

# Bribe and Embezzlement Crimes in Public and Private Sectors According to United Nation Anti-Corruption Treaty (Encounter) Combat

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**Abstract:** This research discusses an important subject form assaults public fund subjects in general and public occupation in particular which this topic is a bout bribe and embezzlement in public as well as private sectors, According to United Nation anti-corruption Treaty (encounter) and in comparison with Jordanian legislation on. This research aims at defy the concepts of these two crimes and their legal framework according to the treaty and the Jordanian legislation. Furthermore, to reveal the goal structure for both within public employee formwork, who is virtual element for these crimes occurrence, In order to achieve the study's objectives, the study is divided into two parts: First examines the legal structure of bribe's crime, in terms of its elements, and legal formwork in both public and private sectors Also for identifying. Nature of public employee the virtual element in both two aims. Second part as consists of embezzlement crime's legal structure whether in public and private sectors. And its elements and issues which it causes. The study revealed the results of and recommendation which are expressed in the study.

**Keywords:** Bribe and embezzlement Crimes, legal formwork.

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## 1. INTRODUCTION

### The significance of the subject:

The significance of legal nature of subject of the two crimes: embezzlement and bribe in bath public and privet sectors and form two aspects: scientific theoretical and practical and application as follow:

#### 1- Scientific importance (theoretical):

The subject scientific importance lies in bring targeting these two crimes analysis and diagnosis through identifying their legal nature and whereabouts.

In addition the study primary significance A lies in its seeking to reveal the concept of public employee the main suspected in these two crimes. Also to display the criminal and discipline policy which legislator Jordan utilizes through relevant legislations form another aspect the important of the study if represented doors opening for further studies and resend about two crimes especially in private sector

#### 2- Practical (Applied ) significance:

The subject practical significance is evident in the examining of obstacles and handles that face the accountability of a person who committed those two crimes in private sector. Which will not be revealed without the reviewing the reason for national legislations failure. These required an extensive study in this regard. Although, there is a huge avalanche of laws and specialized regulations to combat bribe and embezzlement phenomenon, however, this legislation is still in desperate need to be harmonized with the United Nation's anti-corruption Treaty encounter. In addition this subject practical importance is evident through the results of the study and recommendations which are linked to theories and researchers opinions where may be beneficial to specialized in this field.

**Objectives of the study:**

This study sought achieving a main objective which is represented in revealing the role of converting the Jordanian legislation with the UN anti-corruption Treaty for encountering corruption in the field of criminalization bribe and embezzlement in the private sector. Also, to reveal borders separating embezzlement crime and similar other crimes such as: trust abuse in particular, lastly, to examine means and ways which through them eliminate difficulties which hurdle the legal application relevant to such crimes in the Jordanian legislation.

**The problem of the study:**

Based upon the aforementioned, the problem of the study is about the lack of covenant of the Jordanian legislation with the United Nations anti-corruption Treaty encountering, in regard to criminalize bribe and embezzlement in private sector. Also, in case of the legal situation remains as it is which considers the criminal act that is practical to bribe and embezzlement in private sector.

Thus, bribe and embezzlement in private sector are not criminal acts, and the description of embezzlement in private sector shall carry the adaptation of trust abuse crime over its real description of being criminal acts

## 2. METHODOLOGY OF THE STUDY

Due to the study's problem nature and to achieve the study's objectives researcher recognizes that the most appropriate method for this study is the reliance on descriptive method primarily. This method aims at gathering facts and data about a certain phenomenon or situation, with attempt to interpret such facts sufficiently, in addition, the study employs analysis method along with comparative method due to their discussion of United Nations anti-corruption Treaty encounter, and criminal legislations, philology explanation and judiciary rulings relevant to the subject of the study with the Jordanian legislation.

The following are legislations govern the study's subject and eligible for comparison are:

- Jordanian penal Act no 16 of 1960 and amendments.
- Economic crimes Act no 11 of 1993 and amendments
- Honest and corruption encounter commission Act no 13 of 2016.
- United Nations anti-corruption Treaty counters of 2004.

**1- Bribe crime's legal structure:**

Bribe, in legal context means: Doing business by a public employee, in his duties, through making an agreement with stakeholder or have a kind of understanding with him to accept that stakeholder's offer the benefits in return have the employee perform or work or refrain from doing such work, as long as this works part of the employee job responsibility.

In order reveal this crimes concept, it must be discussed within the private sector framework and where the linked nation anti-corruption treaty of 2004 points out. And its concept whitens the public sector which the Jordanian Act of 1960 and its amendments dealt with

**1-1 Bribe crime in public sector legal structure:**

Bribe in public sector is considered to be one of the most dangerous crimes that inflicts harm in Jobs honesty ,Bribe ,also is one of the serious crimes that violates honor and trust. It carries uncontrollable harms on administrative apparatus and society at large

Bribe is a corruption means , makes and cause thing and people be corrupt and a case of unfairness due to its volantes of several values .This crime is committed by public employee , in a form of violation to that employee against his employment performance , just to achieve a personal benefits .it means , that unlawfully ,public employee, unlawfully, accepts amount of money ,gifts or personal benefits in return ,that corrupt employee prouder or furnishes facilities or services related directly do his job responsibilities .Even it contradicts ethics and value of society and public employments ethics which require employee to abide by instructions ,fairness ,and equality in service providing to all citizens. Legal

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Vol. 3, Issue 6, pp: (67-79), Month: November – December 2016, Available at: [www.noveltyjournals.com](http://www.noveltyjournals.com)

philology is in consent that bribe criminalization means job protection and relevant rules, from the fear that dealing with bribe becomes as commodity subjected to demand and supply;

This alleged equality between employment and constitutes distortion to the job as long as job's core is service which the state provides its citizens with. However, bribe cause the state's employees to lose, respect and consideration. However, United Nation's anti-corruption Treaty has expended anti-bribe crime. It has not restricted this crime on national employee only- in accordance with article 2 in public employee definition who may be accused of bribe crimes; whereas such crime is not restricted on national public employee who belong to a state- but also public employee who is foreigner and the international organizations employees.<sup>1</sup>

Public employees defines as, any person performs public occupation or provides services as it is practical and applied in a certain field of the state's law.

In regard to foreign public employee means, any person who occupies any legislative, executive, administrative or judiciary position in a foreign country in behalf of public agency or public institution. International organization's public employee means, whether, international civilian or any person has permission from such organization to action its behalf, or represent it.

United nation anti-corruption Treaty sought to criminalize bribe crime committed by foreign public employees and employees belong to international public institutions.

An each member state has to take necessary legislative actions and international public actions against undeserved privileged or offer it to him, and grant it to him direct or indirectly regardless whether the crime was employee's best interest or for another person or people (entity) in order to have employee to do some acts, or reframe from doing it, during his official, duties performance in order to obtain commercial benefits or retrain it especially those relevant to perform international commercial work( article 1/16 of UN anti-corruption Treaty).<sup>2</sup>

Every state member of UN Treaty has to take necessary measures to criminalize an employee with bribery crime, whether that employee is in international public institution or foreign public employee and whether bribes crime for personal goal or on behalf of another person, for the purpose of having that employee to act not to act during his official duties performances.

### 2- Lawful (legal) principle:

Article (170) of Jordanian penal law states that "Any employee or a person assigned to public service whether by election or assignment (hiring) and every person designated to perform an official duty such as: arbitrator, expert, or agent of a corporation, asks for himself or for somebody else a gift, promise or any benefit to perform in accordance to with his job will be punished for a period not less than two years of imprisonment and a fine equal to what he asked or received whether money or in kind.

This article deals with the crime of bribe in the form of bribery misdemeanor, become this person acted while he perform his job, thus his unlawful act is lesser than bribe felony which 171 article of this law his dealt with.

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<sup>1</sup>Sa'eadKamel (2008) penal law explanation for crime harmful to public interest Amman, Al Thaqafah Dar publisher (405)

Article 2 of United Nation anti-corruption Treaty states that:

a-Any person occupies legislative, executive or judiciary with any state, whether designated or elected, permanent or temporary, whether paid or without pay regardless of the seniority of the person.

b-Any other person performs a public occupation on behalf of public apparatus or public institution or provides public service in accordance to the states internal law and related legal scope of that state

c- Any other person known as public employee according to states in internal law

<sup>2</sup>1\16 article of UN anti-corruption treaty states that each involved state relies on all what is necessary in terms of legislative measures and other measureless to criminalize international act that promise foreign public employee of employee of informational public organization with underserved privilege or offer it to him or grant it to him director in directly whether .he crime for his best interest of offers of any other entity .

**International Journal of Novel Research in Humanity and Social Sciences**

 Vol. 3, Issue 6, pp: (67-79), Month: November – December 2016, Available at: [www.noveltyjournals.com](http://www.noveltyjournals.com)

Article 171 states that, “1- every person mentioned in the above article asked or accepted for himself or for others a gift, promise or any other benefit to do unlawful act or refrain from doing something he has to do because of his job, shall be punished with temporary hard labor and fine equal the value of what he asked or accepted, cash or in-kind.

2- the attorney who commits such deeds shall be punished with same.” This article deals with bribe’s crime as a felony because this person did an unlawful act.

This crime is dealt with in article (172) which states, “Person offers bribe also shall be punished with punishment mentioned in the two previous articles.”

2- Person offering bribe and the bribed shall be forgiven from punishment if they confess their action to relevant authorities or admitted their wrongful act prior to transfer it to court.

Also article (173) deals with crime as it states who ever offer a person/persons or refrain from doing what he supposed to do, is punished by three months at least and 10 dinar to 200 dinar.

Second- public employee characteristics must be available for crime committed person determining public employee meaning- supposed principle- punitive legislation requires a supposedly criteria that is “criminal must be an employee works for public authority, however, public employee definition is not mentioned in the Jordanian penal law’s article except article 169 which states that states,” every public employee in the administrative, judicial or every officer in the civil or military authority, and every employee works for the state or public administration.

It appears that legislator has left public employee definition to Judiciary; we find that “Embezzlement crime consists of four principles”

- Spatial embezzlement physical principle.
- Doer must be states employee.
- Funds which he embezzlement is in his interested or under his control due to his works nodes
- Criminal integration –Abstract principle<sup>(3)</sup>.

In another aspect Jordanian high court of justice defines public works as the person who entrusted with permanent work in serving public facility, managed by one of public law personnel<sup>(4)</sup>.

The aforementioned clarify that bribe’s crime is a crime that is agglutinant to public employee, which means this type of crimes would not occur without having public employee enjoying a public occupation’s authority which gives him solely do business with it. Jordanian legislator expanded public employee concept more than the administrative law<sup>(5)</sup>. Whereas it considers public employee as several types.

<sup>(3)</sup> Ruling No. 104/1973 Bar Association magazine 1973, p. 1652.

<sup>(4)</sup> Statanaw: Ali Khadar ( 2007) Jordanian Administrative judiciary 1<sup>st</sup> ed. Amman, Dar Wa’el P.18

<sup>(5)</sup> Public employees as states workers and administrative authority workers differ significantly from workers belong to private projects owned by private groups or individual. Work in state’s service targets .primarily public interest achieving which can be summarized the smooth and regular work of state’s institutions so as to achieve the state’s objectives, which are citizen’s prosperity power and strength of the state. Administrative law’s philologist put forward several definitions for public worker. Public facilities workers ‘persons in their relationship with the state abide by public law rules; peop0le get paid by the state . In French philology every contributes in public facility service managed by state. (Zoubi, 1993, p. 183)

In the Egyptian administrative judiciary, the public employee it is person who entrusted in doing permanent work in the service of public facility runs by the state, or by any other public personality through occupying a position enters into administrative system of that facility – Egyptians higher administrative court: case No. 168 on 19/12/1959.

In Jordan the higher justice court defines public employee as every person entrusted to do permanent work in the service of public facility.

Belongs to the state or any public law persons no. 2/73- Bar Assn, magazine 1922 no. 7-8. P. 962.

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Vol. 3, Issue 6, pp: (67-79), Month: November – December 2016, Available at: [www.noveltyjournals.com](http://www.noveltyjournals.com)

Some are expert, lawyer and agent of corporation. Thus, the person accepts bribe as a supposedly element in this crime is also include public worker and other person who are not public workers accordingly. Public worker has not be a permeate one, but also temporary workers are treated the same <sup>(6)</sup>.

Jordanian legislator declares in article 169 of penal law, the public worker definition as it supposed to be , “ Every public worker in the administrative and Judiciary branches and every officer of civil or military authority, each of it individual ; and every worker or state’s employee or in public administrative .

Thus, Jordanian legislator, with this broad definition, comes in agreement with what penal law enjoys from being independent <sup>(7)</sup>.

Article 170 of penal code has broadened the scope and the concept of public employee; whereas the bribe’s crime includes every person assigned to a public service wether by election or designations.

This case is contingent with the designate to person who will perform an official test must be issued by authority operates by laws. In this regard Jordanian cassation court rules in one of its decisions. According to articles (4,2,7) of Arbitration Act no 18 of the year 1953, is that, arbitrator whether designated according to special arbitration agreement or by court, is considered as an arbitrator assigned by court and has to perform an official task as it is stated in Article 170 of penal law. Whereas he has the authority to have witnesses under oath, submit petitions to court, makes a decision in regard to the dispute. Thus articles 170 and 171 rules of penal law, applied on the arbitrator in case the asks for bribe. Rules the person who commits the crime of bribe must be a public employee or a person designated to perform a public duty. The material (Physical) principle of this crime is that criminal must be public employee or designated to perform service. In case these criteria are there, it does not have to continue until it is revealed or provides a law suit against it. Thus, the termination of employment for whatever reason does not eliminate the job of employee who committed the crime while he was at the herd of his job, nor in his vacation <sup>(8)</sup>.

The crime of bribe will not occur, without the ability of the employee to do so. (Accepts or asks for a bribe while he is still a public employee). In this regard the cassation court rules that, “Bribe crime is contingent with the person who asks or accept to do by himself or for others gift, promise or any other benefit in return for his performance to do unrightfully act which he is able to do because of his position.

Plaintiff claims that he part hundred fifty dinar to defendant who is a member in consulting committee which governor had established <sup>(9)</sup>. (so as to provide advice ( consultation) to him in regard public safety and public service. The said committee has no power to issue or make any decision whether in closing down or reopening of a shop which was closed down by another party). This 150 dinar was paid in return for re – op-inning a bakery shop which the UNRWA has closed down earlier, this is not a bribe crime because the person who received this money has no authority to reopen the shop, and rather, attorney general has consequently this fraud crime <sup>(10)</sup>:

Article 2 of Jordanian civil service by – law no. 82 of 2013 defines public employee as” Person who is assigned by an relevant authority decision, in a job listed in occupation guide issued by public budget law, into a state’s facility, or the employee

<sup>(6)</sup> in the Egyptian administrative judiciary, the public employee is the person who entrusted in doing permanent work in the service of public facility runs by the start or by other public personality through occupying a position entrels into administrative system of that facility – Egyptian higher administrative court : case no 165 on 19/12/1959

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<sup>(8)</sup> Jordanian cassation criminal, decision 7/75 Bar association magazine.

<sup>(9)</sup> Zain Abedeen , AwadKathem, bribe’s crime in private sector according to Iraqi and international criminal law- Al Kofah Magazine for legal and political sciences Iraq vol. 3, No. 9 Feb. 2011. P. 149

<sup>(10)</sup> Jordanian Criminal cassation, decision no 65/1985- Bar Association’s magazine 1985 p 1275.

**3- Third, Materialistic principle:**

Article 170 and 171 of penal code reveal that, the materialistic principle for bribe's crime requires that public employee or who is in his position, accepts benefit, or a promise whether for himself or for others so as to do kind of act which intervenes in his job's performance. This means that reason to do such act by public work is a his attempt to gain materialistic benefits or non-material benefit. In return to this benefit, the public employee conducts an rightful or non-rightful deed which considers part of his job.

Materialistic principle consists of three elements:

1. Criminal behavior.
2. Criminal results / consequences.
3. Cause / reason

This criminal activity appears in two facets: Acceptance and demand Articles 170 and 171 of Jordanian criminal code has dealt with them: First : Acceptance : to agree an postponed pay, offenders acceptance to receive benefits om future, criminal has no gift possession rather he accept to receive it in future<sup>11</sup> This criminal activity indicates, either criminal asks for a gift from the person involved in this activity who in turn promises him with it and the employee criminal does what the other party asks him to do , or the other party offered the gift or promised the employee to give such gift in turn of fulfill his need<sup>12</sup>.

In this regard cassation court points out that "Bribe is completed with the consent of two people of two people, demand and acceptance between public employee – one who accepted bribe – the other who offered the bribe public employee involved accepts it with the intention to tamper with his work that is entrusted to his as it is shown in articles 170-171 of penal café, Jordanian legislator and not separate the act of bribe accepted person and the person who offered the bribe.

The person who offered the bribe. Instead legislator makes the two as crimes components<sup>13</sup>. Bribe crime is committed with the agreement for acceptance a gift, regardless of he received it or not, thus cassation court clarifies this by, "The taking or receiving two dinars for refraining from doing a work, he supposed to do constitutes a bribe as it is stated in articles 170-171 of Jordanian penal law, The nature of this action shall not be changed even if defendant has not received the amount<sup>14</sup>.

The will to accept bribe is serious and accurate<sup>(15)</sup>. Bribe acceptance reflects such will. Otherwise no acceptance takes place, rather, the public employee reveals his intention to show the other side while he indulging into this criminal activity. Jordanian legislator has not found an acceptable form for acceptance. It is possible to be verbally, or inform of an action, or in writing or by sign or gesture. Also, acceptance can be overly or covertly. Thus, judges must be careful when they have to prove; a covertly acceptance<sup>(16)</sup>.

Jordanian legislator makes, just for asking a public employee, benefit as a complete crime. Thus the person involved initiates bribe so as to get some benefit in return. However legislator makes clear that asking is contingent with acceptance. Never the less, bribe crime must have two parties to be called a crime: person offer bribe, another person accepts the offer. Thus the bribe crime is evident. When there is no acceptance to bribe offer, Jordanian legislator make it a crime when somebody initiates a bribe action. It is a separate crime because bribe's initiator causes people to distrust public institutions<sup>17</sup> for that reason; Jordanian legislator makes the initiator of a bribe a criminal, with or without the acceptance by the public employee.

<sup>11</sup> Abu Amer, M.Z Lebanese penal code, specral part, university publisher , Bireut 1981

<sup>12</sup>Nowayseh, M 2012 Ibrid P. 65

<sup>13</sup> Cassation 1595/2011 on 3/11/2011, Adalet electronic publisher

<sup>14</sup>Cussation-criminal 72/95 – Bar Assn, magazine 1973, p 1078

<sup>(15)</sup> Abu Amer, 1981, Ibid, p. 39

<sup>(16)</sup> Nawayseh M, 2012, Ibid , p. 66

<sup>17</sup>Marsafawi, special penal code Ma'aief publisher Alexandra, 1991 P.25

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Thus, the situation can be either: The needy person response positively to public employee request for a benefit and actually received it or via promise to give public employee such benefit. In both cases, bribe crime is established based on demand and acceptance<sup>18</sup>

Second: The need person does not respond positively to public employee request, by pretending response or just keep silent.

In all cases the crime has been committed, because the demand's elements are there legally<sup>(19)</sup>..

In addition any employee asks a benefit for another employee is considered to be a bribe doer not a partner<sup>(20)</sup>.

The Jordanian law discerns the bribe crime as offense or felony. Rightful act by an employee is considered felony because its consequence is less dangerous. While unrightfully act whereas all facts will be aside down.

### Second elements: Crime's consequences:

Based upon articles 170 to 171 of penal law, the criminal consequence is represented by" ... his acceptance of a gift, promise or another benefit. ". The benefit which bribe acceptant from this unlawful act may materialists benefit or non-materialistic one.

Materialistic benefit is an economic or monetary benefit. It can be cash money or check, promissory note, jewelry or any other alike. Or an opening a credit account in a given bank, or credit bond. Benefits like these can be unlawful such as illegal drugs or stolen stuff or alcoholic every.

In this regard, the cassation court states that, "if a traffic police stopped a

Driver with private license while driving public vehicle. Instead of issuing a traffic violation to the driver; the policeman asks asked to give him four bottles of beer.

Indeed the driver brings the beer, the police officer takes them<sup>21</sup>, that constitutes a crime. The same can be said, when an officer askes a traffic violated driver for a bottle of perfume, instead he gives him five dinar that is a bribery crime<sup>22</sup>,According to article 170 of Jordanian penal law<sup>23</sup>.

Second: the needy person is not responding to public employees demand, whether by refusal or notifying authorities. In all cases the crime is occurred just by requesting benefits<sup>24</sup>.

The same can be said when a pupil employee asks benefits for himself and for somebody else. Thus, employee who asks benefits for another employee is considered a bribe initiator and not a partner in it<sup>25</sup>.

The Jordanian legal system discerns between the bribes crime, by considering it as a crime or felony. Whereas, a public employee or who is in his position does a rightful act, this considered being a bribes felony; however, if a public employee or who in his position does unrightfully act, thus, a bribes crime is evident.

The magnitude and the danger caused by both actions are decisive in separating both acts: a crime or a felony. When a public employee does a rightful act means lesser dangerous than acting unlawfully which facts altered that built on it.

<sup>18</sup>Nawayseh M, 2012, Ibid , p. 67

<sup>(19)</sup> Husni, Najeeb, Lebanon penal code- Al Wahda Publish 1989 .p.40

<sup>(20)</sup> Husni- 1984, ibid, p. 40

<sup>21</sup>Husni- 1984 ibid p. 40

<sup>22)</sup> Cassation – criminal 74/52 Bar Assn, Magazine 1975, p. 210

<sup>23</sup>Cassation – criminal 17/1999 on 11/4/1999 E. adaleh ctr. Officer asking Saudi driver for money s diman so as to not issue him trqafic violation ticket this is a bribery according to article 170 not according to public security law, article 4/37

<sup>24</sup>Husni M. Lebanese penal law- General/ public, Al Nahda 1984 p. 40

<sup>25</sup>Husni, M, 1984 ibid p.40

**Second-criminal consequences:**

Based upon articles 170 and 171 of Jordanian penal law, the criminal consequences is represented in what the law states, "... gift or promise or any other benefits..." the benefits obtained by bribed public employee can be material/ physical benefits or any other abstract one. Material benefits can be economic or financial benefit, that is cash money received by the bribed, or money by check, primary note or jewelry or any unfixed assets or opening a credit account in the name of the bribed at any bank or as a debt which the bribing party is intend to pay<sup>26</sup>.

Such benefits may be illegal such as: drugs, stolen goods, alcoholic beverages.

In the context cassation court states that, "if a traffic officer stopped a man driving a taxi cab with a private driving license, took the license from him and threats to issue a traffic violation citation, if the driver does not bring to the officer 4 bottles of beer. The officer takes the beer, returns the driving license to the man without issuing a violation citation, such act is considered to be a bribes crimes<sup>27</sup>.

In the some context, the cassation court rules that, "if the defendant cheated a driver that he violated radar speed, told him that he is not willing to issue a traffic violation citation in return for a perfume bottle. When the driver told the officer that he has no perfume, officer asked for among as a tip or a like. The driver gave him JD 5. Act like this constitutes a bribe's crime according to article 170<sup>28</sup>.

According to the Jordanian legislator, the non-materialistic benefits is: " or any other benefit..." this definitions brings punishment, the bribed employee... provides or not any act in which money is not involved such as obtaining a job for one of his relatives or promotion or something else similar to these<sup>29</sup>

The benefit can be in the form of a gift, a gift is a given object that carries a value even if it was low value. In regard to the promise it can be a postponed gift. This type of action causes a bribe crime to rise. The material principle is valid just by the acceptance of promised gift or benefits. It is not necessary to have the bribed employee to obtain benefits from the bribing person in same time. The materialistic principle is actualized when the bribed accepts a promise for a gift or benefit later<sup>30</sup>.

Benefit may be asked by employee in behalf of other person, in this regard the guardian legislator stares that "... Asks or accepts for himself or for other, a gift, promise or any other benefit in return to during an act...."<sup>31</sup>

**Third: causality relationship:**

In order for a bribe crime to occur, and the bribed obtaining of benefit and useful gains, this criminal behavior represented in acceptance and demand for this benefit is the reason or the cause to obtain such benefit. If the bribed employee has not acted to do such deed and criminal activity, he would not have obtained such benefit.

**Abstract principle:**

Bribe crime is a crime of intention by a public worker. Criminal intention can be a public intention. It consists of activity will with the knowledge of all material (physical) act's elements of the crime as the law described.

Or it can be a private intention which consists of public intention with the bribed intention to commit a certain act to achieve a certain goal by committing a crime. Is it enough in bribery crime to have public crimind intention or there must be private intention?

Public intention must be present not private intention to have the crime to occur, as some law philologists ague. It is enough to have the bribed had committed the physical act by his own will, knowing consequences of the crime<sup>32</sup>.

<sup>26</sup>Nawayseh, M, 2012, *ibid* p, 72

<sup>27</sup>cassation-criminal- cause 74/42- Bar Assn. Magazine 1975 p. 210

<sup>28</sup>cassation-criminal- decism no. 17/1999 on

<sup>29</sup>Khafaji, A, no publishing year p. 256. *Ibid*

<sup>30</sup>Mustafa, M *ibid*- no date p. 36

<sup>31</sup>Nawayseh, 2012 *ibid* p97

While other law philologists argue that, private intention must be present in addition to public intention. Criminal aims to get a benefit or a promise law punishes public employee because he did business with his job's dutier or public service assigned to him, or may he has intention to exploit his job's privileges.<sup>33</sup>

#### Public service Representatives:

They are persons who perform public service for public's or society's benefits, even if they were not public employees or assignees or employees, it is sufficient to have the representative to be assigned through election or designation . he must be paid ways or does his assignment free of charge one important here is that, this representative must by assigned by authorized or legal authoring<sup>34</sup> . in case the person is a volunteer, he will not be considered public representative until he starts actual work in public service. In this category the following are considered public service<sup>35</sup>. Representatives.

- Parliamentary councils, and domestic councils who represents the natron. Members of upper house of the parliament and members of the low house and municipalities council members<sup>36</sup>, Zoubi, Khaled in his book Jordanian administrative law , Al Thaqafah publisher, Amman, 1993 in page 87 has similar definition of the public service representatives.

2- Every person who is assigned to do an official task such as Arbitrator, depart or agent. Such class of representatives, provide assistance to judges in their task in providing justice, A judge may request their assistance in some matters. This group of people's responsibility is technical, how are requested to provide public service characterized by being technical and enters within public job's framework. (Najem previous ref. p.15)<sup>37</sup>; is assigned by a contract, also, it does not include an employee who is pard an daily basis.

#### In all cases criminal intentions begets 2 elements:

Knowledge and will. Public employee must know that doing wrong is a crime, as if employee was fond to act wrong (bribe's crime). As it was approved by the Jordanian cassation court "criminal intention is found bribing person, if he knows that known that public employee can do this wrong act by offering him money. Thus, accused persons knowing of the accused female employee that she works for civil status directorate, and her ability prepare two fraudulent id card in return for money. And the said employee did what they wanted. Thus constitutes all criminal intentions elements with then for bribery crime<sup>38</sup>.

#### Legal Structure Of bribe's crime in public sector:

United Natrons Anti-corruption Treaty criminalizes bribe in its artick (21). The same can said in the Jordanian penal law article (170)<sup>39</sup>. In addition, Jordanian's Laos to reveal financial assets Act no 54 of the year 2006 article 6 where as it criminalizes the unlawful exploitation or taking advantages of public employment privileges such as taking bribes for public contracts by which projects would be carried out by private sector contractors. Where as private sector contractor bribes a public employee for the purpose of obtaining the contract.

As a result of this crime, private contractor raise up his price for the contract which causes additional financial burden an the treasury especially when government pays additional costs which reaches up to 125 percent of contracts and projects' value<sup>40</sup> the same results, this researcher has revealed, one law philologists argues that bribe's crime can accrue by a public employee a private employee national employee or foreign employee.<sup>41</sup>

<sup>32</sup>Surur. A. 1980 ibid p15-s-

<sup>33</sup>Abu amer, 1981 ibid ps-7-

<sup>34</sup>Moh'dSulahiNejem“ penal law explanation” the spcial part which discusses crimes violates public interest and public trust, crimes against public money and indexes “ Al Thaqafah publisher, Amman 1995 pp 12-13 ).

<sup>35</sup>Newayseh, IBID, P52

<sup>36</sup>Moh'dSubhiNejem, Ibid p.15

<sup>37</sup>MunterNawayseh- bribe crime in the Jordanian penal law, 1 st ed. Al Hamed publisher Amman-2012 p 30

<sup>38</sup> Article 170 at Jordanian penal law

<sup>39</sup> Article 6 of Act 54 of 2006

<sup>40</sup>Naher, Abu salim 2010 Ibid P.36

<sup>41</sup> Sa\eedkamel 2008 p3

**Legal Principle:**

United Nations Anti-corruption Treaty's article (21) that "each member state has to take all measures, legislation included to criminalize the following :

- 1- ponies by a private sector person. For undesired private lege or benefit for him or other to do unlawful act, where may geoperadize his work.
- 2- Asking any person private sector to do wrongful act in refum of benefit for himself or for other.

These two items represent. There crime of bribe and its legal principles in private sector " legal rule states " no crime and no punishment without a text<sup>42</sup> " in other words there is no crime without the presence of this principle<sup>43</sup>.

**Materialistic principle:**

Relies on promise given to private sector employee to do wrong act. Promise means that bribing person promises to grant private sector employee, a benefit, gift or money to commit bribing crime. Acceptance means that the bribe accepts the promise for him or for others<sup>44</sup>

Materialistic principle requires criminal behavior. Jordanian legislator puts differences between bribes crime in public sector and its counter par in the private sector. Causal principle determines the responsible party for the bribes to occur<sup>45,46</sup>

**Abstract principle<sup>47</sup>**

In another aspect Jordanian high court of justice defines public works as the person who entrusted with permanent work in serving public facility, managed by one of public law personnel

The aforementioned clarify that bribe's crime is a crime that is agglutinant to public employee, which means this type of crimes would not occur without having public employee enjoying a public occupation's authority which gives him solely do business with it. Jordanian legislator expanded public employee concept more than the administrative law. Whereas it considers public employee as several types.

Some are expert, lawyer and agent of corporation. Thus, the person accepts bride as a supposedly element in this crime is also include public worker and other person who are not public workers accordingly. Public worker has not be a permeant one, but also temporary workers are treated the same.

**Embezzlement crime's legal principle**

Embezzlement is very serious crime according to punitive legislation. This crime causes public funds waste and mistrust in public employment. The same is said about private sector.

**Embezzlement crime in public sector legal structure:**

1- legal principle: Article 34 of Jordanian penal law states:

- A- Any public employee keeps public money for himself without the knowledge of others.
- B- Anyone who embezzled money belongs to bank's safety boxes or stockholding companies or credit organizations.
- C- Any person who unlawfully alter documents for the purpose of obtaining benefits for himself. All three crimes perpetrators must be punished.

<sup>42</sup> 1952 Jordanian constitution and Sa'eed k.2009 p 52

<sup>43</sup> Majali, N. 2009 ibid p 67

<sup>44</sup> A.AbuSaqee'ah 2006 p.66

<sup>45</sup> Causl principle ibid

<sup>46</sup> Majali, N 2009 ibid p 217

<sup>47</sup> Arousi, N 1991 p .68

## International Journal of Novel Research in Humanity and Social Sciences

Vol. 3, Issue 6, pp: (67-79), Month: November – December 2016, Available at: [www.noveltyjournals.com](http://www.noveltyjournals.com)

### **Criminal characteristic:**

Public employees definition; criminal must be public sector employee (article 169)

Cassation court determines that embezzlement crime consists of 4 principle:

- 1- embezzlement place: materialistic principle
- 2- Doer is state's employee
- 3- embezzled money as in his trust as his job calls for that
- 4- criminal intention/ abstract principle<sup>48</sup>

Jordanian highest court for justice defines public employee as “ a person who assigned to a permanent work in a service facility managed by a person of a public law<sup>49</sup>

Article (2) of economics' crimes act (1) of 1992 defines public employee “ every employee, servant or worker assigned cy authorities in municipalities, village councils and joint service council. Article 3 paragraph 2 G considers crimes relevant to employment as “ Bribe, embezzlement, exploit job and abuse of authority. As it happened with the employees in Greater Amman municipality who were convicted with bribe and embezzlement for more than once.

However, the court considered their crimes as economy's crimes<sup>50</sup>

However the most important element of such crime is the criminal must be a public employee when he committed the crime<sup>51</sup> without it, the crime will be considered according to a different legal description<sup>52</sup>.

### **Materialistic principle:**

Article 170 and 171 of penal code reveal that, the materialistic principle for bribe's crime requires that public employee or who is in his positon, accepts benefit, or a promise whether for himself or for others so as to do kind of act which intervenes in his job's performance. This means that reason to do such act by public work is a his attempt to gain materialistic benefits or non-material benefit

Materialistic principle consists of three elements:

1. Criminal behavior.
  2. Criminal results / consequences.
- Cause / reason

The materialistic principle is actualized when the bribed accepts a promise for a gift or benefit later.

Embezzlement is a crime of intention, criminal determines to commit it prior to the time of actually committing it<sup>53</sup>

if criminal moves assets from its usual place to another or claim lending it to others or claim his lack of knowledge about it. All of these elements are considered embezzlement<sup>54</sup>

even if there is no visible harm, it still a crime<sup>55</sup>

Public funds (money, assets) are anything or everything owned by the state. Money is designed for public benefits<sup>56</sup>

<sup>48</sup>Decision 104/1973- Bar Assn. 1973 p. 1652

<sup>49</sup>shatanawi, A, 2007 P. 18

<sup>50</sup>Decision 403/2012 on 30/5/2010

<sup>51</sup>Tantawi 200 ibid p.276

<sup>52</sup>mohmoud N. 2004 ibid p. 248

<sup>53</sup>Cassation 318 on 26/12/1988

<sup>54</sup>Husni 1978 p. 101

<sup>55</sup>subhi M, 2006 ibid p, 48

If accused employee returns what he embezzled to government, still be punished.<sup>57</sup>

**Embezzlement principle:**

Embezzlement crime consists of four principles”

- Spatial embezzlement physical principle.
- Doer must be states employee.
- Funds which he embezzlement is in his interested or under his control due to his works nodes
- Criminal integration –Abstract principle

Embezzlement is very serious crime according to punitive legislation. This crime causes public funds waste and mistrust in public employment. The same is said about private sector.

**Embezzlement in private sector:**

UN Anti-Corruption Treaty encourages member states to combat embezzlement in the private sector<sup>58</sup>. Egyptian courts call for punishing anyone who commits the crime of embezzlement in the private sector. It is a criminal act<sup>59</sup>

**Legal Principle:**

As it is mentioned earlier article 22 of the UNanti Corruption Treaty;each member states shall combat through legislation the crime of embezzlement in the private sector<sup>60</sup> Thus the judge can based his decision on article 22of the UNanti corruption treaty.

Materialistic principle:

Consists of the following:

- 1- Criminally behavior
- 2- Criminal consequences
- 3-Causal relationship

Also, more assessor benefits to the employee himself<sup>61</sup>. This means owning such assets<sup>62</sup> whether in commercial activity, economy or financial activity.

**CONCLUSIONS RESULTS AND RECOMMENDATION**

**Conclusion:**

This research paper discussed a very important subject scientifically and practically and relevant to both private and public sectors. This subjects is about the crimes of bribe and embezzlement, the research discussed the legal structure of bribe’s crime in public and private sectors. Also the definition of public employee.Then the embezzlement.

**Results:**

- 1- the definition of public employee gives broader meaning to this term.
- 2- Definition and aspects to the bribe’s crime are explained

<sup>56</sup>cassation 5873 on 13/4/1987 of 1956

<sup>57</sup>Kanaan N, ibid p,383

<sup>58</sup>Cassation no. 1234of 1966 from 8-2-1998

<sup>59</sup>Cassationno.383 of 1960from 7-5-1952

<sup>60</sup>Darwish M.no year .,p 26

<sup>61</sup>Fiasal,Bno. 14 p. 99 , FaisalB.no. 14 p 105

<sup>62</sup>Fiasal Bp. 106

**International Journal of Novel Research in Humanity and Social Sciences**

Vol. 3, Issue 6, pp: (67-79), Month: November – December 2016, Available at: [www.noveltyjournals.com](http://www.noveltyjournals.com)

- 3- UN anti-corruption Treaty criminalizes the crime of bribe
- 4- Bribe crime in public sector differs from that in private sector.
- 5- punitive legislations impose secure punishment on embezzlement crime.
- 6- Embezzlement in private sector is harmful, must be dealt with surely.
- 7- Embezzlement main principle is the accused must be public employee as it is mentioned only in article 169.

**Recommendations:**

- Have comprehensive meaning for both bribe and embezzlement crimes.
- Define bribe and embezzlement concepts in the Jordanian legislation
- considering the crime of bribe and embezzlement in private sector as escort crimes.
- Harmonize UN Tread with Jordanian legislation
- English the concepts of bribe and embezzlement crimes.

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