



Legal defenses concerning eligibility and their implementation in the Jordanian sharia courts

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Abstract

This research addresses a topic related to legal capacity, specifically focusing on the imbalance caused by any temporary or permanent symptom that affects a person's legal actions and the rights and obligations imposed upon them. The study examines these issues within the framework of the Jordanian Sharia judiciary. The research explains the concept of capacity, its types, the symptoms affecting it, as well as the formal and substantive defenses related to eligibility in the Jordanian Sharia judiciary. The study employs inductive, analytical, and descriptive approaches to present its findings. At the conclusion of the research, several key findings were reached, the most important of which are: among the symptoms affecting capacity are divine (heavenly) symptoms, such as insanity, dementia, illness, and death, as well as acquired symptoms, such as foolishness, negligence, and coercion. These symptoms directly affect the will, thereby impacting the validity of legal and legitimate acts performed by the individual, as well as the rights and obligations incumbent upon them. The study emphasizes the importance of enhancing legal awareness among practitioners and stakeholders in the legal field regarding the implications of defenses related to symptoms of eligibility in the Jordanian Sharia judiciary, particularly in matters concerning personal status transactions.

Keywords: Eligibility, Implementation, Jordanian Sharia Courts, Legal.

Introduction

Praise be to Allah, Lord of the Worlds, who has ordained laws and established justice, bestowed upon humankind both manifest and hidden blessings, and assigned to everything a purpose and an end comprehensible to reason. May peace and blessings be upon our master Muhammad, the Prophet of guidance, and upon all his family and companions.

One of the significant issues examined by Muslim jurists in both classical and contemporary periods is the concept of legal capacity and its impediments, due to the substantial impact that the presence or absence of capacity has on legal accountability and, at times, even on the validity of legal obligations.

The general legal principle dictates that every individual bears responsibility before the law for his or her actions. However, such responsibility, which is intrinsically linked to legal capacity and liability as prerequisites for obligation, may be affected by certain permanent or temporary impediments. These impediments may, in turn, influence the scope of legal obligation and the validity of acts performed.

Within the jurisprudence of personal status, matters

relating to legal capacity are addressed through rulings derived from Islamic Sharia, which has established precise standards governing eligibility and its effect on the will and actions of the legally accountable person. Consequently, these standards impact the establishment of rights and the imposition of legal responsibilities in relation to various associated matters. Jordanian legislation is grounded in Islamic Sharia, which preceded statutory law in regulating issues of legal capacity and did not leave such matters to human discretion or subjective reasoning, which may be incapable of discerning truth from falsehood.

The requirement of legal capacity in marriage is considered one of the sensitive issues that has received particular attention from scholars and practitioners in both legal and Sharia fields. The Department of the Chief Justice has affirmed that the new instructions concerning eligibility have introduced a number of conditions and restrictions that must be satisfied in order to meet the minimum criteria for the realization of interest (maslahah), which the court is obligated to verify. This is in addition to other criteria and reasons that are assessed by the court according to the circumstances and particularities of each case. Accordingly, this

study presents the defenses related to impediments of legal capacity as applied in the Jordanian Sharia judiciary.

Research problem

The problem of this study lies in its attempt to answer the following main question: What are the defenses related to the impediments of legal capacity, and how are they applied in the Jordanian Sharia judiciary?

This main question is divided into the following sub-questions:

- What is the concept of legal capacity?
- What are the impediments of legal capacity?
- What are the applications of defenses related to impediments of legal capacity in the Jordanian Sharia judiciary?

Research objectives

- To clarify the defenses related to impediments of legal capacity and their applications in the Jordanian Sharia judiciary.
- To explain the concept of legal capacity and its types.
- To identify the impediments of legal capacity.
- To clarify the applications of defenses related to impediments of legal capacity in the Jordanian Sharia judiciary.

Significance of the study

This study seeks to examine the defenses related to impediments of legal capacity and their applications in the Jordanian Sharia judiciary from a contemporary jurisprudential perspective. It aims to elucidate the most significant practical applications associated with issues of legal capacity in the Jordanian Sharia courts by analyzing real judicial practices, through an examination of appellate judgments and decisions issued by the Supreme Sharia Court concerning these matters. This approach contributes to clarifying Sharia rulings and provides a practical understanding of the substantive and procedural defenses related to impediments of legal capacity as applied in the Jordanian Sharia judiciary.

Theoretically, this study is expected to benefit researchers and scholars interested in issues related to rights in general and personal status in particular, as well as those concerned with the provisions of legal obligation in Islamic jurisprudence and law. Practically, it is hoped that this research will serve judges, Sharia muftis, lawyers, and practitioners working within the Sharia judicial system.

Study Methodology

This topic will be addressed through the following scientific methods:

- The inductive method, by extrapolating relevant material from primary sources and presenting it within a comparative analytical framework.
- The analytical method, through the analysis of Sharia-related legislation and the judicial decisions arising therefrom.
- The descriptive method, which will be adopted primarily in accordance with the nature of this study.

Previous studies

There is no doubt that numerous studies, research papers, and books have addressed legal capacity in general. However, no specialized study has examined the defenses related to impediments of legal capacity and their applications in the Jordanian Sharia judiciary. The following are selected studies related to the subject of this research, arranged chronologically from the most recent to the oldest:

According to Bassiouni, Ahmed Al-Hadi Abu Al-Atta Mohamed (2023), in his study titled *"Impediments of Legal Capacity and Their Relationship to the Rulings Concerning Persons with Disabilities"*, published in the Journal of Sharia and Law, Faculty of Sharia and Law, Al-Azhar University, Cairo, Special Issue of the Third International Conference of the Faculty of Sharia and Law, the researcher examined the relationship between impediments of legal capacity and persons with disabilities, alongside the relevant Sharia rulings. This study intersects with the present research in addressing one aspect of legal capacity, namely its impediments. However, the present study is distinguished by its focus on defenses related to

these impediments and their applications within the Jordanian Sharia judiciary, which was not addressed in Bassiouni's work.

According to Abu Khalaf, Nadi Muhammad Tayseer Samour (2008), in his Master's thesis titled "*Legal Capacity: Its Divisions as Affected by Its Impediments and Its Relationship to the Jordanian Personal Status Law of 1976*", submitted to the Faculty of Graduate Studies, Hebron University, Palestine, the researcher explored legal capacity by defining it, analyzing its classifications and developments, and examining its impediments within Islamic jurisprudence, as well as its connection to the Jordanian Personal Status Law of 1976. This study overlaps with the current research in addressing legal capacity and its impediments. Nevertheless, the present study contributes further by focusing on legislative and practical applications of these impediments in the Jordanian Sharia judiciary, which differentiates it from Abu Khalaf's research.

According to Al-Adgham, Khaled Mohammed (2007), in his Master's thesis titled "*Substantive Defenses in Cases of Judicial Separation*", submitted to the Faculty of Graduate Studies, Islamic University of Gaza, Palestine, the researcher examined substantive defenses in judicial separation cases within the Palestinian Sharia judiciary. This study aligns with the present research regarding the general concept of defenses. However, the current study is distinguished by its exclusive focus on defenses related to impediments of legal capacity and their application in the Jordanian Sharia judiciary, emphasizing the legal capacity aspect, which was not addressed in Al-Adgham's study.

Accordingly, the present research provides both a practical and scholarly contribution to prior studies concerning defenses related to impediments of legal capacity in the Jordanian Sharia judiciary. It does not merely present a general discussion of legal capacity rules but emphasizes their practical application in judicial practice, thereby enriching the understanding of their role and implementation in the Jordanian legal context.

Research structure

First topic: The Concept of Legal Capacity, Its Types, and Its Impediments

- **First requirement:** The Concept of Legal Capacity and Its Types
- **Second requirement:** Impediments of Legal Capacity

Second topic: Defenses Related to Impediments of Legal Capacity and Their Applications in the Jordanian Sharia Judiciary

- **First requirement:** Formal Defenses Related to Impediments of Legal Capacity and Their Applications in the Jordanian Sharia Judiciary
- **Second requirement:** Substantive Defenses Related to Impediments of Legal Capacity and Their Applications in the Jordanian Sharia Judiciary
- **Findings and recommendations**

Chapter one

The concept of legal capacity, its types, and its impediments

The concept of legal capacity will be examined by outlining its linguistic and technical meanings from both jurisprudential and legal perspectives, while highlighting the types of legal capacity and their impediments, through the following sections:

The first requirement

The concept of legal capacity and its types

First section: The concept of legal capacity in linguistic usage

The linguistic root of the word *ahl* (eligibility) refers to entitlement and worthiness. It is said: "the people of such and such," meaning those who are entitled to it. A man's *ahl* refers specifically to his wife, while *ahl* may also denote relatives and clan. The people of a thing are its owners; the people of a house are its inhabitants; the people of a place are those who dwell therein. The feminine form of *ahl* is *ahlah*. Eligibility with respect to another person denotes authority over him and the possession of legitimate rights in relation to him.

Accordingly, legal capacity in linguistic terms signifies competence, merit, and adequacy in relation to a matter. One is said to be *ahl* of a matter when one

is worthy or qualified for it. This meaning is reflected in the Almighty's saying regarding the believers: "*And He bound them to the word of righteousness, and they were more deserving of it and worthy of it*" (Al-Fath: 26), and His saying: "*He is worthy of piety and worthy of forgiveness*" (Al-Muddathir: 56).

Eligibility also denotes competence, merit, and fitness, as when it is said that a person is worthy of honor, meaning that he deserves it, or that he is worthy of leadership, meaning that he possesses the capacity and merit necessary to assume such a position.

Second section: The concept of legal capacity in jurisprudential and legal terminology

First: Legal capacity in jurisprudential terminology

Among the most well-known definitions of legal capacity provided by jurists are those of Al-Bukhari and Al-Taftazani. Al-Bukhari defined legal capacity as "a person's validity to acquire rights and to have obligations imposed upon him." Al-Taftazani, on the other hand, defined it as "a person's validity to issue acts in a manner that gives rise to legally binding religious obligations."

It is evident from these two definitions that one focuses on the acts that are imposed upon the legally accountable person in relation to others, whereas the other considers legal capacity from the perspective of acts issued by the individual himself and the extent of his authority for such acts to produce legal effects.

In reconciling these two definitions, legal capacity may be understood as a person's authority to acquire rights, be obligated to perform duties, and have legal effect attributed to his actions.

All of the foregoing definitions, despite their diversity in wording, converge upon a single meaning, namely, a person's suitability to bear rights and obligations.

Second: Legal capacity in legal terminology

The Jordanian legislator addressed legal capacity to

contract in the Civil Code. Article (116) of the Jordanian Civil Code No. (43) of 1976 provides that: "Every person is competent to contract unless his capacity is revoked or restricted by law." [1].

Although the Jordanian legislator did not provide an explicit definition of legal capacity, the relevant legal provisions regulate its rules and effects in detail.

In the Personal Status Law, the Jordanian legislator stipulated that any person who has reached the age of majority is considered legally competent to exercise his rights. Article (203/A) states: "Any person who reaches the age of majority, enjoys full mental faculties, and has not been deprived of his rights shall be fully competent to exercise his civil rights." [2].

The age of majority in law is eighteen full solar years." [3].

The jurists of law did not deviate in their definition of capacity from the definitions of Muslim jurists, although their expressions differed in the narrative, as some of them define capacity as the authority of a person to establish his rights and duties, and accordingly¹, which is the definition that I have chosen in this research.

Section Three: Types of eligibility

Eligibility is divided into two categories:

1. Capacity and obligation: It means the authority of a person to establish rights for him, or to establish obligations on him, and these are proved to the person immediately upon his birth alive, and it is the subject of life and obligation, and all persons are equal in the capacity of obligation. [4].

The capacity for obligation is also defined as: the validity of a person to oblige him and his legitimate rights. [5].

It can be said that the capacity for obligation is the right of a person to demand and demand, whether by himself or through the person over whom he has guardianship.

This capacity is life, and it is established for every living person from the time he is a fetus, and it is confirmed by his birth, and it lasts until his death, whether he is young or old, sane or insane, and the full capacity of obligation is obligatory from birth until death, while the incomplete capacity of obligation is during the presence of the foetus in its mother's womb, and some rights are established for it, such as inheritance, but rights are not established on it.

2- Capacity to perform: which is the person's right to use the right] 6]..

Al-Zarqa defined the capacity to perform as: "the authority of a person to practice actions whose legitimate consideration depends on reason." [7].

The principles of law of legal capacity to perform obligation and performance can be summarized thus:

1. The incomplete legal capacity of obligation was established over every individual regardless of whether the individual is a fetus in the womb of the mother.
2. The creation of complete legal obligation capacity of an individual even before the end of his or her residence in the womb of the mother.
3. The full legal capacity to perform is only assured to those who have met the requirements of legal responsibility and are not under any obstacles to legal assignment.

The second requirement

Legal capacity impediments

The initial assumption about a human being is that he is free of any defect but it is possible that some conditions that influence legal ability might develop. These barriers can be God given or obtained.

Under this requirement, the researcher touches on the notion of impediments to legal capacity and its types.

Legal capacity impediments are classified into two categories namely, divine impediments and acquired impediments.

Part one: Godly obstructions.

Divine impediments are those that happen to an individual without his will or decision. This is why they are attributed to the divine will in legal language because they happen to a person randomly and not under his control. These are insanity, dementia, sleep, illness and death [8]..

1. Insanity

In linguistics, insanity is based on the root, which means concealment, the idea of madness is based on it, as madness is the lack of the intellect because it is obscured or hidden [9]..

Jurisprudentially, insanity is described as an incapacity of the mind that will not allow actions and speech to continue in line with the rational verdict except in exceptional cases. It is characterized as the loss and corruption of the intellect, or, in other words, imbalance in the faculty that is able to differentiate between good and evil and understand consequences] 10], whereby the results are not displayed and the functioning is interfered. This can either be because there was a deficiency inherent in the brain when it was created, or due to the aberration in the temperament of the brain, that is, its inability to be moderate during the time of creation due to confusion or affliction, or because Satan conquers it and puts evil illusions in it, which makes a person rejoice or fear without any just cause [11].

Jurists distinguish between continuous (applied) insanity, when continuous insanity indicates a condition where the insane individual fails to come back to consciousness whereas intermittent is when the subject returns back to sanity and back to insanity [12].

In modern jurists, insanity can be described as a disease, which covers the intellect, does not allow to hear the sound, and is accompanied by agitation and disorder [13].

According to legal commentators, the term insanity can be described as a lack of balance in the power which makes a difference in good and reprehensible things. It is also characterized as a condition that impacts an individual causing loss of mind [14].

In his book Al-Ijma 1bn al-Mundhir said: those who are unanimously agreed that, should a madman fulfill Hajj on behalf of someone and regains sanity and fulfill Hajj, or should a child fulfill Hajj and attain puberty, that does not suffice to bind the obligation of Hajj in Islam [15].

According to Ibn al-Qattan, in Al-Iqna^c, they all say that Hajj is not obligatory on a child until he reaches puberty, nor on the insane until he recovers his sanity, nor on the foolish [16].

He also wrote: The scholars are in agreement that Allah has only spoken to the commands, prohibitions and obligations to adults, who have intellect and only those who have been given reason as well [17].

Ibn al-Qattan also said: They all agree that the insane person who is legally responsible is not required to pray and fast provided he becomes sane after being insane [18]..

2. Dementia

In language, dementia refers to the lack of intellect; a demented individual is one that is free of sound sense.

According to the jurists, dementia refers to the state whereby there is a flaw in the intellect, in which some of his speech would be similar to speech of the sane people, and the rest similar to speech of the mad men [19].

A demented individual is like a critical minor in terms of behavior. He is thus deemed to have inadequate performance ability since there is no basic distinction between him and a critical child. The difference between them is that childhood is a natural stage of development whereas dementia is a crippling impediment [20,65].

3. Sleep

Sleep is a condition that occurs when an individual is in a state of inertia and intellect is in a latent state, and therefore, the person is unable to perceive any sensory stimuli, act willingly, or use reason [21] ...

The fact that sleep does not alter the legality of being able to be obliged does not mean that it does not relieve accountability. Instead, it requires some delay

of performance until the state of wakefulness. Sleep is thus deemed one of the hindrances that does not nullify legal requirement [22]..

4. Illness

The term illness is used to describe the state concerning the body that leads to a lack of natural moderation. It does not deny performance potential and it is regarded as one of the impairments that does not make an individual to be legally incapacitated [23].

Part Two: acquired impediments

The acquired impediments are classified into two groups, those which are caused by the individual, like foolishness and negligence, and those which are exerted externally, like coercion. Each category may be explained briefly as follows:

Primary: Self-acquired impediments.

1. Foolishness, that is the condition of recklessness, which attacks an individual, and induces him, without a prejudice to the intellect, as regards perception, to dispose of his property in a way contrary to sound judgment, provided it does not impair the intellect as regards its finances [24]..
2. Negligence (Al-Ghaflah), which is characterized as a state where an issue fails to cross the mind of a human being [25]..

With respect to symptoms that are caused by external influences but not by an individual, an instance is the situation of coercion, where a person is coerced to do or say something against his will and he would not have done it given the chance to do it freely [26]..

Justified or unjustified coercion that it is some kind of a refuge or not influences neither the legal ability to make obligation, but influences the performance ability, since it is one of those obstacles that destroy voluntary choice and influences the rightness of actions [27]..

According to the Jordanian Personal Status law a lunatic is a person: whose understanding is merely slight, whose speech incoherent, whose management corrupt [28]..

The definition of foolishness in the same law is as follows: a person who spends the wealth in an inappropriate manner, squanders his expenses, wastes his money and destroys it excessively, goes against what the requirements of the Shari 14.

An individual is also considered as one who is not led by positive behavior and therefore is misled in transactions in his best interest [29]..

3. Al-Madhoos (Astonishment)

Linguistically

According to Ibn Manzoor, astonishment was the flight of the intellect, as a consequence of fear or anger, and the likes (1). According to the neighboring lexicon: astonishment is bewilderment, of dahesh, Tah 0ir, or Dhahab 0qlah by Dhahl or Wala [30]..

In fitchettii jurisprudentiae

Ibn 'Abdeen, the follower of the Hanafis, defined the astonished individual by: a person whose deeds and utterances do not belong to his habitual behavior as a result of imbalance generated by some calamity or extremity of circumstances or diseases [31]..

Asthenia is understood as dementia in certain texts of Hanafi. An example below by Al-Bahr al-Muhit says: A fool is similar to a sane boy in his deeds and in taking off the burdens, but he lacks reason [32]..

Al-Siba ma has defined an astonished person as: someone whose anger has overtaken him and he is not mindful of what he is saying, because of extreme anger, sickness, or any other reason [33]..

According to the Jordanian Personal Status Law, a distraught person is one whose words and actions are controlled by anger or other extraneous motives, which result in his or her departure out of habitual behavior [34]..

Part three: Jordanian law of eligibility

Jordanian Civil Code offers more specifications on the legal capacity of an individual, that is, legal capacity of performance. An individual becomes of full legal age when he has attained the age of eighteen Gregorian years, and is not a prisoner or under the influence of

symptoms which will cause him to be ineligible. The civil code Article (43) states:

- All individuals who have reached the age of majority and have not lost their mental faculties shall be completely capable of exercising his civil rights.
- Gregorian age of majority is eighteen years [35]..
- Protecting the Incapacitated Adults through the Legislature.

There are laws that provide protection to adults with incapacity symptoms. One of these measures is quarantine which serves as a result of symptoms that elicit impairment of eligibility in addition to being a legal protection of the property of the people subjected to quarantine. The concept of quarantine is acceptable in the Shariah world as a precaution to avoid wastage of property such that the financial interests of the individual are protected against the imprudent behavior [36]..

It is hence prudent to conserve money that may otherwise be wasted like ensuring that a fool does not use his money too much doing what would put him in danger of liabilities [37]..

The Personal Status Law (203/A) in article (203/A) grants that a person should be fully competent to exercise his civil rights and this is the case where he has attained the age of majority, has full mental faculties, and has not been disqualified. Article (203/B) ascertains that the age of majority is eighteen complete solar years.

Article 204 further stipulates

A. The indiscriminate person will not be allowed to exercise his civil rights because of age, dementia, or insanity.

B. Every person who has not passed the seventh year is taken to be indiscriminate [38]..

Article 205 specifies:

Any person who is of age of discretion, and not age majority, and any person who is of age of the majority, and he is foolish or negligent, shall be incapacitated by the law.

Section Four: Defenses of the Symptoms of Eligibility and how they are applied in Jordanian Sharia Judiciary.

Defense must be defined linguistically, idiomatically and legally before discussing these defenses.

In linguistic terms, defense can be defined as a source of repayment, a countermeasured action that redresses or acts as a barricade to another action [39]..

A defense according to Shariah sources refers to: "A plea whereby the defendant, or the person on behalf of whom the defendant is litigating, aims to defend the defendant in the dispute or to strike down a claim on the part of the plaintiff [40]..

Some of his statements include: • The Code of Judicial Judgments describes defense as: The defendant puts forward an assertion that can counter or reacts to the claim of the plaintiff [41]..

According to the laws, it is defined by Mouawad Mohamed Mustafa Sarhan as: "The defendant or any interested party makes claim when it is established that the defendant has discharged the litigation or the claim made by the plaintiff is dismissed [42]..

According to Mohammed Rakan Al-Daghi it is defined as: The action of the defendant to the lawsuit of the plaintiff to counter it by a claim designed to dismiss, cancel, or end litigation against the defendant in special cases [43]..

A case of the validity of defense is the words of the Almighty: And the Messenger of Allah... Yusuf (peace be upon him) responded to false charges of the wife of Al-Aziz and this proves the legitimacy to respond with an assertion and self-defense (Yusuf: 25-26). Al-Tabari adds: Yusuf answered the defamation of his wife by Al-Aziz to vindicate himself, saying that he had never intended him harm, but that his wife had falsely accused him of what she had not actually done to him [44]..

In the chapter, the researcher reviews the defenses associated with the symptoms of eligibility in the Jordanian Sharia judiciary that are further subdivided into specific demands and sections.

The First Requirement: Formal Defenses of the Symptoms of Eligibility and the Uses in the Jordanian Sharia Judiciary.

In this requirement, the researcher handles formal justifications that are associated with the symptoms of eligibility in the Jordanian Sharia court system. In a proceeding where a claim is concerned with matters of eligibility, the defendant is allowed to make a formal plea, which holds that the court has no jurisdiction to hear the suit. This is a procedural kind of plea that seeks to establish the court in which an adjudication is to take place either to the defendant or the plaintiff.

1. Lack of jurisdiction of the court plea

Lack of jurisdiction is a plea that is legal and is one that reacts to the case prior to offering any substantive response. In this defense, the case is handed over to the court of competence.

The term spatial jurisdiction has been described as follows: The jurisdiction of courts to trial cases according to the location of their headquarters, location, or geographic dispersion, to define how cases of the same type of court are distributed between courts of the same type and of different value and type of dispute [45]..

In case of the defense related to the local (spatial) jurisdiction, it should be advanced prior to the handling of the subject matter of the lawsuit or any other defense. Otherwise, this right of defense is lost, as the jurisdiction regulations of the locality are not relevant to the order in society [46]..

The Code of Civil Procedure, article (110), paragraph [47].states the following:

The plea of lack of jurisdiction or the presence of an arbitration clause should be brought up prior to all other procedural pleas, requests, or defences, or the right to the same will be lost, even in the case of the appellant, who, however, did not do so in the appeal list [48]..

Appellate case example

Oman Sharia Court of Appeal, case no. 3226/2019-

117096, 9/9/2019:

The appeal was filed within the provisions of the law and it was accepted.

The second thing that the appellant appealed against regarding the judgment was on the merits. The law of Sharia procedure in article 9 states that refusal to accept a plea of lack of jurisdiction is a formal defense and must entail a ruling to the competent court with regards to space. This is because one of the requirements had been fulfilled, and the Court of First Instance was ordered to send the case of the appellant to the relevant court [49]..

2. Motion of lawsuit inadmissibility

This is a formal defense, which applies to the standing of the plaintiff to file the lawsuit, as opposed to the substantive right. Its aim is to make the court not proceed with the trial in case of a requirement to file the case e.g.:

- Lack of legal capacity/standing.
- Lack of interest
- The case has already been tried and decided.
- Lack of a legal association between plaintiffs.

The court can adjudicate on such defense ex facie because it is a matter of procedural order [50]..

Appellate case example

Oman Sharia Court of Appeal, the Decree Case No. 1591/2012-11016, dated 7/10/2012:

- The plaintiff had an age of seventeen years, one month, and twelve days when he filed suit. The age of majority in the Temporary Personal Status Law is defined in article 203(b) that provides that age as eighteen years. Thus, the plaintiff did not have a right to exercise the civil rights, and the case was prematurely filed.

Article 221 requires a guardian to initiate a case on quarantine due to minors under the age of majority. In line with that, the Court of Appeal declared the case as invalid and sent it back to the source to be duly notified [51]..

3. Plea of unconstitutionality of the declaration of a person of incompetence

This is a formal plea, and it is over whether this lawsuit and trial proceedings are valid or not, and not on the underlying right. It questions the process because of the incompetence of a legal capacity of the individual or his/her legal representative who is declared incompetent [2].

Appellate case example

Oman Sharia Court of Appeal, Case No. 1429 / 2025-145168, as of 3/3 / 2025:

The Court of First Instance rejected the lawsuit of the plaintiff as it has been established that the defendant was eligible due to medical examination reports. The person was quite mature, knew his/her acts and words and could take part in court hearings.

Upper court approved the decision of a lower court as the correct one, according to Article 151 of the Law on Sharia Procedure [52]..

The second requirement

Substantive defenses of symptoms of eligibility and applications in the sharia judiciary of Jordan

The substantive defenses can be asserted at any phase of the proceedings and they are subjected to the general rules of evidence. In case a substantive defense is proven by written or personal evidences, the case will be dismissed. On the other hand, the rejection of the defense will proceed with the same case at the stage of its suspension according to the relevant legal rules [53]..

1. Plea concerning incapacity of plaintiff

This is in defense of the argument that the plaintiff is not competent enough to proceed with litigation or even represent himself or herself by way of power of attorney. It is based on Articles 618 and 1630 of the Code of Judicial Rulings that require that the plaintiff must be competent in the litigation and Article 43 of the Law of Sharia Procedure that stipulates that both the plaintiff and the defendant must be of a sound mind and that they must be not less than the age of eighteen years [54]..

Appellate case example

Case No. 1591/2012-11016, Case No. 1591/2012-11016, 7/10/2012, Irbid Shari'a Court of Appeal:

The age of majority is eighteen full solar years in accordance with Article 203(b) of the Temporary Personal Status Law. At the time of filing, the plaintiff was seventeen years and one month and twelve days old, and as such was not entitled to exercise civil rights as it was required in Article 204(a).

Article 221 workshops that the guardian of a minor should submit a quarantine case before the minor attains the age of eighteen. The court therefore held the case invalid and sent it back to its channel in compliance with Articles 44 and 148 of the Code of Sharia Procedure and Article 221 of the Provisional Personal Status Law [55]..

2. Defense on the basis of filing against a minor

A case against a minor who is less than eighteen years may be thrown away in case this is proved. A minor is usually limited to personal representation but a guardian can bring a lawsuit on behalf of the minor to a maximum of six months before the minor becomes of age.

Appellate case example

Oman Sharia court of appeal, case No. 686/2019-114446, 21/2/2019:

The Court affirmed the marriage contract on the basis of authentication, acknowledgment and persuasive personal evidence.

• Recognition and self-testimony

Concerning the children of the defendant, the judgment had been annulled due to the fact that:

1. Adult children (Samira, Amira, Khadija) were not included into the lawsuit even when they were eligible.

2. No birth certificates were produced as it is needed in Article 41 of Law of Sharia Procedure.

• The source was sent back the case to change

the name of plaintiff and provide him with proper representation [56]..

3. Defense of Surprise, Drunkenness, and Coercion.

In case a defendant pleads that he or she is surprised, is drunk or coerced and it is established, then the lawsuit can be dismissed. As an example, divorce is not possible in surprise, drunkenness, and coercion under Article 86 of the Jordanian Personal Status Law:

Affected persons are drunkards, under surprise, unconscious, insane or sleepers.

A confused person refers to an individual whose actions or words are not common to him as a result of anger or other elements [57]..

2. Sugar Plea (Drunkenness): Sharia Court of Appeal in Amman, Case No. 1272/2020-119372, the date is 1/6/2020:

1. The Court upheld the denial of divorce claims on the basis of inability of the plaintiff to demonstrate the occurrence of coercion and drunkenness, and supported the legitimacy of the legal procedures and legal documentations [58]..

3. Coercion Plea: Case No. 2704/2019-117574 Oman Sharia Court of Appeal, 14/11/2019:

2. The Court upheld the exclusion of the claim as the plaintiff was not able to demonstrate the use of coercion and the oath taken by the defendant was legal [59]..

4- that insanity, however, that is to be cured, the judge delays the case, when the case is a separate of insanity only; in the rest of the cases, the case is not delayed; and that his argument that he is not legally or judicially incapacitated, that he has not spent a full year, time of separation of insanity, then, who awaits the disqualification of the applicant: and in case that this defence is not admitted, the case is tried: and there is no place to recall it thereafter [60].

One of the decisions in this defense on the part of the Court of Appeals is the information expressed in the ruling of the Sharia Court of Appeal of Amman No. 382/2023-11677, according to which:

However, when the case papers were examined and deliberated, it was ascertained that: 1- The minutes of the sessions and the letter of representation which the depurative judge had written to hear the testimony of the doctor on the mental condition of the defendant failed to meet the procedural requirements as the plaintiff or her representative and the defendant or his representative are not told the date of the hearing. This is a procedural flaw that does not allow one to rely on the testimony of the physician as it was not clear what kind of sickness and what type it is, either permanent insanity or curable.

Hence above, the decision to separate the plaintiff Orouba and her husband Hamad after a time span of one lunar year was erroneous and premature as per the promulgated articles and therefore it was ruled to revoke the same and revert the case to cause of action so that it can be subjected to legal process [61]..

5- Claiming that the plaintiff is charged by reason of a valid judgment having been approved on appeal:

The court should ensure that the judicial procedures that occurred in the case it is handling is legitimate by checking the legal representation of the defendant by the attorney, purpose of the quarantine and the time of its occurrence pre or post-filing of the lawsuit [62]..

In this appeal, some of the decisions made by the appellate are the words mentioned in the ruling of the Amman Sharia Court of Appeal No. 4084/2023-136339 dated 23/8/2023, which stated that:

When examined and considered, the defendant Amir was discovered as having been born on 1/12/2012, that is, she was eleven years old. Because the age of majority is eighteen full solar years, and every human being who has attained the age of majority and is of sound mind is entitled to the exercise of his civil rights, unlike those who are indiscriminate because of young age, dementia, or insanity because of lack of capacity, and because Article 221 of the Personal Status Law provides that when the person, who has an accident of eligibility, is nearly eighteen years of age his guardian initiates the lawsuit requesting that he be quarantined six months prior to his attaining the age of eighteen. As the defendant Amira is not bound to anyone except herself, as she is a minor and has not yet attained majority, the court of first instance had erred in making the judgment against

her on insanity grounds, a decision made too soon in its course, and therefore it was ruled to have it set aside and remanded to the court of first instance to recommence the legal offer [63]..

In regard to the decision on taking the payment, Ibn Nujaim replied:

The payment of the claim is valid, and the payment is valid, that which is above is valid, and it is valid after the testimony, and just as it is valid before evidence is proved, it is also valid after it, and he is the chosen one, unless in three cases:

- Whenever he says, I have a claim, and fails to offer it, it is not considered.
- Second: In the event that there is no evidence in the country, there will be acceptance and suspension to the ensuing council, unless there will be presentation subsequently; failure which it will not be accepted.
- Third: In case of corrupt payment made [64]..

And with regard to payment by a non-defendant:

It is not valid, unless the payer happens to be one of the heirs, and no-one may be appointed as a litigant on behalf of anyone, but by power of attorney, by prosecution, or by the agency of guardians, unless in two circumstances:

- First: One of the successors is a deductor of the rest.
- Second: There is one prisoner who is a non-cooperative prisoner with the others [65]..

As to the impact of both formal and substantive defenses on the suit, it is in the following:

1. Formal defenses cause the litigation to be terminated in the court, however, this does not mean that the plaintiff lost the right and he may be forced to put his lawsuit on hiatus, resumption, wait a length of time, re-file, or other legal measures.
2. Substantive defenses involve the removal of the conflict about the basis of the asserted right since the strength of the judgment makes it impossible to initiate a new action based on the same issue.

3. The inadmissible plea of the lawsuit causes the termination of the litigation proceedings and the elimination of all procedural consequences, including the suspension or extinguishment of the statute of limitations in the lawsuit.

Conclusion

In conclusion, the researcher discusses, on the one hand, the most significant discoveries of the study, and, on the other hand, the main recommendations which are based on the findings as follows:

First: Results

The research ended with the following findings:

1- Capacity is the capacity of the person to experience the rights vested to him by the Almighty God on the one hand, and to perform the responsibilities necessary to him on the other hand, such as the participation in lawful and legal acts and activities in relation to these rights or responsibilities. Capacity has been categorized into full capacity to act and incomplete capacity to act.

2- Among the symptoms of competence:

However, insanity, dementia, sickness, and death are heavenly symptoms.

- Obtained symptoms, e.g., foolishness, negligence, compulsion and astonishment.

3- The formal defenses concerning the symptoms of eligibility and their usage in the judiciary of the Jordanian Sharia:

1. Plea of want of spatial jurisdiction.
2. Demand of inadmissibility of the case and its rejection (due to the inadmissibility of the lawsuit in the conditions and terms of the law).
3. Request of the incompetency of the declaration of an incompetent person.

4- Of the substantive defenses of the symptoms of the eligibility and its use within the Jordanian Sharia courts:

1. The point that is put across is the fact that the suit is brought against a person who is below eighteen years of age.

2. The inability of the plaintiff to litigate.

3. Plea: Surprise, intoxication or Duress.

4. It is argued that insanity, in case it is treatable, permits the judge to adjourn the case in the event that the insanity is the sole issue of separation only; otherwise, the case is not adjourned.

5. The plaintiff has the argument that a judgment approved on appeal should bar the plaintiff.

5- The ability of a person in the financial transaction is to perform his right vested in him by Shari'ah on his property, either as absolute authority, as a man has over his property, giving him absolute latitude over his money, unless a legitimate impediment or unintentional sign of a lack thereof.

6- When the individual is born alive, he is known to be liable to obligation with an entitlement to exercise his rights in the absence of age, sex, will, and perception.

7-Payment is when a litigant, either before or after judgment, brings a lawsuit to protect himself against his opponent, in all or part of the claim, with respect to pursuing him judicially; the defendant wants to put an end to the litigation either forever or temporarily.

Second: Recommendations

The study concluded with the following recommendations:

1- The necessity of enhancing legal awareness among citizens regarding the impact of studying defenses related to the symptoms of eligibility in the Jordanian Sharia judiciary, particularly in family law, and clarifying that substantive and formal defenses constitute a legitimate objection, response, or protection against the lawsuit.

2- Emphasizing the role of Sharia and civil courts in organizing and administering defenses accurately, verifying their validity, and substantiating them through proper legal evidentiary means.

3- Encouraging legal researchers to conduct comparative studies between the civil and administrative organization of defenses in Sharia lawsuits, particularly in contracts, reconciliation, and executive settlements; and to promote the integration of mentally ill individuals into society, with official institutions recognizing their status and assigning them tasks commensurate with their health condition, allowing them to be productive and support themselves and their families.

4- The necessity of providing the state with the means to assist persons exhibiting symptoms of incapacity in their daily lives, raising societal awareness on how to engage with them, and emphasizing the spiritual and moral reward of God for those afflicted, acknowledging that Almighty God tests humanity as part of life.

5- Holding educational courses for families of the mentally ill, as many patient's experience deteriorating psychological conditions due to their families' lack of acceptance of their illness, the concept of recovery, or the disappearance of the symptoms of incapacity.

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