

# The Guardian's Investment In The Minor's Property In The Light Of Islamic Jurisprudence And Jordanian Legislation

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## **Abstract**

The study examined the issue of the guardian's investment in the minor's funds and property in the light of Islamic jurisprudence and Jordanian legislation.

To achieve the purpose of the study, the researchers used the deductive and inductive approaches. They worked to extrapolate information, elicit results and outputs in light of the study problem.

The study concluded with many results, including: the permission of the guardian to invest the minor's funds and property in Islamic jurisprudence and the Jordanian Personal Status Law, where there are many areas in which the guardian can invest the funds of the minor, such as: buying and selling, leasing, and mortgage.

**Keywords:** Islamic jurisprudence, investment, guardian, minor, Jordanian law

## **Introduction**

Praise be to Allah the Lord of the worlds and May the blessings and peace of Allah be upon the most honored of messengers our master Muhammad and all his family and companion.

Investing funds of any kind in the work of various projects, preventing their freezing, and working to mobilize and invest these funds in society, either in trade, industry, agriculture, or construction, and other projects that have great benefit. Therefore, every sound investment is considered correct. It has a beneficial effect on the individual and society in many areas, It is well known that freezing the funds by keeping them as they are without developing them or investing them in the correct positive way exposes them to erosion or decrease, either through various expenses or charity, which is the annual zakat, where it decreases year after year, by taking from it the guardian to buy the supplies that the minor needs, and these requirements It increases directly as the minor gets older and if it is not exploited by development and investment optimally and correctly, The funds of the minor is certainly

decreasing, and as soon as the minor grows up, there may be nothing left of his money to be paid to him.

Hence, given the importance of this topic; this study came, which I hope to achieve its objectives, and answer the problem contained in it and for which this study was formed.

The importance of the study:

The importance of the study stems from the fact that it is concerned with clarifying the ruling on investing the funds of the minor and finding the formulas through which the funds of the minor can be invested, in order to develop these funds and prevent it from diminishing, or its value decreasing as a result of the Currency fluctuations, Undoubtedly, this matter is extremely important, because Islam urges the investment of money in general, because of the benefits and material benefits that it brings to the Muslim community and many positive effects, and thus increases the solidarity between the elements of society in a clear and ideal manner, and the same is the case in development and investment of the minor's funds, It brings great benefit to the guardian, the minor and the society, especially after the minor has acquired legal capacity at puberty,

where his money is paid to him, and he finds it has grown development that guarantees him a decent life, enriches him and protects him from need and prevents him from want and poverty, when the investment of these funds is properly planned. With experience and knowledge, about an extensive study and supervision from the guardian and vigorous follow-up by the judge or the court, for all of this and other matters, this study was of great importance to clarify some of the ambiguous matters for some people.

**The study problem: This study is expected to answer the following main question:**

**What is the ruling on the guardian's investment in a minor's funds in Islamic jurisprudence and Jordanian law?**

**The following questions arise from this question:**

- 1- What is the meaning of the terminology related to the study?
- 2- What is the legality of the guardian's investment in the minor's funds in Islamic jurisprudence and Jordanian law?
- 3- What are the areas in which the guardian can continue the funds of the minor?
- 4- What are the controls of Islamic jurisprudence and Jordanian law for the permissibility of the guardian's investment in the minor's funds?

**Study Objectives:**

This study aims to find a study that talks about the guardian's investment in the minor's funds that combines the provisions of Islamic jurisprudence, and the texts of the amended Jordanian Personal Status Law for the year 2019, which was not discussed before.

**Study Methodology:**

This study is based on the deductive approach, based on reading information and trying to elicit texts related to the study and then using the inductive method to collect the scientific material related to the subject of the study from approved books, and trying to reach the results related to the study framework.

**Study limits:**

The limits of this study are limited to the statement of the rule of the guardian's investment in the minor's funds in jurisprudence and Jordanian law, the statement of some jurisprudential provisions and legal texts related to the subject of the study, and accordingly the limits of this study are limited to this aspect and its results cannot be generalized outside this framework.

**Previous studies:**

Within the limits of what the researchers were briefed on, they did not find previous studies that examined the issue of the guardian's investment in the minor's funds from the jurisprudential point of view and the provisions of the Jordanian Personal Status Law, and what we were able to find from previous studies, most of which are positioned in a statement of the rule of the guardian or guardian's behavior in The funds of the minor compared to the laws of Arab countries and from these studies, and did not address Jordanian law at all, Except for the Bakhit study, which mentioned part of the Jordanian Personal Status Law for the year 2010 AD, and did not address the issue of the guardian's investment in the money of the minor, in the following, these studies are mentioned and the difference between them and our current study.

1- The study of Al-Bakhit, Mahmoud Abdullah Salim, (2013 AD), entitled "The Guardian's Conduct and Related Provisions in Islamic Jurisprudence and the Jordanian Personal Status Law," research published in the Journal of Legal and Political Sciences, the Scientific Society for Research and Studies, where the researcher was divided His study into four demands, in which he talked about the guardian's disposal, the remuneration for guardianship, the difference in guardianship, and the end of guardianship, The researcher did not address the issue of the guardian's investment in the funds of the minor, which is the essence of the research in our study, and he also made a statement of the provisions related to the guardian's disposal from the legal side, as he relied on the Jordanian Personal Status Law No. (36) For the year 2010, while it was adopted in our study The Personal Status Law No. (15) Amended for the year 2019 and therefore the difference between the two studies is clear and there is no room for convergence between them,

neither in the title nor in the content nor the content, the difference between them is clear and unambiguous.

2- The study of Al-Numan, Duha Muhammad Saeed, (2014 AD), entitled "minor's Renting a property", a study in Iraqi law, research published in the Journal of the College of Law for Legal and Political Sciences at the University of Kirkuk, this study specialized in explaining the rule of renting a minor's property in Iraqi law, This study did not share with our current study, as our study concerned a statement of the rule of the guardian's investment in the funds of the minor in jurisprudence and the Jordanian Personal Status Law, while the previous study concerned the statement of the rent of a minor in Iraqi law, and from here the two studies separated.

3- Study of Al-Saker, Youssef Diab, (2017 AD) Guardianship over the orphan's funds and the role of the Public Authority for Minors Affairs in Kuwait, a comparative study of Islamic jurisprudence and Kuwaiti civil law, which is an expression of research published in the Journal of the Faculty of Law for Legal and Economic Research, University of Alexandria, talked about how to save the funds of an orphan in Islamic jurisprudence and Kuwaiti law, This study also differs from my study in several aspects, the most prominent of which is that it specialized in talking about the provisions of guardianship over the orphan's funds in jurisprudence and Kuwaiti law, by looking at the content of this study, the vast difference between it and the current study becomes clear.

4- Aqila study, Belkacem, (2020 AD) entitled The judge's control of the legal guardian's disposal in the minor's funds in Algerian legislation, which is research published in the Journal of Law and Society, University of Adrar, and this study is also, as is clear from its title, concerned By searching for the provisions of the judge's control over the legal guardian's disposal in the minor's funds in the Algerian legislation, and if it is concerned with talking about the minor's funds as is the case in our study, there is no room to say that the two studies are similar, In terms of content, our study talked about preserving the minor's funds and ways of investing them in jurisprudence and Jordanian law, while the previous study talked about the guardian's disposal in the minor's funds from the side of Algerian

law, and accordingly: the difference between the two studies is clear.

5- The study of Al-Zuhaili, Muhammad Mustafa, "Investing the funds of the Minor in the Present time ", research published in the Journal of the College of Sharia and Islamic Studies, Qatar University, Issue (25), 2007 AD.

Where this research touched on mentioning the ruling on investing a minor's funds in general and did not specify it with the disposal of the guardian, and it also mentioned some laws of Arab countries, and did not address the texts of Jordanian legislation at all, Our study was also distinguished by examining some provisions that the previous study did not address, and this highlights the difference between it and our study.

**Study plan:** The study consisted of a Preface, introduction, three sections, and a conclusion, as follows:

**The introduction** included: (the importance of the study, the problem of the study, the objectives of the study, the study methodology, the limits of the study, and previous studies).

**The preface** includes: the definition of the study terms (investment, funds, guardian and minor).

The first topic: the legality of the guardian's investment in the funds of the minor in Islamic jurisprudence and Jordanian legislation.

The first demand: the legality of the guardian's investment in the minor's funds in Islamic jurisprudence.

The second demand: the legality of the guardian's investment in the minor's funds in Jordanian legislation.

The second topic: the areas in which the guardian can invest the funds of the minor.

The first demand: the guardian's investment in the minor's funds by buying and selling.

The second demand is the guardian's investment in the minor's funds by leasing.

The third demand: is the guardian's investment in the minor's funds by mortgaging or pledging the funds.

The third topic: the guardian's controls on the minor's funds in Islamic jurisprudence and Jordanian legislation.

The first demand: the absence of Jurisdictional disputes between the guardian and the minor.

The second demand: obligating the guardian to provide sufficient guarantees and subject his disposal to the supervision of the judge.

The third requirement: the guardian's disposal depend on the court's permission.

Conclusion (conclusions and recommendations)

### Index of sources and references

**First:** Defining investment in language and idiomatically

Investing in the language is from the fruit, which is the collection of it's to bear fruit, and it is called all the money gained, and investment is called the development and growth of funds, it is from growth and abundance.

Investing in funds or money is a request for growth and increase, and investment in the language is something that bears fruit and (1).

As for investment in terminology, the ancient jurists did not address the definition of the term investment, but it came in the definition of contemporary, that investing money means using the money or funds for growth and increasing income and using money in production and increase income (2).

It seems that most of the definitions by contemporary jurists of the word investment denote growth and increase, and this is by capital utilization in one of the aspects of investment in legitimate ways to develop money and obtain profits. Every increase in something saved that has value is called an investment.

**Second:** Defining money, linguistically and idiomatically.

Money in the language is used to refer to all valuables that a person owns, and it is originally called what a person owns of gold and silver.

The Arabs used the word money to refer to camels because the camel was the most valuable Arab money in the past, and therefore funds in the language is called everything that a person hoards and owns, whether this hoarded thing was a kind or a benefit (3).

Money in the terminology is: Everything that can be saved and possessed and everything that is usually used (4).

**Third:** Defining the guardian in language and idiomatically.

Guardian in the Arabic language is from the verb (will = "wassa"), (5) which indicates the connection of something to something, and the will is from this analogy as if it is a word of bequeathing, i.e. connecting, it is said: that his will is a recommendation, and his will, and the guardian.

Guardians: those who are entrusted with an order and the guardian are the one appointed by the guardian or judge to preserve and take care of the funds of the minor (6).

I did not find a definition of the guardian in the terminology of the guardian, but the concept of the guardian came to the jurists when they were talking about the guardian, The guardian can be defined as the person who has been entrusted with the responsibility of caring for the orphan and who takes care of all his personal and financial matters and this is under the supervision of the competent judge, and the judge assigns him this task.

**Fourth:** Defining the minor in language and idiomatically

The minor in the language is from (short), which is different from the tall, and the shorter part of the prayer is shorter, and the short is different from the long, and the plural is short, and a "woman with a short limb" in Arabic, it means that she does not touch with her body

a man but her husband” (7), “and INCAPACITY in the sense of shortening, and disability” (8)

### Minor in terminology

During the search for the concept of the minor according to the jurists, I did not find what I have seen an indication for this term, because the old jurists did not use the term minor, but the jurists have been in the habit of using vocabulary close to the term minor to denote the young child who has not yet reached the age of puberty. Like the boy's word, the juvenile's word, and the child's word (9).

The term minor came to Ibn Taymiyyah in the context of his talk about a minor child whose father died without a will, so the guardian wanted to sell his property (10)

**The first topic: the legality of the guardian's investment in the funds of the minor in Islamic jurisprudence and Jordanian legislation.**

**The first demand: the legality of the guardian's investment in the minor's funds in Islamic jurisprudence.**

Islam calls for saving funds, which is one of the necessary purposes that must be preserved, and investment is one of the legitimate ways to save money, through its development and increase, and investing the funds of a minor requires preserving the original capital, and then looking for ways to use this funds in projects that generate income. Additional income for the minor, for the continuity of these funds and its survival, which achieves the interest of the minor, the guardian, and the whole community, and this is limited to investing this funds in legitimate ways for its development and increase, and adding profits to the original capital (11)

Civil Code, which stipulates, however, the undistinguished young child does not have the right to dispose of his funds and all his actions are void

If Islam has urged the importance of developing and investing money and funds, then this importance is confirmed in developing the minor's funds, and the majority of jurists from the Hanafis (12), Malikis (13),

Shafi'is (14) and Hanbalis (15) agreed, on the permissibility of the guardian to invest the money of the minor and take care of his financial affairs.

They cited what they had agreed upon as evidenced by the words of God Almighty :

﴿ وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا ۖ وَآكُسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا ۗ ﴾ An-Nisa'

“And do not entrust to those who are weak of judgment the possessions which God has placed in your charge for [their] support; but let them have their sustenance therefrom, and clothe them, and speak unto them in a kindly way”

Evidence: In the God Almighty saying: (let them have their sustenance there from) and he did not say (provide them with it), and this indicates the validity of the permissibility of the guardian's investment in the funds of the minor (16).

From the hadith of the Messenger of God, may God bless him and grant him peace: " قول النبي صلى الله عليه وسلم: " مَنْ وَلِيَ يَتِيمًا لَهُ مَالٌ, فَلْيَتَّجِرْ لَهُ بِهِ, وَلَا يَتْرُكْهُ تَأْكُلُهُ الصَّدَقَةُ"

‘Amr b. Shu'aib on his father's authority said that his grandfather told of the Prophet addressing the people and saying: “If anyone is guardian of an orphan who owns property, he must trade with it and not leave it till the sadaqa consumes it.” (17).

**Indication:** The Prophet, may God bless him and grant him peace, commanded the person in charge of managing the funds of a minor to trade with it, and not leave it to be consumed by sadaqa.

It is reasonable that reason necessitates working on the development of the minor's funds, and this has been legally proven. Investing the minor's funds leads to an increase in the movement of production, achieving lawful profit, preserving and developing the minor's funds, and preserving the capital so that it does not diminish little by little. (18)

Thus, it is clear that Islamic Sharia permitted the guardian to invest the minor's funds and even encouraged him to invest the minor's funds in various profitable projects in various fields. It permitted the guardian to invest the minor's funds because this

investment develops the funds and increases in quantity and value which is available to the minor. The funds that ensures his livelihood for the length of time he is a minor and after reaching what guarantees him a decent life that protects him from need and prevents him from poverty, and this is a personal benefit for the minor, This investment must be properly planned by those with experience after studying, knowing and clarifying that the guardian must protect the funds of minors, but the scholars set some controls for this, the most important of which are:

The guardian's investment of the minor's funds himself, as if the trustee trades with him without appointing another or that he participates in his speculation and Murabaha and other legitimate ways to develop funds, and in this case, the guardian has the right to take the fee for his guardianship, development and investment of funds for a minor, especially if the guardian is poor, The evidence for that is the saying of God Almighty:

﴿وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ﴾ "If the guardian is well-off, Let him claim no remuneration, but if he is poor, let him have for himself what is just and reasonable." (An-Nisa verse 6). Al-Tabar , said regarding the meaning of the noble verse: Whoever is a custodian of the funds of minors and orphans and is rich let him abstain with his funds from the funds of the minor and orphan (19).

In most cases, this wage or Income is determined by the wage of the same, and if the minor has real estate, land, and shops, the guardian rents and supervises them, receives its wages or Income directly, and puts it in the account of the minor, i.e. with the funds of the minor, Likewise, it is permissible for the guardian to dispose of the funds of the minor in any way that brings him a benefit and generates a profit for him, by working on investing and developing his funds, such as trading in the funds of the minor, buying and selling, and other legitimate ways of developing and increasing funds.(20)

### **The second demand: the Jordanian Personal Status Law opinion regarding the guardian's investment in the minor's funds**

The Jordanian legislator permitted the guardian's investment in the funds of the minor, as this legislator agreed in the Jordanian Personal Status Law what the jurists have said about the validity of the permissibility of the guardian's investment in the minor's funds, even with the presence of minimal deception, Article No. (236) of the Jordanian Personal Status Law No. (15) amended for the year 2019 AD stipulates that they will contract issued by the guardian regarding the funds of the minor are valid and enforceable, even if they are with a little deception. Its term exceeds three years, conservation and maintenance work, fulfillment of rights, repayment of debts, sale of crops, sale of movable property that quickly becomes damaged and the Sustenance.

However, the law restricted the disposal of the guardian in the money of the minor with the permission of the court, as Article No. (237) stipulates that "The disposal of the guardian in minor's funds that are not included in the management business, such as selling, mortgaging, loan, reconciliation, dividing common funds, and investing funds are not valid Except with the permission of the competent court and in the manner specified by it."

This article clarifies that the disposal of the guardian in financial matters related to minors other than administrative matters such as selling, mortgaging, and others are subject to the permission of the judge (the competent court), because the major purposes that Islamic Sharia meant to preserve, including the preservation of funds, is fraught with divine care. The powerless are entire to Him, Glory be to Him, and since the texts of the law are closely related to the texts of jurisprudence and Sharia, most of the legal materials are derived from the Hanafi School.

The principle is that the guardian has the freedom to dispose of the minor's funds as he sees it in the interest, and that is what he derived from the guardianship initially, but some of these disposal, especially the financial ones, have been restricted with the permission of the judge; Because it requires certainty and is presented to the stakeholders and experience in this field, to know the extent of the benefit that accrues to the minor, and so that his funds are not wasted by misbehavior, and the judge's continuous follow-up to

the guardian prevents him from disposing of the minor's funds alone.

**The second topic: the areas in which the guardian can invest the funds of the minor.**

The first demand: the guardian's investment in the minor's funds by buying and selling

The first branch: The difference between jurists regarding the guardian's disposal of the minor's funds by buying and selling is as follows:

The Hanafi jurists (21) said: The behavior of the guardian in selling something from the minor's funds varies according to the inheritance, in terms of his funds being

free from debt or the will, or the funds being preoccupied with them, and also differs in terms of the presence or absence of the minor, on As follows:

If the minor's funds are not occupied by debt or a will, the guardian can sell the Movable assets at the same value, or with a slight deception, and the deception is funds that fall under the assessment of the assessors and the guardian may sell it without need without causing damage to the funds; Because keeping the price of the Movable assets is easier than keeping it in itself, And if they are all adults and they are present, he does not have the authority to sell something unless there are bequests, and if they are absent, he owns the sale of the movable because keeping the price is easier, and he has the mandate to preserve the funds of the absent" (22). But if the funds are real estate, then the trustee does not have the right to sell it unless there is a need for that, as the payment of a debt for which there is no payment except the sale price of this real estate, so he sells it all, or sells a part of it to pay that debt, and the followers of the Hanafi school also went to say: that If the real estate of the minor is about to fall, or if its supplies and its outgoings are more than its yield, or if there is a clear benefit in selling it to the minor, such as selling it for the same price, or with a slight deception, it is permissible for him to do so (23).

As for the presence or absence of the minor, Ibn Abidin stipulated that if the deceased had neither debt nor a will, and the heirs were adults and present, then the sale shall not be completed, In the event of their absence, the

bids will be sold only, and if all minors are not adults, the bids and real estate will be sold, If the minors are between adults and non-adults, the children's share of the real estate shall be sold without the adults, unless they are absent, in which case only bids shall be sold..." (24). In another text, it was mentioned in the reply to "Kitab al-Muhtar" that it stated, "and if the guardian sells or buys the orphan's property from himself if he is the guardian of the judge, it is not permissible at all because he is his agent, and if the father's guardian is permissible on the condition of an apparent benefit for the young person, which is the amount of half increase or decreases, and he said: It is not permissible at all"(25).the jurists of the Maliki school (26) went to the fact that there must be a reason for the guardian to sell the property other than the father, but the guardian is like the father in that each of them bears his actions on conduct (27).

Al-Hattab said, "Malik disliked that the guardian buys from the orphan's property for himself. If the guardian does or leases himself into the funds of an orphan in his care, then the judge will pursue his action, and if it is suitable for the orphan, the judge will allow him, and the same applies to the father in his young son" (28).

The Shafi'i jurists (29) : It is not permissible for the guardian to sell the movable property at all, and the property is not sold as well except for an apparent need or pleasure. Imam al-Shafi'i said: "If a man is a custodian of the estate of a dead person, then it is preferable for me to trade it for them as long as the trade in it is not infringing, and if it is not infringing, he guarantees that it will not be damaged."

Omar Ibn Al-Khattab - may God be pleased with him - traded with the funds of an orphan who was taking care of him, and Aisha - may God be pleased with her - bought goods with the funds of the sons of Muhammad bin Abi Bakr in the sea, and they are orphans that she takes care of and pays zakat from it. (30)

Imam al-Shirazi mentioned cases of the guardian's permissibility to sell the property of a minor, and he said: "He does not sell the property to him except in two places: one is that necessity calls for him to lack alimony and he has no money other than him, and he does not find anyone to lend him, and the second is that he has the pleasure of selling it, which is that He asks

him for more than his price, so it is sold to him and he buys for some of the same prices, because the sale in these two cases involves luck, and in the other two cases there is no luck in it, so it is not permissible..." (31).

As for Hanbali jurists, they are of the view that the guardian of an orphan can speculate with his money and pay it to someone who speculates for him, and the guardian trades with the orphan's funds and there is no guarantee on it, and the entire profit is for the orphan, If he gives it to someone who speculates for him, the speculator has the profit that the trustee acknowledges for him.

In sum, this saying is that the guardian of an orphan may speculate with his funds and assign someone to speculate with it for him, and make for him a share of the profit, whoever he is, a guardian, a ruler and he is the first to leave it "(32), this is concerning the movable funds. As for real estate, it is permissible for the orphan's guardian to buy the property for him, it is permissible for him to build it for him, and it is not permissible for him to sell the property unnecessarily. The orphan's property is only in three cases, mentioned by Ibn Qudamah in (Al-Mughni), which are:

**The first case:** is that the minor requires clothing, alimony, or debt repayment, or what is indispensable, and he has nothing to satisfy his need (33).

**The second case:** that there is a desire to sell it; that he pays a lot more than its price, Abu al-Khattab said, like a third and the like (34).

**The third case:** is that he fears damage, drowning, ruin, or the like (35)

However, Hanbali jurists forbade the guardian to sell his funds to the minor, or the minors' funds to the guardian, because of the accusation and suspicion (36).

As for the Jordanian legislation's opinion on the guardian's investment in the minor's funds by buying and selling.

It was stated in the texts of the legislation related to the Islamic courts (37) that if the guardian requests the reconstruction of the minor's property and the like, such as buildings, farms, and the like, then the matter is presented to the orphan's council to investigate the

number of expenses required for this. After being verified by the experts with a statement of what is related to the minors, and the payment of what belongs to the partners in the expenses of the building to the extent of their shares in the property, the council decides to spend the necessary funds.

Article (44) of the same law stipulates: (The disposal of minors' funds by creating or buying real estate for them, selling or mortgaging it, or other disposing of their immovable property, is only with the permission of the Shari'a Judge after the availability of legal justifications).

### Weighting

After this quick presentation of the opinions and directions of the jurists on the issue of the guardian's investment in the minor's funds by buying and selling, and through what has been mentioned above, it appears to me – and God Almighty knows – the preponderance of the correctness of the statement that it is permissible for the guardian to invest in the sale and purchase of the minor's funds, whether it is movable funds or real estate. Especially since the development and investment of the minor's funds by buying and selling in the right and proper manner benefits the minor, as his funds may increase by trading in it, if this behavior brings benefit and interest to the minor, There is no doubt that buying, selling and trading these funds, developing and investing them instead of freezing them, with the need to adhere to this behavior for the interest of the minor, and this is achieved by the judge's permission for what he deems in the interest of the minor, or stopping the sale and purchase if the minor's funds is damaged or destroyed. (God only knows).

### The second demand is the guardian's investment in the minor's funds by leasing.

The majority of jurists, the Hanafis (38), the Malikis (39), and the Hanbali sayings (40) agreed that the guardian has the right to exploit and invest the funds of the benefactor, whether for himself or others, as long as his disposition is dependent on the beneficiary's interest in the presence of the representative from the law, There is no doubt that investing a minor's funds in leasing is a good matter because it achieves the interest of the minor in developing his funds, whether it is renting real



estate or land, but this situation must be taken into consideration that the leasing is for more than a wage like it, or for a wage like it, Or the least of what people covet.

The Hanafi jurists have indicated that the guardian's behavior in renting the funds of a young child is dependent on the judge's permission, and is subject to his supervision so that the interest of the beneficiary is achieved. And explaining the difference that the lease of the funds of a young child is spent on his funds according to the point of view, so the father takes his place in it, and the option of annulment is not established for him when he reaches puberty,

As for renting himself, he disposes of himself with damages, and the father should not have owned it except that he owned it in terms of it being a kind of sport, disciplining the young, and disciplining him (41).

While the Shafi'is (42) and some of the Hanbalis (43) agreed with them, it is established to say: The puberty of the minor proves that he has the choice between signing the lease contract or rescinding it.

#### **As for the Jordanian law's opinion on the guardian's investment in the minor's funds by leasing.**

The texts of the Jordanian Personal Status Law are consistent with what the jurists have said that the actions of guardians with the funds of minors are dependent on the interest and that the actions of the guardians are predicated on payment, but it is necessary to observe the law and the court's authorization represented by the judge, to achieve this interest to the fullest, and to save the funds of little children from loss and destruction, Where the law was also keen on this, the legislation of the Jordanian Sharia courts stipulated: "The disposal of the funds of minors by creating or buying real estate for them, selling it, mortgaging it or other disposals of their immovable property, is only with the permission of the Sharia judge after the availability of legitimate justifications." (44).

Although this article is general in the actions followed by guardians in the funds of minors, leasing and investing, and developing money are included in it, so it is not permissible to rent the funds of minors except

with the permission of the court, and the judge is the one who knows the interest of the minor, as it came in the same legislation: Guardians rent real estate or lands of minors by public auction if the rent is more than one hundred dinars), but this is an encouragement to develop and invest the minors' funds, and to achieve their benefit under the supervision of the court.

#### **The third demand is the guardian's investment in the minor's funds by mortgaging the funds.**

The majority of jurists from the Hanafis (45), the Malikis (46), and the Hanbalis (47) agreed that it is permissible for the guardian to mortgage some of the funds of a minor by analogy with the permissibility of that to the father; Because the guardian takes his place, and the guardian acts in the interest of the minor, and the mortgage is in the interest of the minor in terms of the possibility of investing and developing the funds, Pawning something of his funds is possible to lend or contract with him.

And the Shafi'is went (48): to say that it is not permissible for the guardian to mortgage something from the funds of the young person except for an interest where it is not permissible for the father in their view to pledge from his son except with what is preferred, and if the mortgage is not in the interest of the young person, then it is not correct, Imam Al-Shafi'i said - may God have mercy on him -: and whoever you said may not be pledged except for what he prefers for himself or an orphan or his son from the father of a son, the guardian of an orphan, offices and an authorized slave, then it is not permissible for him to pledge anything because the pledge is a trust and the debt is obligatory, The mortgage is in any case a deficiency for them, and it is not permissible for them to mortgage except where it is permissible for them to deposit their funds out of the necessity or fear to transfer their funds. (49)

Here it is clear that Imam al-Shafi'I and after him the Shafi'i jurists do not see the mortgage as an interest of the bequest for fear of missing out on the funds.

It is answered that: The mortgage is only obligated to take possession, as it is guaranteed to take possession of the mortgagee until he returns it (50)

The Jurists' made an exception for two cases in which a guardian may make a mortgage, and they are:

**The first:** is the case of necessity: if he needs alimony and does not have money to spend on it, so he mortgages some of their belongings in return for the funds he spends on them (51).

**The second:** That the mortgage is for a clear interest, such as if he finds a commodity worth two hundred that is sold for one hundred and has no money, so he buys it on condition that he mortgage it with it something of his belongings equal to one hundred, and in this behavior an exploitation of opportunities and investment of the money of the minor through the mortgage (52).

Then, the jurists differed regarding mortgaging the funds of the minor with the debt belonging to the heir, and this disagreement came from two opinions:

**The first:** what the Hanafi jurists held (53): that the approval necessitates that it is permissible for the guardian to pledge the funds of his custodian with a debt to himself; Because the guardian has the right to deposit the money of his guardian, and the mortgage takes precedence over the deposit, and the mortgagee guarantees the mortgage if he dies.

**The second:** is what the majority of Maliki jurists (54), Shafi'is (55), and Hanbalis (56) said: It is not permissible for a guardian to mortgage a minor's funds with a debt that they owe; Because they do not have the right to pay off their debt with the demise of their guardians, and in mortgaging the funds of their guardians is the fulfillment of their debts in terms of rulings and not realities.

As for the opinion of the Jordanian law, Article (238) paragraph (b) of the Jordanian Personal Status Law states that (a guardian may not mortgage his funds to a minor or a ward, nor to mortgage the money of either of them to himself).

The legal article, in its first part, stated that the guardian may mortgage the funds of the interdicted to a foreigner with a debt he owes on either of them.

But the second part of the same article prohibits mortgaging the guardian's funds with the interdicted, as well as the Jordanian law forbidding the guardian to

mortgage his money to himself; Perhaps the reason for this is due to the condition that the mortgagor must be one of the people who donate what he pledges, and accordingly, no one has the right to pledge anything from the funds of one who has financial authority, just as he is not allowed to pledge anything with any of their money; Because one person is not fit to be a two-sided contract.

### **Section three: weighting.**

After reviewing the opinions of the jurists on the issue of the guardian's mortgage of the funds of the minor, it becomes clear that God Almighty knows best that the most correct opinion is what Abu Hanifa, went to and adopted the Jordanian law, where he said: Permissibility of the guardian's mortgage of some of the funds of the minor by analogy with the permissibility of that to the father, with the collector Compassion and the achievement of interest in each of them for the beneficiary, and as for the second paragraph, the subject of the research, the law has tended to the doctrine of the majority of jurists in their stipulation that the party to whom the money was loaned to him is the first to donate what he pledged or pledged as it became clear through the research, and God Almighty knows best.

### **The third topic: the guardian's controls on the funds of the minor in jurisprudence and Jordanian law**

The jurists dealt with the rules of the guardian in their books, and they agreed in the sentence on four general conditions for the guardian, which are: that he be a Muslim, Capable, straighten, and reliable: that is, that he be able to carry out the affairs of the minors (57).

In view of the large number of controls set by the jurists for the guardian who has the right to guardianship of the minor, I will summarize this research on a statement of the controls that correspond to what was stated in the texts of Jordanian law.

The first of these controls lay down by Sharia jurists, which the legal scholars also did not overlook, are:

### **The first demand: the absence of a judicial dispute between the guardian and the minor**

The jurists restricted the absence of a judicial dispute between the guardian and the minor, i.e. the requirement that there be no enmity between them; This is to preserve the minor's funds and protect his rights from being manipulated by the guardian, and because the rival is not entrusted with the minor and his money, if this enmity occurs, the guardian is dismissed.

This is a summary of the words of the jurists on this subject, regardless of their disagreement about the wording: some jurists stipulated this expression, while others included it under the condition of the union of the public debt. (58).

Imam Al-Sherbiny said: "It is stipulated in the guardian's choice, lack of ignorance, and clear hostility to the one who is commissioned with him, and Al-Isnawi deduced from this that the Dhimmi guardian is from the religion of the recommended so that the will of the Christian to the Jew or the Magian is not valid, and vice versa for enmity" (59), and they inferred that The generality of the evidence that forbids taking the Jews and Christians as allies because of their extreme hostility towards the believers, including:

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾ [النساء: 141]. And : ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا بَطَانَةً مِّن دُونِكُمْ لَا يَأْلُونَكُمْ خَبَالًا﴾ [آل عمران: 118].

(Allah will judge between you on the Day of Resurrection. Allah will not grant the unbelievers any way over the believers). (AN-NISA 141) and (Believers, do not take intimates with other than your own. They spare nothing to ruin you; they yearn for you to suffer. Hatred has already shown itself from their mouths, and what their chests conceal is yet greater. Indeed, We have made clear to you the signs, if you understand). (AL-E-IMRAN 118) .

#### Indication:

The verses included a prohibition against the polytheists from supporting and winning and taking them as allies and friends rather than the believers because of their excessive enmity towards them and the cheating and betrayal they are upon them (60), and likewise: Whoever has enmity or disagreement with minors, because of his enmity and anger of a profound effect in

the loss of the right of the minor and the unjust wastage of his money.

As for the Jordanian law, Article 231 states the guardian at the time of his appointment and during his guardianship is required:

A- Complete eligibility.

b- The ability to do the affairs of the minor.

c- He must not have been convicted of a crime immoral or affecting honor or integrity.

d- That he has not been declared bankrupt or declared insolvent.

e- That he has not previously had his guardianship taken away or he has been removed from the guardianship of another minor.

f- That there is no legal dispute between him and the minor.

And since it is permissible for the father to recommend to a person of his choosing to take care of the affairs of his minor children during his life or after his death, and this is also permissible for the paternal grandfather when the father is lost, if the father and grandfather are lost, and neither of them will bequeath to anyone to take care of the minors, then the judge appoints a guardian He manages their affairs.

The second requirement: obligating the guardian to provide sufficient guarantees and subject his actions to the supervision of the judge

Article (235) of the Jordanian Personal Status Law states:

A - The court may oblige the guardian to provide the necessary guarantees according to the circumstances of each case, and the expenses of these guarantees shall be at the expense of the minor.

B - The actions of the guardian are subject to the control of the court.

We have explained above some provisions related to the guardian's actions in the areas related to the minor and his money.

We have seen that the guardian should investigate and diligently as much as possible in the interest of the minor, so where his interest is found, that action is permitted and where it is lost, it is prohibited.

It is noted that the law fully took into account the interests of the minor, and took all means that guarantee the rights of the minor, so it legislated all measures that guarantee the rights of minors.

He asked the guardian to provide sufficient guarantees to take care of his right and restricted his behavior under the supervision of the law.

It is also noted that: Jordanian law established controls and conditions to guarantee the rights of minors, and that these provisions were not mentioned in their legal wording in the books of jurists, such as providing guarantees from the guardian and subjecting his actions to the supervision of the court, but they dealt with these provisions in the folds of their talk about guardianship and guardianship, as What is intended in them is to achieve the interest, and The basis for choosing a guardian is rationality and competence to ensure that, as the law is consistent with what the public has said: Caring for the affairs of minors is entrusted with interest, revolves where it revolves and refrains where it stops.

Accordingly, it turns out that the requirement that there be no enmity between the guardian and the minor came in the interest of the minor, and that this restriction restrained the hostile owners from encroaching on the minors' money; Because in allowing grudge and enmity in the guardian to lose the rights of the minor, and settling accounts with grudge and trustee, and there is no room here for that, the will is one of the contracts of donations and sympathy for the benefactors, and if the enmity becomes clear, the guardian is dismissed.

After following and extrapolating the opinions of the jurists on the conditions of the guardian, and their agreement that guardianship and trusteeship are dependent on the interests of the minor, the course of verifying the validity of each is where his interests are

manifested, his affairs are taken care of, and his money is preserved from waste and loss. The enmity between the guardian and the minor, as with this condition the care of the minor's interest and money is completed and his interest is achieved.

### **The third demand: the guardian's actions depend on the court's permission.**

Article (237) of the Personal Status Law stipulates that: (The actions of the guardian regarding the money of the minor, which are not included in the administration's work, such as selling, mortgaging, loan, reconciliation, dividing common money and investing money, are not valid except with the permission of the competent court and in the manner it specifies).

The legal article clarifies that the actions of the guardian in financial matters related to minors other than administrative matters such as selling, mortgaging and others are subject to the permission of the judge (the competent court), because the purpose of preserving money is one of the major purposes that Islamic Sharia meant to preserve.

Since the texts of the law are closely related to the texts of jurisprudence and Sharia, and most of the legal articles are derived from the Hanafi school, the principle is that the guardian is free to dispose of the minor's money in what he sees in the interest, and that is what he derived from the mandate in the beginning, However, some of these behaviors, especially financial ones, were restricted with the permission of the judge. Because it requires certainty and presentation to the stakeholders and experience in this field, to know the extent of the benefit that accrues to the minor from disposing of it, and so that his money is not wasted by misbehavior.

### **Conclusion and results**

At the conclusion of this study, the researchers reached several results, which are:

1- It is permissible for the guardian to invest the money of the minor in Islamic jurisprudence, as well as in the Jordanian Personal Status Law.

2- Selling, buying, leasing, and mortgaging are all areas in which it is permissible for the guardian to invest the minor's money

3- The investment of the minor's funds should be disciplined, and be carried out in proper planning with those with experience after extensive study, supervision by the guardian, and vigorous follow-up by the judge or court.

4- In the trustee's investment of the minor's money, a great benefit accrues to the guardian, the minor, and the Islamic community, which leads to building a stable and secure society.

### Recommendations:

1- Working on increasing and intensifying research and studies in other fields in which the guardian can invest the minor's money.

2- Encouraging investment in the minor's money in various profitable projects in various fields, due to the benefits that accrue to the individual and society.

3- Helping the trustee and making him aware of the importance of investing the trustee's money, and knowing its jurisprudence and legal provisions to be able to manage these funds following the provisions of Islamic Sharia and Jordanian law.

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