

THE MOTIVE AND ITS EFFECT ON PERSONAL STATUS CONTRACTS

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ABSTRACT: Every action that a human being makes that is carried out in his daily life , has an inner motive and an impulse that makes him do those very actions in order to reach his goals and purposes that satisfy his desires and meet his Interests . Only our Almighty God is the one who knows the human soul and the actions they have done. And as long as Allah his praise and exalted has lifted from the people what they have done to themselves as in the Hadith of the Prophet "God exceeded me from my nation and what is whispered in them , unless it works or spoke"(1) Only that depends on not speaking of those whispers or the attempt on doing them , Only at the same time Allah has established a practical rule and a clear path that can be followed by the Prophet which is in the Prophet's hadith (peace and blessings of Allah be upon him) : "But acts are by intentions" (2) , where it shows through this hadith that every act and say to the human being depends on the intention in terms of solution and sanctity and intention, as it is the case for the motive and its importance in the disclosure of the hidden intentions .In fact, the theory of motivation has received great interest In Islamic Fiqh , where Islamic law has been credited Establishing the rules of this theory before the status of laws known as after a very long time under the concept of theoretical reason. Since personal status contracts are not like other contracts that relate only to one side, the material aspect, which can be repaired and re-concluded again or compensation for the damage caused to the contractors. However, personal status contracts are not only related to the material aspect but also to the aspect of community formation. The personal characteristics of the contractors are related to the composition of the family and the rights and duties that are considered as seeds to create a community . Studying the motive is therefore of great importance in maintaining the contracts from manipulation and confusion that leads to the uncertainty of the contractors when the conclusion of these contracts, and thus we reach the result of the protection of society and individuals alike. For all these reasons, this was an my reason for considering the personal situation of people in terms of health and invalidity, considering that all previous studies dealt with motivation and its relation with contracts in general and not personal status contracts.

Keywords: personal status contracts , Motive

1-INTRODUCTION

Every action that a human being makes that is carried out in his daily life , has an inner motive and an impulse that makes him do those very actions in order to reach his goals and purposes that satisfy his desires and meet his Interests .

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Only that depends on not speaking of those whispers or the attempt on doing them , Only at the same time Allah has established a practical rule and a clear path that can be followed by the Prophet which is in the Prophet's hadith (peace and blessings of Allah be upon him) : "But acts are by intentions" (2) , where it shows through this hadith that every act and say to the human being depends on the intention in terms of solution and sanctity and intention, as it is the case for the motive and its importance in the disclosure of the hidden intentions .In fact, the theory of motivation has received great interest In Islamic Fiqh , where Islamic law has been credited Establishing the rules of this theory before the status of laws known as after a very long time under the concept of theoretical reason. Since personal status contracts are not like other contracts that relate only to one side, the material aspect, which can be repaired and re-concluded again or compensation for the damage caused to the

contractors. However, personal status contracts are not only related to the material aspect but also to the aspect of community formation. The personal characteristics of the contractors are related to the composition of the family and the rights and duties that are considered as seeds to create a community.

Studying the motive is therefore of great importance in maintaining the contracts from manipulation and confusion that leads to the uncertainty of the contractors when the conclusion of these contracts, and thus we reach the result of the protection of society and individuals alike.

For all these reasons, this was an my reason for considering the personal situation of people in terms of health and invalidity, considering that all previous studies dealt with motivation and its relation with contracts in general and not personal status contracts. Personal conditions that have personal and financial effects at the same time are the issue of conclusion of the marriage contract and ways of disintegration and the extent of the impact of the illegal promoter.

2- Research Questions

For this reason, the study answer for the following Questions :

1. What is the difference between the term motive and other suspected terms ?
2. What is the effect of the motivation on the ways of marriage and its deterioration in terms of health and invalidity?
3. What is the effect of the inducement on the ways of dissolving the marriage contract ?

3- Methodology

The first topic The concept of motivation and its controls and evidence.

First requirement Definition of the promoter.

Section I: The linguistic definition of the motive.

There are many meanings in the language, including: "the sending, the impulse, the awakening".

An example: We say: From his mission, send him any sent (1), and emit the thing: which rushed to (2), and sent the dead: any deployment on the day of the Baath, saying Almighty: Hajj Hajj Khaj prison (3), said Imam al-Tabari: I greet you after what you were in death "(4), and also said: Send it from his people: awaken him and alert him (5).

Section II: Emitter Terminology.

The motive can be defined as a "motive that drives the creator's will to act to an indirect purpose".

Dr. Wahba al-Zuhaili defined him as: "the distant motive that led the contractor to the contract".

1. "Narrated by al-Bukhaari in his Saheeh, Muhib al-Din al-Khatib, the Salafist printing press and its library, Cairo, 1, 1400 AH, c. 2, p. 215, Hadith No. (6315).
2. (Narrated by Muslim in his Saheeh, Muslim bin Hajjaj Nisabouri, Press Ali Egypt, C 3, p. 1516, the number of hadith (1907)

Through these previous definitions, we may know the motive as: "an external stimuli that drives the impulse and helps it to carry out a specific voluntary behavior abroad."

The second requirement The difference between the term motive and the suspected terms.

Islam have used some terms such as intention and motive , and they wanted to motivate them in some of their writings and at first glance, we find that synonyms, but when the audit shows some differences and this is what we will show in this requirement.

Section I: The difference between motivation and intention.

The difference between motivation and intention can be clarified by shedding light on the linguistic and theological meaning of the intention, thus creating the difference between them and the motive

First: Intention Language: Intention is taken from the intention of: I intend (1), and intended the intention to intend intention: intention and resolve to (2), intention: the face that is intended and intended (3), intention: the direction of self towards work (4).

Secondly: Intention as a term.

Many of the definitions of the scholars have responded to the intention of a convention that is identical to its linguistic meaning. One of these definitions is the definition of Imam al-Qarafi, which he defined as "man's intention with his heart what he wants to do." (5)

Imam al-Ghazali (may Allah have mercy on him) considered the intention to be identical to the will and the intention, as he considered it to have the same meaning. The intention was defined as "the medium, the will and the resurrection of the soul by reason of desire and inclination to what is acceptable to the purpose either immediately or in the future" (6) .

Through these definitions it can be said that the intention is: "my heart action precedes any action done by man."

The intention, though used by scientists, is synonymous with emulation in many places, especially in terms of language, but it differs from the motive in terms of linguistic and standard definition. The intention is the tendency of the soul and its direction to work, while the motive is the driving motivation of this tendency. Also, the motive in the contracts to be discussed in this subject is (the wrongful motive) either that there is a contract or corruption or invalidity or that it has no effect on it.

- (1)The arbitrator and the vast majority, Ali bin Sidah, investigation: Abdul Hamid Hindawi, Dar al-Kuttab al-Alami, 1, 1421 AH-2000M, C 2, p.
- (2) Al-Ain: Abi Abdul Rahman Al-Farahidi, Investigation: Mahdi Al-Makhzoumi and Ibrahim Al-Samarrai, Al-Hilal Library House, 2 p 112. (Surat al-Baqarah, verse 56).
- (3) Al-Bayan al-Bayan on the interpretation of the Qur'an, Muhammad bin Jarir bin Yazid ibn Katheer Abu Jaafar al-Tabari, investigation: Abdullah bin Abdul-Mohsen al-Turki, Cairo, Dar Hager for printing, publishing, distribution and advertising, 1422 H-2001, c1, p. 290.
- (4) Al-Zamakhshri, The Investigation of Muhammad Basil Al-Sudoor, Dar al-Kuttab al-Siyoumi, Beirut, Lebanon, 1, 1419 AH, 1998, p. 1, p. 66.
- (5) (The theory of abuse in the use of the right, Fathi al-Darini, the institution of the message, Beirut, I 2, 1977-1937, p. 207. (Islamic jurisprudence and its evidence, Wahba al-Zuhaili, Dar al-Fikr, Syria - Damascus, 4, 1, p. 146.

It is contrary to the intention as the intention exists in each of the actions of the human is the specific if they are pure to God, or involve with him others, then they are true or may be corrupt.

Section II: Difference between motivation and intent.

We also highlighted the difference between motivation and intention in the previous few lines until we show what is the difference between them. We will also highlight the linguistic and theological meaning of the intention to find the difference between them.

First: the intent as language.

The intent is to straighten the way and bring the thing, and its purpose is intended: we look towards it, and the intention in the thing: the excess is between the excesses and the scattering (1).

Second: The intention is a term.

Shaykh al-Qarafi (may Allaah have mercy on him) defined him as "the will of the act if he finds it only, and if he presents it with a time he has not intentionally designated." (2)

Therefore, it can be said that intention is one of the stages of will. It is the intention to do or the will of a particular thing, and so it is similar to intention and determination. They are also stages of the will, and this is all other than the motivation.(3)

(1) Al-Zaher in Gharib al-Faz al-Shafi'i, Muhammad al-Azhari, Investigation: Abdel-Moneim Toubi Bashtaty, Dar al-Bashaar Islamic, Beirut-Lebanon, 1, 1419 AH-1998, p.

(2) Dictionary of the Mediator, Ibrahim Mustafa, Ahmed Zayat, Hamed Abdul Qader Mohammed Najjar, investigation of the Arabic language complex, Dar Dawa, c 2, p. 965.

(3) Dictionary of Language Standards, Abu Hussein bin Fares, investigation: Abdul Salam Mohammed Harun, Dar al-Fikr, 1399 AH-1979M, C 5, p. 366.

(4) Median lexicon, same source, c 2, p. 966.

(5) Ammunition, Shahabuddeen Ahmed bin Idris al-Qarafi,

Investigation of Muhammad Hajji, Dar al-Gharb al-Islami, I 1, 1994, c 1, p. 240.

(6) Revival of the Sciences of Religion, Abu Hamid al-Ghazali, and Bahamshh singer of carrying books in the graduation of the neighborhoods of news, to Abi al-Fadl Abdul Rahim Iraqi, Dar al-Fikr, c 4 p 309, p. 310.

To bring the picture closer, for example,

This is a stage of will, but this marriage may be for a hidden purpose such as analysis of this woman to her husband Here is this motivation is outside the stage of will.(4)

Other differences can be found between motivation, intention and purpose. We can reveal intent and intention, but we can not reveal the motive. The intent and intention are one and the same, while the emitter may be multiple from one behavior to another and from one person to another.(1)

Third requirement : Legitimate evidence of the motive

In this requirement I will list the evidence that the jurists have drawn on the motive of the Holy Quran and Sunnah as follows:

Section I: Evidence from the Holy Quran.

The Almighty said: "The Almighty has made it clear to him that he has been subjected to a sin, and then he has made a pilgrimage to Mecca, and he has taken a deep breath, which is a sacrifice of a great mass."(2)

The verse speaks of the child's breast after the separation of his parents, which prevents and forbids both spouses intended to harm the other (3) There are several actions are behind the motives of the haram are intended to damage and the owner arbitrarily use it right.

For example, if the wife asks for more than the other's wages in return for breastfeeding, the husband is entitled to rent another nursing home.

Section II: Evidence from the Prophetic Sunnah.

The hadith of the Prophet (peace and blessings of Allaah be upon him): "But deeds are by intentions, and every man has what he intended.(4)

This talk shows that the corruption and integrity of the work is linked to the inducement, if the motivation to work honest was good work and if the motivation to work is illegal and the work is bad and invalid.

Fourth requirement: Controls of knowledge of the motive .

In this requirement I will address the subject of controls developed by the jurists of the motive , through which it is possible to know whether the motive is legitimate and if the motive is illegal.

(1)Lsan al-Arab, Ibn Manzoor, Abu al-Fadl Jamal al-Din, Dar Sader and Beirut House for Printing and Publishing, 1388 H-1968, C 5, p. 3642.

(2)Ahmad bin Idris al-Qarafi Abu al-Abbas, Investigator: Mu'assid bin Qasim al-Faleh, Al-Haramain Library, Publishing Year 1408 AH-1988, I, Vol. 1, p. 221.

(3)Kuwait Encyclopedia of Jurisprudence, Ministry of Awqaf and Islamic Affairs, Kuwait, 1, 1425 AH-2004, C 42, p.

(4)The theory of motivation in Islamic law and positive

law, Halima Ait Hamoudi, Dar al-Haditha, Beirut, 1, p.

Since the motivator is a hidden self-rule that can not be viewed, and therefore it is not a pillar or a condition on which the validity or invalidity of the contract depends, the views of the jurists differed as to the motivation and therefore they had two directions, one of which dominated the objective view and the second highlighted the subjective tendency. The position of Iraqi law on these theories.

Section I: Objectivism.

The owners of this trend are Hana'is and Shaafa'is. According to this trend, there is no effect on the contracts and actions in terms of health and non-existence. The contracts and actions are correct unless they are declared in the form of the wrongful motive to conclude them, or know the nature of the contract.(1) Al-Shaafa'i (may Allaah have mercy on him) said: "Because the intention is to talk with oneself, and Allaah has set the people apart from what they themselves have done. He may intend to do something, do not do it, intend it, and do it."(2) . Accordingly, they allow the marriage of analysis if the intention of analysis is not mentioned during the contract. Al-Kasani, may God have mercy on him, says: "... if she marries another husband, and she intends to analyze it, The first is to say all of them, because the mere intention of the benefits is not considered valid and the marriage is valid, so that the ribbons of health will be collected for the first time, as if the timing and other corrupt meanings were intended.(3)

Section II: Autobiography.

This trend is supported by the scholars of the Malikites (Hanbalis) and Al-Dhahriya (1)(4)(5)

On the basis of their opinion, if the act includes an illegal charge that the other party knows or can know, it is nullified. In other words, every contract included an illegal invention, and even if it is not mentioned in the contract, it is invalidated by its sufficiency and a precaution to prevent the corruptor.

(1)The theory of motivation in Islamic law and positive law, same source, p.

(2)Al-Baqarah, verse 233.

(3) Al-Mabsout, Muhammad ibn Ahmad ibn Abi Sahl Shams al-Umma al-Sarkhasi, (deceased 483 AH), Beirut, Dar al-Maarifah, 1414 AH-1993, p. 5, p. 208.

(4) (Narrated by Muslim in his Saheeh, Muslim bin Hajjaj Nisabouri, Mohamed Ali Press, Egypt, C 3, p. 1516, talk no. 1907.

Section III: The position of Iraqi law from the jurisprudential controls to determine the legitimacy of the motive. After reviewing the jurisprudential trends on the controls through which we can know the legitimacy of the motive or not, we must in this requirement to show the position of Iraqi law of these controls in the sense whether the Iraqi law has taken the substantive or subjective.

To answer this question, there was a need for a quick review of the cause of the law and a description of the theories that explained the reason for the commitment, whether it is the direct purpose or the motive. For conventional theory, the reason is the causal reason (the direct purpose) which the obligor intends to reach from behind his or her commitment.

This is the reason why this theory stands and considers it to be one of the pillars of commitment(1).

Modern theory is the driving force behind contracting.

The proponents of this theory have stipulated two conditions in the reason why it is legitimate.

The second condition is to inform the other party of the wrongful reason.

Latin laws such as Italian and French law have taken the theory of modern reason, and in this they agree with the Maalikis, Hanbalis and the Umayyad - the self-proponents - who teach the illegitimate motive to invalidate the illegal (2). The German law - objectively - does not complicate the illegal motive unless it is authorized in the contract and this is consistent with the Hanafi and Shafi'i doctrine (3).

As for the position of the Iraqi legislator, he went on to say that there is a double reason. He is once attributed to commitment in the traditional sense, and he attributes it again to the contract (meaning emitter). In the second paragraph of Article (123) of the Iraqi Civil Code is considered a reason for the obligation, where it states: "Every obligation is presumed to have a legitimate cause, even if this reason is not mentioned in the contract unless otherwise indicated by the evidence"(1). And then returned in the third paragraph of the same article, considering it a reason for the contract in saying: "3 - If the reason cited in the contract is considered to be the real reason for evidence to be contrary to that(2).

(1)(Local), Ali Ibn Hazm, the investigation of Muhammad Munir Damashqi, print management Almnirh in 1351 AH, C 9, pp. 29-30.

(2) (The mediator in explaining the civil law, Abdul Razzaq al-Sanhuri, Dar al-Nahda al-Arabiya, 1963, p. 463.

(3) (Hakim, brief in the theory of commitment in Iraqi civil law, Baghdad, Press Higher Education, 1986, 3 p. 103.

In the sense that it is based on both theories (traditional and modern). However, the position of the Iraqi judiciary clearly tends to adopt modern theory. In a judgment of the Court of Cassation in this sense, the following is stated: "It is true in the law that the reason is the motive for contracting and the motive is not valid unless it is agreed between the contractors. The buyer to the contract is illegal and the seller does not know it is not counted".

The second topic

The effect of the inducement on the methods of marriage and its deterioration in terms of health and invalidity. There are no doubt that the personal status issues are many and varied as they relate to the provisions and principles governing the relations within the family, including the provisions of engagement and marriage, dowry, marital maintenance and duties towards her husband, divorce, separation of the judge between spouses, divorce and inheritance, custody and custody of children. . In the definition of the term personal status,

Professor Mohammed Al-Shafei was well-known as the "calendar of rules pertaining to status and eligibility and all family relations, personal and financial, as well as commandments, inheritances and gifts (3)

But I tried to limit the statement of the effect of the motive on the methods of marriage and ways of dissolution only and divided into two requirements: A special requirement for the matters of the conclusion and conclusion of the marriage contract, and a special requirement for its dissolution. The general view of the fuqaha 'is that it is haraam to give khutbah to the khutbah. It was narrated that Ibn 'Umar (may Allaah be pleased with him) said about the Prophet (peace and blessings of Allaah be upon him) said: "Do not sell a man to sell his brother.

However, the majority of fuqaha (1)have stipulated a number of conditions if it is possible to forbid the man's speech to his brother's (2):

(1)Abdul Majid al-Bakri, Al-Wakiz in the Theory of Commitment in Iraqi Civil Law, Legal Library, Baghdad, 2017, p.

(2)(Decision of the Iraqi Court of Cassation No. 654 / H / 967, Journal of Judiciary, January 1968, p.

(3) (Family Provisions in the Light of the Personal Status Code, Muhammad Al-Shafei, Al-Maaref Al-Jadeeda Press, 1993, p.

First, there should be a previous sermon and a later sermon.

Second: The first sermon should be a legitimate reward.

Third: The second suitor should be aware of the first sermon.

The fourth condition is that the previous sermon is still present(3).

In this way, we observe that one of the conditions of the prohibition of khutbah on the khutbah is that of the second sermon of the first sermon, that there is an intention or an illegitimate embezzlement that the second suitor has sought the khutbah to annul the marriage of the fiancee so that he may marry her or he may not marry her. Or envy or revenge, and these things lead to the corruption of relations between people.

This is contrary to the purposes of Islamic law as in the verse(1)

As for the position of the Iraqi legislator on this subject, he did not address it, although the second part of this law is devoted to the prohibition of marriage, leaving it to the provisions of Islamic jurisprudence. Article 1 (2) states: "If there is no legislative text, Of the provisions of this law).

Second: The khutbah in the 'Aida.

The woman who is waiting for the period specified by al-Shar'a to wait for her without marriage after the division between her and her husband, if the division is due to divorce, it is a litigated divorce, whether divorce or retribution or a minor or minor ignorance.

As for the sermon of the aggressor from a divorce, the scholars agreed that it is haraam to expiate a woman's divorce from a divorce by means of divorce, not by way of declaration or by way of expiation.(2)

There is no doubt that in this prohibition is only to prevent the illegal motive that may lead this aggressor to refuse to return to her husband (divorced) in anticipation of marrying her marriage, as this may also exist illegal motive in the second suitor who wants this speech spoil This wife is divorced from

her husband and he does not marry her and therefore she is facing two things. First, divorce her from the first, and the second is to miss the marriage of the suitor. There is no doubt that these things lead to hostility and hatred among the people.

As for the sermon of the aggressor from the divorce of a minor Bainouna.

The fuqaha (3) 'have agreed that it is haraam to allow a woman to divorce a woman from a minor divorce.

As for exposing her sermon, the fuqaha 'differed on this to two points:

The first view is that the majority of fuqaha '(scholars) have said that it is permissible to expiate the sermon of the deceased from a minor dispute.

This is contrary to the purposes of Islamic law as in the verse(1)

As for the second view: it is for the Alhanafia (2) and the Shaafa'is (3)

and the Hanbalis(4) which emphasizes the inviolability of exposure.

As for the relationship of the wrongful motive to the sermon of the aggressor in this divorce, it turns out that this sermon has led to enmity and hatred between the suitor and the first husband because he has given the husband the opportunity to go back to his wife and he may not marry her.

Moreover, it is permissible to leave the khutbah in a manner that is corrupt, and it is obligatory for the divorced woman to tell her that she has finished her period in order to marry the suitor.

As for the sermon of the deceased from a great divorce, it is agreed by the fuqaha (5) that it is forbidden to make a statement about the marriage contract, because the declaration of her marriage is not possible except for marriage.

As for the hadith of death, there is no harm from exposing the hadith of the woman who died from her death, and this is what the majority of fuqaha 'have (6).

As for the declaration of the speech (1) , they agreed that it is haraam to prevent the harm caused by the illegitimate motive of this statement, because this would harm the family of the deceased husband and his relatives and may lead to enmity between the suitor and the deceased husband's family. The case to the antagonism by the family of the deceased husband and hatred of her as she did not respect her promise and may lead to ill-treatment during a few of the restrictions on maintenance and housing as a duty towards them, while at the same time acceptance of the sermon during the kit will expose them to bad words and suspicions and doubts Of people, and so care to carry it and offer to the heirs of the dead Islam denied permission to speak.

(1)The beginning of al-Mujtahid, and the end of the frugal, Abu al-Walid Muhammad ibn Ahmad Ibn Muhammad Ibn Rushd, Mustapha al-Istiqama, Cairo, 1938, Al-Kafi, Abu Abdullah Muhammad ibn Ahmad al-Ansari, published by Dar al-Kuttab al-Arabi for printing and publishing 1387 AH-1967, J2 / 521,

persuasion, Shams al-Din Muhammad ibn Ahmad al-Sherbini, Mustafa al-Halabi Press, 1940,

(2)(Saheeh Muslim, p. 5, p. 212, source previously mentioned

(3)(Introduction to the marriage contract and the sermon in jurisprudence and law, Dr. Jamil Fakhri Mohammed Jassim, Dar Al-Hamed Publishing, Amman, Jordan, 2009, p. 82.

As for the position of the Iraqi legislator of this type, article 13 of the Iraqi Personal Status Law No. 188 of 1959 amending the prohibition of the abuser's sermon states: "... and the temporary, the combination of wives over four, That is, those who were engaged in the right of others to be the wife of another, actually or ruled that they are still in the kit can not be addressed and several here a divorce or several deaths alike.

3 - To abandon the khutbah: Undoubtedly the abrogation of the khutbah is a legitimate right of the parties, but it may be misused as if one of the parties modifies the sermon without a reasonable reason, or with the intention of harming the other party, so that there is no abuse of this right. We return to the criteria that show whether there is arbitrary in or not and these criteria:

A - The standard of intent to damage: The purpose of the damage of the fair appears if one of the suitors modified the engagement to defame the reputation of the other party, as shown by the presumption of assigning the other party things such as asking the finance of the fiancee to leave work or ask the betrothed of the suitor to transfer his job to the place of residence and has the inherent desire In the end of the sermon (), this is considered as personal or subjective criteria.

B - the standard of gross harm: It is a physical objective criteria for example by that the finance and married finance and his desire to complete the marriage after finishing his studies and be inspired that He pays her part of the dowry and confirms his desire to complete the marriage from time to time. If he returns from study after four years, for example, he is not able to perform the khutbah. Desire (2)

Hence, it is clear the effect of the illegal motive in the matter of abandoning the khutbah in terms of the existence of (intent to harm and the criterion of gross harm).

As for the position of the Iraqi legislator on this subject, it is considered that the mere abandonment of the sermon does not arise to be a cause of compensation, that is to say, it is regarded as a right of the person who addressed it, but at the same time it has taken the objective and personal criterion in that it is recognized if the tort is associated with material or moral damage The parties may award compensation in accordance with the provisions of tort.

(1)Surat Al-Khorat, verse 10).

(2) Narrated by al-Muhajaj, al-Sharbini, 3, 135-136, al-Mughni, Ibn Qudaamah 7/525.

(3) p. 135, Mughni, Ibn Qudaamah, Ibid., C. 7, pp. 524-525. , Al-Mahli, Ibn Hazm, p. 167.

Section II: Marriage of the patient death disease.

There is no doubt that the origin of a person is to marry in normal circumstances when he is properly recovered from any disease or obstacle that prevents him from marrying either mentally or physically, then the contract is valid and all its effects are legitimate, but the exception in some unusual

circumstances is that the person complicates His marriage is suffering from a disease feared death, what is the rule of marriage in this case and is there a link or link to the illegal promoter? This is what I will explain in this section, but first I have to clarify the meaning of marriage first and then the meaning of the disease of death and then show the link with the illegal promoter.

The definition of marriage is defined in Article 3 (1), P 2 of the Iraqi Personal Status Code (1): Marriage is a contract between a man and a woman who is legally entitled to establish a bond of common life and offspring.

Through this definition, it is clear that the purpose of the marriage contract is multiple:

1. Establishment of a joint life between men and women.
- 2 - descendants
3. Psychological and physical pleasure.
4. Save the offer.

5 - self-realization and completion of the couple characteristics (1) As for the disease of death: The concept of death disease has several definitions, including: "The patient is meant to die from the death of most likely" (2). As for the opinions of the jurists regarding the validity of the marriage of the patient, there is a lot of sayings of the scholars. The Hanafis (3), the Shaafa'is(4) (Hanbalis)(5), and the Hanbalis regarded the marriage of the patient as a true disease, and they inherit the woman.

As for the Malikis, they went on to say that this marriage is not valid. If a man marries a woman who is sick and dies, she has a dowry, if she is touched by any income and no inheritance from it. If he dies, he is touched and has no dowry or inheritance. (6).

As for the opinion of the Iraqi legislator on the marriage of the patient, the death of the deceased Iraqi law did not mention the issue of the marriage of the patient, except for what was stated in paragraph (2) of Article (10)

Which deals with the administrative aspects of marriage, where this paragraph stipulated that "the statement is rejected by a medical report that supports the safety of spouses of communicable diseases and health contraindications and other documents required by law.

The unintended effect of marriage on death is: By reviewing the opinions of the Muslim jurists on this issue, we found that the Malikis had done the illegal motive to nullify this marriage. It is clear here that the patient does not need to marry in this case and can not achieve the goals that exist in the marriage mentioned above, Unless there is an illegal motive to pay for the completion of this marriage and is an attempt to introduce and renew the original heirs and the legitimate right to inheritance and this was the ban approved by the Malikis in order to preserve the rights of the heirs.

Section III: Marriage Analysis (Analyst).

It is known that the intention of the couple to marry is to build a continuous family forever and give birth to offspring, and other purposes to be achieved from marriage, but sometimes there may be other purposes contrary to the provisions of Sharia, such as analysis of the wife of her husband, who divorced three, so we can

know the terminology As "the absolute analysis of three of her husband who divorced her" (1).

This definition was agreed upon by Ibn Manzoor, who is of the same language as the same definition. He said: "A man should divorce his wife three times and marry another man who is required to divorce her after placing her for the first husband (2)

(1)The same source, the singer, Ibn Qudaamah, the same source, c 7, pp. 524-525, Ibn Hazm, al-Muhaili, p. 167, same source.

(2)((Bdayd al-Sanayeh in the order of the laws, al-Kasani, c. 3, pp. 541-542, same source.

(3)(The polite in the jurisprudence of Shafi'i, Abu Ishaq Shirazi, the investigation of Zakaria Omirat, Dar al-Kuttab al-Sulti, Beirut-Lebanon, I, 1416H-1995M, C 2, p. 448.

(4) (The singer, Ibn Qudaamah, c 7, p. 525, same source.

(5) (Ibidin Ibn Abidin, Muhammad Amin, Ibn Abidin, Dar al-Fikr edition, Beirut, C2, p. 682, al-Sharh al-Saghir, al-Dardir, Ibid., P. P. 136, Singer, Ibn Qudaamah, c. 7, source cited above, pp. 524-525, Ibn Hazm, al-Mahli, c 9 p. 197, source.

(6) The same source, Al-Sherbini, C3, the same source, Al-Mughni, the same source, Ibn Qudaamah, J 7, pp. 524-525, P. 131, local, same source, c 9, p. 167.

As for the opinions of the jurists in this type of marriage, I consider him a Hanafis (3) marriage makrooh and quoted that the Prophet had called him (an analyst) testified to the validity of marriage if it was corrupt for what he called (analyst).

The rest of the scholars of the Malikya (1), the Shaafa'is (2) and the Hanbalis (3) recognized the invalidity of this marriage. They quoted many hadiths, including the narration of 'Abd-Allaah ibn Mas'ood (4) (may Allah be pleased with him) (Peace and blessings of Allaah be upon him) said: The Messenger of Allaah (peace and blessings of Allaah be upon him) said: "Did I not tell you the alms of al-Ta'is?" They said: O Messenger of Allaah, he said: He is the analyst. His "(5).

As for the position of the Iraqi legislator on the marriage of analysis, the Iraqi law is free of reference on this subject.

But by following the opinions of Muslim jurists on this matter it can be said that the marriage of analysis is invalid and therefore it was necessary to address it within the provisions of this law by allocating material indicating its ruling or determining the corrupt marriages, including the marriage of analysis.

As for the relationship between the marriage and the marriage, there is no doubt that the reason for the prohibition of this type of marriage by the majority of jurists is to apply the idea of the illegitimate

(1) Same as above.

(2)Legal measures to limit the deviation from the sermon in jurisprudence and law, Dr. Jaafar Fakhri Mohammed Jannam, Dar Al-Hamed Publishing, Amman-Jordan, First Edition 2000, p.

motive of marriage and intention to circumvent the law. That he was not an illegitimate marriage, since the analyst did not intend to form a family, and he did not mean permanency, stability, housing, or affection. Therefore, such a motive is not respected and is not counted and is not given weight or status.(6)

(Diabetes, insanity, dementia, coercion, loss of distinction from anger, sudden or major illness, sickness in death, or in the event of death if he died in that disease or condition).

This means that the Iraqi legislator has stated in paragraph [35] to prevent the divorce of the patient the disease of death originally, meaning that if the husband dies of that disease, his wife remains intact and inherits him for the absence of divorce, which means that the Iraqi legislator has The views of the four doctrines agreed to the absolute inheritance of the patient's acute illness.

In addition to this situation, the Iraqi legislator added (a situation that is almost as perilous) as the case of the person sentenced to death. The ruling is one in both cases, namely, the absolute inheritance from the divorce of the mouse.

As for the link between the divorce of the mouse and the illicit motive after reviewing the views of the Muslim jurists and then the statement of the position of the Iraqi legislator, we find that they all agree legally and legally to inherit the woman who was divorced by her husband in the disease of death, and we find that this unanimity is the work of the illegal promoter because divorce only in this circumstance Is a very strong presumption that the emitter husband is depriving the wife of inheritance, as the wife's life will inevitably end with the death of the wife does not need to end divorce.

Unless the intention of the husband is to deprive the wife of inheritance, and this is called this type of divorce (divorce of the mouse).

Therefore we note that the confirmation of the inheritance of the wife was through (approval) (1) because the husband was intended to harm his wife is punished contrary to his intent to punish a murderer inherited inheritance by inheritance (2).

Section II: Take off the patient's disease of death.

Under the same circumstance that can be located by the husband is a circumstance (death disease) can be located by the wife also exploits this circumstance to use the right to take off the husband, but the motive in this act is an illegal embezzlement is deprived of inheritance, and even show the relationship of the illegal inventor takes off The sick disease of death was to show the meaning of khul start and then the position of jurists to take off the patient in terms of leave or prevention.

(1), but the custom is the text of the khul 'by the inclusion of khayy in removing the marriage, and in particular the khul' - the opening of the khay' - in the removal of non-matrimony (2) .

It is called khula 'because Allaah has made women to wear clothes for men and men for them, and if he divorces them, each one of them is stripped of the garment of his companion.(3)As for his definition of the fuqaha ', there are several definitions, including: resolving the conjugal relationship with the word khul' and what it means in return for a woman's obligation (4).

With regard to the opinions of the Muslim jurists in removing the patient, the disease of death is as follows: Al-Hanafiyyah: They are permitted to take off the sick

woman because he is dependent on accepting the money from the husband, and he has found this acceptance, and he is entitled to the khul'al allowance, as much as one-third of the estate, and not more than one-third, or his share of the inheritance.

As for the Maalikis, some of them have also permitted khula 'if the amount of the allowance does not exceed the amount of his inheritance (6). The majority say that it is not permissible at all (7).

As for the Shaafa'is,(8) they also permitted (9) khula 'to give the khula' a khulal allowance, but it is not permissible to go beyond a mahr like that. As for the position of the Iraqi legislator on this issue, we find that the Iraqi legislator stipulated in Article (46) of the Personal Status Law in paragraph (2) of them on the conditions of the health of khul 'in general where "It is required for the health of the khula 'that the husband is eligible for the divorce, and that the wife is in place for him and he is divorced by divorce." (1) Thus, the Iraqi legislator has stated that the khula' is not valid, That he did not mention the permissibility or disqualification of divorce from the wife in the disease of death, but you can say that the measurement of the eligibility requirement required in the health of khul'a issued by the husband also must be available for the wife of the patient and therefore can say the authenticity of the dislocation of the patient Disease of death. This is close to the doctrine of some of the Maalikis who said that it is not permissible to take off the sick from death. As for the relationship of dislocation of the patient emitter: By following the views of the Muslim jurists who called for the sick leave to take off the disease, they agreed that the khul 'allowance should not exceed the amount of the share of the inheritance from the estate.

(1)Introduction to the Marriage Contract) in Jurisprudence and Law, Dr. Jafar Fakhri Mohammed Ghanem, Dar Al Hamed Publishing, Amman - Jordan, First Edition 2009, p. 242.

(2)Brief in explaining the personal situation and its amendments, Ahmed Kubaisi. C1, Marriage and divorce and their effects, 2010, p. 24.

(3)(Ahmed Kubaisi, same source, p. 22.

On the other hand, the absence of khul 'from the patient is never allowed.

Which is the view of some Maliki and the position of the Iraqi legislator, we find that in the eyes of the work of the illegal promoter either by the amount of khul 'share of the inheritance of the estate, the illegal motive here is the intention of the woman to give her husband the loan more money than the share of the estate, The fuqaha (2)'maintained the heirs' inheritance through the work of the emitter.

On the other hand, the absence of a sick leave is also an act of illegal embezzlement through the fact that the wife divorces herself under the khula 'for the purpose of harm. It is arbitrary because she thereby abused this right to divorce herself and harmed others (the rest of the heirs) by giving the husband a share Greater than the share of the estate and the reduction of shares of the rest of the heirs and this is a presumption of the function of the intention of damage to the family and damage is forbidden and paid is required to say: (no harm or damage(3

Section III: Muscle.

We can say that the muscles are two types:

The guardian of the husband and his wife's husband.

(1) Prior to graduation.

In fact, both types are detrimental to women and deprive them of their freedom, whether they are free to choose the right or appropriate husband or their freedom to get rid of inappropriate marriage. In order to show the extent of the relationship between the illicit motive and these two types of separation, the husband.

First: the muscle of the guardian.

Muscle is a language meant by: Prevention and imprisonment in the narrowness and intensity and prevent the person and his intention, it is said muscle of the man deprived of muscle, and the muscle of the woman for the husband: her imprisonment, and their place: cramped, and the muscle matter: more severe and severe disease any severe (1).

And the woman's muscle from marriage to her imprisonment, and the man's muscle: preventing her from marriage unjustly (2).

The term: is to prevent the guardian of women from the marriage of the satisfaction of (3).

As for the position of Muslim jurists on the issue of muscular:

The Muslim jurists agreed on the prohibition of immobility and(4) prohibition(5),(6) and that the woman who was prevented from marrying would be transferred to the guardian. They explained this by saying that the marriage of a woman was a right over her.(7) If a woman refuses to marry her, then the ruler is able to marry her from the kaafah, and they are quoted as saying by the Prophet (peace be upon him): "Any woman who is not kissed by the guardian is invalid, and her marriage is invalid, and her marriage is invalid(8) .

As for the position of the Iraqi legislator on the matter of the guardian of his guardian, he spoke about this issue in Article 8 of the Iraqi Personal Status Law in paragraph (1) with regard to the issue of incomplete eligibility. We make the validity of the marriage conditional upon the judge's permission to hold the marriage contract.

But the judge has specified a specific time or period specified by the judge for the guardian to accept or reject, and his refusal is justified because of the court's conviction. The request is rejected or the judge permits the marriage if the judge is not satisfied because the guardian refused to marry his guardian. Came in accordance with the views of the Muslim jurists mentioned above on the prevention of muscle and its prohibition and the transfer of state to the guardian (judge).

Article 9, in paragraphs (1), (2) and (3), deals with the situation of forced marriage and the state of prevention of marriage for reasons that may be tribal, neurological or tribal, or for any other reasons. It is known that tribal women are the victims of such customs, which is the right of a cousin to marry them without the rest of the men from outside the tribe or clan, regardless of whether there is equality between them or common denominators,

whether social or cultural. Or scientific, and often the fate of this type of marriages is failure, and to eliminate this phenomenon unhealthy Iraqi legislature to impose legal sanctions on the relatives of the girl or woman, whether they are relatives of the first degree or the rest of the grades prison sentence of not more than ten years. Article 9, paragraph (1) that:

(. Neither a relative nor a non-Jew has the right to prevent a person who was eligible for marriage under the provisions of this law from marriage).

Article (2) stipulates: "Anyone who contravenes the provisions of paragraph (1) of this article shall be punished by imprisonment for a period not exceeding three years and by a fine or one of these two penalties if he is close to the first degree. Ten years or imprisonment for a period not less than three years " .

As for the relationship of the original muscle of his birth to the illicit motive.

After extrapolating the opinions of Muslim jurists and the position of Iraqi law on this issue, we find that the Iraqi legislator has agreed with the opinions of Muslim jurists in the prevention of muscle issued by the guardian of his mandate and in this prevention acts of illegal promoter, and shows the illegitimate motive in this matter several pictures can be explained below :

- 1 - Adhering to some outdated customs and stubbornness, and this is shown in preventing the guardian from returning his money to her husband, who divorced her with a minor divorce. Allaah says (interpretation of the meaning): "Do not be a duke and then be in your hands."
- 2- The image of the muscle appears in the prohibition of the orphan girl, who is the partner of their guardian in his money, which prevents her from marrying another person, so that she will not be allowed to share it with anyone else. Allaah says (interpretation of the meaning): The injection of the tahini is prohibited.
- 3 - Greed in the woman's money or the request of a large dowry or for the purpose of retaining it for service and salary.

From these pictures we find that Muslim jurists and legislators of Iraq have taken care of the interest of women in pushing muscle from the work of the illegal inventor located at the guardian.

Second: the husband's husband.

The husband is meant to be deceived: it is to harm her and not to improve her wealth, because he does not treat her like a husband or leave her to behave in herself.

As for the views of the Muslim jurists on the question of the husband's husband's relationship to his wife, they also agreed that he should not be allowed to do so, because in the muscle, the harm is done to her and the ten bad ones are deficient, so that she will be deprived of what he has given him and what he takes from it. He did not deserve it, and they based their spending on this according to the meaning of the verse: "Then give him a good Hajj."

The position of the Iraqi legislator on the question of the husband's husband to his wife:

The Iraqi legislator did not address the question of the husband's wife , as there is no need for that as long as the option of khul is

available to the wife whenever she wants to get rid of marriage if this marriage is harmful to her, in any way.

As for the relationship between the illegitimate motive and the issue of the husband's husband, it is clear that the husband's intention is to harm the wife by depriving her of her rights or to deprive her of her rights to ask her for divorce and to follow the example of the Muslim jurists.

Section IV: Rejection. Divorce retroactively does not remove the marital bond immediately, but the disappearance of this association is dependent on the expiry of the kit. The divorcee is entitled to return the absolute to the marriage without the need for a new contract as long as it is in the kit. This is what is referred to in the fiqh as the "reaction" (1).

Rejection can be defined as the language: revision and repetition, said to be reviewed by speech, and recovered from the thing: if you take from him what you paid him (2).

As for the Sharia, there are many definitions of return. One of these definitions can be mentioned: a woman's response to marriage from a non-violent divorce in a specific manner.

As for the opinions of Muslim jurists in the ruling on the intention to harm(3)

Muslim jurists agree on the validity of the husband's reaction in normal circumstances, when there is no intention of the husband to prolong the period of preparation with the intention of harming the wife.

Muslim scholars have agreed (4) that the length of the udah on the wife review if close to the expiration of the number and then release until the resumption of the kit If the expiry of the kit returned by the husband and this is what

To do harm to the wife, and based their opinion on this to the verse: I have the right to have a brain and the brain is not the same as they are.

With regard to the position of the Iraqi legislator on the issue of irreversibility, the Iraqi legislator did not address this issue, but it would have been better to address this issue and put it in the provisions of the personal status law, considering that this issue is many in the community and must stop the cases of invalidity In the return of the wife as this wife was affected initially by the pace of divorce and then tasted the humiliation of return damage.

As for the link between the illegal motive and the reference,

After reviewing the views of the Muslim jurists who agree that the man is not allowed to return to his wife in the intention of harming them, we find that this agreement was the work of the illegal promoter of the husband, the husband meant here is not the reform or in order to maintain the family, but was for the damage his art was a corrupt intention Such as his intention and does not accept the return of acts of the Almighty saying: We are the left of the two natures are the two are the same (2).

4- CONCLUSION :

After completing the research, in which I wanted to clarify the extent of the relationship between the illegal motive and some of the personal status contracts (marriage and divorce), I reached some of the results as follows:

- 1 - Every action or work done by the human being has a reason to induce and motivation to carry out this act, in the sense that the motive is affecting the actions of the human and thus affect the contracts concluded in terms of health and invalidity.
- 2 - Islamic law was the first to establish the rules of motivation before the laws of the situation and have launched multiple labels of emitters such as (intention, intent), but the laws of the situation they called the name of reason, and self-motivation, motivator.
3. Personal status contracts have two aspects:
The physical side which is the financial conduct between persons and the damage resulting from it can be compensated.
As for the personal aspect: it is related to the formation of the family and the personal rights of its members, and the promoter of great importance in preserving these rights in order to reach an important result is the protection of society and the family.
- 4 - Since the motive is subjective and psychological is difficult to detect or deduce it for the position of Islamic jurists controls through which to identify the motivator and these controls are the knowledge of the other party and the motivation of the legitimacy of this motivation.
In the case of jurists, the motive is the reason. Two theories have emerged for the reason: the traditional theory and its proponents of German law agree with the objective tendency advocated by Hanafi and Shafi'i doctrine and modern theory and its supporters French and Italian law agrees with the self-propensity advocated by Maliki, Hanbali and al-Dhahri.
- 6 - Iraqi law in its texts advocated the dual reason, that is, taking the two theories together, but the decisions of the Iraqi courts call for the introduction of modern theory (subjective tendency).
- 7 - There are a lot of issues that have to do with the motivation of the Iraqi legislator and was successful in that the prohibition of the speech of the aggressor acts of illegal invention and approval of compensation if accompanied by the abandonment of the speech damage and this acknowledgment is the work of the illegal promoter.
And grant him the divorce of the patient death disease and the wali's muscle to his majesty.
However, in the same case, he neglected to mention some of the issues that have to do with the implication of the prohibition on engagement, the marriage of analysis, the husband's husband and his wife, and the intention of harm.
It was better for the Iraqi legislator to review these issues and to stipulate them as legitimate rulings placed by God - His Compassionate and Exalted - and is likely to fall into the practical life.
- 8 - After reviewing the views of Muslim jurists in matters related to or related to the emulator we find diversity and multiplicity of sources of jurisprudence and as a result of this diversity appeared different opinions of Muslim jurists.

5- Recommendations:

1 - The family is the basis of society, so the Islamic jurisprudence tried to surround this family with special care, and therefore should be the position of the Iraqi legislator in line with the position of Islamic jurisprudence to give the family more important through the detailed legal texts that rid the family of the dangers that threaten the cohesion and seek To dismantle, as in the case of the illegal motive, which was neglected in its workers and the text of it in many legal texts.

2 - It may also recommend the establishment of a number of scientific seminars and academic research for law professors and researchers graduate students to reach a lot of gaps or issues neglected by the Iraqi Personal Status Act text.

From God my success

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