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Fiqh Controls For The Preservation And Development Of Minors ' Funds In Fiqh And Its Applications In Jordanian Legislation" A Comparative Study "

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Abstract :

This research deals with the statement of jurisprudential controls for managing and developing the funds of those in charge financially. As one of the tasks of the person in charge of the money of others is to preserve the money of minors. The research showed the persons who fall under the meaning of minor in Jordanian jurisprudence and legislation. The research showed the legal controls that the person in charge of the money of others must take into account when disposing of the money of minors. And that the legislation followed a disciplined approach to collect the interests of those in charge. The researchers recommend the necessity of issuing a law concerning guardianship and financial representation on behalf of others.

Keywords: Jordanian legislation, minors' funds, jurisprudential and legal controls.

Introduction:

Praise be to Allah, Lord of the worlds, and prayers and peace be upon His noble Messenger, and after.

Islam urged to help the needy, and singled out people for help. For a reason that exists in them, such as smallness or madness, etc., all in all, they all need help to preserve their money and interests. And he called them under Jordanian legislation the name of minors, and he assigned this care to people known as guardians. The scholars established controls to take care of the minors’ money and themselves, and some scholars generalized and made the legal rules and rulings one thing.

Research importance:

The importance of this study lies in:

First: It highlights the jurisprudential controls and legal conditions in the Sharia legislation regulating the work of the Jordanian Sharia courts related to the funds of minors.

Second: Showing the Jordanian legislator's care for minors, especially to identify the role of Sharia legislation in following up the funds of minors.

Problem of the study:

The problem of the study is summarized in answering the following question: Who are those in charge of them in jurisprudence and Jordanian legislation? The following questions branch out from this question:

1- What are the controls in jurisprudence and legislation regulating the actions of the person in charge of the money of others?
2- What are the most important practical applications in this regard?

Objectives of the study:

1- A statement that a minor in Jordanian jurisprudence and legislation is every person whose circumstances prevent him from managing his own money.
2- Showing the concern of Jordanian legislation by adopting many methods to preserve the minor's money, whether when appointing the person in charge of his money, and after that special measures were taken to follow up on the minor's affairs.

Study Approach :

In their research, the researchers took the comparative descriptive approach, by mentioning the law approach in caring for and preserving the money of minors, and with a simple comparison sometimes with jurisprudence if the need arises.

The study plan was as follows

The first topic: study terminology.

The first requirement: the jurisprudential control, its definition and its relationship to other terms.

The second requirement: definition of minors in jurisprudence.

The third requirement: Defining the minor in Jordanian legislation and who is included in the meaning.

The second topic: the controls that must be taken into account when developing the minor's money.

The first requirement: jurisprudential controls for preserving and developing the funds of minors.

The second requirement: the legal conditions for preserving and developing the minor's money.

The first section: the legal conditions for the management and development of the minor's money.

The second section: Practical measures in legislation to preserve and develop the minor's money.

The first topic: study terminology.

The first requirement: the jurisprudential control, its definition and its relationship to other terms.

In this section, the discussion will be about defining the jurisprudential control and some related terms.

The first section: definition of jurisprudence and legal controls.

The first purpose: definition of jurisprudential controls linguistically and idiomatically.

First: the control linguistically.

The control is singular and plural is controls, and indicates preserving to the fullest[1].

Second: Defining the jurisprudential control, idiomatically and in usage.

[1] Al-Razi Zain al-Din Abu Abdullah Muhammad ibn Abi Bakr ibn Abd al-Qadir al-Hanafi (d.: 666 AH), Mukhtar al-Sihah, investigation: Yusuf al-Sheikh Muhammad, Al-Asriyyah Library - The Typical House, Beirut - Sidon, Edition: Fifth, 1420 AH, 1999 AD, p. 182.

A - The jurisprudential control idiomatically.

It is the science that: (specialized in a chapter and intended by it systems of similar images)[2], with the aim of coming out with a majority rule through which the provisions of the jurisprudential parts related to one of the chapters of jurisprudence are recognized directly[3].

B- The jurisprudential rule in use.

The control is also used in the sense of the Shari'a ruling and refers to the restrictions directed at the actions of persons who dispose of their money on behalf of minors. Since the term has undergone developments, including the use of scholars in the sense of the rule, and in the sense of restricting the absolute, definition, restriction, condition, and statement of the amount, and it was used in the sense of obligation, confinement, and limitation, so everything that would require the disposal of a specific requirement is thus a jurisprudential control[4].

The second requirement: introducing the minor

The first section: introducing the minor language.

1- The minor in the language.

The origin of the word minor in the language is from shortness, and shortness has several meanings in the language, including the failure to reach the matter due to inability to do it[5], and the inability to do it, and it also indicates that the matter has not reached its end and extent[6], (and it is said that the thing is shortened to such and such that it is not exceeded by it to others)[7].

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[2] Al-Subki, Taj al-Din Abd al-Wahhab ibn Taqi al-Din (deceased: 771 AH), similarities and analogues, Dar al-Kutub al-Ilmiyyah, first edition 1411 AH - 1991 AD, vol. 1 / p. 11.
[3] Abdul Rahman, Jurisprudential Rules and Controls Containing Facilitation, Part 1/ pg. 40.
[4] Al Saif, Abdullah bin Mubarak, The Foundation of Jurisprudential Regulations and its Applications among the Hanbalis, Journal of the Saudi Fiqh Association, without publication information, pp. 171-172.
[5] Al-Zamakhshari, Abu Al-Qasim Mahmoud bin Amr bin Ahmed, Jarallah (deceased: 538 AH), The Foundation of Eloquence, investigation: Muhammad Basil Oyoun Al-Soud, Dar Al-Kutub Al-Alami, Beirut - Lebanon, Edition: First, 1419 AH - 1998 AD, Part 2 / p. 81
Ibn Faris, Ahmed bin Zakaria Al-Qazwini Al-Razi, Abu Al-Hussein (d.: 395 AH), Dictionary of Language Measures, investigation: Abd al-Salam Muhammad Harun, Dar Al-Fikr, 1399 AH - 1979 AD., Part 7 / p. 413.
[6] : The Arabic Language Academy in Cairo, Al-Mu'jam Al-Waseet, (Ibrahim Mustafa / Ahmed Al-Zayyat / Hamid Abdel-Qader / Muhammad Al-Najjar), Dar Al-Da'wa, (D, T. D, I), Part 2 / p. 738
[7] The Academy of the Arabic Language in Cairo, al-Mu'jam al-Waseet, vol. 2/ pg. 738.

The second section: jurisprudential definition of a minor.

The use of the term "minor" is not common in jurisprudence, but if the jurists use the term "the one who is responsible for them," then they apply it to specific people, and they are:

First: the orphan.

Orphan language refers to the one who is single, and he is the one whose father died before reaching puberty[8]. As for the orphan, by convention, it is the young whose father died and was not an adult[9].

Second: Everyone who needs financial assistance.

The jurisprudents attached to the young everyone who needs financial aid in managing his money, whether to save it or develop it for an excuse such as madness, foolishness, dementia, inattention, or absence. All in all, these people need to protect their money just like the little one, so they attached some of their financial rulings to the little one[10].

The third requirement: Defining the minor in Jordanian legislation and who is included in the meaning.

The first section: the legal texts governing the definition of a minor.

The Jordanian legislation dealt with the term minor a lot and has its own connotations, and they are united by the fact that the term, if it is used, includes everyone who needs care for a disease in it, or was attached to the rule of the minor due to an emergency that he suffered. The term minor was used in the Jordanian legislation to denote specific persons, and they are:

First: the little one.

Legislation uses the term "younger" to mean "every person who has not completed eighteen solar years of age"[11].

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[8] Ibn Manzoor, Muhammad bin Makram bin Ali Jamal al-Din al-Ansari al-Ruwaifi'i al-Ifriqi (deceased: 711 AH), Lisan al-Arab, Dar Sader - Beirut, Edition: Third - 1414 AH, Part 12/645, Ibrahim Mustafa / Ahmed al-Zayyat / Hamid Abdul Qadir / Muhammad Al-Najjar), Al-Mu'jam Al-Waseet, The Academy of the Arabic Language in Cairo), Dar Al-Da'wa, Part 2/ pg. 587.

[9] Al-Jazari, The End in Strange Hadith, vol. 5 / p. 291.

[10] Details will come on that.

[11] : In Article (43) of the Sharia procedural law, the article obliges to take into account the provisions of the Personal Status Law related to minors and the incapacitated.

The minor rule in the law is that "one of the litigants has not completed eighteen solar years of age at the time the lawsuit is filed[12]," this is with regard to the litigation on his behalf.

Second: the insane.

The name of the minor in the legislation includes the insane, and insanity in language is "a description of someone who has no mind"[13].

As for insanity jurisprudentially, it is: (a disorder of the mind in such a way that it prevents the flow of actions and words on the approach of the mind, except rarely[14]).

The Jordanian legislation did not address the definition of the insane, so it is referred to the most correct definition of the doctrine of Imam Abu Hanifa according to the text of Article (325) of the Personal Status Law, and what was transmitted in the definition of the insane idiomatically is the Hanafi school of thought.

Secondly: the imbecile, the foolish, and the heedless.

1- The imbecile.

The imbecile in the language has its origin from dementia[15], and it indicates lack in the mind[16].

And the imbecile, idiomatically, is the one who has been afflicted with: (a self-induced scourge that necessitates a defect in the mind, so that its owner becomes mixed-minded, so that some of his speech resembles the speech of the wise, and some of it is the speech of the insane and the pursuit of the soul on what it desires….)[17].

Article (126), Paragraph (a) of the Personal Status Law defines the imbecile as: (the imbecile is the one whose feelings are disturbed in such a way that his understanding is little, his speech is mixed, and his planning is corrupt).

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[12] The law dealt with the conditions of the minor in the Articles:(26 ،43 ،138 ، 172 ،173 ،175 ،183 ،191(

[13] : Al-Farabi, Al-Sahah Taj al-language and Arabic Sahah, P. / 5 / p. 293.

[14] :: Al-Taftazani, Saad al-Din Masoud Ibn Omar (d.793 Ah), explanation of the recitation on the explanation, Sabih library in Egypt, (D, I, d, t), P3 / P334.

Al-Zubaidi, Mohammed bin Mohammed bin Abdul Razzaq al-Husseini, Abu : [15] al-Fayd, nicknamed Murtada, (deceased: 1205 Ah), crown of the bride from the jewels of the dictionary, investigator: a group of investigators, Dar Al-Hidaya, P ..36 / p. 433

The son of his master Mursi Abu al-Hassan Ali Bin Ismail (d.: 458 Ah), : [16] dedicated, investigation : Khalil Ibrahim Jafal, House of revival of Arab heritage – .Beirut, first edition, 1417 Ah-1996, p. 1 / p. 267

.Al-Jarjani, definitions, Vol.1 / p. 147 : [17]

2- The foolish.

Foolishness is in language, lightness of forbearance, and forcing oneself to do the wrong thing[18].

As for the definition of foolish idiomatically, it indicates an act: (waste and extravagance in spending, and to act as a disposition without a purpose or compensation, and the wise people of religion do not consider it instead.)[19], Spending without a purpose is considered by the wise to its owner as foolish.

Article (126), Paragraph (B) of the Foolish Personal Status Law has been defined as: (Who spends his money in a wrong place, wastes his expenses, wastes his money and wastes it with extravagance, contrary to what is required by the Sharia and reason(.

3- Heedless.

Heedlessness in the language indicates the affliction, which is the person: “He who is imbued with good, is heedless of evil and does not know it”[20].

As for the definition of heedlessness in the terminology, it is: (He who is deceived in sales due to the safety of his heart, and is not guided to profitable actions)[21].

Article (126), Paragraph (c) of the Personal Status Law has been defined as: (He who is not guided to beneficial behaviors, but he is unfair in dealings, so he will be fooled by it).

It is noted that the law classifies both the foolish and the inattentive as lacking in capacity, but this appendage is not in every way as it was recorded in Article (205) (according to what the law decides). Therefore, each of the foolish or the inattentive is considered among the incapacitated except in the cases and procedures that he decides The law, and this is only by claiming a withhold and announcing it to the people[22].

.Al-Farahidi, the book of the eye, Vol. 4 / p. 9 : [18]

.Al-Aini, the building explained the gift, Vol. 11 / p.88 : [19]

[20] : Al-Harawi Muhammad bin Ahmed bin Al-Azhari, Abu Mansur (d.: 370 Ah), language refinement, Investigation: Muhammad Awad muraib publisher: House of revival of Arab heritage – Beirut, first edition, 2001, p. 6/ p. 166.

[21] : Ministry of Endowments and religious affairs in the state of Kuwait, Encyclopedia of jurisprudence, P.17/ p. 97.

[22] According to the text of Article no. (211) of the Personal Status Law: (B) as for fools and those who are inattentive, they are sentenced by the court and the quarantine is lifted from them in accordance with the rules and procedures prescribed in the law, and the decision of the quarantine is communicated to the quarantined and announced to the people.

The foolish and the heedless are fully qualified in terms of performance, but some of their actions are devoid of the actions of the wise, which caused them and others harm.

Third: the absent.

Absent language is: (the one who is far away and does not know where he is)[23].

Absentee and missing person are called those who are absent from their homeland and no one knows their whereabouts.

Missing is: (whoever has no news of him, so he does not know whether he is alive or dead)[24]. And if the jurists use the word absent, they often mean the missing person as well. [25]

Article (245) of the Personal Status Law defined the absentee as: (a person who does not know his hometown or place of residence, and circumstances prevented him from managing his financial affairs by himself or through an agent for a period of one year or more, and as a result, his interests or the interests of others were disrupted, and a judgment was issued to that effect(.

Whoever is absent and does not know his address but has an agent is not considered absent in this sense, and Article (246) of the Personal Status Law defines a missing person as: (...a person whose life or death is not known and a judgment was issued to that effect(.

The law differentiated between the absent and the missing, taking into account the effect on the judgment of each one of them, and to complete the meaning of absence and loss in the law, a ruling must be issued for that absence or loss. Then the law clarified the method of managing the money for them, and it stipulated in Article (247) thereof that (a - the judge shall appoint, upon request, a trustee to manage the money of the absent and the missing(...

After clarifying who the minors are in jurisprudence and legislation, the place of these people has been established by people to take care of the minor's money, and he is known as the person in charge of the money of others. And his task in guardianship: (supervising the financial affairs of

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C. The registration and civil status departments and the relevant authorities in the kingdom shall be informed of the peremptory quarantine rulings issued by the Sharia courts to take into account their content(.

[23] Al-Herwi, the refinement of Language, Vol .1/ p. 124.

[24] Ibn Najim, the magnificent sea, Vol. 5 / p. 177, Ibn Abdin, Al-Muhtar's reply : to Al-Durr al-Mukhtar Vol. 4 / p. 292-293

[25] Buqazaha, Ayad Faraj Ibrahim, The Missing and Its Rulings, A Jurisprudential Study, Master Thesis, Omdurman University, 2015, unpublished, 106

the minor by preserving and developing his money, fulfilling his rights, and spending on him as required by his interest and needs)[26], and these have guardianship over money and its development, and the fact that this part concerns me with the transitive financial guardianship, the researchers put the following definition for it: (legitimate authority over the money of others in need Care is made for those who are proven to look into what achieves the interest on the money of the one who is over him, such as creating and executing contracts on his behalf and following up on what results from them.)

Definition Explanation:

That the legislator gave power to the father or the paternal grandfather over the money of the son or the son of the son in need of care. It requires the one to whom this guardianship has been made to act in what is good and in the interest of his guardian. Dispositions on behalf of others are valid from him, and their effect is due to their guardian and binding on them if they are in accordance with the best interest. This definition includes the guardian, trustee, and curator. The reason for choosing this definition is that the study is related to money.

Also, the term “values” in Jordanian legislation has a special meaning, even if it is not stipulated in the legislation, but by following the legal texts, it is defined as: (the person appointed by the judge to manage and develop the funds of those who were ruled absent or lost by a judgment acquired by the final degree, to manage their money in accordance with the provisions of guardianship legitimacy established by law).

Explanation of the definition: that if a judgment is passed for the loss or absence of a person and the judgment acquires a final degree, then those concerned and qualified have the right to request the appointment of a trustee to manage the money of the absent and missing, and the trustee must abide by the provisions of guardianship in the management of funds.

The reason for choosing this definition is as follows:

First: The condition for specifying the values in the Jordanian legislation is that the absence and loss must be proven by a final ruling, and according to the conditions stipulated by the legislation.

Second: The definition distinguishes the values in the Personal Status Law from the values in the articles of the Code of Civil Procedure in Articles No. (32 and 153-156) and Article (896) of the Civil Code, which indicated that

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Sana, Sheikh, legal controls for the management and disposal of minor funds : [26] , Algerian Journal of legal, economic and Political Sciences, P. 245, published on https://www.asjp.cerist.dz/en/downArticle/32/51/1/82371 the values in the civil law is a judicial guard appointed by the judge over the funds of the disputants in common money.

Third: He specified the method by which the money of the absentee and the missing should be managed with the care of the best interest and achieving happiness in it, as in managing the money of the young by adhering to the laws and regulations that necessitate that.

The second topic: the controls that must be taken into account when developing the minor's money

The first requirement: jurisprudential controls to preserve and develop the funds of minors.

The researchers exerted their efforts to extrapolate the controls for the development of the minor's money in the books of the ancient jurists and other contemporary scholars, in the hope that it will be a help in understanding an adequate conception of the development of the minor's money, so it will be a help for the minors' guardians, and a clear way for the judge to judge the actions of the guardians.

The first criterion: that the financial dispositions be issued by those who have the right to dispose of them.

Sharia prohibits anyone from using the money of another without his permission, because he (may Allah bless him and grant him peace) said: “The whole of the Muslim is sacred to his fellow Muslim, his blood, his wealth and his honor.” [27] However, this prohibition is not absolute, but some actions are excluded from it, such as the behavior of the person in charge of the money of others, and this exception includes the guardian, trustee, and trustee, with the need to take care of other controls.[28]

The second criterion: the person responsible adheres to the limits required by the prosecution.

The release of the ruler’s hand over the money of others is limited only to what he was authorized to do and what the order included[29], and it is not corrected by subsequent permission[30], and the representation may be restricted to a specific purpose or period and ends after the end of the

[27] Muslim, Sahih Muslim, Hadith No. 2564, Chapter on the prohibition of oppressing a Muslim, letting him down, despising him, his blood, his honour, and his money, vol. 4 / p. 1986.

Ahmed bin Sheikh Muhammad Al-Zarqa (1285 AH - 1357 AH), explaining the : [28] rules of jurisprudence, corrected and commented on by: Mustafa Ahmed Al-Zarqa

.Al-Mawardi, Al-Hawi Al-Kabir, vol. 15/ p. 309 [29]

.Ibn Qudamah, Al-Mughni, vol. 5/ pg. 78 : [30]

time or purpose[31]. Guardianship, custodianship, and others accept the specification of the type that the guardian has restricted, as it is a mandate, which is correct to be restricted and released. The restriction is consistent with the general prohibition against financial transactions, and it was permitted as an exception. Likewise, it does not expand on that without a chain of transmission, and this is the saying of the Malikis[32], Shafi'is[33], and Hanbalis[34], contrary to the saying of the Hanafis[35] and the preferred saying of the Malikis[36]. Since the guardianship is comprehensive, even if the guardian recommends a specific thing only.

The third rule: the actions of the master over others depend on the interest.

The custodian of others requires that his disposition be in the interest of the minor, so: (The shepherd's disposition of the subjects depends on the interest)[37]. This rule is general and includes everyone who took over the work on behalf of others, the ruler and the ruled. All the actions of the person in charge of others are conditional on their purpose being the realization of interests, bringing and complementing them, and preventing corruptions completely or minimizing them. And the actions of the ruler are by choosing the most appropriate, most beneficial, and easiest[38], because he (peace and blessings of Allah be upon him) said: (He who is in charge of the affairs of this nation in deed and does not encompass it with advice, he will not smell the fragrance of Paradise). [39]

Al-Zubaidi, Abu Bakr bin Ali bin Muhammad Al-Haddadi Al-Abbadi Al-Yamani [31]
Al-Hanafi (deceased: 800 AH), Al-Jawhara Al-Nairah Al-Mutabaa Al-Khairiya,
.Edition: First, 1322 AH, Part 1 / p. 239

Alish Muhammad bin Ahmad bin Muhammad, Abu Abdullah Al-Maliki (d.: [32]
1299 AH), Granting Al-Jalil, Sharh Mukhtasar Khalil, Dar Al-Fikr - Beirut, Edition:
.Without Edition, Publication Date: 1409 AH, 1989 AD, Part 9 / p. 578

Al-Shirazi, Abu Ishaq Ibrahim bin Ali bin Yusuf (T: 476 AH), Al-Muhadhdhab in [33]
.the jurisprudence of Imam Al-Shafi'i, Dar Al-Kutub Al-Alami, (D, T. D, T), 3/756

Abd al-Rahman bin Muhammad bin Qasim al-Asimi al-Hanbali al-Najdi [34]
'(deceased: 1392 AH), Hashiyat al-Rawd al-Murabba', Sharh Zad al-Mustaqni
.Without a publisher), Edition: First - 1397 A.H., Vol. 6/ Pg. 81)

A committee of scholars headed by Nizam al-Din al-Balkhi, al-Fatawa al- [35]
.Hindiyya, vol. 6/ pg. 146

.Alish Manah Al-Jalil, vol. 9/ pg. 578 [36]

Al-Zarkashi, Abu Abdullah Badr al-Din Muhammad bin Abdullah bin Bahadur [37]
(deceased: 794 AH), scattered in the rules, publisher: Kuwaiti Ministry of Awqaf,
.Edition: the second, 1405 AH - 1985 AD, vol. 1 / p. 309

Ibn Hajar Al-Haytami, Ahmad bin Muhammad bin Ali Al-Saadi Al-Ansari, : [38]
Shihab Al-Din, Sheikh Al-Islam, Abu Al-Abbas (deceased: 974 AH), the major
jurisprudential fatwas, compiled by: The disciple of Ibn Hajar Al-Haytami, Sheikh
(Abdul Qadir bin Ahmed bin Ali Al-Fakihi Al-Makki (d. 982 AH
.Islamic Library, vol. 3/333

Al-Bukhari Muhammad bin Ismail Abu Abdullah Al-Jaafi, Al-Jami Al-Musnad : [39]
Al-Sahih Al-Musnad Al-Sahih Al-Musnad Al-Sahih Al-Musnad Al-Sahih Al-Musnad
from the affairs of the Messenger of God, may God's prayers and peace be upon

It is in the interest to limit the purchase to what is most likely to be profitable, and to follow the safe ways of development[40], and not to buy what is not hoped for profit, or there is little demand for it, if doing the opposite is considered negligent[41].

The fourth rule[42]: What is prevalent in the right of a human being in money is not required to be assigned, and in which the right of worship is preponderant.

The rule clarifies that: (If the owned money is owed in whole or in part to God Almighty, then it is required for the obligation of entitlement to it that its owner be accountable, and if the money is due to a human being in whole or in part, then it is not required for its obligation on the owner of the money to be a taxpayer). [43]

And since what is stipulated in the law is due to the most correct view of the Abu Hanafi school of thought, according to the text of Article (325), the Hanafi[44] school of thought is that zakat is not obligatory on the wealth of the young, the insane, and the insane; Being required for the obligation of zakat to be intellect and puberty. And these are not wise people, so there is no zakat on their wealth; For the generality of his saying - (may Allah bless him and grant him peace) -: ("There are three people whose actions are not recorded, a sleeping person till he awakes, a child till he is a grown up, and an insane person till he is restored to reason or recovers his sense.")[45].

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him, his Sunnah and his days = Sahih Al-Bukhari, Investigation: Muhammad Zuhair bin Nasser Al-Nasser, Dar Touq Al-Najat (photographed from Al-Sultaniya by adding the numbering of Muhammad Fouad Abdul-Baqi), Edition: First, 1422 A.H., Book of Rulings, Chapter: He Who Entrusts a Subject and Did Not Advise, 7150

Ibn Qudamah, Abu Muhammad Muwaffaq al-Din Abdullah bin Ahmad bin : [40] Muhammad al-Jamaili al-Maqdisi, then al-Dimashqi al-Hanbali, known as Ibn Qudamah al-Maqdisi (deceased: 620 AH), the singer of Ibn Qudamah, Cairo .Library, Edition: without edition, vol. 10 / p. 116

Al-Khatib al-Shirbiny, Muhammad bin Ahmad al-Khatib al-Shirbiny al-Shafi'i [41] .(deceased: 977 AH), Mughni al-Muhtaj, vol. 3 / p. 153

[42] : This rule is based on the origin of the Abu Hanifa school of thought, as it is applied in the Jordanian legislation, otherwise the issue is controversial among the jurists.

[43] Al-Dakhil, Muhammad bin Abdullah bin Sulaiman, Jurisprudential Regulations Related to Financial Rights, Master Thesis, Imam Muhammad bin Saud Islamic University, Higher Institute of Judiciary, 1430 AH -1431 AH, p. 85.

[44] :: Al-Sughdi Abu Al-Hassan Ali Bin Al-Hussein Bin Muhammad, Hanafi (d.: 461 AH), Plucking in Fatwas, investigation by Salah Al-Din Al-Nahi, Dar Al-Furqan, Al-Risala Foundation - Amman, Jordan, Beirut, Lebanon, Edition: Second, 1404-1984, Part 1/169

[45] Al-Nisa'i, Abu Abd al-Rahman Ahmad ibn Shuaib ibn Ali al-Khorasani, (d.: 303 AH), al-Mujtaba from al-Sunan = al-Sunan al-Sughra by al-Nisa'i. Investigated by: Abd al-Fattah Abu Ghuddah, Islamic Publications Office - Aleppo, Edition: Second,

The point of reasoning is that: (In obligating Zakat, actions are recorded on him, and it is a pure act of worship, so it is not obligatory on a boy like all other acts of worship.)[46]. However, crops are obligatory.[47]

The fifth criterion: The acknowledgment of the guardian, trustee, and custodian of the person in charge is not proven, and evidence or what was actually issued by them is required.

Acknowledgment is an argument confined to the affirmative, so the acknowledgment of the person responsible for others is not valid. If an acknowledgment of this is issued by them, then there is no effect on the person in charge of him[48], because Allah Almighty says: { And no bearer of burdens will bear the burden of another }[49]

But if the person in charge of owns the creation, then he has the approval[50]. The minor must have evidence against him in order for the obligation to be directed to him, since the fulfillment of the coalitions will be from his money, except for what requires blood money, since the intention of the minor is in fact a pure mistake, taking into account the legal puberty of the minor. Where the legislation made puberty at the completion of the eighteenth year of age.

The Sixth Control: The person in charge of the money of a dishonorable person is not liable except by negligence or infringement.

Representatives are not appointed on behalf of others except after they have fulfilled the conditions of appointment, and if they are appointed, they become trustees of what they have been entrusted with, and everyone who receives money on behalf of others is considered

1406-1986, Book of Divorce, Chapter: The one whose divorce does not take place, Hadith No. 3432, Part 6 / p. 156, the investigator Abd al-Fattah Abu Ghadeh said: It is an authentic hadith.

46 Al-Sarkhasi, Muhammad ibn Ahmad ibn Abi Sahl Shams al-A'imamah (d.: 483 AH) al-Mabsut, Dar al-Ma'rifah - Beirut, edition: without edition, 1414 AH-1993 CE, al-Mabsut, vol. 2 / p. 163

47 : the previous source.

48 Al-Babarti Muhammad bin Muhammad bin Mahmoud, Akmal Al-Din Abu Abdullah Ibn Al-Sheikh Shams Al-Din Ibn Al-Sheikh Jamal Al-Din Al-Roumi (deceased: 786 AH), Al-Inayah Sharh Al-Hidaya, Dar Al-Fikr, Edition: without edition and without date, vol. 8/321-322.

49 : Al-Anam, 164.

50 Al-Zarkashi, Abu Abdullah Badr al-Din Muhammad bin Abdullah bin Bahadur (deceased: 794 AH), Al-Manthur in the Jurisprudential Rules, Kuwaiti Ministry of Awqaf, Edition: Second, 1405 AH - 1985 AD, Part 3 / p. 207

trustworthy[51], and that is: (such as the partner, the speculator, the lessee, the borrower, the trustee, and the warehouse)[52].

If the trustee receives the money on behalf of his guardian, and this money is lost, the situation is not without two things:

The first: If the person in charge causes the money to perish, then he is a transgressor in doing so.[53]

If the disposition of the person in charge is transgression or negligence, the person in charge shall be liable for the damage caused to a third party and the guarantee shall be from the money of the person in charge[54], and it is a sufficient reason to remove or limit his guardianship over the money of the person in charge.

The second: That it is not a negligence on the part of the person in charge of the third party, nor a transgression, in which case there is no guarantee for him, because the guarantee is a condition of transgression and negligence.[55]

Seventh Control: The money is not handed over to the child until after he has reached adulthood or with his permission.

It is a condition for paying money to its owner, who was young, that the person to whom the money is paid is of adulthood, and that he is good at disposing of money. This rule is taken from the Almighty's saying: {"And try orphans (as regards their intelligence) until they reach the age of marriage; if then you find sound judgement in them, release their property to them.."}[56]

[51] : Abu Muhammad Ghanem bin Muhammad Al-Baghdadi Al-Hanafi (deceased: 1030 AH), Al-Damanat Complex, Dar Al-Kitab Al-Islami Edition: without edition and without date, p. 396
[52] Abu Hamama, Munira Saeed Abdullah Studies, Sharia Sciences and Law, Volume 46, Number 3, 2019, p. 82
Al-Zarkashi, Al-Manthoor fi Al-Qawaida Al-Fiqhiyyah, vol. 1/ pg. 209 [53]
Ibn Abdeen Alaa al-Din Muhammad bin (Muhammad Amin al-Ma'ruf) bin : [54]
Umar bin Abd al-Aziz Abdeen al-Hussaini al-Dimashqi (died: 1306 AH) (Qara Ain al-Akhyar to complement the response of the confused Ali "Al-Durr al-Mukhtar Sharh Tanweer al-Absar" (printed at the end of the response of the confused)) Dar Al-Fikr for Printing and Publishing And distribution, Beirut - Lebanon, vol. .8/484
Abu al-Naja Musa bin Ahmad bin Musa bin Salim bin Isa bin Salem al-Hijjawi [55]
al-Maqdisi, then al-Salhi, Sharaf al-Din (deceased: 968 AH), Zad al-Mustakni' in Abbreviation of al-Muqni', investigation by Abd al-Rahman bin Ali bin .Muhammad al-Askar, Dar al-Watan Publishing House - Riyadh, 123
(An-Nisa: 6) [56]

He stipulated that two conditions should be met in paying the money, which are puberty and adulthood, so the ruling is not proven without the two conditions being fulfilled. [57]

The ninth rule: Commitment to the provisions of the law when investing with the money of those in charge.

Investigating the good things from the provision in the disposals issued by the person in charge must be legitimate in the application of what is permitted to them. It is not permissible to invest the money of others in areas that are forbidden by Sharia, including: Depositing in: (banks with interest, or buying shares of companies operating in the field of forbidden)[58]. And if he violates this control, he is sinful and guarantees that it is an infringement.

The tenth criterion: documenting the contracts issued by the person in charge of what is valid for him to conclude from the outset, and attesting to that.

Documenting contracts is legitimate for His saying (the Most High): {"O you who believe! When you contract a debt for a fixed period, write it down. Let a scribe write it down in justice between you." }. [59]

The point of evidence: (Write what you contracted with, whether it was a sale, a delivery, or a loan, and they differed in this writing, and some of them said: It is obligatory, and most of them are desirable.)[60]

The specificity of documentation appears in the contracts of the person in charge, which the person in charge may perform on his own authority, and experts must also be consulted before documenting this.[61]

The tenth control: follow-up, monitoring and evaluation of the performance of the supervisory authorities.

Al-Sarkhasi, Al-Mabsout, vol. 25, pg. 21, Ibn Qudamah, al-Mughni, vol. 4, pg. [57] .344

[58] : Madou Guy Ben Sidi Syal, Investing Endowment Funds in Islamic Sharia: Its Formula, Risks, Controls, "A Comparative Study with the Waqf Law in the Emirate of Sharjah," Faculty of Sharia and Islamic Studies - University of Sharjah Journal - United Arab Emirates, Volume 16, Issue Rabi` al-Thani 1441 AH / December 2019 AD, 577

[59]) Al-Baqarah: 282(

[60] Al-Baghawi Mohi Al-Sunna, Abu Muhammad Al-Hussein Bin Masoud Bin Muhammad Bin Al-Farra' Al-Shafi'i (deceased: 510 AH), Milestones of Revelation in the Interpretation of the Qur'an = Tafsir Al-Baghawi, investigation: Abd Al-Razzaq Al-Mahdi, Dar Revival of Arab Heritage - Beirut, Edition: First, 1420 AH, C 1 / p. 393.

[61] Nader Muhammad Ahmed Al-Qudah, Photos of the investment of endowment funds and their ruling in Islamic law, Al-Zaytoonah University Journal of Jordan, for legal studies, Volume (2), Issue (1), p. 26.

The authority of the trustee over the money of others is not absolute, as it is limited to interest. The person in charge must follow up on investment matters and tools[62], in order to spare the money of the person in charge of risks so that they do not lead to its loss, and to find out about any dangers that the money may face in order to be a way to stave it off[63].

Precaution in financial transactions would remove the risks that may befall the money of the person in charge, whether to avoid them or reduce the loss.[64]

Eleventh Control: Commitment to the conditions of the donor to the minor.

If money is given to a minor on the condition that it be used in a specific way, then the person in charge of the minor's money must abide by the condition of the donor of the money in the event that the donor makes the money be used in a particular direction, and it is not valid to use the money for anything other than what was given to him, even if the person in charge is a father[65].

The twelfth rule: Analyzing oneself in financial transactions, except for what was without consideration.

A person should treat people as he likes to be treated, so the person in charge should not do what he would have done if the money belonged to him, because the money of the person in charge is a trust in the hands of the person in charge and needs more care and attention than his own money; Because he has the right to donate, give up, and forgive with his own money, and he is absolutely not entitled to do so with the money of minors[66].

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[62] Colonel, Saeed Suleiman, Endowment Investment in Contemporary Application.. Waqf Followers of the Direct Line in the Emirate of Sharjah.. as a Model, Ministry of Education, College of Sharia and Islamic Studies - University of Sharjah, Sharjah - United Arab Emirates, College of Sharia and Islamic Studies - University of Sharjah Journal - United Arab Emirates, Volume 16, Issue Rabi` al-Thani 1441 AH / December 2019 AD, 278.

[63] : Nader Muhammad Ahmed Al-Qudah, Photos of the investment of endowment funds and their ruling in Islamic law, p. 25.

[64] Khattab, Hasan al-Sayyid Hamid, Controls of Endowment Investment in Islamic Jurisprudence, a research presented to the Fourth Conference of Endowments, which is organized by the Islamic University in cooperation with the Ministry of Islamic Affairs, Endowments, Call and Guidance, under the title "Towards an Integrated Strategy for the Advancement of Islamic Endowments" for the year 1434 AH - 2013 AD, p. 22.

[65] Al-Sunaiki, Zakaria bin Muhammad bin Zakaria Al-Ansari, Zain Al-Din Abu Yahya (deceased: 926 AH), Asna Al-Matalib fi Sharh Rawd Al-Talib, Dar Al-Kitab Al-Islami, edition: without edition and without date, vol. 2 / p. 480.

[66] Al-Anzi Naifa Khamis bin Radwi, Investing the Orphan's Money, Journal of Islamic Studies and Academic Research, Issue (81), p. 106

The second requirement: the legal conditions for preserving and developing the minor's money.

Dealing with the minor’s money in terms of preserving and developing it has conditions stipulated in the laws and regulations, and we will talk about that as follows.

The first section: tribal control.

The second subsection: post-monitoring.

The third branch: Practical procedures in legislation to preserve and develop the minor's money.

The first section: tribal control.

Tribal oversight of preserving and managing the minor’s money means looking into the conditions of the person to be appointed in terms of meeting the conditions stipulated in the Personal Status Law in Article (231)[67] and this is in the case of taking charge of the minor’s money. In the event that the insane, the foolish, or the person with inattentiveness exceeds eighteen years of age, a judgment of confinement must be issued against them, and a judgment of loss and backbiting shall be issued and its acquisition of the peremptory degree of permissibility of appointment, in addition to the previous conditions mentioned in Article (231) of the law[68].

The second subsection: post-monitoring.

The work of the court is not limited to verifying that the conditions stipulated for the validity of the appointment have been met. The court must ensure the continuity of these conditions in the person appointed after the appointment to ensure that the trustees perform their tasks entrusted to them as it should be in order to collect the interest of the minor.

[67] Article (231): The guardian must, at the time of his appointment and during his guardianship, meet the following:

A. Perfectionism.

B. The ability to handle the affairs of a minor.

C. He should not have been convicted of a crime immoral or affecting honor or integrity.

D. He must not have been declared bankrupt or declared insolvent.

E. That he has not previously been deprived of his guardianship or removed from the guardianship of another minor.

F. That there is no judicial dispute between him and the minor.

[68] Through the practical reality in Sharia courts.

It is sufficient for the court to be suspicious of the actions of the person in charge of the minor's money to limit the powers of the guardianship or even to remove them from it, and the court proceeds with it without claiming that it is an act of guardianship[69].

The guardian must submit his accounts to the court regarding his actions against the person in charge every six months in order for the court to be assured that the person in charge takes into account the interest in the actions[70].

The third section: Practical procedures in the Jordanian legislation to preserve and develop the minor's money.

The Jordanian legislator divided the actions of the person in charge of the minor's money into two parts:

First: What requires permission before starting it.

Second: That which does not require permission to dispose of it before proceeding with it.

This distinction is due to the distinction between the actions of management and disposal. These two terms have their own meaning in Jordanian legislation. Disposal is a more general type of management, so every disposer of money is in fact entitled to management, and vice versa is not true. A brief discussion will be made of the distinction between actions of disposal and management, and then talk about what is required for permission in actions and what is not required.

The first purpose: introducing the work of administration and disposal of legislation.

The second purpose: What is required for permission before it can be started.

The third purpose: What does not require permission to act.

[69] Article No. (227) of the Personal Status Law.
) Chapter VII: Eligibility, Guardianship, and Trusteeship
A- The father and the grandfather, if they disposed of the child's money and their disposition was of equal value or with little injustice, the contract is valid and executed.
B- If they are known to have misbehaved, the court may restrict their guardianship or deprive them of this guardianship.) And Article No. (228): (The court may, on its own initiative or upon request, deprive or restrict the guardian's guardianship if the justifications and reasons for that are available(.
[70] As stipulated in Article 239 of the Personal Status Law.

The first purpose: to introduce the work of conservation, management and disposal of legislation.

Dispositions issued by the person in charge of the money of the person in charge are divided as follows:

First: Preservation works[71], which are: (necessary and urgent actions aimed at protecting the financial integrity of a person or one or more of its constituent elements without entailing a modification of the legal status of this person).[72]

Second: Management works, which are: (Those works that are intended to exploit or invest the material elements that make up the financial disclosure in a normal way without entailing the obligation of the disclosure in the future and without changing the economic specialization of its constituent elements.)[73]

Third: Disposal actions, which are: (those actions that result in permanently modifying a person's financial position, or obligating him for the future, such as selling real estate or a shop).[74]

The benefit of distinguishing between these actions is to stand on the matter that needs permission, so the person in charge of the money of others does not undertake it. It is not submitted to him except after obtaining the permission of the court. And between actions that do not need permission, he performs them himself, but both actions are subject to judicial accountability, even if one of them is done by the guardian on the order of others without recourse[75]. And everyone who has a guardian over others, whether the guardian, trustee or custodian, has to act within the limits drawn for them, as they are representatives of others by virtue of the law.[76]

The second purpose: financial transactions for which permission is required before they are undertaken.

[71] As it is a special type of representation and its reality is agency, and among the meanings of agency in the language is memorization, Al-Farahidi, Kitab Al-Ain, vol. 3 / p.

[72] Rushdi, Muhammad Al-Saeed, Acts of Management and Acts of Administration in Private Law, Manshaat Al-Maarif, first edition 2010-2011, p. 134.

[73] Rushdie, Minor Funds Management, 160.

[74] Rushdi, Muhammad Al-Saeed, Acts of Management and Administration in Private Law, Manshaat Al-Maarif, first edition 2010-2011, p. 164

[75] Rushdi, Muhammad Al-Saeed, Managing the Funds of Minors, Interdicted Persons, and Disputed Funds, Dar Al-Fikr Al-Jami'i, first edition, 2015, pp. 126-127.

[76] Munzer, Al Waseet fi Explanation of Civil Law, 115-116.

The financial actions that will be issued by the person in charge of the money of others are either creating ownership, transferring it, or keeping it in the partnership.

First: Dispositions that create or transfer ownership.[77]

The Jordanian legislation stipulated that in any financial transaction that changes the basis of the money from its state to another state - other than the actions of the administration - the permission of the court must be sought in it, whether this disposal is a sale or a purchase, with the need to obtain the court's permission in the first place, and the court must ensure that there are legitimate and legal justifications for the validity of the request, and seek assistance The court has experience for this purpose. In general, every financial transaction related to the sale and purchase of the minor’s money in a manner other than what is considered an act of administration, the court’s permission must be obtained in order for it to occur properly. This is what was stipulated in Article (31) of the Inheritance Law: (Disposal of minors’ money).

Second: The remaining financial dispositions of the partnership in the money.

The custodian may own money that he did not share with others through the estate, and this money may be a commercial or agricultural project, and the matter does not deviate from two cases:

The first: that the heirs and the person in charge of the third party agree to continue the partnership.

Paragraph (b) of Article (30) of the inheritance system states; And the beholder of the article is not hidden from him that it focuses on achieving the interest of the person in charge of it. For any project that has its own tools, the court must write them all down at the first stage of seizing the estate. Then work is underway to appoint who will take over the management of the company. If the heirs and the guardian or guardian agree on him, it is permissible, and it is required for his appointment to be characterized by experience, competence and honesty to manage the project. The court chooses him if the heirs do not agree on that. It has the right to appoint one or more experienced persons to manage the project and to have the competence to do so and the trust to manage the project. He is called the director of the company. In both cases, the manager must provide an appropriate financial guarantee compatible with the investment, and submit an annual budget for the work and its outputs, provided that the budget is subject to scrutiny by certified accountants

[77] Such as selling, exchanging, or renting a minor’s real estate for more than three years, or having a car that belongs to him, or reconciliation over a traffic accident involving the minor’s money or himself.

chosen by the Sharia court, after which it is decided to maintain the project if it is profitable or a reason for losing money. If the court is able to set aside the losses, it will complete the project, otherwise it must liquidate it, because it is inconsistent with the principle of investing and developing money.

Second: That the heirs do not agree to continue the project.

If no agreement is reached between the heirs to continue the project, the court must liquidate and sell it[78]. This is what is stipulated in paragraphs (a and e) of Article (40) of the inheritance system:

(**A**. If the heirs do not agree among themselves or with the partners to continue working on the project, lease it, or include it, the project will be sold and the estate liquidated if it was all owned by the deceased, or his share that he owned in it will be sold...

B. If the project is a company subject to the provisions of the Companies Law, then what belongs to the deceased will be liquidated in accordance with the provisions of the Companies Law in force..)

And the money of the person in charge of the company, whether it is a profit or liquidation of the project, must be sent to the Orphans Funds Development Foundation for investment in the institution.

The third purpose: What does not require permission to act.

Not all financial dispositions of the person in charge of third parties in Jordanian legislation require prior permission. Some actions do not require prior permission for the validity of the disposition. The wisdom of the legislator is that waiting in some actions may exhaust the dealer, for example, selling the crop at the same price does not require permission from the court. In addition, renting the minor’s money for a period not exceeding three years does not require permission, so the trustee undertakes it himself without referring to the court and on the condition of a similar fee.

This is known by legislation as management and conservation works, such as harvesting crops and selling them. The law made the permissibility of disposition not to be obscenely unfair[79], as this is a waste of the right of the person in charge[80]. One of the behaviors that is one of the acts of disposal is spending on the little one. The wisdom of this is that matters of

[78] This shall be after counting the contents and estimating their price by jury experts.
[79] Article (125) of the Civil Code.
[80] Article (146) of the Civil Code defined outrageous unfairness, and it came in its text: (Deception and unfairness. Outrageous unfairness in real estate and other things is what does not fall under the evaluation of assessors.(

management need speed in production, direct action and not being late. As the delay may sometimes hurt. And taking care of this interest, this authority was given on the condition that it be according to custom, such as spending on the young or selling some of his money, and on condition that it be at a similar price or even a little unfairness.

Conclusion

The most important findings and recommendations include:

After all, praise be to Allah, and prayers and peace be upon His Messenger, may God bless him and grant him peace.

Results :

1- Minor in jurisprudence and legislation is a term that includes everyone who is unable to manage his own money by himself, in fact, in judgment, or in addition.

2- The Jordanian legislation is gradual in managing the funds of minors and set certain conditions for that to ensure the achievement of the interest of the person in charge and the follow-up of his financial affairs.

Recommendations:

The two researchers recommend the Chief Justice Department, which is the actual sponsor of minors' affairs, to do the following:

First: Working on issuing a law specialized in the provisions of guardianship and financial representation on behalf of others.

Second: Developing Sharia legislation to be more flexible in preserving the funds of minors.

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