

# THE MATCHING EXTENT OF THE REAL WEAPON DEFINITION UPON APPLYING IT ON THE UN-REAL WEAPON ACCORDING TO THE JORDANIAN LAW

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## ABSTRACT

*This research has sheds lights on the applicability of the definition of weapons as described by the Jordanian Penal Law to un-real weapons (fake or toys), where it was found that the Jordanian Court of Cassation has two understanding on this matter, within the first understanding of the jurisprudence, the fake weapon consider as a real weapon at the aggravating circumstance of theft, while the second understanding, did not consider the counterfeit weapon as a real weapon to create a crime of threatening. As well as the research dealt with the Jurists' point of view regarding this subject, finally, the researcher came into a conclusion for the need of amending the definition of weapons contained in the Penal law.*

**Keywords:** Weapons, Armed Weapon, (Counterfeit/Fake/Un-real) Weapon, Jordanian Penal Law.

## INTRODUCTION

The Jordanian Legislator presented the definition of weapons in Chapter (II) at the second volume of the Penal Law, entitled by (Crimes Against Public Safety), where the weapon was defined to determine the definition of Gangs and The Armed Congregates and Meetings (Article 154 of the Penal Law), and for defining the crime of carrying weapons, which was mentioned in Article 156 of the Penal Law, the legislator provides the following definition at Article 155 of the Penal Law:

1. To apply the preceding Article, the meant of weapon is each Armed Weapon, any cutting or piercing or bruising tool, or any device or tool which is risky into public safety.
2. Pocket knives with a blade more than ten centimeters shall be considered a weapon in the sense specified in this Chapter, unless it was basically intended for use in a profession, industry or craft practiced used by the holder or for domestic usage, and the purpose of carrying the knife is for use in craft, profession, industry or domestic. The term "*knife*" in the definition includes any tool/device except machete with a blade, whether with or without a sharp head.

However, the term "*Weapons*" is also mentioned in other Articles of the Penal Law, where the legislator considers that carrying or threatening by weapons deem as an aggravating circumstance of theft case (Articles 400 and 401 of the Penal Law), as well as, the term "*Weapons*" was mentioned in the threat offense in Article 349 of the Penal Law, which needs a threatening by weapon or using armed weapon to be proven.

A part of jurisprudence views tend to the idea of that the definition of the term "*weapon*" which contained in Article (155) of Penal Law concerns only the mentioned offenses at that

definition, and does not extend to the definition of the term "*weapon*" in other criminal Law Articles (Al-kilani, 2004), while the most inclined view in jurisprudence believes in consider the Weapon definition in Article (155) of the Penal Law to be the interpretation of the term "*Weapons*" wherever they appear, due to two reasons:

First, the mentioned "*Weapon*" definition is comprehensive, gives sufficient explanation to the term and includes the identifications formulated by the jurists about the weapon nature and the weapon specifically. Second, the law should be read as one unit as considered by the Court of Cassation (Namoor, 2002), as it is inconceivable that the legislator intended to use the same term by two different meanings just because it was used in different Articles, and if the legislator intended other meaning he will state it explicitly (Al-Saied, 2008), which complies with the rules of legal interpretation. It is a fact in the field of interpretation that the technical terms used by the legislator in a certain Article, its meaning must be overwhelmed in other Articles in which the legislator uses the same term but did not identify it, unless stated by legislator expressly or implicitly (Al-Saifi, 1972).

This view does not raise any difficulties when the used weapon is a real weapon, but the serious problem arises when an un-real weapon is used by the offender to facilitate theft or threaten, by this case, the un-real weapon will not apply to the Weapon definition contained in Article (155), but the cause of criminality have been achieved.

Is the usage of an un-real weapon sufficient to determine that there was an aggravating circumstance upon theft incident, or it is enough to confirm that the threat crime elements contained in Article (349) available?

## RESULTS AND DISCUSSIONS

The Jordanian Cassation Court decided to consider the case of carrying a weapon or the threat thereof as an aggravating circumstance for the crime of theft if the weapon is fake, and the court has justified its decision on based on the causes of the text, in which it states that the cause of considering the weapon threat as an aggravating circumstance in this crime, is what this threat cause to the victim by frustration and inner horror which cripple his will to defend his possessions, as the impact of the real weapons and the fake weapons will be equal, since it appears as real weapon, and the victim can't verify the truth (Laws, 1985), As the victim cannot in such circumstances ask for clarifying or check up the weapon to verify the weapon truth (Laws, 2001). Consequently, the threat of the accused to the victim with a weapon that in his possession, despite his weapon is of sound effect type, achieves the threat of the real weapon threat as long as this gun has the appearance of a real gun and as long as this gun inflicted horror in itself and paralyzed victim ability and led him to escape (Laws, 2007).

A sum of Jordanian jurists have aligned with this view based on the same arguments (Saleh, 1989), while within the Egyptian jurisprudence there are who's tend to this view, but not as package, but under two conditions: First, the fact that the real weapon led to the threat of the victim. Second, the fake weapon has the appearance of a real weapon, and the reference in this condition, is the ordinary person, as the ordinary person within the position and circumstance of the victim cannot distinguish that the weapon is counterfeit (Behnam, 1999).

From another perspective, some Jurists opposed the Court of Cassation's point of view and they insist that the weapon must be real, the consideration of counterfeit weapons as a real weapon is an expansion of interpretation, and enlarging for the scope of criminalization without a legal base, and this would be a deviation from the principle of the legitimacy of crimes and

sanctions (Namoor, 2002). It is not enough to rely on the causes of the text only, it is not enough for the victim to be horrified and horrified simply because he imagined the toy weapon as a real weapon, since the source of terror and horror must be a weapon as defined by law, and If the legislator wanted to indicate the status of the availability of the weapon similar to the actual availability of real weapons, he would not hesitate to mention it explicitly (Al-Saied, 2008).

This understanding was adopted by the Jordanian Cassation Court concerning the threat offense under Article (349) of the Penal Law, as this Article stipulates:

1. Whose threatens others by using a weapon, shall be punished by imprisonment for a period not exceeding six months.
2. If the threatening weapon was armed and used by the perpetrator, the penalty shall be imprisonment for a period, not less than six months.

Accordingly, the Court of Cassation decided that the crime did not occur in the case of the use of fake weapon, accordingly, the stipulates of the court decision was: (The uses of sound effects gun by the perpetrator, will not be applied to the provisions of Article (349/2) of the Penal Law, as the used gun is a sound gun and does not meet the technical specification of the armed weapons.) (Laws, 2005) so, when the courts prosecuted such cases, the court must ensure that the weapon is real (Laws, 2018).

## CONCLUSION

This research elucidates the difference in the extent of consideration of the fake weapon as a real weapon, whether to build up an aggravating circumstance for the theft crime or occurring the crime of threat by weapons.

Each understanding has its legal and logical references, it is possible to announce that the understanding who went to consider the fake weapon is not as a real weapon, was based on the literal interpretation of the legal texts, by respecting the principle of legitimacy, and that who went to the contrary was based on the hiding interpretation which focuses on the aim of the legislator and the causes of the text, which is closer to Logic, as its not logic to consider threaten the victim by fake weapons is not crime of threatening, as the appearance of the used weapon is similar to the real weapon and created a dread situation into the victim and violated his right in reassurance, to resolve this conflict, It is more appropriate that the legislator expands in the definition of the weapons to include counterfeit weapons according to certain parameters, as the French legislator adopt, where he defined the weapons in the Article (132-75) of the latest French Penal Law as:

1. *A weapon is any object Lead to kill or injure. Any other objective susceptible present a danger to ordinary is classed as a weapon when it is used to kill, injure or threaten or it is destined by the person carrying it, to kill, injure or threaten.*
2. *Any object which resembles and can be confused with a weapon defined in the first paragraph, and that is used to threaten, kill or injure or is destined, by the person carrying it, to threaten, kill or injure, is classed as a weapon.*
3. *The use of an animal to kill, injure or threaten is classed as using a weapon. Where the owner of the animal is convicted or if the owner is not known, the court can decide to hand over the animal to an animal refuge, which can dispose of it as they wish.*

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