Law.

The right to marry and to found a family is firmly highlighted in the UDHR in Article 16 which states that “(1) men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution”.

In application to this article, the Jordanian personal affairs law, regulates these affairs so as to ensure the application of Article 16 of the UDHR, especially the non-discriminatory and equality approach laid down regarding the right to marry and to found a family.

The Law emphasizes the right to enter in the marriage relation with full and genuine consent of both spouses as required by paragraph 2 of Article 16 of UDHR which affirms that “Marriage shall be entered into only with the free and full consent of the intending spouses”. It also determines the age of capacity related to marriage contract by 18 years old for both spouses, and provides for one exception in this regard by allowing the marriage of a male or female who is under 18 and above 15 if his/her guardian or the competent court considers that marriage is in the interest of him/her. It is worth mentioning that no limitation of any kind has been imposed by the Law to exercise the right to marry and to found a family, except certain condition related to the eligibility and the efficiency of the man to get married; a man has to be eligible physically, mentally and financially to exercise his right to marry. And in the case that a man is 20 years older than his intended wife, the marriage shall be first approved by the competent court to ensure the woman free consent.

Influenced by Islamic Law, the man is responsible for the expenses the marriage entails. And he is the responsible party for all financial affairs as reasonably needed by his wife and children. Accordingly, the woman may resort to the competent court to demand her expense or divorce if her husband rejects to provide her with a reasonable amount of money accordingly to his financial capabilities.

Unfortunately, certain States legalized the same-sex marriage for reasons related mainly to personal freedom and liberty, and other are still considering the issue of legalizing such relations. However, the right to marry –indeed- has a natural meaning i.e. marriage between a man and a woman. In this regard, one may notice that same-sex marriage is getting more supporters worldwide; accordingly, the legal issue attached to this kind of relationships may considerably be changed in the future.

80 Article 10/A of the Jordanian Law for Personal Affairs
81 Article 10/B of the Jordanian Law for Personal Affairs
82 Articles 21 & 22 of the Jordanian Law for Personal Affairs
83 Article 11 of the Jordanian Law for Personal Affairs
84 Articles 59 & 60 of the Jordanian Law for Personal Affairs
85 Article 59/C and 115 of the Jordanian Law for Personal Affairs
86 It is to be noted that same-sex marriage contradicts the principles of Islam the main source for family law in Jordan, and therefore, such marriage is prohibited and considered null. Moreover, same-sex marriage contradicts public order and morality in Jordan. Therefore, it entails criminal liability for its’ parties according to the Amended Jordanian Criminal Law no 16/1960.
Conclusion and Recommendations

Originally, fundamental rights, i.e. human rights embodied in international human rights treaties and constitutional rights enshrined in national constitutions, and private law were considered to be wide apart due to the sharp distinction between public and private law. Therefore, private law was considered to be immune from the effect of fundamental rights. However, a novel approach believes in the interaction between human right and private law, and this approach argues that fundamental rights and private law relate to each other this relation will determine the future of private law.\(^\text{88}\)

The traditional vision that considers private law in general and civil law in particular as patrimonial legal rules has to be reconsidered by legal scholars and professionals in order to place human rights in private law discourses, because the fundamental values enshrined in these rights are of profound influence and cannot be neglected in the private law debate.\(^\text{89}\)

Civil Law encompasses the essential theories of law, i.e. the theory of liability and the general theory governing civil transactions. However, it includes some rules that can be tackled from unconventional angles such as civil law rules related to certain human rights which were incorporated in main national and international human rights documents; these rights are the right to be admitted as a legal person before the law, freedom to contract, property right, the right to fair trial, the right to work and the right to marry and to found a family.

In so doing, civil law enhances further legal protection for these human rights, and comes closer to other branches of law concerned with the protection of human rights i.e. Public International Law “International Law of Human Rights”, Constitutional Law and Criminal Law. Moreover, by having human rights implications, civil set forth common legal values among different legal jurisdiction. Indeed, Protection of human rights within the states’ legal system by means of Constitutional, Criminal, and Civil law will probably lead for common and approximate rules in an era of globalized human community.\(^\text{90}\)

At the end of this Paper, I would not find better conclusion than what Professor Olivier Moréteau once wrote: “we may go much further showing that system building is not creating strait-jackets but safeguarding rights, if we legislate in simple terms and agree to look at the reason behind the words (the ratio legis) and ultimately, the principles or values behind the legal systems (ratio iuris). A body without a soul is a corpse. A Code or Constitution without a spirit is just a maze of dead words. We may be trained in the civil law or in the common law, but what is the point of what we do if we do not bring life into it?”.\(^\text{91}\)

After exploring the protection of certain human rights offered by the Jordanian Civil Law, the author suggests that Civil Law shall be studied and taught from different angles; beyond the traditional approach which views the civil law only as a mean of organizing civil transactions and civil liability. This different approach will clarify the fact that civil law is -indeed- an interdisciplinary field of legal studies with various ramifications that go beyond the traditional way in which civil law has been perceived by specialists – practitioners and academics. To initiate and enhance this suggestion, certain topic has to be the core of further research within the civil law realm; as a beginning, topics like protection of human right, economics of civil law, and punitive function of civil liability should receive more attention from researchers.

References


\(^{90}\) For more about this issue see, Sabino Cassese, 2006, ”The Globalization of Law” International Law and Politics, V 37, Pp 973-993, available online at: http://www.iiil.org/GAL/documents/THEGLOBALIZATIONOFLAW.pdf

[18] Amended Jordanian Criminal Law no 16/1960