

The Claim of Non-Enforceability of the Debtor's Disposition against the Creditor in Islamic Jurisprudence and the Jordanian Civil Code

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Abstract

All the debtor's money is guaranteed for the fulfillment of his debts, and all creditors are equal in this guarantee, The creditor can collect his debt from any of the debtor's money and executant his debt on all of them, but the debtor may intend to transfer its ownership to someone else Harming the creditors and preventing him from fulfilling his right, for that reason The legislation took into account this matter and took considering the existence of this intent on the part of the debtor, and prescribed means that preserve the general guarantee of the right the credit, And one of these means is enabling the creditor to file a claim that the debtor's action against him is not enforceable, And in this research, I will study this case from a jurisprudential and legal point of view, And study its terms and conditions, And its effectiveness in maintaining the general guarantee of the creditor.

Keyword: not enforceable, action. Islamic jurisprudence, Jordanian Civil Code

Introduction:

In the name of Allah, the Most Gracious, the Most Merciful, and praise be to Allah, Lord of the Worlds, and peace and blessings be upon the Prophet Hadi Muhammad and his family and companions, and after:

All the debtor's property constitutes general security for creditors, which guarantees their right to payment, in the sense that they enforce their rights against him, in which none of them takes precedence over others, but all creditors are equal, unlike private insurance, such as a mortgage, where the creditor takes precedence over others about the property on which this insurance alone 'falls.

Article 365 of the Jordanian Civil Code No. 43 of 1976 states: "Subject to the provisions of the law, all the debtor's property is a guarantor for the payment of his debts and all creditors are equal in this guarantee." ⁽¹⁾

This general guarantee gives the creditor the right to control the debtor's property, what has come into it, and what has come out of it, to ensure that it is guaranteed that it does not lack the debtor's default or fraudⁱⁱ.

One of the ways to preserve the general security is an action for non-enforceability of the disposition, in which the creditor pays for himself the consequences of the debtor's fraud if he disposes of his property to the detriment of the creditor's right.ⁱⁱⁱ

In this research, the claim of non-enforceability of the debtor's actions in Islamic jurisprudence and the Jordanian Civil Code will be identified as one of the ways to preserve the general guarantee of creditors' rights.

Search problem:

The problem of this research lies in answering the following questions:

- 1- What is the definition of an action for the ineffectiveness of the debtor's conduct and what is its legality?
- 2- What are the conditions for the action for the ineffectiveness of the debtor's disposition?
- 3- What is the effect of the action on the ineffectiveness of the debtor's disposition?

Problem limits:

The research will be limited to studying the claim of non-enforcement of the debtor's conduct in Islamic jurisprudence on the four schools of jurisprudence and in the Jordanian Civil Code.

Research hypotheses:

This research proceeds from the premise that the claim for non-enforceability of the debtor's disposal constitutes a guarantee for creditors in fulfilling their rights, as it contributes to preserving the general security of creditors.

Previous studies:

The books on the provisions of obligation in civil law have dealt with the subject of the lawsuit for non-enforcement of disposal within its topics when talking about the means that guarantee the creditor the implementation of the obligation, and there are also many legal types of research specialized in the study of this lawsuit, including the following:

1- The lawsuit of non-enforceability of the debtor's disposition against the creditor in the Jordanian Civil Law - a comparative study -, by the researcher Nisreen Al-Mahasneh, a master's thesis in law, from the University of Jordan - Jordan, 1995, and this is a legal study limited to explaining the provisions of this lawsuit in the Jordanian civil law with its comparison with other man-made laws.

2- The lawsuit of non-enforcement of the disposition (the policy lawsuit), by the researcher Rizk Iman Scheherazade, a master's thesis in private law, from the University of Akli Mohand Oulhaj - Algeria, 2018, which is a legal study in its entirety, with sometimes inference from the Maliki school.

However, these studies were legal, with comparison in some of them with Islamic jurisprudence, specifically the Maliki school without rooting and detailed jurisprudence accurately, and without indicating the opinion of other schools of jurisprudence, so this research came to root jurisprudence and detailed the claim of non-enforcement of the debtor's disposition in the right of the creditor on the four schools of jurisprudence, in terms of their concept, legitimacy, conditions, and effects, with a statement of the opinion of the Jordanian Civil Code in them.

Research Methodology:

In this research, I relied on the following approaches:

- The inductive approach, where I extrapolated the vocabulary of the research from jurisprudential sources, i.e., Jordanian civil law.
- Deductive approach: where I analyzed what was extrapolated to reach the provisions of the lawsuit of non-enforcement in jurisprudence and law.

Research Plan:

The research plan consists of three demands and a conclusion as follows:

- The first requirement: the meaning and legality of the claim of ineffectiveness of the debtor's disposition against the creditor.
- The second requirement: the conditions of the action for the ineffectiveness of the debtor's disposition against the creditor.
- Third requirement: the effect of the claim for non-enforceability of the debtor's disposition against the creditor.
- Conclusion: It contains the results of the research.

The first requirement: the meaning and legality of the claim for non-effectiveness of the debtor's disposition against the creditor

All the debtor's funds constitute a general guarantee for creditors, as the creditor can collect his debt from any of these funds and execute on them, and the presence of these funds is often what makes the creditor reassured to contract with his debtor on the basis that these funds guarantee him the fulfillment of his debt.

Sometimes, however, if the debtor's financial situation worsens, he may sell his apparent property, such as real estate, to hide it from his creditors, or merely to spite his creditors to favor others from his relatives and friends, by selling his money to them cheaply, or giving it to them, or favoring one of his creditors at the expense of others to their detriment, by paying him all his debt so that he escapes the rule of ^{dividing the debtors}^{iv}. General guarantee to challenge his disposition through a claim of non-enforceability of the debtor's disposition against him.

Jordanian jurisprudence has defined an action for the ineffectiveness of a disposition as an action initiated by a creditor against a debtor to prevent him from disposing ^{of his property}^v.

However, it is noted in this definition that making the creditor's right through this lawsuit to prevent the debtor from acting, and it is known that the prevention of disposal can only be through interdiction, and this lawsuit does not prevent the debtor from acting but only gives the creditor the right to request that the disposition issued by the debtor be not effective against him if it harms his rights.

An action for the ineffectiveness of a debtor's disposition against a creditor can be defined as an action in which the creditor requests that the debtor's insolvent disposition be ineffective against him if such action is detrimental to the general security of his debt.

It is a path taken by the creditor to obtain from the judiciary a judgment that he is a third party in the disposition of his insolvent debtor who has prejudiced his rights^{vi}.

Islamic jurisprudence has permitted a creditor who has been injured by the actions of his insolvent debtor to challenge them, and this challenge to the acts, whether they were issued before the debtor was confiscated, as according to the Maliki jurists, or after the interdiction of the bankruptcy according to the Maliki jurists, and the two Hanafi companions,^{vii} who are the mufti according to the Hanafi school of thought, and the views of the ^{viii} Sahafi's and the ^{ix} Hanbalis^x, while Abu Hanifa does not permit the interdiction of the bankrupt debtor^{xi}.

The Malikis allow challenging the actions of the debtor who surrounded the debt with his money even before it was confiscated, as soon as the briefing, so he is prevented from acting as a donation, and also if the debtor is owed before the quarantine, he is prevented from making exchanges in addition to donations, while according to Hanafi, Shafi'i and Hanbali jurists, as we will see later, the debtor is not prevented from acting to harm the rights of creditors until after he is quarantined.

One of the most important effects of interdiction on the bankrupt debtor is to prevent him from disposing of his money so as not to harm the rights of his creditors.

In preventing him from acting given the debtors so as not to cause them to harm by acknowledgment and recourse, that is, to sell it from a person of great destiny from whom it cannot be taken away, or by acknowledging it and then benefiting from it on his part as ^{it was}, and ^{xiii}lest it harms them by disposing of his property such as gift and sale because if the debtor sells his property by way of placement from another person in the presence of witnesses, or acknowledges it to him in this manner by way of submission, the debtors will not find anything to pay their debts^{xiii}.

Perhaps he hastened the judgment of some creditors and left the debts of the rest damaged so that the interdiction was the first to prevent him from squandering and to bring all his opponents to their equal rights^{xiv}.

The Jordanian Civil Code derived the claim of ineffectiveness from Islamic jurisprudence specifically ^{from Maliki jurisprudence}^{xv}.

An insolvent debtor who has surrounded the debt with its property even before the interdiction cannot dispose of its property without compensation because of the detriment of its creditors^{xvi}.

Article 370 of the Jordanian Civil Code stipulates: "If the debt is immediately or deferred with the debtor's property by increasing or equaling it, he shall be prohibited from donating a donation that is not obligatory and has not been customary."^{xvii}

The basis of this lawsuit is to prevent damage and abuse of the right of the property if it is harmful to others, the debtor who surrounded the debt with his money if his behavior leads to weakening the rights of his creditors and their general guarantee, or it is intended that they do not reach their right, is prevented from actions that harm the rights of his creditors, to attach the rights of the debtors to this money, and it is known that the Sharia lifted the damage, the Messenger of Allah (peace and blessings of Allah be upon him) said: "No harm, no harm", the ^{xviii}creditor can request that the debtor's conduct be ineffective if it is detrimental to his right.

Article 1021 of the Jordanian Civil Code states: "The owner may dispose of his property as he wishes unless his conduct is grossly harmful to others or contrary to laws relating to the public interest or private interest."^(xix)

The basis for this action is that the law wanted to protect the creditor from fraud by its insolvent debtor and its attempt to smuggle its funds out of the hands of its creditors^{xx}.

The creditor shall be deemed to be ineffective ^(xxi)against the debtor if the debtor has resorted to such acts to harm the creditor's rights and reduce his general security.

Where the creditor seeks, through the action for ineffectiveness, to challenge the debtor's actions that are harmful to his rights, so that these actions do not have any effect on the rights of creditors and do not detract from their general security.

Second Requirement: Conditions of the Debtor's Claim for Non-Effectiveness of the Debtor's Disposal against the Creditor

For the creditor to be able to institute a claim for non-enforcement of the debtor's disposition against him and benefit from its effects, several conditions must be met, and these conditions, as stated in Islamic jurisprudence and the Jordanian Civil Code, are as follows:

The first condition is that the debt has surrounded the debtor's property, whether equal to or over it^{xxii}.

The creditor may prevent the debtor from making his contributions if the debt is equal to or more than his property, whether the creditor is multiple or individual, and whether the debt is current or ^{deferred}^{xxiii}.

Article 370 thereof states: "If the debt is immediately or deferred with the debtor's property by adding to it or equalizing it, he shall be prevented from donating a donation that is not obligatory and has not been customary, and the creditor may request a ruling that this disposition is not effective against him."^(xxiv)

Hanafi, Shafi'i and ^{xxv}Sahibi jurists of the Hanbali school of thought ^{xxvi}stipulate, for the permissibility of challenging the actions of the ^{xxvii}debtor whose property the debt is enclosed, that the disposition be issued by him after the interdiction of it, which is the case of private bankruptcy as will be explained later, while his actions before the interdiction are effective with them.

If the debtor who surrounded the debt with his property before the interdiction donates his property or part thereof in what he is not obligated to donate and what he was not accustomed to donating, his disposition, in this case, is not effective against the creditor based on the Maliki doctrine, and the creditor may challenge it through a claim of ineffectiveness of the disposal by the Jordanian Civil Code.

The second condition: is required that the debtor knows at the time of his disposition that the debt is surrounded by his money, and if he does not know that, he is not prevented from acting, so if he acts as a donation by giving or giving charity and he has debts that he does not know whether his money will pay them or not, he may act until he knows that his debts take up his money, so no one is free from having a debt^{xxviii} (0), but if he knows that the debt he owes takes away the money in his hand, he may not dispose^{xxx} of it^{xxx}.

If the disposition is issued by the debtor knowing that the debt has surrounded his property, this is evidence of an intention to harm the creditors and his abuse of his right, and thus the obligation to bring an action for non-effectiveness of the disposition is realized.

It should be noted that this condition relates to the first case of the debtor, which is merely to inform the debt of his money, but about the second and third cases, namely the cases of public and private bankruptcy, knowledge is assumed to be achieved once the bankruptcy.

The third condition on that the creditor's right is payable, and therefore free from dispute^{xxxii}, so that every creditor with a right of performance may use the claim of ineffectiveness of the debtor's disposition, there is no difference between an ordinary creditor or an excellent creditor, or between a creditor with an assessor right and a creditor with an unknown right, such as a victim of an unlawful act before assessing the compensation due to him.^{xxxii} (0)^{xxxiii}

Accordingly, a person whose right is dependent on a suspensive condition or associated with a suspensive term may not resort to such action.^{(0)xxxiv}

It is obvious that for the creditor to challenge the debtor's conduct, his right is payable, but if he has not been payable, as if he were in dispute before the courts and the court has not yet ruled on the maturity of the debt, he cannot challenge the debtor's actions.

The fourth condition is that the debtor's conduct is detrimental to the rights of creditors, by resulting in a decrease in the^{xxxv} debtor's rights, and consequently a decrease in the rights of creditors, causing or increasing the debtor's^{xxxvi} insolvency, by being impoverished conduct that reduces its rights or increases its obligations^{xxxvii}.

It is as if he surrendered in money and then the peace was postponed after he had been confined to the penny, and he received it without his capacity, which is that he had delivered modern food and took old, or good and received poorly, and if his opponents are not satisfied with it, it is not permissible for him to do so, because the arrest of less than the agreed capacity is a deficiency that enters the creditors in their right. The lack of capacity is like the lack of eyes.^{(0)xxxviii}

It is also a form of prejudice to the rights of creditors, such as if the debtor confesses to another person in the presence of witnesses by way of supposition⁽⁰⁾,^{xxxix} or sells his property by way of submission so that creditors have no money from which to pay their debts^{(0).xl}

Similarly, the unlawful preference of one creditor over another, and the performance of payment to some creditors but not others, is considered impoverished conduct and may be^{xli} challenged.

The debtor may agree with a creditor to give him special security to take advantage of the other creditors without right, such as by mortgaging his property with him, so that he would not have advanced without this special security, to the detriment^{of themxlii}.

Insolvency is actual insolvency, where the debtor's debts exceed its rights, rather than legal insolvency, which requires a judgment to be declared under certain conditions and procedures.^{(0)xliii}

Any act of the debtor that causes his insolvency or increases the insolvency is considered to be harmful and may be challenged by the creditor, but if the conduct does not cause or increase insolvency, as if it were a set-off at the price of the same, it shall not be challenged for lack of intent to damage.

Fifth condition: the debt arises before the debtor's disposal of his money^{xliv}.

The right of the creditor, if not ahead of the impugned disposition, had no face for grievance, as his right existed only after the disposition was issued by his debtor and at a time when the right of which the debtor disposed was not part of his security so that it is said that he relied on the existence of this right, and it cannot be imagined that there was a fraud on the part of the debtor and that he intended by his conduct to harm a creditor that did not exist at the time of his disposition, except in one hypothesis, which is that the debtor has acted in the expectation that it will soon become^{xlv} indebted.

For example, if he sells an object at a time when he is seeking to conclude a loan, and then borrows after the debtor is satisfied that the lender cannot perform on the property after he has sold it, in such an imposition the creditor is entitled to challenge this disposition on the grounds of ineffectiveness, because of fraud on the part of^{the debtorexli}.

If he sells a house in favor and then a debt is fixed on him, if the debt was before the sale, the debt is more entitled to favoritism, and if it is after the sale, the purchaser is more entitled to it.^{(0)xlvii}

The date of existence of the creditor's right rather than its maturity date, and the date of issuance of the disposition rather^{than the date} of its publicity^{xlviii}.

The obligations entered by the debtor before the maturity of the debt are effective and the creditor may not challenge them through an action for the ineffectiveness of the disposition for lack of intent to the detriment of creditors.

Condition VI: The impugned disposition must be a financial disposition related to the property in the hands of the debtor, ^{lix}such as selling something from his property or giving money, which violated the requirements of the prohibition of disposal^l.

If the disposition is not related to the property on which the interdiction has been signed, if the disposition is related to his property, he shall not be prevented from enforcing it and shall be followed by it after the interdiction has been released^{li}.

For example, if he sells a ladder secured in his debt, or buys a commodity in his possession that is postponed for a long known period, he can trade in that commodity and profit from it, or guarantee a guarantee related to his debt, for all this and the like related to his liability and not related to his money in his hand is valid and past and there is no objection to the debtors because the prohibition to dispose of it concerns his property ^{without his debth}^{lii}.

The seventh condition: is that it be a legal act, so that material acts, such as the illegal act, are not challenged, because, because it is a material act, it is necessary against the creditor. ^{liiii}

It is as if he had consumed the money that he needed immediately because he was an irrevocable spectator.^{liv}

Rather, a challenge to a legal act, whether voluntary or netting, and whether unilateral, is such as the debtor's relinquishment of a right in rem, such as an easement, usufruct, or mortgage right, or his relinquishment of a will issued to him, or his discharge as a debtor, or the endowment in kind owned by him in charitable terms, or the authorization issued by the debtor to correct a contract that is voidable if its validity results in prejudice to creditors^{lv}.

Or the conduct is twofold, such as gift, sale, barter, payment of consideration, company, or composition^{lvi}.

It is inconceivable that material acts are challenged because, as mentioned, they are inherently effective, and cannot be invalidated.

If all these conditions are met, the creditor may challenge the debtor's actions and request that they be unenforceable against him through an action for the ineffectiveness of the debtor's disposition.

Third requirement: the effect of the claim for non-effectiveness of the debtor's disposition against the creditor

The creditor shall have the right to challenge the actions of his debtor if he surrounds the debt with his money, because of the impact of such actions on the general security of his debt, so he submits a claim of non-enforceability of the debtor's actions, which results in a judgment of ineffectiveness and annulment of the disposition, and the money subject to the disposal returns to the general guarantee so that the creditor can execute it to collect his right from him.

Before starting the effect of the action for the ineffectiveness of the disposition, it is first necessary to detail the cases of the debtor who surrounded the debt with his money, and the judgment of his disposal in each case.

An insolvent debtor who has taken possession of the debt has three cases, each of which has its provisions about the effectiveness of its actions, the provisions for the effectiveness of the debtor's actions, and the effect of the action for non-enforcement thereon are detailed as follows:

First: The case of surrounding the debt with the debtor's money

This situation is pre-bankruptcy ^{lvii}and is achieved as soon as the debt is enclosed ^{lviii}.

To surround the debt with the debtor's property is that his current and deferred debts are more than or ^{equal to his} property^{lix}.

In Maliki jurisprudence, once the debt is surrounded by the debtor's property, his actions are restricted even before he is confiscated.^{lx}

It is a narration from Imam Ahmad ibn Hanbal and the choice of Ibn Taymiyyah: if his property is narrowed from his debts, he becomes interdicted without the ruling of the ruler, so his actions will not be carried out^{lxi}.

Al-Mardawi said: "This is the right thing to say, especially since people's tricks have ^{increased.}"^{lxii}

Accordingly, the creditor may request that the donations of the debtor who has surrounded the debt with his property not be enforced and that are not customarily done by donations, such as charity, gifts, etc., whether the debtor is multiple or individual, and whether his debt is current or deferred^{lxiii}.

He shall not be prevented from disposing of without compensation of the necessary alimony of his father, son, himself, and wife, nor of the customary sacrifice, the crumb of a liquid, and the maintenance of two Eid's, without extravagance^{lxiv}.

Nor may the Malikis guarantee it, nor lend it, both of which are contracts ^{of donation}^{lxv}.

It may be bought and sold with the condition of non-favoritism because favoritism is considered a donation and is detrimental to the rights of creditors, and a sale in which favoritism^{is rewarded}^{lxvi}.

It is not permissible for him to pay a debt that has not matured, and the rest of the debtors may prevent him from doing so because it is a loan, it is a donation, nor may he pay a debt that has matured with all the money he has, because there^{is a right} in it,^{lxvii} and he is not prevented from paying some of his money to some of his debtors if his debt is immediate, provided that some of the rest are suitable for transaction on him, otherwise the creditor may prevent it^{lxviii}.

His declaration of a debt to the person against whom he is accused, such as his wife and brother, shall not be executed, he shall be prevented from doing so and his declaration shall be rejected, but his declaration of a debt to the person against whom he has not been accused is permissible, whether the debt against which he owes is established by evidence or by his acknowledgment^{lxix}.

A person who has taken possession of the debt may mortgage some of the property in his possession to some^{of his} debtors, provided that the mortgage is stipulated in the^{lx} contract and is in an incident transaction for the person against whom he is not accused, but in the debt owed by him before that, it is not permissible^{lxxi}.

Hanafi, Shafi'I,^{lxxii} and the^{lxxiii} correct Hanbali scholars believe that the actions of the^{lxxiv} debtor whose property the debt has been surrounded by are all permissible and enforceable before the interdiction of it, whether donations or otherwise, so it is permissible for them to donate, sell, approve and other acts unless the ruler interdicts him.

This is because he is an adult who is not interdicted, and because the reason for the prohibition is the interdiction, the reason for which does not progress^{lxxv}.

In the Hanbali school of thought, although his behavior before the interdiction is correct, it is forbidden for him to act if he harms his opponent^{lxxvi}.

Article 370 of the Jordanian Civil Code states: "If the debt is immediately or deferred with the debtor's property by increasing or equaling it, he shall be prevented from donating a donation that is not obligatory and has not been customary."^{lxxvii}

This is consistent with the objective of the action for non-enforcement, which is to prevent the bankrupt debtor from harming the rights of his creditors by reducing the general security, and this damage is achieved by simply taking note of the debtor's property and insolvency, even before the interdiction if he acts in a manner harmful to their rights.

It should be noted that the conduct that may be challenged in this case is limited to voluntary contributions and similar acts only, while its compensation is valid if there is no favoritism.

Second: The Case of General Bankruptcy

General bankruptcy is the establishment of a debtor who has nothing to satisfy his debt without asking the judge to interdict him, so they transfer between the debtor and his money, buying and selling, and giving and taking^{lxxviii}.

General bankruptcy differs from private bankruptcy in that creditors in general bankruptcy do not submit the matter of the bankrupt debtor to the judge for interdiction^{lxxix}.

In terms of effects, in general bankruptcy, the deferred debt is not dissolved, while in private bankruptcy^{it is dissolved}^{lxxx}.

The debtor's harmful acts in the event of general bankruptcy are not valid according to the^{Malikis, lxxxi} and in a narration from Imam Ahmad, Ibn Taymiyyah chose that his actions are not conducted if they are detrimental to the creditor^{lxxxii}.

In the case of general bankruptcy, the debtor is prevented from donating^{his property}^{lxxxiii}.

Nor may he act in netting, even without^favoritism^{lxxxiv}.

He may not pay a debt that has matured or has not been dissolved because of the obligation to share his property^{lxxxv}.

He may not^{mortgage his property}^{lxxxvi}.

If the bankrupt acknowledges a debt to another person who has bankrupted a debt before it is approved by the person against whom he is not accused, if his acknowledgment is in the council in which he went bankrupt or close to it according to custom, if the debt with which he went bankrupt has been established by his acknowledgment,^{lxxxvii} but if his acknowledgment is far from the council, it shall not be accepted^{lxxxviii}.

If the debt for which he became bankrupt is proved by evidence and then acknowledges a debt, his acknowledgment shall not be for anyone other^{than those who} have gone bankrupt^{lxxxix}.

What the bankrupt acknowledges but does not accept because the debt that is bankrupt with evidence, or because of the distance of its approval from the Bankruptcy Board, is in his debt necessary, and he pays it from the renewed money because the interdiction is only in the money in his possession at the time^{of his bankruptcy}^{lxxxix}.

The debtors shall divert him from his property and prevent him from disposing of it in the manner aforesaid, and they may sell such property and collect the price^{thereofxcvi}.

While the Hanafi,^{xcii} Shafi'i,^{xciii} and authentic scholars of the Hanbali school did not consider that the establishment of a debtor who surrounded the debt with his money before the interdiction prevents the enforcement of his legitimate actions, such as donations, compensation, acknowledgment, or other acts, all of them are permissible and enforceable, and the debtors do not have the mandate to annul them, even though his conduct is forbidden if it harms his rival according to the Hanbalis, as mentioned earlier.^{xciv}

Article 371 of the Jordanian Civil Code states: "If the creditors claim the debtor whose property is surrounded by their debts, he may not donate his property or dispose of it as a set-off, even without favoritism."^(xcv)

In our view, the action for the ineffectiveness of the debtor's disposition in the event of general bankruptcy included, in addition to the debtor's contributions, his compensation, as the creditor has the right to challenge it through this lawsuit.

Third: Private Bankruptcy Case

The bankruptcy of the debtor's interdiction shall be achieved by submitting the debtor's order to the judge for interdiction^{thereofxcvi}.

Private bankruptcy is the judge's order to discard all the debtor's property because of his inability to pay^{the debt he owes}^{xcvii}.

Its virtue is the prohibition of entering into debt before a subsequent one in^{a subsequent transactionxcviii}.

If the debt surrounds his money, if he fears that he will take refuge and flee his money, and the debtor asks the judge to confiscate him, he will be confiscated by the Malikis, the Shafi'is,^{xcix} and the Hanbalis^c, which is the view of Abu Yusuf and Muhammad al-Shaybani, contrary to Abu Hanifa, who does not permit the interdiction of the bankrupt debtor, and the fatwa on their^{ci} sayings.^{cii}

Concerning the permissibility of interdicting a bankrupt debtor, Ibn Ka'b ibn Malik reported from his father that he said: "The Messenger of Allah (peace and blessings of Allaah be upon him) confiscated his wealth and sold it in a debt that he owed."^{ciii}

Article 959 of the Code of Judicial Judgments states: "The debtor shall also be interdicted by the ruler at the request of the debtor."^(civ)

Article 375 of the Jordanian Civil Code stipulates that: "The debtor may be interdicted if his debts increase on his property."^(cv)

Deferred debts^{cvi} are dissolved^{by private bankruptcycvii}, which is the fundamental difference between private bankruptcy and the other two cases.

Article 380 of the Jordanian Civil Code stipulates that: "A judgment of interdiction shall result in the dissolution of the debtor's deferred debts."^(cviii)

Once it is decided that the debtor is confiscated, he can no longer dispose of his property, neither by donation nor by compensation, and all acts issued by him after the interdiction are not effective against the creditors, so his actions are invalid as prescribed in the Hanafi school of thought, the Maliki school, a saying in the^{cx} Shafi'i school of thought, and in another saying that is dependent on the leave of the debtor, or the payment of the debt that he owes,^{cx} as well as according to the Hanbalis, its ruling is a nullity^{(cx)(cxii)}.

The Hanafis believe that if selling it is at the same price, it is not for bidden, because it does not invalidate the rights of the debtor.^(cxiii)

Also, his acknowledgment of a debt is not executed against the creditors because he is accused of it, according to the Hanafi, and one of the^{cxiv} two sayings according to the Shafi'is and the^{cxv} Hanbalis, so as not to^{cxvi} harm the debtors because of them so that the person who is entitled to them does not share with them the interdicted property so that the right of the debtor is attached to his eyes.

The difference between the Malikis in accepting the declaration is based on how the debt of the debtor who went bankrupt with it is established, and if he acknowledges a debt owed by him to the person who is not accused of it, and the debt with which he is bankrupt has been proved by legal evidence, this declaration is not accepted about the money^{in his handcxvii}. Accepts its approval^{cxviii}.

A bankrupt whose declaration is not accepted in the event of interdiction is obliged to pay it after the debts have been paid and the interdiction has ended, even if he obtains money after the interdiction in which his declaration has been executed because the creditor right did not relate to him and because the interdiction is in his property in his possession at the time^{of his bankruptcycxix}.

Article 1002 of the Code of Judicial Judgments stipulates that: "Quarantine affects everything that leads to the annulment of the right of the debtor, such as charity, gift, and the sale of money for less than the price of the same."^(cxx)

Article 381 of the Jordanian Civil Code states: "A judgment of interdiction shall result in the debtor not executing against all his creditors the disposal of his existing and existing property, and his acknowledgment of a debt to another since the registration of the summons."^(cxxi)

It was felt that the effect of the judgment of interdiction based on the time of registration of the summons should protect creditors from the actions of their debtor harmful to them, and there is no harm to third parties in this since registration is sufficient to alert them to the action of interdiction, since their intention to deal with the debtor after such interdiction is borne alone by them as a result^{cxxii}.

After clarifying the cases of the bankrupt debtor, in the case of debt briefing and general bankruptcy, the ineffectiveness of the debtor's actions requires a challenge to the disposition before the judge according^{to Maliki juristscxxxiii cxxiv}.

As for the rest of the jurists, the action before the quarantine is correct and irrevocable.

As for the case of private bankruptcy, which is the interdiction of the bankrupt debtor, he does not need a claim for non-enforcement, as once the interdiction is not carried out, the debtor's actions are not implemented against his creditors, so the creditor does not need to prove the insolvency and damage he needs to prove the claim of ineffectiveness, as it is assumed once he is interdicted, and this is the opinion of the jurists of the four schools of thought, which is what the Jordanian Civil Code has followed.

About the appealed judgment of disposition, whether before the interdiction, which is in the cases of enclosing the debt and the general bankruptcy according to the words of the Malikis, which is dealt with in the lawsuit of non-enforcement, or after it, which is the case of private bankruptcy according to the words of the Hanafi, Maliki, and Shafi'i jurists in the words of the Hanbalis, its ruling is a nullity, as it has been previously passed, as the disposition concluded by the debtor is rescinded and returned to the detriment of his creditors and is not executed against them, which is what the Jordanian Civil Code adopted in Articles (370) and (371) for the first and second cases, and in Article 389 concerning the third case.

In practice, the Jordanian judiciary stated that the effect of the lawsuit for non-enforcement of the debtor's disposition is invalidity, in line with its ruling in the Maliki school of thought, as stated in the decision of the Jordanian Court of Cassation No. (3681/2014) dated 6/1/2015: "The effects of the lawsuit for non-enforcement are identical to what is stated in the Maliki jurisprudence as a nullity lawsuit, and that limiting the effect of the lawsuit to the non-enforceability of the disposal against the creditor violates the general rules mentioned in the Civil Code in Article (2/175), which states that Failure to authorize the suspended contract entails its invalidity, and it is clear that the creditor's action against the conduct of his debtor does not become and is an express opposition to the disposition, which follows from it that the action for ineffectiveness remains in its main results a claim of nullity."^{cxxv}

The Jordanian judiciary considered it a special nullity lawsuit, as stated in Cassation Decision No. 461/91 of 1993.^(cxxvi)

Many decisions have arranged the invalidity of the contested disposition through the claim of ineffectiveness of the debtor's disposition, including what was stated in the decision of the Court of Cassation No. (1586/2007) dated 6/1/2008: "Whereas the judgment of ineffectiveness of the debtor's disposition against the creditor means that the contract for the sale of the debtor's immovable property is not enforceable against the creditor, and this can only be done by rescinding the sale contract so that the creditor can execute the property, especially since Article (371) at the end of it stipulates that he is entitled to The creditor may request the sale of the debtor's property and the joint venture in its price by the provisions of the law, which includes the termination of the contract for the sale of the immovable property until it is executed and sold and the price thereof."^(cxxvii)

Once the debtor's conduct is determined to be ineffective, all creditors against whom the conduct was made to the detriment of the debtor^{will benefit}^{cxxviii}.

Since the disposition provision is restitution or annulment, whether, in Jordanian jurisprudence or civil law, this means that it applies to all^{creditorscxxx}.

The consequence and benefit of the action for the ineffectiveness of the disposition are that the money in question remains in general security and does not leave it, and this benefits all creditors equally, unless any of them has a privilege, since any creditor can enforce it to collect his right from it by the rules of division of the debtors through quota^{cxxx}.

In summary, the action for non-enforcement entails in the application the annulment of the conduct issued by the debtor to the detriment of the rights of his creditors, so that it does not have any effect on the creditors and does not detract from their general security.

The end:

After the praise of God Almighty has completed this research, the most important results can be summarized as follows:

- 1- A claim for non-enforceability of the debtor's disposition against the creditor is one of the ways to preserve the general security of the creditors.
- 2- An action for non-enforceability of the debtor's disposal shall return what has been discharged from the debtor's property to the general guarantee.
- 3- One of the most important conditions for the action of the debtor's disposition is to surround the debt with his money, and the damage resulting from his conduct toward the creditor's rights.
- 4- The Debtor's Disposition shall be challenged by way of an action for the ineffectiveness of the Debtor's disposition in the cases of debt enclosure and general bankruptcy.
- 5- An action for the ineffectiveness of the debtor's disposition results in the invalidity of the contested disposition, and therefore all creditors benefit from its effect.

Finally, there are other ways in which the creditor can maintain his general guarantee to ensure the fulfillment of his debt, so I recommend researchers study the rest of the methods of preserving the general guarantee in Islamic jurisprudence and Jordanian civil law.

Praise be to Allah, Lord of the Worlds.

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^(xxxvii) Sanhoury, Mediator, C: 2, r: 1012. Belhaj, Provisions of Commitment, p: 191, 192, Sultan, The General Theory of Commitment, pp.: 46.

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^(l) Mawardi, Hawi, C: 6, r: 320, nuclear, total, c: 13, p: 281.

^(li) The Lumberjack - the Talents of Galilee - C: 6, r: 599, Al Mawardi, Al Hawi, C: 6, r: 319, nuclear, total, c: 13, p: 281, Ibn Taymiyyah, ed., c.: 1, r: 345, Al-Mardawi, Al-Insaf, C: 5, r: 212, Al-Bahooti, Scout the Mask, C: 3, r: 424.

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 (liv) Mosuli, Choice, C: 2, r: 106.
 (lv) Sanhoury, mediator, j: 2, r: 1009; 1010.
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 (lxi) Ramini, Branches, C: 6, r: 464, Al-Mardawi, Al-Insaf, C: 5, r: 209; 210.
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- (ci) Ibn Qudamah, Mayor of Jurisprudence, p.: 57, Ibn Taymiyyah, ed., c.: 1, r: 345, Al-Mardawi, Al-Insaf, C: 5, r: 209, Al-Bahooti, Sharh Al-Muntaha Al-Iradaat, c: 3, r: 448.
- (cii) Fern, Mabsout, C: 24, p: 143, Al-Kasani, Bada'i Al-Sana'i', c: 10, r: 92, Mosuli, Choice, C: 2, r: 105, 106, Ibn Najim, The Clear Sea, C: 8, r: 94.
- (ciii) Abu Alhassan Ali Bin Omar Aldaraqutni Sunan Aldaraqutni (Al Resala Foundation). Hadith No. (4551), C: 5, r: 413, al-Nisaburi, al-Mustadrak 'ala al-Sahihin, Kitab al-Bai'u', hadith no. (2348), c.: 2, r: 67, al-Hakim al-Nisaburi said: "This is a saheeh hadith on the condition of the two sheikhs and they did not take it out."
- (civ) Haidar - Pearls of Rulers - C: 2, r: 597.
- (cv) Jordanian Civil Law No. 43 of 1976.
- (cvi) Al-Kharshi, Khalil's explanation of Al-Kharshi, j: 5, r: 266, Alish, Explanation of the Grants of Galilee, c: 6, r: 23.
- (cvii) Judges, Explanatory Notes to the Jordanian Civil Code, pp.: 388.
- (cviii) Jordanian Civil Law No. 43 of 1976.
- (cix) Fern, Mabsout, C: 24, p: 143, Ibn Najim, The Clear Sea, c: 8, r: 94, Al-Kasani, Bada'i Al-Sana'i', c: 10, r: 92, Mosuli, Choice, C: 2, r: 106.
- (cx) See: The Lumberjack, The Talents of Galilee, c: 6, r: 950. Al-Kharshi, Khalil's explanation of Al-Kharshi, j: 5, r: 266, Alish, Explanation of the Grants of Galilee, c: 6, r: 20. 21.
- (cxi) Mawardi, Hawi, C: 6, r: 308, 320, nuclear, total, c: 13, p: 280.
- (cxii) Ibn Qudamah, Mayor of Jurisprudence, p.: 57, Ibn Taymiyyah, ed., c.: 1, r: 345, Al-Mardawi, Al-Insaf, C: 5, r: 212. Al-Bahooti - Explanation of the Ultimate Wills - c: 3, r: 448.
- (cxiii) Mosuli, Choice, C: 2, r: 106, Ibn Najim, The Clear Sea, C: 8, r: 94.
- (cxiv) Mosuli, Choice, C: 2, r: 106, Ibn Najim, The Clear Sea, C: 8, r: 94.
- (cxv) Mawardi, Hawi, C: 6, r: 321.
- (cxvi) Ibn Qudamah, Mayor of Jurisprudence, p.: 57, Al-Bahooti, Explanation of the Ultimate Wills, c: 3, r: 448.
- (cxvii) Al-Kharshi, Khalil's explanation of Al-Kharshi, j: 5, r: 268, Alish, Explanation of the Grants of Galilee, c: 6, r: 28. 29.
- (cxviii) Al-Kharshi, Khalil's explanation of Al-Kharshi, j: 5, r: 268, Alish, Explanation of the Grants of Galilee, c: 6, r: 28.
- (cxix) Mosuli, Choice, C: 2, r: 106. Al-Kharshi, Khalil's explanation of Al-Kharshi, j: 5, r: 268, Alish, Explanation of the Grants of Galilee, c: 6, r: 29, Mawardi, Hawi, C: 6, r: 321.
- (cxx) Haidar - Pearls of Rulers - C: 2, r: 650.
- (cxxi) Jordanian Civil Law No. 43 of 1976.
- (cxxii) Judges, Explanatory Notes to the Jordanian Civil CodeAM: 390.
- (cxxiii) Al-Kharshi, Khalil's explanation of Al-Kharshi, j: 5, r: 266, Alish, Explanation of the Grants of Galilee, c: 6, r: 21.
- (cxxiv) Article 372 of the Jordanian Civil Code stipulates that: " If the creditor claims to surround the debt with the debtor's money, he shall only prove the amount of his debts, and the debtor himself must prove that he has money not exceeding the value of the debts. "
- (cxxv) Decisions of the Jordanian Court of Cassation. <https://lawpdia.jo>
- (cxxvi) Decisions of the Jordanian Court of Cassation. <https://lawpdia.jo>
- (cxxvii) Decisions of the Jordanian Court of Cassation. <https://lawpdia.jo>
- (cxxviii) Article 373 of the Jordanian Civil Code.
- (cxxix) Judges, Explanatory Notes to the Jordanian Civil CodeAM: 379.
- (cxxx) See: Article 371 of the Jordanian Civil Code.