

Extent of Liability of Heirs for deceased's Debts in Jordanian Civil Law

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Abstract

I have dealt in this research titled "Extent of Liability of Heirs for deceased's Debts in Jordanian Civil Law" whereby it appears that liability of heirs for deceased's debt is limited to what they received from his estate, it also appears that not everything inherited by heirs will be considered part of the estate. I have also addressed the time ownership of the estate passes to heirs and the jurisprudential dispute about it as well as the position of the Civil Law. It is evidenced by provisions that estate passes to heirs upon the deceased person's death. I have also dealt with the effects and consequences of determining the time the ownership of estate passes to heirs, it appeared that there are important results and consequences for determining the time the estate is passed to heirs. I have also dealt with the rule of the deceased's postponed debt, and the rule of dispositions of an indebted estate property by the heirs before and after its division, and the discrepancy between the estate creditors' rights, and the rights of those disposed to by heirs or one of them. The principle is in the primacy of attachment by the creditors, or the registration of the disposition by the persons disposed to in the real estate, as for movable property, the principle is in the possession whenever it is bona fide and has a valid ground.

Keywords: Liability of heirs, deceased's debts.

1. Introduction

A person may die with debts due on him to some people. These debts may be ordinary or secured by a mortgage or a right of privilege, they may be or due or postponed. The estate of the deceased may be insolvent so that the sums of the estate does not meet debts, or not insolvent, so that the total estate components are more than the debts. What is the extent of liability of heirs for these debts? What is the time ownership of estate passes to heirs? Is it once the deceased dies or after payment of his debts? Is everything devolved to heirs because of death of deceased constitute part of the estate and can be subject to an attachment order? Or is there property devolving to the heirs because of the death of deceased, does not constitute part of the estate, and what is the rule for postponed debts owed by deceased due after his death? What is the rule for the dispositions of estate property by heirs or some of them?

In this research, I will attempt to address questions in successive chapters as follows:

Chapter I: Time estate is transferred to heirs.

Chapter II: Scope of attachment on what has been inherited by heirs because of deceased's death.

Chapter III: Status of deceased's postponed debts.

Chapter IV: status of dispositions of estate by heirs.

Chapter I: Time estate is transferred to heirs

The purpose of determining the time estate is transferred to heirs, if debts are attached to, it is not only to state their ability to dispose of this estate property, from the time of transfer of the estate property to them, but there are effects and results that depend on determining this time, is it from the time of death of deceased, or the estate remains in the name of the deceased until the payment of all his debts. The most important of these results are as follows:

1. To say that the estate is transferred to heirs once the deceased person dies, then the development and increase of value in the estate, whether continuously or separately, shall be the property of the heirs and the debts are not payable from that increase in value, and wills shall not apply to same. However, if we said that the estate remains in the name of the deceased then the generated increase in value, whether continuously or separately, shall belong to the deceased, and the debts shall be payable from it and the wills are executed on it.
2. If part of the estate was immovable property, owned on a common ownership basis, and the deceased co-owner has sold his share in the immovable property after the deceased death, then heirs cannot sue for preemption right unless the share of their deceased in the immovable property has transferred to them. Therefore, if we say of the transfer of estate to heirs happens after the fulfillment of the debts, then in this case if the co-owner sells his share in the immovable property before the fulfillment of debts of the estate, the heirs cannot sue for the preemption right because the ownership of the property will not be transferred to them until the fulfillment of the debts. However, if we said the transfer of the estate occurs from the moment

- of the deceased person's death, then the heirs can file a lawsuit claiming preemption right at any time the co-owner sells his share in the property.
3. The expenses and expenditures for the maintenance and preservation of the estate property shall be borne by heirs from the moment of deceased's death, if the estate passed on to heirs once the deceased dies. If the estate property is sold to fulfill the deceased's debts, the heirs cannot claim expenses, and they have to get rid of these expenses by selling the property to fulfill the debts owed by deceased, and these expenditures will be on the estate if it stayed in the name of the deceased.
 4. The liability arising from the estate property, for example, if there are in the estate property things that require special care to prevent harm or machines, and resulted in harm to others, the liability to compensate an injured person will be on heirs from the moment of deceased's death, if we said that estate passes to heirs from the moment of deceased's death. However, if we said that estate passes to heirs from the moment of the deceased's debts are paid, then the injured person can have recourse to the estate to claim compensation if the damage has been inflicted to him before the payment of debts on estate.

Schools differed in determining the time the estate passes to the heirs of the estate, as follows:

- a. Al-Hanafia School believes in the need to distinguish between whether the debts are equal to or more than the value of estate, or that the debts are less than the amount of the estate. If the debts are equal to the amount of the estate or over, then the estate remains within the property of the deceased and shall not be transferred to heirs. However, if the debts are less than the amount of the estate, the property shall pass on to heirs once the deceased dies, provided that debts are transferred with the estate. Another team of the Al-Hanafia School believes that a sufficient part of the estate shall remain in the name of the deceased in order to fulfill the debts, and the remainder of estate shall pass on to heirs from the moment deceased dies.
- b. Al-Malikia School believes that the estate property shall remain in the name of the deceased after his death until debts are paid, whether the estate value is sufficient to fulfill the debts or not.
- c. Al-Shafia School believes that the estate property shall transfer to heirs from the moment of the death of deceased, but such transfer shall be burdened with the debts that was owed by deceased ⁽²⁾.

With regard to the position of the Jordanian legislator, it can be drawn from the following provisions:

1. Section (1110/2) of the Jordanian Civil Law provides as follows: (And the heirs may as soon as the time-limit for disputes relating to the stock-taking of the estate expires request the temporary receipt of all or part of the things and monies the inventory of which is not required against the supply of a guarantee therefor or without it).
Some scholars ⁽³⁾ consider this text, which corresponds to the wording of Section (900/2) of the Egyptian Civil Law, indicates that ownership of estate property transfers to heirs from the moment of death of deceased.
Others consider different opinion ⁽⁴⁾, that this wording does not benefit the transfer of ownership of estate to heirs from the moment of death of deceased, because there is no reason to prevent heirs from requesting to receive the estate property, as they have rights in the remainder of the estate property after the payment of debts. Thus, they have the right to maintain this property and receive it even if the ownership of the estate property does not transfer to the heirs before fulfilling the debts, which were due on the deceased.
2. Section (1086/2) of the Jordanian Civil Law provides as follows: (The designation of heirs, the determination of their shares in the estate and the devolving of the estate shall be subject to the provision of the Moslem Shari'a). Some ⁽⁵⁾ say that the legislature has stipulated that the inheritance is one of the reasons to acquire the property, and referred the transfer of the estate property to heirs to the provisions of Islamic law, which stipulates that inheritance is due upon the death of deceased.
3. Section (1086/1) of the Civil Law provides as follows: (The heir acquires by succession the immovable, moveable and rights existent in the estate).
This wording indicates that the heirs shall own the estate property once the deceased dies. The Jordanian Court of Cassation has ruled as follows: (pursuant to Section 1086/1 of the Civil Law, heir shall acquire ownership of real estate, movable and rights existing in the estate by succession, and therefore it is not required to prove this ownership of heir by making a transfer process and issuing a title deed. However, it is enough to prove the deceased ownership or share in the land and that the claimant is one of the heirs) ⁽⁶⁾.
The Court of Cassation has also ruled in another decision as follows: (...to say that property ownership does not transfer to heir unless it is registered in the registration department is clearly contrary to Section (1086/3) of the Civil Law) ⁽⁷⁾.

The Jordanian Court of Cassation stated that the usufruct shall pass on to heirs once deceased dies pursuant to Section (1086) of the Civil Law. Whereby it stated in its decision the following: (... the allotment of the unit, in our view, is a facet of usufruct which the defendant inherits because Section (1086) of the Civil Law stipulates as

follows (The heir acquires by succession the immovable, moveable and rights existent in the estate). Since usufruct is one of the existing rights in estate, it shall be inherited by the children).

In this regard, I do not agree with this ruling as it is inconsistent with the wording of Section (1215/6) of the Jordanian Civil Law, which stipulates that usufruct ends with the death of the usufructuary, and therefore, this right does not pass on to the heirs.

Chapter II: scope of attachment on what has been inherited by heirs because of deceased's death.

In this Chapter, I will be addressing the extent of scope of attachment on what has been transferred to heirs because of death of deceased, and showing the estate components that may be attached on and pay the debts out of, as well as the rights and the properties that are not considered components of the estate and may not be used to pay the debts of deceased.

a. Estate components that may be attached and debts that may be paid out of.

1. Different kinds of property, real estate or movable, whether in the hands of the deceased when he died, or with his depositor, and whether property is leased, borrowed or under usurpation. Also blood money (Diyya enters within these properties.

2. What ends to be property, such as the right of beneficiaries in the income of a trust (Al-Waqf) property if appeared and its validity is not shown. And debt owed by debtor, whether as a result of a contract or a result of a personal injury.

3. What can be substituted for money if this substitution is pure, such as the right to increase the height of a wall, watering right, rights of passage, and the water flow if substituted for as to the Hanafi, Hanbali and Shafi'i schools of jurisprudence⁽⁸⁾.

B. The rights and the properties that are not considered components of the estate, and not used to pay the deceased's debts:

1. Abstract Rights that do not relate to a financial property but turn to the owner and his will, are not of the estate, rather if accepted, the shall be replaced by money, such as rights of option to terminate the contract, and preemption right, which may be subject to reconciliation according to the Maliki school of jurisprudence. However, what is taken of property as a substitute for it is not considered an estate, but finally shall belong to the heir according to what is shown in their books. It is written in Al-Khersha: (If bankrupt dies leaving behind him a preemption right, it shall be for his heirs not to his creditors)⁽⁹⁾.

2. The pensions and compensations of employees that follow their death are not considered part of the estate, because they are not payable to the deceased in his life. The Jordanian Court of Cassation has ruled in its decision as follows: (The heirs shall not be asked for the deceased's debts except to the extent of the estate devolved to them, the pension allocated to heirs from the state treasury shall not be considered of the estate assets, and the appellant before the court of cassation is not entitled to attach it in order to settle the debts claimed from the deceased)⁽¹⁰⁾.

3. The sum of life insurance of deceased,⁽¹¹⁾ if the sums is in favor of the heirs. Section (945) of the Jordanian Civil Law provides as follows: (1. the insured may stipulate the payment of the insured sum to persons specified in the contract or to those he specifies thereafter. 2. And if the insurance is for the interest of the spouse of the insured, his off-spring, descendents or heirs, the insured sum shall be due to those who are proved to be such persons at the time of the death of the insured and if the heirs are the beneficiaries, the insured sum shall be divided among them according to their shares under the Shari'a Law).

Section (949) of the Civil Law provides as follows: (The sums agreed to be payable on the death of the insured shall not form part of his estate and his creditors shall have no title to them but they shall have the right to be reimbursed with what he had paid if it was too excessive for the insured's financial condition).

4. Compensation for the reflected damage, where the heirs deserve compensation for the reflected material or moral damage, because of the material or moral damage that they have suffered as a result of the death of their deceased⁽¹²⁾. Section (274) provides as follows: (Notwithstanding the provision of the preceding Section, whoever commits an act injurious to the person whether it is murder or the infliction of a wound or injury, shall be liable for compensation for the damage he has caused to the victim, his heirs or his dependents who were deprived of support because of the injurious act). Section (267/2) provides as follows: (And damages may be awarded to spouse and close relatives in the family for the moral damage inflicted upon them by the death of the injured). The amount of compensation payable to the heirs for the reflected material and moral damage that they have suffered is not included in the estate components, and the creditors of the deceased may not attach it⁽¹³⁾.

The Jordanian Court of Cassation⁽¹⁴⁾ has provided in a decision as follows: (1. The judicial precedents has settled that the compensation claimed by heirs of deceased for damage they have suffered as a result of tort inflicted on him, in accordance with the provisions of liability for negligence stipulated in Sections (256, 266, 267 and 274) of the Civil Law, is not considered part of the estate of deceased but a personal injury because it was not due from the deceased before his death (Court of Cassation (Civil Division) (General Panel) Decision No. 4435/2003 dated May 26, 2004 and Decision No. 4221 / 2004 dated April 17, 2005). Accordingly, the

argument on the pretext of Al-Takharuj (settlement of rights) and certification of the contents of the estate and impact thereof is futile. 2. What the appellant (to the court of cassation) deserves for the material and moral damage is assessed by the technical expertise pursuant to the provisions of Sections (266/267) of the Civil Law provided that the compensation does not exceed in total the upper limit which is the insurance company is obliged to according to the table. As the Court of Appeal ruled for the appellant (to the court of cassation) for compensation in accordance with the list of components of estate and awarded one-third and not in accordance with the technical expertise, then the appealed decision is contrary to the provisions of the law and the decision of the Court of Cassation (General Panel) No. (2449/2012), which requires the decision to be set aside in this respect, taking into account the legal rule that provides that the appellant shall not be prejudiced because his appeal especially since the claimant is the appellant in this case).

Chapter III: status of deceased's postponed debts.

With respect to the postponed debts due after the death of the deceased, the legislator stipulates in Section (406) of the Jordanian Civil Law as follows: (The postponed debt shall not become mature by the creditor's death but shall do so by the debtor's death unless it is guaranteed by real security).

We can see from this text that the legislature has distinguished between ordinary debts, and debts guaranteed by real security. The postponed ordinary debts that are payable after the death of the debtor, the period of their maturity shall extinguish, and they shall become due and shall be fulfilled upon the death of the debtor, in order for the creditors of the postponed debts to collect their rights. The estate property may not be sufficient to fulfill the debts, so if the holders of due debts take hold of the estate property and attach same, the postponed debts' holders may not find any of the estate property left to attach on. Therefore, the wording of the section came to provide for the extinguishment of the payment date of ordinary debts, in order to enable the creditors to obtain their full rights, or enter in an equal division with the rest of the creditors.

If the debts are guaranteed by real security by possessive mortgage, insurance mortgage, or a public or private right of privilege, they shall collect their rights before other creditors of the debtor, and enjoy the qualities of priority and pursuit. Therefore, there is no need for the extinguishment of the debt payment dates, if their debts are postponed, since the estate rights pass on to the heirs with the same qualities it had before the death of creditor⁽¹⁵⁾.

In this regard, the heirs may find it better to fulfill the postponed debts guaranteed by real security. Then they shall seek from the Court to rule for the acceleration of the postponed debts, as Section (1105) of the Jordanian Civil Law provides as follows: (the Court may on the application of all the heirs decree the acceleration of a postponed debt and the determination of the sum due to the creditor). The legislator also allowed each heir after the distribution of postponed debts to pay the amount due on him before the due date according to Section (1106) of the Jordanian Civil Law, which reads as follows: (Every heir may after distribution of postponed debts pay his share before the due date).

Chapter IV: status of dispositions of estate by heirs.

The heirs may dispose of the estate property with or without division, even if the estate is indebted. I will be addressing next the rules of estate division and the rules of the disposal of the estate by heirs without dividing it.

First, the rules of dividing the estate

If the estate is indebted and heirs divided same and each heir took his share of it, what is the validity of this division?

Scholars differed on the provision of this division as follows:

a. Al-Hanafia School's Opinion

Al-Hanafia believes in the invalidity of this division, and each creditor or heir may request to invalidate it, whether the debts makes the estate insolvent or not, and whether heirs fulfilled the debts or not, because ownership of the estate property by heirs is not proved when the estate property is encumbered by debts.

b. Al-Shafia School's Opinion

Al-Shafia sees that the estate is owned by heirs once death takes place, and rights of creditors is attached to it, similar to the attachment of a debt to a mortgaged property. The heirs may not share the estate until the debts are paid, whether or not surrounding the estate, because their attachment to the immovable property is an objection to dispose of. However, if the heirs pay off all debts, or the creditors discharge the deceased of all their debts, or the debts extinguish for whatever reason, the division then shall be valid and implemented.

c. Al-Hanbila School's Opinion

Al-Hanbila believes that attachment of the debts to the components of the estate does not prevent the validity of its division among the heirs, whether they knew of the debts or not. However, it is not binding. But if they fulfill the debts, the division shall be binding. If they refrain from fulfilling the debts, the division shall be void, and the estate shall be sold.

d. Al-Malikia School's Opinion

Al-Malikia has multiple statements in the division of the indebted estate as follows:

The First Opinion: it is not possible to divide the estate among the heirs before payment of debts, and their evidence in this is the Quran verse: (after any bequest which was made or debt).

The Second Opinion: this division is correct and non-binding because of the attachment of the right of creditors to it. If this attachment is over, it shall be binding. The creditors shall have no right to object to the division if they received their rights, as they have no right to the properties of the estate. However, their right is limited to fulfillment. If the heirs rejected fulfilling the debts, the division shall be annulled and the estate shall be sold to pay the debts.

The Third Opinion: this opinion differentiates between whether the estate has some valuable property or is all the estate is valuable property. In this case, its division is correct and non-binding. If the heirs refuse the fulfillment, the division shall be overturned and the estate shall be sold to pay the debts. If the estate is money or equivalent, and is still in the hands of the heirs, its division before payment of debts shall be valid, obligatory and not overturned because of the possibility of recourse to the heirs each according to his share of the estate ⁽¹⁶⁾.

Status of disposition of an indebted estate by the heirs without dividing same:

Scholars differed on the rule of the disposal of an indebted estate by heirs without dividing it as follows:

a. The Al-Hanafia School's Opinion: believes that the disposition of the indebted estate by the heirs is a disposition of what something they do not own, and have no mandate on it. This disposition is valid, conditional on the authorization of who owns the property, or has the mandate on the property at the time of such disposition. If it did not have an authorizer at the time of the disposition, the disposition shall be void and cannot be validated by an authorization afterwards, and the debt prevents heir to own the estate and it remains in the name of the deceased. If the heir disposes of it before the payment of debts, it shall be void, because it is made by a person who does not own the property nor has the mandate and no person authorized the starting of disposition.

b. The Al-Shafia School's Opinion: sees that the heirs shall own the indebted estate once the deceased dies. However, it does not go to allow the disposition in the case the debt arises. It sees that the heirs own the estate encumbered by the creditor's right, and this right is related to all objects of the estate, similar to a debt secured on a mortgaged property. Therefore, all the dispositions by the heirs, of sale, gift, mortgage, or rent are void if the estate is indebted, and the creditor shall in this case pursue the properties of the estate in the hands of whoever possess them.

c. Al-Malikia School's Opinion: believes that the heir does not own the indebted estate until the fulfillment of the debts due on it. It also sees that what the debtor leaves of property after his death is subject to attachment by his creditors' rights, and that the creditor's right has the priority over the right of the heirs. Accordingly, the disposition of the indebted estate by heirs shall not be effective if occurred before the fulfillment of debts.

d. Al-Hanbila School's Opinion: Some of them believe that the heir does not own the indebted estate, whether the debt makes the estate insolvent or not. And some go to another aspect and say that the indebted estate passes after the death to the heirs encumbered with the debt. According to the first opinion, the disposition of the indebted estate by a heir before the debt fulfillment is voidable, because he disposed of what he did not have. According to the second opinion, the disposition of the indebted estate by a heir is valid and effective as long as it does not prejudice the rights of creditors. If the heir sold a thing or mortgaged it and paid the debt, his disposition shall be valid. However, if he did not pay for the debt or failed to fulfill it, and the creditor did not find a fulfillment with the exception of the thing that was sold, the sale shall be terminated ⁽¹⁷⁾.

The position of the Jordanian Civil Law of dispositions of an indebted estate by heirs before payment of debt.

The predominant opinion provides that the estate property transfers, pursuant to the Civil Law, to the heirs once the deceased dies, and the basis to this is the following:

1. The wording of Section (1110/2) of the Civil Law, which allows the heirs temporarily claim things or monies that it is not needed in the liquidation of the estate.

2. The Jordanian legislator referred the transfer of property to the heirs to the provisions of Islamic law as per Section (1086/2) of the Civil Law, which provides that the estate is due upon the death of deceased ⁽¹⁸⁾.

3. Section (1086/1) of the Jordanian Civil Law provides as follows: (The heir acquires by succession the immovable, movables and rights existent in the estate), and this wording is conclusive for the transfer of ownership of the estate property to the heirs.

4. Section (1123) of the Jordanian Civil Law provides as follows: (If the estate is not inventoried in accordance with the preceding provisions, the estate ordinary creditors may execute for their rights or what was devised to them against the estate immovable's disposed of or on which rights in rem were imposed for the benefit of others if they attach them for their debts before the dispositions are registered).

The inference drawn from this Section is that it provides that whoever receives a right in rem from the heir to the

estate property shall have preference over the creditors of the deceased, if he had registered his right, before the creditor secures his right to the estate property.

According to the Jordanian judiciary, estate passes on to heirs once death occurs. In the case of distribution of estate before debts are paid in an indebted estate, then heirs shall be obliged to pay the debt each according to his share of the inheritance. The Jordanian Court of Cassation ⁽¹⁹⁾ ruled as follows: (It is legally determined that estate of deceased passes immediately to heirs once death occurs according to legal allotment of shares and after payment of debt owed by deceased. In case of transfer of the inheritance shares to heirs before payment of debt, the heirs shall be obliged to pay the debt each as per his share and no more than the value of the estate devolved to them from the deceased pursuant to Section (1086) of the Civil Law).

It is not required to prove the ownership of heirs by a transferring process and obtaining a registration certificate of ownership. The Jordanian Court of Cassation has provided in a decision ⁽²⁰⁾ as follows: (It is not a requirement to prove ownership of the heirs ("the Respondents" to the Court of Cassation) by a transferring process and obtaining a registration certificate of ownership).

The Jordanian Court of Cassation has ruled in another decision ⁽²¹⁾ as follows: (The heir acquires, by succession, title for the real estate, moveable's, and rights in the estate immediately after the death of the deceased, and it is not required to prove ownership of the heir by a transferring process and obtaining title deed registration from the Department of land and survey).

Thus, it is clear that the heir acquires the estate property immediately after the death, and therefore he is able to dispose of such property, and his disposition is valid for being issued by the owner. In this case, a conflict of interest may arise between the person disposed to from the heir, and the interests of the creditors of the deceased whose rights are attached to the estate property. It is necessary here to reconcile between conflicting interests, and this needs to differentiate between the disposition of immovable property, and the disposition of moveable property.

First: the heir's disposition of immovable property:

With regard to the disposition of the heir of immovable property, if the disposition is registered at the competent Land and Survey Department, the problem of preference arises between the creditors of the deceased and the right of the person disposed to. This varies between the disposition by heir of an indebted estate property that underwent liquidation, and the dispositions by heir of an indebted estate property that did not undergo liquidation.

a. The dispositions by heir of an indebted estate properties that have undergone liquidation:

Article (1090) of the Civil Law provides as follows: (1. The Court shall record in a special register the orders issued for the appointment of executors for the estate, for their confirmation if they were appointed by the testator or for their dismissal or resignation. 2. And the said recording shall be binding on other parties dealing with the heirs in respect of the estate immoveable property.

This text provides that if the decision of the appointment of liquidator has been recorded, the rights of creditors shall be effective against all those who receive from the heir an in-kind property of the estate properties. However, if the decision was recorded after the registration of the dispositions, it will be futile. In this regard, I wish the Jordanian legislator would amend the wording of Section (1090) of the Jordanian Civil Law in order to ensure the protection of the estate creditors' rights in all cases, so that their rights be effective against all those who receive from the heir an in-kind property of the estate properties, whether the disposition was before or after recording the decision of appointment of the liquidator.

B. Dispositions by heirs of indebted estate properties that have not been subjected to liquidation:

Section (1123) of the Jordanian Civil Law provides as follows: (If the estate is inventorised in accordance with the preceding provisions, the estate general creditors may execute for their rights or what was devised to them against the estate immoveable disposed of or on which rights in rem were imposed for the benefit of others if they attach them for their debts before the dispositions are registered).

It is apparent from the text that a distinction should be made between the creditors' attachment before or after recording the dispositions as follows:

1. If creditors conducted attachment before recording dispositions, then creditor's right becomes effective against all those who receive from heir an immovable property right from the estate properties, and therefore he can attach the property in the hands of the person the property was disposed to.

2. If creditors attach after recording the disposition, this attachment does not affect the rights of the person disposed to.

In this regard, I wish the Jordanian legislator would amend the wording of Section (1123) of the Civil Law, to ensure that the creditors of the estate have their rights from the estate, whether they attached it before or after recording the disposition of the heirs to the person disposed to according to the Rule "No transfer of estate until payment of debt".

Second: disposition by heir of movables:

The Jordanian legislator did not address the case of the heir's disposition of moveable property if the estate is indebted, which requires the application of the general rules, and in accordance with these rules, if person disposed to had received a moveable property from the estate, while not knowing that the estate is indebted, it would be good faith, and he acquires the ownership of the moveable property in accordance the Rule which provides that "The possession of the moveable with a valid ground and good faith shall constitute an ownership deed". However, if he did so in bad faith, then the deceased's creditors may attach on this moveable.

In this regard, I wish the Jordanian legislator would expressly provide for the right of the estate creditors to claim and pursue against the moveable property of the estate, in order to have their rights before the person disposed to.

Results and recommendations:

After completing this search paper "Extent of Liability of Heirs for Deceased's Debts in Jordanian Civil Law ", I have reached to the following conclusions: **First: Results**

1. Liability of heirs for deceased's debt is limited to their shares in the estate.
2. Scholars differed in determining the time estate ownership passes to heirs. With respect to the position of the Jordanian legislator, it did not expressly provide for the time estate ownership transfer to heirs. However, it can be inferred from the texts that the time of estate ownership transfer to heirs is upon death of the deceased.
3. Not every property that devolves to heirs because of the death of deceased constitutes part of the estate and may be attached. However, certain properties that devolve to the heirs because of the death of the deceased cannot be attached, and therefore the liability of the heirs with regard to what has devolved to them (certain estate properties) of the estate shall not be established, as shown in the body of this research.
4. The heirs may, according to the Jordanian Civil Law, dispose of the indebted estate. However, this disposition is not considered valid in certain cases against the creditors of the estate, and as shown in the body of this research.

Second: Recommendations:

1. I wish the Jordanian legislator would amend the wording of Section (1090) of the Jordanian Civil Law, in order to ensure protection of rights of creditors of the estate in all cases, so that their rights be effective against whoever receives from the heir an in-kind right to property from the estate, whether the disposition was before or after recording the decision of the appointment of the liquidator.
2. I wish the Jordanian legislator would amend the wording of Section (1123) of the Civil Law, to ensure that creditors have their rights from the estate, whether they have attached it before or after recording the disposition of the heirs to the person disposed to according to the rule "No transfer of estate until payment of debt".
3. I wish the Jordanian law would expressly provide for the right of estate creditors to claim and pursue against the estate moveable property in order to have their rights before the person disposed to.

Footnotes

(1) A., A., Owaidi, Co-Professor of Civil Law, Department of Private Law, Faculty of Law, University of Jordan.

(2) regarding these views, check A., Al-Khafif's, article, Extent of Attachment of Rights to Estate, Journal of Law and Economics, 12th year, p. 158-174.

(3) M., A., Arafa, Liquidation of Estate in Civil Law, legislation and Judiciary Journal, 1st year, p. 25. A., Al-Khafif, Extent of Attachment of Rights to Estate, previous reference, p. 156.

(4) M., W., Sewar,(1999), Explanation of Civil Law, Original Rights in rem, the House of Culture and Publishing Library, Amman, p. 35.

(5) M., A., Arafa, *ibid.* (1999), Amman, p. 35.

(6) Jordanian Court of Cassation (Civil Division) Decision No. 883/87, 1990, Journal of the Bar Association, P. 955.

(7) Jordanian Court of Cassation (Civil Division) Decision No. 1243/1990 dated 01/27/1991.

(8) A., Al-Khafif, Extent of Attachment of Rights to Estate, Journal of Law and Economics, Cairo University, Issue 1 &2, 12th year, 1942, p. 142 et seq.

(9) Dr. A., Al-Khafif, *ibid.*, P. 148.

(10) Jordanian Court of Cassation (Civil Division) Decision No. 1366/1996, dated Sept.,12, 1996.

(11) Regarding life insurance, check A., Sanhoori,(1964), medium commentary on the new Civil Code, Part VII, Volume II, Dar Ehya Al-Turath Al- Arabi, p. 1389 et seq. G., Abu Orabi. (2011), Insurance Rules, Dar Wael for Publication, p. 228 et seq. J., M., Ibrahim. (1989), Insurance According to Kuwaiti Law, p. 117 et seq.

(12) See about Compensation for Rebounded Damage, M., Musa, (2004), the Legal Status of Person Injured by Rebounded damage, Dar Al-Nahdha Al-Arabia, F1.

(13) A., Sarhan, N., Al-Khater. (2005), Explanation of Civil Law, Sources of Personal Rights, the House of

Culture for Publishing and Distribution, F1, 416.

(14) Jordanian Court of Cassation (Civil Division) Decision No. 14481/2011 dated Jan. 22, 2013.

(15) A., Jumaa, (2006), Brief Explanation of Jordanian Civil Law, the Provisions of Obligation, Dar Wael for Publication, p. 303. A., Farr, the Provisions of obligation, the House of Culture for Publishing and Distribution, 2005, p. (5 Y. M., Al-Jubouri (2003) Brief Explanation of Jordanian Civil Law, the House of Culture, p 479.

(16) These opinions are referred to by A., Khafif, op. ibid P. 178 and beyond.

(17) These opinions are referred to by A., Sanhoori, Sources of right in the Islamic jurisprudence compared to Western jurisprudence, Dar Wa'el Arab heritage, Beirut, Lebanon without the year of publication, Part V, p. 81 et seq.

(18) I., Ghanem, (1960) the Genuine Rights in rem, the second part, causes of Acquiring Original Rights in Rem, p. 74.

(19) Jordanian Court of Cassation (Civil Division) Decision No. 2091/2010 dated July 27,2010.

(20) Jordanian Court of Cassation (Civil Division) Decision No. 2446/2008 dated Nov. 27, 2008.

(21) Jordanian Court of Cassation (Civil Division) Decision No. 3551/2006 dated March 22, 2007.