

THE PROVISIONS OF CURIOSITY AS ONE OF THE APPLICATIONS OF THE BENEFICIAL ACT (ENRICHMENT WITHOUT A REASON) IN THE JORDANIAN CIVIL LAW

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Abstract

Curiosity is that a person called inquisitive performs a beneficial act that necessity necessitates intentionally and without being obligated to do so for the account of another person called the business owner without an order from the latter. Virtue is achieved even if the curious, while assuming a matter for himself, has assumed a different matter, because the two matters are connected with him, and it is not possible to do one of them separately from the other.

The Curiosity is considered as one of the applications of the beneficial act (enrichment without a reason), as the Jordanian legislator was keen to organize the virtue and stipulated it in the civil law, where he began by defining the principle of earning without a reason as an application of the beneficial act, and then receiving an unworthy one, then the extravagance, and that is in the articles of (301- 308) The Jordanian Civil Code highlighted the virtue entity as one of the important and necessary applications of the beneficial act. Thus, the virtue was prepared as a general source of personal right (obligation) that falls under the beneficial act (enrichment without reason).

Keywords: inquisitive, employer, eligibility, agency, Curiosity rules.

Introduction

A person has the freedom to exercise his rights and dispose of his money, and as a general principle, no one is allowed to interfere in the affairs of others, except that - and in narrow circumstances - the law and jurisprudence permit interference in the affairs of others without the knowledge of that third party and without his consent, when necessity and need arise, in order to preserve his interests and save For his money, and from these virtuous conditions.

The virtue is that a person who is called an inquisitive person intentionally undertakes a matter of the affairs of others without being obligated to do so, and this matter is beneficial for the account of this third person (another person) who is called the employer, as if a person intentionally undertakes an urgent matter for the account of another person without obligating him Thus, and for example, when a person builds a wall of a house for his friend or neighbor while he is not there for the reason of traveling or entering a hospital, and the wall almost collapses and causes a specific disaster for others. In this case, the inquisitive person doing this work is verified to benefit his friend or neighbor, although there is no legal obligation for him to do this work. However, the Jordanian Civil Code allows individuals to interfere in the affairs

of others out of consideration.

The research importance

Undoubtedly, virtue is a system that aims at solidarity and social cohesion, and with the same power it expresses noble feelings and good morals towards others. It is also considered as a tool of solidarity and social solidarity.

It should be noted that virtue was able to penetrate and transcend moral duties and the rules of courtesy to be included within the actions regulated by law, due to the individuals' need for it, as force majeure circumstances may arise that prevent a person from directing his interests and preserving his money, such as illness or travel, especially in light of the industrial and economic development that made the individual in need of Others interfere in many of his affairs.

In view of this importance of the virtue system, virtue must be encouraged and encouraged, and so that the matter does not recur without organization and whoever interferes in the affairs of others and violates his privacy and encroaches on his property, the Jordanian legislator regulated the provisions of virtue in the Jordanian Civil Law No. (43) of 1976 in the third section of Chapter Four in Articles (301-308) under the heading of the beneficial act, from the sources of personal rights.

It should be noted that the Jordanian legislator highlighted the virtue entity as one of the important applications of the beneficial verb. Thus, virtue was considered a general source of personal right (obligation) that falls under the beneficial act.

Research problem:

The research problem lies in the case of whether virtue is a material act or a legal act in the Jordanian civil law? What is the rule of inquisitive behavior incapacitated? Does lack of eligibility invalidate the actions of the nosy towards the employer? What is the extent of the consideration of the actions of the curious if the employer is deficient in capacity and without discrimination and understanding, while the rules of eligibility are decided to protect the non-discriminatory from the actions emanating from him and not from the actions that arise in his responsibility apart from his will? What is the position of the Jordanian civil law of virtue? What are the obligations resulting from the death of the curious or the employer?

Research Methodology:

The study of this research is based on the analytical descriptive approach, so the researcher focused on studying and analyzing the legal texts in the Jordanian civil law, citing some judicial rulings issued by the Jordanian Court of Cassation, and as we are in the process of studying a subject that mainly needs extrapolation of the legal texts that govern it, And analyze them, present and discuss jurisprudential opinions, review the provisions of virtue in the Jordanian civil law, and draw conclusions and recommendations.

Search Plan:

In the study of the provisions of virtue as one of the applications of the beneficial verb

(enrichment without reason) in the Jordanian civil law, the researcher adopted the following plan:

The first topic: the pillars of virtue.

The first requirement: the curious performs a material or legal action.

The second requirement: that the work of the curious is in the interest of the employer.

The third requirement: that the curious person should not have performed the work in fulfillment of an obligation upon him.

The second topic: the provisions of virtue.

The first requirement: the obligations of the inquisitive.

The second requirement: the obligations of the employer.

The third requirement: the common provisions between the curious and the employer.

The third topic: evaluating the position of the Jordanian civil law on virtue.

The first topic

The pillars of Curiosity

Article (301) of the Jordanian Civil Code stipulates that: (Whoever performs an act that is beneficial to a third party without his order, but the court authorized it or obligated him by necessity or ruled by custom, he is considered to be acting on his behalf and the following provisions apply to him).

Article (302) of the Jordanian Civil Code stipulates the following: (The agency rules apply if the employer acknowledges what the curious person has done).

It is clear from these two texts that it is required for the establishment of virtue to have three pillars, and we will divide this topic into three requirements as follows:

The first requirement: the curious performs a material or legal action.

The second requirement: that the work of the curious is in the interest of the employer.

The third requirement: that the curious person should not have performed the work in fulfillment of an obligation upon him.

The first requirement

The curious performs a material or legal act

Article (301) of the aforementioned Jordanian Civil Code referred to carrying out a beneficial act for others, and did not indicate the nature of that act that the person performs, and does this act necessarily have to be material? Or may it be legal, in order to achieve the first pillar of virtue, it is necessary to specify the nature of the work so that we can answer these questions.

As the agency is not permissible only in legal actions. A group of civil law commentators held that virtue can only be found in these actions as well, but the most correct opinion adopted by the judiciary is that the act of inquisitiveness may be a legal act or it may be a material act.

Examples of legal dispositions are many, including that the curious accept a gift issued to the employer, or sell agricultural crops to the employer, which quickly perishes, or pay a tax due on the employer in order to avoid imposing attachment on his money, or accept a condition in the interest of the employer until The conditional is prevented from returning to it. From this,

we see that the legal actions that the nosy person performs may be from the work of the administration, and may be from the acts of disposition. In both cases, it is not required that the curious have full capacity to engage in legal action, but it is sufficient for him to be discerning, as is the case with the agent.

The curious is obligated to follow the rules of proof in his adherence to the legal disposals that he held in his name on the employer, while the employer is not required to follow the rule that proof must be made in writing if the value of the disposal exceeds the quorum of testimony in his relationship with the curious, because the legal disposal for him is considered a material fact, as for examples of actions The material that the curious may undertake, such as extinguishing a fire that broke out in the house of others, or restraining a horse in order to enforce its rider, or harvesting a crop that is feared to be spoiled, or the purity of cultivation from a pest that has infected it.

It is also required for the work that the curious person does for the employer's account to be necessary, whether in that it is a legal act or a material act, and if Article (301) of the Jordanian Civil Code requires the work to be beneficial, then this is not sufficient to justify the interference of the curious in the affairs of It is not permissible for the curious to build in an empty land owned by the employer in order to achieve the exploitation of this land (for example). Rather, the work that the curious does is required to be necessary, and it is so when authorized by the court or required by a state of urgency and compulsion or ruled by custom.

And if the work of the curious does not have the characteristic of necessity, then the employer is not obliged to do it in accordance with the provisions of virtue, even if this work is useful or beneficial, unless the employer approves the intervention of the curious, then the provisions of the agency are followed. Appreciating the attribute of necessity is at the time of intervention, and strictness must be taken when assessing this attribute if the work is not an act of management but rather an act of disposal.

The second requirement

The inquisitive work should be for the benefit of the employer

In order for the work of the curious to be in the interest of the employer, the curious should have the intention of benevolence in the interest of the employer, and that the curious should be released in his work with the intention of achieving the interest of the employer (others), and this intent or intention is what distinguishes between virtue and enrichment without reason.

Here the following question arises, which is whether the inquisitive person's intention was to work for his own benefit, and then it became clear that he was working for the benefit of others, so do the provisions of virtue apply?

To answer that, the lesson is always the intention available on the part of the intervening party. When his intention to work for his own benefit goes away, the characteristic of inquisitiveness ceases from him, and the rulings of virtue do not apply to him, even if it is later discovered that he is doing the work for the benefit of others, such as that possessor of real estate who carries out repairs for his benefit, then it becomes clear that that real estate belongs to someone else. .

The nosy person is the one who works for the interest of the employer (others) and not for the

benefit of himself.

However, if the intention of the intervening party is to work for his own interest, then he is not obsessive, even if his intervention is beneficial to others. In this case, he does not return on the claim of virtue, but rather on the claim of enrichment if its conditions are met. For example, if the tenant makes necessary repairs to the leased property in order to obtain the benefit of the property for himself, then for the landlord it is not considered intrusive because he works in his own interest, and he reverts to the landlord on the claim of enrichment for no reason.

It is possible for the curious to work in his own interest and in the interest of the employer at the same time. If it is necessary for the curious to have the intention to work for the benefit of others, but this intention does not need to be directed to working for the interest of others alone, rather it is permissible for virtue to be achieved even if the curious person while taking over a matter for himself has taken over the affairs of others, because between the two matters between A connection with which one cannot be done separately from the other.

The third requirement

The curious person should not have performed the work in fulfillment of an obligation upon him

In order for virtue to be realized and established, the curious must take over the affairs of others without being a party to doing so. If the intervening party is found to be obligated to do so, it is not considered obsessive-compulsive, whether in this case the source of the obligation is the contract, such as the agency, or it is the source of the law, as is the case in the case of the guardian, trustee, and trustee. The ambulance driver is not entitled to claim compensation for the damage he sustained while transporting the patient, because it is his duty to provide first aid to people.

In application of this, the superior is not considered negligent in compensating the injured party for the damage caused by his subordinate, because he is legally responsible for the act of the superior.

Undoubtedly, the employer's position on the intrusive interference is that the employer does not even know about the inquisitive's interference. This is the prevailing situation, but it happens that he is aware of it, and in this last case the matter does not deviate from one of the following assumptions:

First: If the employer has invited the intervening party to carry out the work, he is not considered a nosy but an agent. The previous agency is like the subsequent declaration, in the sense that if the employer acknowledges the interference of others in his own affairs, whether the third party's interference fulfills the conditions of virtue or not, then with this declaration he becomes an agent, and accordingly Article (302) of the Jordanian Civil Code stipulates that: (The rules of agency apply if The employer acknowledged what the nosy person had done.)

Second: That the employer knows about the interference of the curious and prevents him from carrying out the work or continuing with it, otherwise the employer may recourse against him with a guarantee on the basis of tort liability if his intervention resulted in harm, but if his intervention resulted in a benefit, he has no recourse against the employer except on the claim

of enrichment without reason .

Third: That the employer knows about the interference of the nosy person and then takes a negative stance towards him, that is, he does not oppose or approve of it, and in this case the rules of virtue remain their mandate, and they must be acted upon.

The second topic

Curios provisions

The provisions of the surplus are represented in the obligations incurred by the curious and the employer, in addition to some common issues and provisions related to the eligibility of the two parties to the surplus, and the impact of death on their obligations. We will divide this research into the following demands:

The first requirement: the obligations of the inquisitive.

The second requirement: the obligations of the employer.

The third requirement: the common provisions between the curious and the employer.

The first requirement

Inquisitive commitments

The Jordanian Civil Code defines the obligations of the curious person according to the provisions of Articles (303-306) of it, with many obligations, which we list successively as follows:

First: Proceeding with the work so that the employer can continue with it:

Article (303) of the Jordanian Civil Code stipulates that: (the curious person must continue with the work he started until the employer is able to carry out it himself, and he must also notify the employer of his intervention whenever he is able to do so). The aim of this text is for those who decide to interfere in the affairs of others to act seriously without recklessness or complacency.

Accordingly, the curious remains obligated to carry out the work so that the employer can carry out it himself. If the business owner is unable to start, the curious person is obliged to complete it, whether the work undertaken by the curious person is a physical act or a legal action. In the case of legal disposition, it is assumed that the curious has concluded it in his personal name or in the name of the employer, as he must complete and implement this work if the master of knowledge is unable to do it.

Second: Notifying the curious employer of his intervention:

It appears from the text of Article (303) of the Jordanian Civil Code that the curious must notify the employer of his intervention whenever he is able. The purpose of this obligation is to achieve the employer's knowledge of the curious's interference, and when the employer's knowledge of that is achieved, he has the right and duty to carry out the work himself, which results in the fall of the curious's obligation to continue with the work.

Third: Exerting the care of the ordinary person in carrying out the work:

Article (304) of the Jordanian Civil Code stipulates that: (The inquisitive is responsible for the damages incurred by the employer, and the court may determine the guarantee if the

circumstances justify that). Article (305) of the Jordanian Civil Code stipulates that: (If the curious entrusts another person with all or part of the work, he shall be responsible for the actions of his representative, without prejudice to the right of the employer to refer directly to this representative).

To check that the curious has made his first commitment to carry on with the business he has undertaken usually refers to the standard of the layman. As long as the commitment of the curious is not an obligation to achieve a result, but rather to exert care, the curious is not obligated to exert in the work except the care of the usual person. In the sense that the curious should exercise the care that an ordinary person who is in the same circumstances does, otherwise he will be considered responsible for the damages that befall the employer, because the principle is that he is not legally bound to interfere in the affairs of others, whatever the necessity. average person. The damages that may be caused to the employer may result from the negligence of the curious in taking the necessary care to carry out the work or his failure to preserve the money of the employer after carrying out the work and it is governed by the rules of tort liability.

In the case if the subordinate entrusts all or some of the work to another, he is responsible for the actions of his deputy before the employer on the basis of the responsibility of the subordinate for the actions of his subordinate. But this does not prevent the employer from referring directly to the nosy deputy.

Fourth: The curious presents an account to the employer and returns what he seized because of the extravagance:

Article (306) stipulates that the curious person is obligated to do what the agent is obligated to return what he seized because of the extravagance and submit an account for what he did).

And Article (846) of the Jordanian Civil Code stipulates that: (The money that the agent receives for the account of his client is considered as a deposit. If it perishes in his possession without transgression or negligence, then there is no guarantee for him).

He concludes from these texts that the curious person is considered as an agent in the money he receives for the employer while he is in charge of the latter's business, as if he sold a movable property that is quickly damaged, so he is obliged to return everything he earned for the account of the principal, whether the agent works for the account of the principal or works in his personal name. If the agent does not return what he has of money to the principal and disposes of it or uses it for his own benefit, then he has enriched at the expense of the principal for no reason. And the money that the agent or the curious person receives for the account of the employer is considered as a deposit, and he does not guarantee it unless he transgresses it or falls short in keeping it.

The second requirement

Employer obligations

Article (307) of the Jordanian Civil Code stipulates that: (The employer must implement the undertakings that he has committed to, and reimburse him for the necessary and beneficial expenses justified by the circumstances, and compensate him for the damage incurred by him

as a result of his work. his business his profession). According to this article, the employer has four obligations, which are as follows:

First: The employer's obligations to implement the undertakings made by the curious person on his behalf:

If the curious person's execution of his work requires the conclusion of legal actions, the effects of these actions return directly to the employer, and he becomes the creditor and the debtor, in accordance with the rules of representation that apply to surpluses according to Articles (301) and (302) of the Jordanian Civil Code. If the curious person contracts with a third party in his own name, he remains obligated towards him to implement the obligations that arise from that, and the curious person has the right to return after their implementation to the employer.

Second: Obligation to compensate the curious for the damage he sustained:

If the curious person suffers damage as a result of his work for the benefit of the employer, such as if he suffers a physical harm while extinguishing the fire that broke out in his neighbor's house, or his equipment was damaged during that, and it was not possible to avoid this perception by making a reasonable effort, the curious person has the right to claim compensation for these damages to Employer .

Third: The Employer's Obligation to Refund Necessary and Useful Expenses:

The business owner is obligated to reimburse the necessary expenses incurred by the curious person, in addition to the legal benefits, from the day of the notification and the judicial claim thereof. And the obligation of the Lord of knowledge to return the necessary and useful expenses is obligatory, even if spending them does not result in the desired result, noting that there is no exaggeration on the part of the curious in spending the beneficial expenses.

Fourth: Paying the wages to the curious if the work he did falls within his profession:

As for wages, the employer is not obligated in the Jordanian civil law to pay wages to the curious in return for doing extravagant work. The principle is that the employer does not pay wages to the curious, unless the work falls within the scope of his profession, as is the case with a doctor who treats a sick or injured person, or an engineer. If he undertakes the restoration of a property, then he has the right to be rented for this work.

The third requirement

Common provisions between the curious and the employer

The curious share with the employer certain provisions that apply to both of them, namely the provisions of eligibility and the provisions of death, and we will explain that as follows:

First: Eligibility Rule:

The Jordanian legislator neglected to mention eligibility in the scope of virtue. This means that he referred us to the general rules. And since the Jordanian legislator has subjected the work of the curious to the rules of agency, the curious person may be incapacitated, aware and discerning, and in this hypothesis he is able to perform the work in the interest of the employer, whether this work is material or legal, provided that the latter concludes in the name of the employer and not in his own name. profile. As for the actions that the nosy person enters into in his personal name, for their validity, he must have the necessary performance capacity for

these actions.

As for the employer, he is not required to be competent to perform, rather he may be indiscriminate and cognizant, because the rules of eligibility are decided to protect the indiscriminate from the actions emanating from him, not from the obligations that arise in his responsibility apart from his will, and this is what applies to virtue where the obligations arise in it. The employer is owed by law. However, if the curious performs transactions in the name and on behalf of the employer, the employer must have the necessary performance capacity to conclude such disposal, in application of the general rules.

Second: The case of death:

Article (308) of the Jordanian Civil Code stipulates that: (1- If the curious person dies, his heirs are bound by what the agent's heirs are bound by upon the termination of the agency with the death of the agent. 2- If the employer dies, the curious person remains committed to the heirs with what he was committed to towards their inheritor).

Article (4/862) of the Civil Code stipulates that: (The agency ends with the death of the agent or his disqualification, even if the agency relates to the right of a third party. However, the heir or the guardian, if he knows about the agency and has the capacity, must notify the principal of the death and take the necessary measures. The case is in the interest of the client).

It is clear from this that the virtue ends with the death of the beneficiary, just as the agency expires with the death of the agent, but the heir of the curious or the guardian of the heir, if he is fully competent and aware of the beneficiary, arises a personal obligation to notify the employer of the death of the bequeather and to take the necessary measures for the interest of the beneficiary work until the latter can direct the matter himself. On the other hand, the business owner remains committed to the heirs of the inquisitive with the same obligations that he assumed in the face of their inheritors.

But if the employer dies, unlike the agency that expires with the death of the principal, because it is based on the personal consideration of its parties, the surplus does not end with the death of the employer. Virtue does not arise from a contract, but rather from a material fact, which is the establishment of the curious regarding an urgent and necessary matter for the employer. Therefore, the death of the employer does not affect the obligations of the curious who remains committed towards the heirs with what he was committed to towards their inheritor. Likewise, the death of the employer does not affect his obligations, as they are transferred to his heirs, and they are bound by them in the face of the curious, but within the limits of the estate.

The third topic

Evaluation of the position of the Jordanian civil law on the curios

Needless to say, the Jordanian legislator has defined the virtue as an agency contract. The approval of the employer for the work of the curious person is considered by virtue of the subsequent authorization for the behavior of the curious person. Article (302) was clear in likening virtue to agency, as it stipulated that: (The rules of agency apply if the employer acknowledges what the curiosity has done).

We do not agree with this direction of the Jordanian legislator for the following reasons:

First: The employer is obligated, according to the text of Article No. (307) of the Civil Code, to the curious with the obligations specified by the law, whether he approves of the work or not. Whereas, the rules of agency do not require that, rather the matter depends on his authorization. If he authorizes the work, it is executed against him, and if he does not authorize it, all obligation falls from him.

Second: The work done by the curious is a material act and not a legal act in which his will replaces the will of the employer, as is the case in the agency contract.

Third: When the Jordanian legislator codified the rules of virtue on the basis of general principles that govern the return of the poor to the rich man on the pretext of earning without reason, he gave it a broad concept. Therefore, it can be said that the provisions of virtue in the Jordanian civil law do not express a mere special application of the applications of the beneficial act (Earning without reason), but expresses in most of its aspects the general principles that govern this principle, although the Jordanian legislator has mentioned it as an application of the beneficial action.

Fourth: The virtue in the Jordanian civil law does not turn into an agency with the employer's approval of it. Rather, the agency rules apply, if the employer acknowledges what the curious has done for his account, and the work remains a virtue that has its nature, conditions and characteristics.

Conclusion

Praise and thanks be to God Almighty, and after completing the writing of the research, and its title is Ahkaam al-Fadalah as one of the applications of the beneficial verb (enrichment without reason) in the Jordanian Civil Law, and I have reached a set of results and recommendations, which we list as follows:

1- There is a confusion between material work and the legal action that the curious performs in the interest of the employer on the one hand, and defining the curious work with material, illegal actions on the other hand. The curious, as he performs the material actions, performs the legal actions of the employer.

2- The Jordanian legislator adopted the broad concept of virtue, and it is not necessary that the work that the curious performs, whether material or a legal act in favor of the employer, be an urgent and necessary matter, but rather it is sufficient for it to be useful and beneficial.

3- If the intervention of a third party results in a benefit that is returned to the employer, then the third party may have a recourse against him on the pretext of the beneficial act (enrichment without reason).

4- The virtue does not become an agency once it is approved by the employer, especially if the work is material. Rather, the meaning is that the employer seems to have adopted the work done by the curious, regardless of its nature, whether it was material or legal.

Needless to say, the Jordanian legislator has defined the virtue as an agency contract. The approval of the employer for the work of the curious person is considered by virtue of the subsequent authorization for the behavior of the curious person. Article (302) was clear in likening virtue to agency, as it stipulated that: (The rules of agency apply if the employer acknowledges what the curiosity has done).

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2- The Jordanian legislator adopted the broad concept of virtue, and it is not necessary that the work that the curious performs, whether material or a legal act in favor of the employer, be an urgent and necessary matter, but rather it is sufficient for it to be useful and beneficial.

3- If the intervention of a third party results in a benefit that is returned to the employer, then the third party may have a recourse against him on the pretext of the beneficial act (enrichment without reason).

4- The virtue does not become an agency once it is approved by the employer, especially if the work is material. Rather, the meaning is that the employer seems to have adopted the work done by the curious, regardless of its nature, whether it was material or legal.

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