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Rules of Patient's Sale during Death-Illness in the Jordanian Civil Code

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Abstract:

The present research aims to study the topic of (Rules of Patient's Sale During Death-Illness in the Jordanian Civil Code), which is one of the important topics that need further research and did not attain sufficient due diligence in the civil law literature.

The dispositions of this illness are also very important, as death-illness is an illness which most likely results in the death of the person with that health situation within a year. However, should the period of illness extend to over a year without any intensification on the ill person's health situation, the said person's dispositions are considered correct. Even though he is ill because the disease is not then considered a disease of death. If a person is surrounded by risk factors of death and the likelihood of the illness resulting in death, then that person might be considered to have a death-illness. Death is considered a reason for the succession of the creditors and heirs in the inheritance of the patient after his death. Because with death, a person loses his capacity to own property, and his natural personality ends, but his legal personality extends metaphorically until his debts are paid. In addition, the purpose of linking the rights of creditors to the patient's inheritance is for the repayment of debts. As for the purpose of the heirs, it is to achieve their succession in two-thirds of the patient's inheritance after the payment of debts. I have clearly discussed this subject in detail. This study included a set of results and recommendations.

Keywords: Creditors, heirs, death-illness, death, inheritance, disposition

1. Introduction

Perhaps one of the unquestionable facts is that the Jordanian civil code constitutes, in itself, the basic building block and legal reference for all internal legislation in the legal building. Perhaps one of the facts recognized by various pioneers of legal thought is that the mechanism by which civil code deals with various aspects of transactions that concern individuals and groups almost covers all aspects of disposition that may arise between individuals. However, the truth is that there are some legal issues that still raise many questions for jurisprudence and legal legislation, including the issue of Rules of Patient's Sale during Death-Illness in the Jordanian Civil Code, which is one of the important topics that must be studied and researched because of its great importance in our daily lives. During his illness, the patient feels that his time may have drawn near, and the end of these dispositions is that he has achieved what he wants, and then he has died. However, when the patient disposes during the illness or death, this affects him as he prefers some heirs over others, then the heirs will be influenced by these doubtful and suspicious dispositions. In addition, the law permits illness-death patients to dispose of their money after their death through a will to non-heirs except within the limits of one-third of the inheritance or more than one-third if the rest of the heirs permitted that, and the wisdom of restricting the freedom of the patient after his death in his dispositions that may be issued during a period of illness-death with a retroactive effect is to protect the rights of creditors and heirs. A person may sell some of his estate and property while he is in a very bad health situation called (death-illness), for reasons he expects. The Jordanian Civil Code considered this sale as well as this disease with a special view, so the draft Jordanian Civil Code organized the sale in the event of a death-illness in Articles (543-547). The provisions of the dispositions issued by the patient with a death illness have great importance in the life of the individual and society, as this importance is manifested by providing the necessary legal protection for the rights of creditors and heirs, as well as the rights of the patient himself before the judiciary.

1.1. The Importance of Research

It is legally established that the will of man is free by nature, and man is not bound - according to the principle - except by his will. The will is the basis of legal disposition, as it is what establishes a legal disposition and determines its effects, and it is known that a person of full capacity is free to dispose of all or most of his property in the manner he deems appropriate in the case of his life, whether this is a legal disposition by sale or materially by destruction, unless it is linked

to the right of others. Also, he has the right to dispose of it in payment or for free, without being responsible for that before anyone and the right of a person remains as such until he dies. Nevertheless, he has been permitted to dispose of his money after his death through a will. However, this behavior is limited in that it is not for one of the heirs because there is no will for the heir and that it is only for non-heirs within the limits of one-third of the inheritance because the will in more than one-third of the inheritance is not permissible either. Nevertheless, the bequest or the will is authorized for heirs or for non-heirs by more than one-third of the remaining heirs. Hence, the importance of this research is to study the provisions of the sale of the patient with the death-illness and the consequent effect on it, as the sale issued by the patient is not without benefit for some people, whether they are creditors or heirs because the right of the heirs to the property of their inheritor is proven to them after his death. However, these rights are also related to his property in the event of death-illness for fear of harming them by selling or disposing of it to a third party or one of them during this period, when the patient's will is weak, not like the will of a healthy person.

1.2. The Problem of Research

The patient with the death illness has the right to dispose of his property in all kinds of dispositions as long as he is in his full mental capacity and is not foolish, but there are limits to the dispositions that he may carry out. The problem of the research is that the patient with death-illness may, in the urgency of his illness, perform random, unstudied dispositions because of his despair, perhaps from the disease and knowing that his time may have drawn near, and he may feel that his death is near. So, he begins to settle his financial situation. In this way, he may act in favor of some of the heirs or others, which causes harm to the heirs and creditors because the right of the heirs and others is related to the inheritance from the beginning of the illness. What is meant by death-illness? What are the conditions of death-illness? What are the rules of patient's sale during death-illness? What is the method of calculating the time that is adopted for the legal dispositions of the patient with death-illness? Is it permissible for a patient with a death illness to withdraw his legal dispositions during the time period granted to him by law? What is the rule of patient's sale during death-illness, whether it is for one of the heirs or for a third party?

1.3. The Method of Research

The method of this research is based on the descriptive-analytical approach. Through the analytical method, the researcher was interested in studying and analyzing legal texts in the Jordanian civil code, citing some judicial rulings issued by the Jordanian Court of Cassation. We are in the process of studying a topic that mainly needs to extrapolate and analyze the legal texts that govern it, present and discuss jurisprudential opinions, review the general and objective provisions of the rules of patient's sale during death illness in the Jordanian civil code, and draw conclusions and recommendations.

1.4. The Plan of Study

In studying the provisions of the rules of patient's sale during death-illness in the Jordanian Civil Code, the researcher has adopted the following plan:

- First Topic: The Nature of Death-illness and Explanation of Its Conditions
 - ✓ First Theme: The Nature of Death-Illness
 - ✓ Second Theme: The Conditions of Death-Illness
- Second Topic: The Rules of Patient's Sale during Death-Illness
 - ✓ First Theme: The rules of patient's sale to the heirs
 - ✓ Second Theme: the rules of patient's sale to non-heirs (the third party)

1.4.1. The Nature of Death-illness and Explanation of Its Conditions

The identification of the nature of death-illness requires that we first present its definition, the types of diseases, and what is considered a death-illness, and then we explain the conditions of death-illness, and we will divide this topic into two themes as follows:

- First Theme: The Nature of Death-Illness
- Second Theme: The Conditions of Death-Illness

2. The Nature of Death-Illness

In application of the general rules, we find that every person who has reached the legal age of majority and who enjoys his mental powers has not been placed under guardianship after declaring legally incompetent. He/she is eligible to exercise his civil rights, and the age of majority is granted in Jordan to those who have completed eighteen full solar years of age.¹

Accordingly, an adult who is of mental faculties and who is not placed under interdiction may sell his property to the person he wants, at the price he deems appropriate, provided that a person may contract a disease of death that compels him to sell his property or some of it to an heir or a third party. Here, several questions arise: What is the disease of death? What are the types of diseases, and what is considered a disease of death? To answer that, we will divide this theme into two independent issues as follows:

- First Issue: Defining the disease of death.

¹See the text of Article (43) of the Jordanian Civil Law No. (43) of 1976.

- Second Issue: The definition of the legal scholars of the disease of death.

3. Defining the Disease of Death

Some legal restrictions are imposed on the disposition of a sick person whose death may have drawn near to protect those who will inherit him, as his guardianship over his property is imminent to the end. Since he is still alive during this period, he can dispose of his property according to the disposition that suits him like a healthy person, but at the same time. And as long as he is sick, the disease will result in his death, and then his dispositions must be restricted because the rights of his heirs are attached to those properties, fearing that this patient will dispose of his property by causing harm to his heirs or that these dispositions will be with favouritism and bias, i.e. the practice of giving unfair advantage to one person at the expense of another. Therefore, the provisions of the Jordanian Civil Code confirmed: although the rights of the heirs are established to them in the property of their inheritor after his death, their rights are related to his property before his death, if he was sick with a death disease, for fear that he would take it in harmful disposition during his illness by selling it.²

The Jordanian legislator identified the disease of death, unlike some legislation that did not identify this disease. Article (543/1) of the Jordanian Civil Code stipulates that death-illness is an illness during which a person becomes incapable of performing regular tasks and which most likely results in the death of that person within a year. However, should the period of illness extend to over a year without any intensification of the ill person's health situation, the said person's dispositions are considered valid or healthy. Even though he is ill because the disease is not then considered a disease of death. It is clear from the definition of the text of Article (541/1) of the disease that a person becomes incapable of performing regular tasks that he used to perform in his daily life, such as a doctor who is incapable of going to the hospital, or to his clinic to treat and examine patients, and like the lawyer who stops going to his office and court to follow up the cases in which he was entrusted. A person who stops practising some of his sports, cultural, or social activities because of his illness does not think of stopping the usual tasks as long as he continues to practice his usual profession.³

The Jordanian Court of Cassation ruled in one of its decisions that it stated: "... Since for the application of Article 543/1 of the Civil Code, the required conditions must be fulfilled in the case of a death-illness, and it defined the death-illness as an illness during which a person becomes incapable of performing regular tasks and which most likely results in the death of that person within a year. However, should the period of illness extend to over a year without any change in the ill person's health situation, the said person's dispositions are considered correct/healthy unless a decline in the health situation occurs). There are some cases in which a person, although not ill, might be considered dead; for example, if a person is surrounded by risk factors that will probably result in the person's death."⁴

It is worth noting that this disease will most likely result in a person's death because not every disease will probably result in a person's death. Cancer disease is one of the diseases that most likely results in a person's death, and AIDS (HIV) most likely results in a person's death. There are some cases in which a person, although not ill, might be considered death-illness, for example, if a person is surrounded by risk factors that will probably result in the person's death, such as the person who is in areas of civil wars, or a warrior in the army when there is a war with the enemy, or who is found in areas of disasters, such as earthquakes, volcanoes, floods, and epidemics. Accordingly, article (543/2) of the Jordanian Civil Code states: (There are some cases in which a person – although not ill- might be considered in death-illness, for example, if a person is surrounded by risk factors that will probably result in the person's death), Provided that the patient dies within a year as of the onset of his illness-disease, and incapability of performing regular tasks. However, should the period of illness extend to over a year without any intensification on the ill person's health situation, the said person's dispositions are considered valid or healthy, even if he is ill because the disease is not then considered a disease of death.⁵

4. The Definition of the Legal Scholars of the Disease of Death

The definition is the duty of legal jurisprudence, not legislation, but there are some legislations that define illness-disease, including the Jordanian legislator. There have been many definitions of legal jurisprudence for the disease of death, and it is defined as the disease that will most likely result in death, and this death is actually connected to this disease.⁶

Part of the jurisprudence has defined it as a disease in which the patient is incapable of performing his interests and meeting his needs outside the house if he is a man or inside the house if he is a woman. Provided that it will most likely result in death, and the death is actually connected to it, even if he is a lay-up or ambulatory patient.⁷

² Refer to Hosni Mahmoud Abdel-Dayem, *Death-Illness and its Impact on Selling*, Dar Al-Fikr Al-Jamii, Alexandria, 1, 2007, p. 96

³ See the decision of the Jordanian Court of Cassation (cassation of rights) No. 771/1982 dated 10/1/1983, published on p. 425 of the Jordanian Bar Association number on 1/1/1983. As well as the decision of the Jordanian Court of Cassation (cassation of rights) No. 1712/2008 dated 31/3/2010, Adalah Publications.

⁴See: Decision of the Jordanian Court of Cassation (Rights Cassation) No. 4207/2021 dated 9/26/2021, Program of "Your Decision"

⁵ See Yassin Al-Jubouri, Al-Wajeez in Explanation of the Jordanian Civil Code, Part 3, Nominated Contracts, Explanation of the Provisions of the Sale Contract, Dar Al-Thaqafa for Publishing and Distribution, 2016, Paragraph 585, p. 644

⁶ See Suleiman Marks, Al-Wafi in Explanation of Civil Code, part 3, Nominated Contracts - Volume One – Sale Contracts - 5th edition, without publishing canter, 1990, paragraph 335, p. 373

⁷ See Tawfiq Hassan Farag, *Sale and Barter Contract*, without publishing canter, 1985, p. 635

There is a case in which a person might be considered to have a death illness, for example, if a person is compelled to stop his regular tasks in a state of health, provided that it contracts him outside the house for a man, and the woman is kept away from her regular task at home, whether the person dies because of it or because of another emergent cause during it. The disease of death has been defined by one of the jurists as a disease that would create a feeling of despair of life and the imminence of the death, and the patient dies in that state because of the disease or other reasons. There is a case in which a person might be considered to have a death-illness; for example, if a person is in any situation that creates this feeling for him.⁸

It is clear from the jurisprudential definition above of death illness that it differs in wording, not in meaning. A part of jurisprudence considers death illness when the patient is unable to fulfil his interests, whether inside or outside the home; in most such cases, the patient dies. However, should the period of illness extend to over a year without any intensification on the ill person's health situation, the said person's dispositions are considered valid or healthy. And there are those who decided that one of the signs of this illness is that the patient cannot take more than one step only after seeking the help of others.⁹

The researcher believes that there is a case in which a person might be considered death-illness, for example, if a person is unable to realize his actions and behaviors and what is going on around him, and he is unable to distinguish between his valid and invalid actions, and his illness is most likely results into his death and the one he feels that his time may have drawn near and he has the feeling that he will die. However, I disagree with the Jordanian legislator and other legislation and legal jurisprudence by limiting the period to one year. It may be that a person is death-illness and is not distinguished by his regular dispositions and is most likely to die, and this disease extends with the patient for more than a year. However, his health remains poor. The Jordanian legislator should have left the matter to a specialized medical committee that alone decided whether this patient was dead or not.

5. The Conditions of Death-Illness

With regard to the death-illness, there are conditions that must be met. These conditions must be combined for the patient to be considered to have a death illness, and they were stipulated in article No. 543 in the Jordanian Civil Code. We deal with them successively in the following issues:

- Issue One: The patient is incapable of performing his regular tasks.
- Issue Two: The likelihood of the illness resulting in death
- Issue Three: The death of the ill person within a year of the illness's onset

6. The Patient Is Incapable of Performing His Regular Tasks

A person's inability to follow up on regular tasks is his inability to do his usual tasks in his daily life. What a person performs in terms of the duties of his profession or trade on a daily basis is considered normal work/task. If he stops, he is considered unable to continue regular tasks. A driver who stops practising his profession due to his illness is considered to have a death illness if all other conditions are met. Likewise, the doctor, engineer, lawyer, employee, worker, maker, trader, blacksmith, carpenter, and all of these craftsmen and professionals are considered to be in the disease of death if they stop practising their professions, work, or craft, and the disease extends to less than a year, which eventually ended in his death.¹⁰

Sports, cultural or social activities are also considered a usual task for the person who has taken these sports activities for the football player, for example, while these activities are not considered a usual work for other people.¹¹

It should be noted that the inability to follow up on the usual task does not require him to lay-up or stay in bed on the basis of continuity, but it is sufficient for him to stay with him at the time of the intensification of the illness, that is, he remains unable to perform his tasks.¹²

The Jordanian Court of Cassation ruled in a decision that stated, "... We find that the Court of Appeal has reviewed the evidence of the case submitted by both parties after it referred to the conditions for the realization of death disease according to Article (543) of the Civil Code, namely: the ill person's inability to perform regular tasks. The jurist "al-Sanhuri," explained these conditions that what is meant by the first condition is that the illness hinders the patient from performing his tasks, and what is meant by that is his normal, familiar interests/ tasks that healthy people can usually

⁸ See Mustafa Ahmed Al-Zarqa, *Explanation of Civil Law, Nominated Contracts, Sale and Barter Contract*, 6th edition, without publishing house, 1965, p. 285.

⁹ See Abbas Al-Aboudi, *Explanation of the Provisions of Nominated Contracts in Civil Law - Sale and Rent - Dar Al-Thaqafa for Publishing and Distribution*, 2009, p. 210

¹⁰ See: Muhammad Yusuf Al-Zoubi, *Nominated Contracts, Explanation of Civil Code*, Dar Al-Thaqafa, 2004, Paragraph 455, p. 504.

¹¹ See: Ali Al-Obeidi, *Nominated Contracts, Sale and Rent*, Dar Al-Thaqafa for Publishing and Distribution, 2005, p. 188

¹² Refer to Anwar Sultan, *Nominated Contracts, Explanation of Sale and Barter Contracts*, Dar Al-Nahdah Al-Arabiya for Publishing, Beirut, 1980, paragraph 353, p. 362

perform. In order for the disease to be a death disease, it is not obligatory for the patient to stay in bed, as he may not need it and remain incapacitated despite that.¹³

Likewise, the death disease does not prevent the patient from going to a notary public to ratify a contract issued by him because the notary public is not authorized to prove the seller's disease history. There is no doubt that some people practise a hard profession, and the disease prevents them from their work, but it does not prevent them from pursuing other usual tasks, which are carried out by ordinary people, so this patient is not considered a death patient¹⁴

7. The Likelihood of the Illness Resulting in Death

In his life, a person is exposed to many diseases and ailments, with which he may be unable to continue his usual work. However, these diseases are quickly cured because they are mostly normal diseases that do not most likely result in death, meaning that they are not fatal diseases. Such diseases and health ailments are not considered diseases of death, even if they take the life of the patient. The issue of determining whether a disease is considered fatal or not is one of the technical issues that the experienced doctors are facing, and it is not one of the legal issues over which the judge has jurisdiction.¹⁵

It should be noted that the common diseases that will most likely result in death, according to the normal course of things, are cancer and AIDS/HIV.¹⁶

The Jordanian Court of Cassation issued a decision in which it stated: (There are some cases in which a person, although not ill, might be considered in death-illness; for example, if a person is surrounded by risk factors that will most probably result in the person's death). That is, what is learned from the previous text, according to what has been established by diligence, is that the following three conditions are required to decide the invalidation of dispositions of the person who contracts death-illness:

- The likelihood of the illness resulting in death
- The death of the ill person within a year of the illness's intensification
- The ill person's inability to perform regular tasks

It is required that these three conditions be met in order to decide the invalidation of dispositions of the person who contracts death-illness. And since the issue of estimating this matter (the fulfillment of the three conditions combined) is one of the issues that is related to the evidence presented, which indicates the state of the person with a death disease at the time of the disposition, and whose assessment is up to the trial court without oversight by the Court of Cassation, as long as that is based on a justifiable and acceptable basis¹⁷

It should be noted that there are some cases in which a person, although not ill, might be considered to have a death-illness; for example, if a person is surrounded by risk factors that will most probably result in the person's death, such as the person who is in areas of wars with the enemy, or in areas of disasters, such as earthquakes, volcanoes, and huge floods. There is a case in which a person might be considered to have a death-illness; for example, if a person has been drawn on drowning or burning when surrounded by flames. All the cases in which a person is surrounded by risk factors will probably result in the person's death. If that person dies in such a case, then his death is considered as a result of death disease, and his dispositions are subject to the ruling of well – although he is not ill .¹⁸

8. The Death of the Ill Person within a Year as of the Illness's Onset

Should the period of illness extend to over a year without any intensification on the ill person's health situation, the said person's dispositions are considered valid, and the disease is not then considered a disease of death. However, It is considered a normal chronic disease. The reason for this is that the disease does not in itself affect a person's eligibility as long as it does not affect his mental faculties.¹⁹

However, what limits this eligibility is the nearness of death of the patient to a degree that becomes almost certain, and this situation puts the patient in a disturbed psychological state that may push him to take some legal actions that harm the heirs in their capacity as his general/non-designated successor. This situation is not achieved if the disease

13 See: Decision of the Jordanian Court of Cassation (Rights Cassation) No. 5439/2021 dated 10/28/2021, Qararak website. See also the decision of the Jordanian Court of Cassation (Rights Cassation) No. 165/1984 dated 3/26/1984, published on page 710 of the Lawyers Magazine issue on 1/1/1984

14 See Abd al-Rahman al-Halalsha, Al-Wajeez in Explanation of the Jordanian Civil Code, Sale Contract, Dar Wael for Publishing, 1st Edition, 2005, pg. 568

15 See Abd al-Razzaq al-Sanhouri, Al-Waseet in Explanation of the New Civil Law, Contracts Relating to Ownership, Sale and Barter, Al-Halabi Legal Publications, Beirut - Lebanon, 2000, Paragraph 176, p. 317.

16 Refer to Hosni Mahmoud Abd al-Dayem, Death- Illness and its Impact on the Sale Contract, *ibid*, p. 108. See Yassin al-Jubouri, al-Wajeez in Explanation of the Jordanian Civil Law, Nominated Contracts, Explanation of the Provisions of the Sale Contract, *ibid*, Paragraph 588, p. 645

17 See: Decision of the Jordanian Court of Cassation (Rights Cassation) No. 779/2022 dated 4/17/2022, "Your Decision" Publications

18 See Muhammad Yousef Al-Zoubi, Nominated Contracts, Explanation of Civil Law, *ibid*, Paragraph 455, pg. 505

19 See Yassin al-Jubouri, Al-Wajeez in explaining the Jordanian civil code, nominated contracts, explaining the provisions of the sale contract, *ibid*, paragraph 589, p. 646

extends without changing for a period of time, indicating that death is no longer almost certain, and the legislator estimated this period as a full year.²⁰

Accordingly, the Jordanian Court of Cassation ruled in a decision that stated: "The Court of Cassation concluded that it follows from Article 543/1 of the Civil Code that three conditions must be met in order for it to be considered that there is a death disease:

- The ill person's inability to perform regular tasks, which healthy people can do, and it is not obligatory for the patient to stay in bed.
- The likelihood of the dangerous illness resulting in death and the estimation of the likelihood of death is referred to the opinion of doctors.
- It actually ends with death within a year.

Our court also finds that the concept of death disease and the scope of its application, which is discussed in Articles 543-547 of the law, includes all the dispositions that the plaintiff performs in his death disease, and the matter is not limited to the sale contract only, as Article 543 of the Civil Code considered that: should the period of illness extend to over a year without any intensification on the ill person's health situation, the said person's dispositions are considered valid or healthy. Accordingly, the dispositions include claiming the subject matter of this case as a legal action, if proven true.²¹

9. The Rules of Patient's Sale during Death-Illness

The provisions of the rules of patient's sale during death-illness in the Jordanian Civil Code varied, and we will divide this topic as follows:

- The first theme (the rules of patient's sale to the heirs) and
- The second theme (the rules of patient's sale to non-heirs/the third party)

9.1. The Rules of Patient's Sale to the Heirs

The Jordanian legislator regulated the ruling on the sale of patient with death-illness in the event that there are heirs, if his sale is to the heirs by a price, or if the sale is without a price. To clarify this, we will divide this theme into two issues: (the ruling on selling to the heirs at a price) in the first issue and (the ruling on selling to the heirs without a price) in the second issue as follows:

9.2. The Ruling on Selling to the Heirs at a Price

Article (544/1) of the Jordanian Civil Code stipulates that: (The patient's sale of some of his property to one of the heirs shall not be implemented unless the rest of the heirs permit it after the death of the inheritor). It is clear from this text that the sale made by the inheritor during the death illness to one of his heirs is dependent on the approval of the rest of the heirs, and the word "not implemented" indicates that the disposition is valid, but it is dependent on the approval of the heirs.²²

If they permit the disposition, it becomes effective against them from the time the disposition is concluded, and if they refuse it, the disposition becomes ineffective against them. The authorization of the heirs or their refusal to the disposition shall not be considered except after the death of the inheritor. This is because the capacity of the heir is not established for any of the heirs until after the death of their inheritor, and their right to inheritance is not established except after the death of their inheritor. Before that, this right is not established for them, and the authorization of one of the heirs to the disposition or refusal of it before the death of the inheritor is irrelevant, as it has occurred from someone who does not possess it²³

Therefore, we find that the Jordanian legislator stipulated in Article (544/1) that the approval or refusal to take place after the death of the inheritor in order for a person to inherit from his predecessor, the life of the heir must be realized upon the death of his predecessor, and it is not certain that the successor will survive in its proper place. The wisdom behind restricting the sale of the patient with death illness is to protect the heirs from favoritism.

10. The Ruling on Selling to the Heirs without a Price

If the purchaser does not prove that he paid the price for the patient, the disposition is considered a gift because it was done without a price, and in this case, the provisions of the will apply. If the value of the sold item does not exceed one-third of the inheritance, the disposition shall be carried out against the heirs without the need for their approval. However, if the value of the thing sold exceeds one-third, it shall not be implemented if it exceeds one-third except after the heirs' approval²⁴

The Jordanian Court of Cassation issued a decision in which it stated:"...and since the contracts submitted in the lawsuit are similar to contracts of sale or the gift contract on condition of compensation, and given the court's power to

20 See Ali Al-Obaidi, *Nominated Contracts, Sale and Rent*, *ibid*, p. 189

21 See: Decision of the Jordanian Court of Cassation (Rights Cassation) No. 6671/2019 dated 3/16/2020, "Your Decision" Program. As well as the decision of the Jordanian Court of Cassation (Rights Cassation) No. 1804/2006 dated 9/27/2006, "Your Decision" Program.

22 See: Yassin al-Jubouri, Al-Wajeez in Explanation of the Jordanian Civil Law, *Nominated Contracts, Explanation of the Provisions of the Sale Contract*, *ibid*, Paragraph 591.

23 See Abd al-Rahman al-Halalsha, Al-Wajeez in explaining the Jordanian Civil Law, the sale contract, *ibid*, p. 571

24 See Muhammad Yusuf Al-Zoubi, *Nominated Contracts, Explanation of Civil Law*, *ibid*, Paragraph 457, p. 508

adopt them, it finds that these contracts are nothing more than gift contracts on condition of compensation as long as the evidence is and as it is clear from the papers, the inheritor intended by them to donate to contain all the contracts required to be nullified for the same phrase (lifelong subsistence) as long as he did not reserve for himself the right to usufruct and possess these real estates as is established in the sales contracts, and based on the interest that the inheritor saw at the time of concluding these contracts to perform a specific service and an obligation to perform a work, then these contracts are disbursed and the provisions of the gift contract on condition of compensation apply to them..."²⁵

11. The Rules of Patient's Sale to Non-Heirs/The Third Party

As we explained the ruling on selling to the heirs in the previous theme, we will explain through this theme the ruling on selling of death-illness patients to non-heirs (third party). And we will divide this theme into two issues as follows:

- The ruling of the sale in relation to the creditors and
- The loss of the creditors' right to cancel the sale of death-illness patients.

12. Sale Ruling in Relation to the Creditors

As for the ruling on selling a patient to a third party with regard to the creditors, it differs from the ruling with regard to heirs. Article (546) of the Civil Code stipulates: "A patient's sale to a third party shall not be executed for less than the value of a similar one, even with a slight unfairness against the creditors, if the debt-ridden inheritance and the buyer have the right to pay the similar price; otherwise, the creditors may annul the sale."

From the text of Article (546) above, it is noted that the sale for less than the value of a similar one, even with a slight unfairness, is not enforceable with respect to the creditors when the debt-ridden inheritance because the interest of the creditors is affected by the sale for less than the value of the similar one, and the accompanying unfairness, even if it is small, which results in detracting from their general guarantee, which is represented by the financial liability of the debtor (the death-illness patient).²⁶

It should be noted that debts, the inheritance, in this case, are more than the rights it has. This leads to the interest of the creditor being affected by the unfairness of any kind, even if it is minor, because if the unfairness is small, then it is great. Even if it started like that, it will be a big amount in the lots of money. Therefore, it will harm the creditors because it diminishes the general guarantee for them, so it is not enforceable against them because their right is suspended in a place that has been afflicted with unfairness. Even if it is a little, unless they permit it, then the buyer must, in order to preserve the contract, complete the price so that it becomes equivalent to the price of the same.²⁷

Undoubtedly, if this does not occur, the creditors may rescind the contract, and they bear the burden of proving that the sale took place at less than the value of the similar and with little unfairness. But if the sale was made by the death-ill patient to a third party at a price much less than the price of a similar one, or if it was done with gross unfairness, then there is no doubt that the sale will not be enforceable against the creditors:²⁸

The Jordanian Court of Cassation issued a decision in which it stated: "Article (485) of the Civil Code stipulates that:

- Once the sale is completed, the ownership of the sold property shall be transferred to the purchaser unless the law or the agreement stipulates otherwise.
- Each of the parties to the sale must hasten to implement his obligations, except those that are deferred).

Article (457/1 and 2) of the Civil Code stipulates the following:

- A gift is a possession of money or a financial right to another in the event of the life of the owner without compensation.
- It is permissible for the donor, while the idea of donation remains, to stipulate that the donee undertakes a specific commitment, and this commitment is considered compensation.

25 See: Decision of the Jordanian Court of Cassation (Rights Cassation) No. 461/2019 dated 4/16/2019, Qararak website publications. The Jordanian Court of Cassation ruled in a decision that stated: " By interpreting the meaning and concept of lifelong subsistence, which was included as a price in the sales contracts required to be invalidated, the subject matter of the case, and in violation of the contested judgment of the provisions of Article (1129) of the Civil Code. This is when the sale contracts were not considered the subject matter of the case in the ruling on disposition added to after death (the will), and that if the conditioning is taken to mean that the sales contracts are (contracts of gift on condition of compensation), then the appealed ruling remains defective and in violation of the law. This is because the gift, in this case, remains void and/or at least is invalid. The right of the plaintiffs (appellants) to request its annulment and its erroneousness when it considered that the contracts subject to the case are valid and enforceable and contrary to the provisions of Article (557/2) of the Civil Code and subjecting these contracts to the provisions of renunciation of the gift in accordance with the provisions of Articles (558, 561, 566, 567) of the same Civil Code."

See the Decision of the Jordanian Court of Cassation (Rights Cassation) No. 429/2021 dated on 3/15/2021, publications of the Qararak website.

26 See: Yassin al-Jubouri, Al-Wajeez in explaining the Jordanian civil law, nominated contracts, explaining the provisions of the sale contract, *ibid*, paragraph 598, p. 654

27 See the text of Article (147) of the Jordanian Civil Code, where it stipulates: (If the unfairness, even if it is minor, affected the property of the person interdicted for the debt or the patient with death illness, and their debt-ridden properties, then the contract is conditional on removing the unfairness or permitting it by the creditors; otherwise, it is void).

28 See: Ali Al-Obeidi, Nominated Contracts, Sale and Rent, *ibid*, p. 194. See Abd al-Rahman al-Halasha, Al-Wajeez in Explanation of the Jordanian Civil Law, Sale Contract, *ibid*, p. 575

Article (562) of the Civil Code stipulates the following:

- The compensation in a conditional gift must be known.

Otherwise, it is permissible for each of the parties to terminate the contract even after receiving the thing given unless they agree to specify the consideration before the termination. If the donee dies or the donee disposes of it before rescission, he must return its value on the day of receipt. Article (1/1125) of the Civil Code stipulates that: (The will is to be disposed of in the inheritance added to after death).²⁹

13. Loss of the Creditors' Right to Rescind the Sale of the Patient with Death Illness

It should be noted that the right of creditors and heirs to annul the patient's sale is forfeited if the ailment for which they were granted this right no longer exists. With regard to the creditors, they may not cancel the patient's sale to a third party for less than the value of the sale if the purchaser pays the similar price.³⁰

Article (547) of the Jordanian Civil Code stipulates that: 1) it is not permissible to rescind the sale of a patient if the purchaser disposes of the thing sold in such a manner that he granted a good-faith person with a right in the property of the thing sold in return for compensation. In this case, the creditors of the debt-ridden inheritance may claim the difference between the price and the value of the thing sold to the buyer from the patient. The heirs have this right if the purchaser is one of them, and if he is a third party, what completes two-thirds of the value of the inheritance sale must be returned.

It is clear from the text of Article (547) above that two conditions are required for the loss of the right of creditors and heirs to cancel the sale as follows:³¹

13.1. The First Condition

That the person to whom the purchaser disposed of the item had been of good faith, i.e. he was not aware at the time of the disposition that the person to whom the item was disposed of had bought it from a person who was suffering from death-illness.

13.2. The Second Condition

The disposition has granted this person a right in the asset sold in exchange for compensation, such as selling. In this case, the creditors or the heirs have no choice but to claim the purchaser from the patient the difference between the price and the value of the thing sold. If the purchaser is not one of the heirs, he must return what completes two-thirds of the value of the thing sold of the inheritance. However, if he is ill-intentioned (who has bad faith), knowing that the thing was sold for a price less than the price of an equal during the death-illness, or if he receives it without compensation, then they have the right to annul the contract with the ill-intentioned disposer, or with a good-faith dispossessor if he receives it without compensation unless the third party completes the price to the similar price, in which case he is prevented from rescinding it even with a bad-faith dispossessor or who received it without compensation. The aim of this is to obtain a similar price and not terminate the contract.³²

14. Conclusion

Praise and thanks be to God Almighty, and after completing the writing of the research, its title is the rules of patient's sale during death-illness in the Jordanian Civil Code, and I have come to a set of results and recommendations as follows:

- A patient is not considered a patient with death disease unless the following three conditions are met:
 - ✓ The ill person's inability to perform regular tasks, which healthy people can do, and it is not obligatory for the patient to stay in bed.
 - ✓ The likelihood of the dangerous illness resulting in death
 - ✓ The estimation of the likelihood of death is referred to the opinion of doctors.
- The dispositions of the patient with death-illness are legal dispositions established for him by law. And in the event that he was unable to complete it, he was considered in the rule of the inheritor.
- Death illness does not nullify or diminish the eligibility, but it limits the disposition of the patient with it.
- The sale of a patient with death-illness to one of the heirs shall not be effective unless the rest of the heirs permit it in the Jordanian Civil Code.
- The sale of a patient with death-illness to a third party for less than the value of a similar one, even with a small amount of unfairness, is not enforceable against the creditors if the inheritance is ridden with debts. The creditors may request the rescission of the sale.

29 See: Decision of the Jordanian Court of Cassation (Rights Cassation) No. 461/2019 dated 4/16/2019, Qararak website publications.

30 This is what was stipulated in Article (546) of the Civil Code, saying: (The sale of a patient to a third party is not executed for less than the value of a similar one, even if it is a little unfair to the creditors if the debt-ridden inheritance and the buyer have the right to pay the similar price; otherwise, the creditors may annul the sale).

31 See: Ali Al-Obeidi, Nominated Contracts, Sale and Rent, *ibid*, p. 195. See Samir Tanago, Contract of Sale, Al-Faniyah for Printing and Publishing, without a year of publication, p. 416

32 See: Abdul Qadir Al-Arari, Al-Wajeez in the General Theory, Nominated Contracts, Sale Contract, 1st Edition, Dar Al-Aman Library - Rabat, 1999, p. 85. See Nabila Raslan, Sale Contract, without edition, without publishing center, 1997, p. 85

- The authorization of the heirs of the death-illness patient's sale that occurred before the patient's death is not considered because the waiver takes place after the right is established. The right of the heirs to the money of their inheritor is established after the death of the inheritor and not before that.

15. Recommendations

- We recommend that the Jordanian legislator not limit the period to one year for the patient with death-illness and to leave the issue of determining the period to a specialized medical committee of doctors and opinion-makers.
- I recommend the Jordanian legislator that the text of Article (547/2) of the Jordanian Civil Code be amended to become (what completes two-thirds of the inheritance and not two-thirds of the value of the sale), as the relationship of the heirs and creditors is their relationship with the inheritance not with the sale.

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