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## Judicial and consensual values according to Jordanian law

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### **Abstract**

*This research delves into the multifaceted treatment of guardianship and values in Jordanian law, examining the legislative provisions scattered across various legal frameworks. The Jordanian legislator exhibits a distinct approach in addressing these issues, often aiming to convey specific ideas through individual legal articles. This study scrutinizes the occurrences of values in distinct legal contexts, including civil law provisions related to guardianship, the Code of Civil Procedure addressing the appointment of trustees for disputed funds, and the contractual aspect of guardianship. The research focuses on elucidating the concept and types of guardianship while exploring its distinctive features compared to related legal concepts such as agency contracts and deposits. Moreover, the study provides an overview of various jurisprudential opinions on these topics, aiming to foster a comprehensive understanding of the intricacies surrounding guardianship and values within the Jordanian legal landscape. At the end of this research endeavor, several key findings aligned with the objectives of the study have been elucidated. Additionally, a series of insightful proposals have been put forth to further advance the discourse within this field of inquiry.*

**Keywords:** *custodianship, guardianship, consensual values, judicial values, judicial guard.*

### **Introduction**

Social and economic life has evolved significantly in our present era, leading individuals to establish numerous relationships aimed at achieving profit and financial gains. Consequently, the intertwining of these relationships has resulted in various disputes over shared assets among them. Disputes concerning shared assets represent complex legal conflicts between individuals.

When these disputes could not be resolved through mutual agreements, resorting to the judiciary for their resolution became the customary approach.

However, it is well known that seeking resolution through the judicial system does not lead to immediate and expeditious solutions due to the complexity and duration of legal procedures, which may adversely affect the legal status of joint asset owners and impede their developmental prospects.

Thus, the concept of custodianship (guardianship) emerged and crystallized to address these challenges. Custodianship undertakes the task of promptly and temporarily adjudicating such disputes through a legal representative, known as "the custodian," designated by the law.

The custodian performs similar functions to those of an appointed judicial guardian and is

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appointed by the parties or the judiciary in case of an urgent and legitimate risk that could harm the assets until the judiciary issues its verdict on the matter.

### ***The problem of the study***

The crux of this study revolves around the legal nature of "Al-Qayamah" (Custodianship), wherein jurists' opinions diverge due to the intricate interplay of closely related legal systems. Addressing this predicament necessitates delving into several secondary inquiries, including What is meant by "Al-Qayamah"? What does the "Al-Qayamah" contract entail? How is it distinguished from other contractual arrangements? Additionally, the study aims to explore the conclusions reached by jurists and legal scholars concerning the legal adaptation of "Al-Qayamah." These inquiries will serve as the focal point of our investigation, with the aspiration of discovering comprehensive answers.

### **Significance of the Study**

The study of the legal nature of "Al-Qayamah," whether judicial or consensual, holds paramount importance due to the contrasting opinions among jurists and scholars regarding its adaptation. Given its inclusion in various legal provisions and its use as an alternative to judicial guardianship, there is a pressing need for a precise legal description of "Al-Qayamah." This issue has become one of significant relevance, drawing widespread attention within legal circles.

### ***The scope of the study***

The focal point of this study revolves around understanding the legal nature of "Al-Qayamah" (Custodianship) and determining its precise legal description. This includes investigating whether it is considered a contract similar to agency or deposit, or a form of representation, thus identifying the consequences associated with each type.

Furthermore, the study seeks to ascertain the obligations of the parties involved, treating the "Al-Qayamah" contract as one among other contracts governed by legal regulations. However, the study does not delve into the responsibility of any party in the event of non-compliance with the obligations, except to the extent necessary and relevant for this investigation.

### ***Study Objectives***

The primary goal of this study is to attempt to provide a legal description that clarifies the nature of "Al-Qayamah" (Custodianship) work and the legal obligations arising from such a description. This endeavor is based on the opinions of jurists and legal scholars, while also considering legal rules within various legislations.

### ***Research Methodology***

The study will employ an analytical methodology, wherein we shall analyze the concept of "Al-Qayamah" (Custodianship) and its legal adaptation, whether it is considered a contract or a provisional precautionary measure.

The investigation will also examine the legal consequences and provisions stipulated by the legislator. Additionally, we will analyze the primary obligations of the parties involved when engaging in "Al-Qayamah" (Custodianship) work, relying on the contractual agreements they have reached and referring to legal texts, jurists' opinions, and relevant legal experts' views.

### Literature Review

Several previous studies have addressed topics related to the subject of this research, albeit in different ways. Some studies focused on the provisions of guardianship, including the issue of civil liability, without specifically examining the legal position of "Al-Qayamah" (Custodianship) itself. Examples of such studies include:

***Khatam Hussein Al-Sabbah's*** doctoral thesis titled "The Judicial Guardianship Provisions in Civil Law" at the International Islamic University, 2017. However, my study differs from this one as it specifically addresses judicial guardianship while delving into the concept of "Al-Qayamah" and its appointment scenarios, such as in cases of absence or imprisonment.

***Basel Al-Nawaiseh's*** research article on "Civil Liability of the Judicial Guardian" was published in the Jordanian Journal of Law and Political Science at Mutah University, Volume 5, Issue 1, 2013. My study differs from this research as it examines the concept of judicial guardianship and its legal regulation, in addition to addressing the civil liability of the judicial guardian. It also explores the differences between "Al-Qayamah" (Custodianship) and its scenarios and compares them to guardianship.

***Marzouq Suleiman Hilal Al-Amoush's*** Master's thesis titled "Judicial Guardianship in Jordanian Legislation: A Comparative Study" at Al al-Bayt University, 2005. My study differs from this research, which primarily focuses on a comparative analysis between Jordanian legislation, Islamic jurisprudence, and comparative legislation.

It specifically revolves around the legal texts related to guardianship without delving into the practical differences between a guardian and a custodian. In contrast, my study is confined to Jordanian legislation and its applications.

***Nayef Thani Al-Fayez's*** Master's thesis titled "Procedures of Judicial Guardianship according to Jordanian Legislation" at Al-Isra Private University, 2019. My study differs from this research as it does not explore the appointment of "Al-Qayamah" (Custodianship) in cases where eligibility criteria are met. Instead, it primarily deals with the procedures and responsibilities of guardianship.

***Ibrahim Abu Shamma's*** work titled "The Legal Position of 'Al-Qayamah' (Custodianship) in Jordanian Legislation," was presented as a higher diploma thesis at the Jordanian Judicial Institute in 1995. My study differs from this work as it does not address the issue of civil liability of "Al-Qayamah" (Custodianship) but instead focuses on general principles, such as appointment criteria and their effects.

## **Chapter One: Concept and Types of Custodianship**

Custodianship holds significant importance as a measure aimed at safeguarding the rights of stakeholders in funds placed under its supervision. It can be established either through a judicial order or by means of a contract entered into among individuals. To accurately define custodianship, distinguish it from similar concepts like agency and deposit contracts, and understand its nature, a comprehensive exploration of its definition and conceptual framework is essential.

This research will focus on two main aspects in Chapter One:

Aspect One: Defining the concept of custodianship and providing a detailed explanation.

Aspect Two: Identifying and differentiating between the various types of custodianship.

### ***First Aspect: Concept and Definition of Custodianship***

Custodianship is considered a significant topic regulated within the realm of expedited justice in Jordanian legislation. However, only a limited number of legal provisions are dedicated to elucidating its nature, components, and conditions. Despite this, custodianship, especially judicial custodianship, has acquired considerable importance in practice, as many individuals resort to it when facing disputes due to the complexities and intertwining of financial relationships.

In addition to judicial custodianship, consensual custodianship has emerged, wherein individuals mutually agree without the need for judicial intervention. Consequently, the scope of judicial application expanded, and many of its judgments became a result of judicial interpretations due to the paucity of legislative regulations governing it. Therefore, this section aims to define custodianship linguistically, legally, in jurisprudence, and in the judiciary.

### ***Subsection one: Linguistic Definition of Custodianship***

Linguistically, "custodianship" is derived from the source "Kom," which means taking charge or assuming authority over a matter. It refers to someone with authority and responsibility, overseeing and guiding the affairs of others. The custodian is the one appointed to manage the affairs of a restricted individual, such as a wife is under the guardianship of her husband, who takes care of her and fulfills her needs.

The term "custodianship" is synonymous with the term (guardianship), as we will elaborate further. Hence, it becomes necessary to define (guardianship) linguistically. It is derived from the verb harass meaning to guard or protect, with hurs signifying the act of safeguarding someone or something. For instance, one might say, "So-and-so's property is under guardianship," meaning it is protected and not accessible for disposal.

### ***Subsection two: Legal Definition of Custodianship***

Islamic jurisprudence addresses custodianship within its regulations governing the guardianship of property for minors and incapacitated individuals. The Jordanian legislator followed the Islamic

jurisprudential approach in Civil Law, employing the term "custodianship" in the same context to govern the authority over the property of absentees, wards, and their financial management, investment, and other matters related to guardianship and trusteeship.

Despite the dissimilarities between the concept of custodianship in Islamic jurisprudence and judicial guardianship in Jordanian and comparative legislation, they both share certain aspects. Custodianship falls under the topic of guardianship over minors' property and individuals experiencing temporary incapacity, following the Islamic jurisprudential framework. On the other hand, judicial guardianship in Jordanian legislation is a provisional precautionary measure falling under the jurisdiction of expedited justice.

The provisions related to custodianship are articulated in Articles 131 and 133 of the Jordanian Civil Law. Article 131 refers to the matters concerning custodianship and refers them to specific laws and regulations. Article 133 stipulates the validity of actions taken by guardians, trustees, and custodians within the boundaries prescribed by the law.

Referring to the specific laws mentioned in the Civil Law, the Jordanian Law of the Courts of Personal Status designates the jurisdiction of religious courts to appoint custodians, authorize them, hold them accountable, and rule on the consequences of their actions. Furthermore, the Jordanian Code of Civil Procedures addresses another concept, distinct from the previously mentioned custodianship, relating to guardianship, trusteeship, and judicial guardianship. In this study, we will focus on judicial guardianship in Civil Law and discuss custodianship within the scope of guardianship over property, particularly in cases of incapacity, as one of the scenarios for appointing a guardian to clarify the distinction between the two concepts prescribed by our Jordanian legislator.

Accordingly, the Jordanian legislator dealt with the subject of values in several separate texts and it seems that he wanted in each site to reach a specific idea, so we find him sometimes mentioning the values in the civil law in the provisions related to guardianship and guardianship and the conditions of the interdicted and leaving an order This is regulated by special laws, and at other times guardianship is mentioned in the Code of Civil Procedure, meaning the trustee who is appointed to guard disputed funds (judicial guard), and at other times a definition of guarding is mentioned as one of the contracts related to work (consensual guard). And by examining the various legal texts in the Civil Procedure Code, we find that it did not deal with guardianship in terms of its nature and its provisions are limited to dealing with the case of appointing values in terms of jurisdiction, as Article (32) of the Jordanian Civil Procedure Code stipulates that "the judge shall rule on urgent matters On a temporary basis, without prejudice to the right to the following matters, provided that this does not preclude the competence of the trial court also in these matters if they are referred to it by way of dependency:

1. Urgent matters for which there is fear of running out of time.
2. Considering applications for appointing an agent or custodian of funds, precautionary seizure,

guarding, or travel ban.

3. Urgent examination to prove the case.

4. A lawsuit to hear a witness who fears that he will miss the opportunity to be cited on a subject that has not yet been presented to the judiciary and may be presented to him. And all his expenses are on the one who requested it.

We also find that he defined custodianship as a contract based in its basis on Article (894) of the Civil Code, which defined custody as “a contract whereby the two disputing parties entrust money to another in order to preserve and manage it, provided that he returns it with its yields to the one who proves his right to it.” This text was intended Article 896 of the same law stipulates that: “One of the disputants over money may, when there is no agreement, ask the judiciary to pay an immediate danger or based on a just cause to appoint a receiver who will receive this money for safekeeping and management, or authorize him to exercise any right.” The judiciary considers it to be in the interest of both parties.” Here, the legislator meant by judicial receivership, and accordingly it is clear that the trustee is only a judicial guard appointed by the competent court to manage disputed money for safekeeping and management, and that the Jordanian legislator used the term guard in the civil law when he spoke of judicial receivership, and he used the term trustee. The guard is also required in the Code of Civil Procedure, and thus the Jordanian legislator did not differentiate between the trustee and the judicial receiver, as the trustee is the same as the judicial guard according to the plan of the Jordanian legislator.

Accordingly, we see that the articles mentioned by the legislator in the Code of Civil Procedure can be considered as procedural rules for the subject of guardianship (guardianship). As for the provisions contained in the Civil Code in Articles (894-908), they are considered substantive provisions for the subject of guardianship (guardianship), so to speak.

And in light of the legal provisions contained in Articles (894, 896) of the Jordanian Civil Code and Article (32) of the Jordanian Civil Procedure Code, we support the jurisprudential definition that defines the claim of appointing a trustee or judicial guard as: It is disputed, or the right to it is not established and threatened with an immediate danger in the hands of a trustworthy person who undertakes to preserve and manage it, and he is obliged to return it with its yields and to submit an account about it to whoever proves his right to it.

As for the Egyptian legislator, he did not define the term guardianship directly, but he referred to it through his definition of custody, as it referred in Article (729) of the Civil Code to the guardianship contract (guardianship) as: “a contract whereby the two parties entrust to another person a movable property or a sum of money.” A dispute arises regarding it, or the right is not established, so this person undertakes to preserve it, manage it, and return it, along with its received proceeds, to the one who proves his right to it.

Article (730) of the Egyptian Civil Code stipulates that “it is permissible for the judiciary to order

the guard:

1. In the cases referred to in the previous article, if the concerned parties did not agree on the custody.
2. If the owner of interest in a movable or immovable property has reasonable grounds to fear that the possessor may embezzle this thing, damage it, or alter it.
3. In other cases stipulated in the law.

Accordingly, the researcher believes that the Egyptian legislator did not refer to custodianship, but rather considered it in the sense of guarding, and dealt in his texts with the two types of consensual guarding and judicial guarding, as we indicated in its previous articles.

### ***Subsection three: Jurisprudential Elucidation of Guardianship***

Within the realm of jurisprudence, various definitions have been advanced to explicate the intricate concept of guardianship. Several of these definitions converge upon the notion that guardianship entails a legal framework where the judiciary, propelled by the exigencies of temporality and urgency, institutes a provisional measure in accordance with statutory provisions. This measure materializes upon the solicitation of a party possessing a vested interest in contested pecuniary matters. It falls within the purview of judicial discernment to ascertain the necessity of this measure in safeguarding the rights and interests of the concerned parties. The trustee, having been entrusted with this responsibility, assumes custody over the contested funds, be they in the form of movable assets, immovable properties, or diverse financial holdings. The trustee is mandated to safeguard and administer these assets, and subsequently relinquish them along with any accrued gains to the rightful claimant upon substantiation of entitlement. This comprehensive definition encapsulates the components of judicial guardianship, encompassing its normative tenets, ethical obligations, as well as its preservative aspect.

An alternative articulation posits guardianship as an ephemeral precautionary recourse that preserves the status quo of rights, refraining from altering their underlying foundation. This delineation underscores the necessity of lodging the disputed matter with a third party as a material deposit. In a complementary vein, jurisprudential discourse delves into the legal essence of guardianship, classifying it as a transitory measure of precaution intended to shield monetary assets or entitlements subject to custodial oversight.

A distinct facet within jurisprudential thought ascribes guardianship to a transitory legal mechanism emanating from judicial directive. This mechanism necessitates the transfer of movable assets, immovable properties, or diversified financial holdings into the custody of an appointed custodian. The custodian undertakes the responsibility of their stewardship, predicated upon the instigation of those with vested interests in the matter. This course of action is predicated upon reasonable apprehensions of impending jeopardy. Such intervention becomes imperative, particularly when the contested assets remain within the possession of their incumbent possessor. This expedited



procedure remains effective until the judicial resolution of the dispute or its amicable resolution among the parties concerned. It is pertinent to underscore that this mechanism does not assume a coercive enforcement role, thereby safeguarding the immutable essence of the underlying entitlement.

Upon scrutiny of the antecedent jurisprudential perspectives, it becomes apparent that a predominant theme pertains to the operative impact of guardianship. Concurrently, these definitions allude to the intrinsic nature of guardianship, delineate its distinguishing attributes, and elaborate upon its particular repercussions. Additionally, a segment of jurisprudential discourse posits guardianship as tantamount to a deposit ordained by the judiciary, vesting a trustee with the responsibility of its custodial maintenance and subsequent restoration upon contract completion. This custodian's role supersedes that of a mere depository, assuming a position of enhanced authority, as opposed to that of an agent. Conversely, an opposing strand of thought within jurisprudential deliberation, accompanied by the adjudicative pronouncements of the Egyptian judiciary, posits guardianship as an agency relationship.

An alternative paradigm has emerged that posits guardianship as an amalgamation of agency and deposit, wherein the custodian assumes the dual role of an agent and a depository, thereby being subjected to the concomitant regulations governing both agency and deposit relationships. Moreover, there exists a perspective that defines custodianship as not being an explicit contract, quasi-contract, or deposit arrangement. Rather, it is depicted as a judicially sanctioned legal pursuit, characterized by a distinct mandate bestowed upon the custodian by the judiciary. This mandate engenders a unique capacity that can solely be conferred through a judicial order, encompassing legal representation. The scope, constituents, circumstances, and repercussions of this capacity are exclusively defined by statutory law.

Consequently, custodianship, in its broader context, materializes as an interim measure, either consensually agreed upon by the involved parties or mandated by the judiciary, aligning with statutory prescriptions. Pursuant to this arrangement, disputed funds are entrusted to a designated custodian who undertakes the dual responsibilities of preservation and management. This custodial stewardship persists until the resolution of the underlying dispute regarding the legitimacy of the corresponding entitlement, all while safeguarding the integrity of the entitlement itself.

#### ***Section Four: Articulating Judicial Notions***

The conceptual delimitation of values has engendered intricate challenges, owing to the absence of unequivocal principles established by the Court of Cassation from the period post-1988 up until 2001. This lacuna was precipitated by the limited avenue for contesting decisions originating from applications for the appointment of monetary trustees, given their classification as urgent verdicts that fall under the jurisdiction of the Court of Appeal. Consequently, these decisions remained unassailable through cassation, pursuant to Article 176 of the Code of Civil Procedure prior to its amendment.



However, the legislative overhaul of the Code of Civil Procedure in 2001 ushered in a transformational alteration. It rendered decisions issued by summary courts amenable to cassation appeal, provided permission is granted. The judicial domain, through its adjudicatory proclamations, has meticulously navigated the intricacies of guardianship, elucidating its essence. Within the Jordanian legal context, a noteworthy absence of terminological distinction between the roles of trustee and guardian prevails. This homogenization is explicitly emphasized across a myriad of judicial edicts, wherein the term "guard" is interchangeably utilized to encapsulate the semantic essence of "trusteeship." Moreover, the term "judicial guardianship" is parenthetically aligned with "judicial receivership," signifying their synonymous connotations. This equivalence is substantiated in a Court of Cassation ruling that expounds: "Article 32 of the Code of Civil Procedure empowers the judge presiding over urgent matters to provisionally adjudicate, without derogating from the fundamental right, the solicitation for the appointment of a monetary custodian or guardian. Articles 153 to 156 of the Civil Code delineate the procedural framework governing the selection of a monetary custodian."

In a distinct pronouncement from the Jordanian Court of Cassation, it was ruled that the plaintiff's claim against the respondent is dismissed on the grounds of non-justiciability. This verdict was rendered in consideration of the fact that the eminent party did not assume responsibility for the management of the mill. Instead, the responsibility for its administration was assumed by a partner from its inception in 1988 until the plaintiff assumed management in 1991. However, this transition of management did not conclusively evidence the cessation of the partner's engagement, as he subsequently withdrew from managerial involvement and transferred authority to the liquidator.

Upon comprehensive examination of numerous judicial judgments, it becomes evident that the Jordanian judiciary has chosen to conflate the roles of trustee and judicial receiver. This approach led to the codification of guardianship in concordance with the legislative definition adopted by the Jordanian legislator. This conflation was succinctly articulated in a decree from the Jordanian Court of Cassation which elucidated: "It is legally established, pursuant to Articles 894, 900, and 905 of the Civil Code, that Custody constitutes a contractual arrangement wherein both disputing parties vest funds in the custody of a third party for preservation and management. It is contingent upon the custodian to restore these funds, along with their accrued gains, to the party successfully substantiating their entitlement."

Similarly, the Egyptian judiciary, through a sequence of pronouncements, has embarked on a concerted endeavor to expound upon the construct of judicial guardianship. These elucidations culminated in the assertion that judicial guardianship has attained the status of meticulous scrutiny and scholarly discernment. The Egyptian Court of Cassation, in a notable decision, delineated judicial receivership as an interim precautionary measure. This measure, according to the Court, does not alter the intrinsic nature of the underlying entitlement. Furthermore, it is emphasized that judicial receivership remains divergent from an execution mechanism and is not to be misconstrued as supplanting cautionary or attachment procedures instrumental in the cessation of the statute of

limitations for ownership acquisition. Moreover, the Egyptian Court of Cassation underscored that judicial receivership, by its very nature, embodies a transitory, precautionary resort employed by the judiciary in situations necessitating the preservation of contested matters. In a specific ruling, it elucidated that judicial receivership constitutes an extraordinary procedure activated in instances of dire exigency, insufficiently addressed by routine litigation procedures, as delineated in Article 730 of the Civil Code.

Considering the foregoing legal, jurisprudential, and judicial delineations, it becomes apparent that the characterization of judicial guardianship as a legal pursuit advanced by the judiciary is the definition most amenable to adoption. This recognition arises from the inherent prerogative of the law to define the competencies and obligations of the judicial receiver, stipulate the parameters of engagement, and specify the contexts in which it applies. Moreover, the judicial capacity ascribed to the judicial receiver is fundamentally predicated upon the judicial order that decrees guardianship in instances of monetary dispute, entrusting temporary custodianship to manage, conserve, and subsequently restore the funds, alongside their increments, to the rightful claimant. This instantiation emerges as a provisional precautionary recourse, resorted to solely in exigent circumstances.

### ***Second Aspect: Categories of Custodianship and their Key Distinctive Features***

In this analytical exploration, we will delineate the distinct categories of custodianship, encompassing judicial, legal, and conventional custodianship. Moreover, we will elucidate the pivotal distinctions that set custodianship apart from analogous frameworks.

Delving into the diversity of custodianship typologies, their origins can be classified into three primary categories, as expounded herein:

#### ***Subsection One: Consensual Custodianship Agreement***

The consensual custodianship agreement constitutes a contract wherein two conflicting parties mutually resolve to vest a designated trustee with the guardianship of contested funds until the resolution of their dispute. The activation of this arrangement necessitates the joint agreement of both parties, a stipulation entrenched in the legislations of both Jordan and Egypt through Articles 894 and 729, respectively. Noteworthy is that the essence of consensual custodianship resonates with these legal precepts, wherein the disputing parties independently opt to place their contested funds under the purview of a custodian or trustee. The parties retain the autonomy to appoint this custodian sans judicial intervention. Within this context, the consensual custodianship contract adheres to the conventional principles inherent in contractual agreements, namely: mutual consent, the designated location, the rationale, and the involved parties. These parties encompass the disputing litigants on one side and the selected custodian on the other.

Conversely, conventional custodianship diverges not solely in terms of origin, but also in the entity that instates the custodianship. The selection of the custodian is a distinct matter from the

imposition of judicial custodianship itself. To expound, the establishment of judicial custodianship is effectuated through judicial pronouncement. In contrast, the appointment of the custodian is a distinct decision, whereby consensus among all stakeholders facilitates this appointment. Notably, this procedural variation does not alter the judicial nature of consensual custodianship, which perseveres even if a judicial ruling mandates the custodian's designation, in the event that the disputing parties fail to concur on the custodian's identity.

This dichotomy engenders several notable distinctions, encompassing:

**First:** Pertaining to remunerations and costs attributed to the custodian, in judicial custodianship, the incumbent costs are typically shouldered by the defeated party once a final judgment is rendered in the case. By contrast, in consensual custodianship, the custodian's compensation hinges upon the terms delineated in the agreement between the custodian and the litigants. Absent predetermined fees, recourse to the judicial authorities becomes a viable course to ascertain the remuneration.

**Second:** In the realm of consensual custodianship, the custodian's liability is contingent upon whether their role is voluntary or undertaken for compensation, and thus governed by the tenets of the deposit contract. Contrarily, the liability of a judicial custodian hinges upon their remuneration status. If unpaid, it adheres to the general principles of agency agreements, necessitating that the custodian conduct their duties with the same diligence applied to their personal affairs. If remunerated, the custodian must exercise the standard level of care expected from a reasonably prudent individual. Given that judicial custodianship entails compensated labor, the agent is intrinsically deserving of remuneration. In the event that the compensation remains unspecified, they merit commensurate remuneration. The subsequent chapter shall extensively delve into the civil responsibilities vested in the judicial custodian.

Hence, grounded in the aforementioned legal, jurisprudential, and contractual demarcations, it becomes discernible that the elucidation of judicial custodianship as an autonomous legal pursuit aligns with the legislative prerogative, demarcating the responsibilities and capacities of the judicial custodian and delineating the domains in which it operates. This judicial capacity is exclusively derived from the judicial mandate, effectively imposing custodianship in instances of contested funds between disputing parties, entrusted to a custodian for provisional management, safeguarding, and eventual restitution to the rightful claimant. This ephemeral precautionary measure is invoked exclusively in exigent circumstances.

As is widely recognized, the legislator's approach to responsibility diverges based on whether the custodian undertakes their duties for remuneration or voluntarily, adhering to the foundational principles of civil law. A remunerated custodian is subject to heightened responsibility, whereas a voluntary custodian is held to a less stringent standard.

**Third:** the timing of the establishment of consensual custodianship varies, occurring either prior to or subsequent to the emergence of a dispute. In contrast, judicial custodianship materializes only

after the dispute has taken shape. While the establishment of judicial custodianship hinges on the existence of an imminent threat, the agreement in consensual custodianship supersedes the need for an evaluation of this precondition. The consensus among the litigants to place contested funds under custodianship is deemed to imply the presence of an urgent threat necessitating custodial intervention, aligning with one of the custodial scenarios. This concordant agreement effectively obviates the need for further investigation into the matter by the judiciary.

Despite the custodianship agreement constituting a contractual pact contingent upon the concurrence of the involved parties, it mirrors judicial custodianship in being a transitory and provisional mechanism. Both modalities entail a non-substantive procedural approach that safeguards the original right, propelled by exigency, deriving their existence from this imperative.

It is noteworthy that both custodial variations constitute ephemeral procedures that preserve the integrity of the underlying right, accompanied by comparable ramifications. The governing factor that imparts rights to the custodian and delineates the attendant obligations, including the cessation of custody, emanates from either the contractual agreement or the judicial ruling.

### ***Subsection Two: Legal Custodianship***

Legal custodianship is invoked through statutory precepts, such as those delineated in the Code of Civil Procedure or other pertinent legislations. It is predicated upon legal edicts, established without the involvement of individuals' mutual accord or judicial decree. Legal custodianship is imbued with the authority to manage and safeguard funds placed under its purview, as conferred by the law, concurrently being vested with the capacity for legal representation on behalf of the rightful claimant of the funds under custody.

Within the Jordanian legal framework, numerous provisions exemplify instances of legal custodianship, including the Code of Civil Procedure's Article 144. This stipulation entails the entrustment of seized movables and assets to a reliable party for preservation or management until the culmination of the trial. Similarly, Article 145 of the same Code mandates the delivery of assets held by a third party on behalf of the debtor to the court or a designated individual in the aftermath of a seizure decision. The third party, in this context, functions as the custodian or legal guardian of these assets until their transfer to the designated custodian by the court or its appointed representative. Importantly, this custodian's appointment is governed by a statutory prescription rather than being contingent upon mutual agreement or a judicial decree. This delineation accentuates the distinction between legal custodianship, dictated by statutory law, and judicial custodianship, where the judiciary exercises discretionary authority to institute custodianship, scrutinizing the fulfillment of its prerequisites. Unlike the latter, the former is impervious to judicial discretion, as its origination and implementation are predetermined by statutory mandates, eliminating the need for judicial intervention to impose or assess the conditions requisite for its establishment, including urgency, jeopardy, and the non-compromise of the original entitlement's integrity.

Similarly, the Jordanian legislator has furnished additional instances of legal custodianship, prominently encapsulated within the Execution Law's provisions (Articles 52-56). These articles stipulate that the custodian, handpicked by the chief of the execution department, is designated from either the seizer or the possessor of the confiscated assets, as necessitated by the circumstances. Within the same legal framework, the legislature extensively addresses the parameters and requisites underpinning this form of custodianship. It meticulously outlines the custodian's responsibilities, entitlements, including their remuneration, as well as the mechanisms for initiating and terminating this custodianship.

### ***Subsection Three: Judicial Custodianship***

Judicial custodianship, commonly referred to as "guardianship," is defined as the act of entrusting a specific individual with an object, placed under the purview of the judiciary, by means of a court-sanctioned order, contingent upon the court's determination of the interests warranting such action. The Jordanian legislator has granted the authority to the expedited judicial authority to enforce judicial custodianship as a provisional preemptive measure. This measure is designed to uphold the rights of the parties with vested interests in the subject of contention, ensuring the preservation of these rights concerning the temporarily disputed assets. Its ultimate objective is to ensure that the dispute is definitively resolved by the competent court, thus determining the validity of the contested rights. Alternatively, the custodianship may cease upon the mitigation of the compelling circumstances necessitating its imposition. The driving impetus behind this legal concept emanates from the principle that safeguarding the immediate interests of the ostensibly rightful claimant stands as a paramount legislative objective. Consequently, the authorization for imposing judicial custodianship is derived from the profound necessity to urgently protect these interests, thereby bolstering the conventional litigation procedures by recourse to the judicial custodianship mechanism.

### ***Chapter Two: Delineating Guardianship from Analogous Constructs***

Indeed, within the ambit of our exploration, the notion of guardianship can at times intertwine with other legal frameworks necessitating clear differentiation, notably encompassing the concepts of deposit and agency. Juridical interpretations have exhibited diverse inclinations, with certain perspectives positing guardianship as tantamount to a deposit, where judicial authorities appoint an individual to hold entrusted funds with the obligation to restore them at the agreement's culmination. This perspective underscores the custodian's lack of representative capacity. In contrast, another faction of jurisprudential thought, in conjunction with decisions rendered by the Egyptian judiciary, advocates for classifying guardianship as an agency. Simultaneously, an alternative perspective has emerged, proposing that guardianship may concurrently embody aspects of both agency and deposit. In this intricate viewpoint, the custodian assumes the dual roles of an agent and a depository, effectively invoking the principles of both agency and deposit to define their role.

In light of the foregoing, this discourse embarks upon a comprehensive examination of the distinctions between guardianship and the deposit contract in their fundamental aspects. Subsequently, it delves into the disparities that demarcate guardianship from the agency contract.

### ***First Aspect: Differentiating Guardianship from Deposit Contracts***

The Jordanian legislator has precisely characterized the deposit as a contractual arrangement wherein the proprietor confers authorization upon another party to safeguard their monetary resources. This commitment binds the depository to the responsibility of securing the entrusted funds and subsequently returning them in their original state. Article 871 of the Civil Code articulates the depository as the designated individual with whom, based on a mutual accord, the possessor of assets entrusts their movable property for safekeeping, usually without any associated remuneration unless otherwise agreed. Conversely, French jurisprudence does not construe custodial arrangements as contractual engagements between the trustee and the court, but rather as an interface between the trustee shouldering depositor responsibilities and the party instigating the custodial case. This perspective situates custodianship as fundamentally a court-imposed deposit, paralleling the custodian's function in consensual settings. Certain scholars align with the notion that guardianship aligns with the deposit contract. Their stance reflects an understanding that equates guardianship to a physical deposit of contentious assets placed in the custody of a designated individual. Notably, French jurisprudence contributes to this interpretation, asserting that judicial custodianship essentially constitutes a court-sanctioned deposit. However, opposing viewpoints contend that this categorization oversimplifies the nuanced interplay between custodianship and the deposit contract.

These perspectives emphasize that while there may exist areas of overlap in obligations, the distinct intent and attributes of custodianship and deposit warrant a more nuanced understanding. This differentiation becomes particularly pronounced when comparing consensual custodianship with custodianship mandated by the judiciary. Furthermore, these interpretations underscore that custodianship entails responsibilities that extend beyond the parameters of conventional deposits, especially when compensation is involved. This perspective accentuates that custodianship delves beyond the traditional scope of depository duties, thus necessitating a deeper examination of the intricate interrelationships between these constructs. Nevertheless, a fundamental distinction prevails between guardianship and trusteeship across several dimensions. Esteemed scholars like Dr. Al-Sanhouri and others have underscored the differentiation of guardianship from trusteeship and agency. This distinction is marked by the following characteristics:

### **Nature and Object**

Guardianship primarily revolves around contested entities, whether they encompass movable property, immovable assets, or disputed finances. This contrasts with deposit agreements where funds are deposited without underlying disputes, typically pertaining to movable possessions.

### ***Origin and Source***

Guardianship may stem from consensual or judicial avenues. Judicial guardianship predominates, emanating from court rulings, while consensual guardianship through contractual agreements is rare. Conversely, deposits solely arise from agreements due to their contractual nature.

### ***Applicability***

Guardianship is more inclined towards immovable assets, though not precluding its association with movables. Conversely, deposits are more commonly associated with movable possessions, albeit not excluding immovable assets.

### ***Compensation***

Guardianship inherently involves remuneration, whereby the custodian receives a stipulated fee regulated by the court. Even if remuneration is waived, the default is remunerated guardianship. Deposits, however, are fundamentally unremunerated unless a contrary arrangement is established, occasionally involving a nominal fee.

### ***Responsibilities***

Guardians are entrusted with the management, preservation, and exploitation of funds under their custodianship on behalf of the stakeholders. On the other hand, depositaries are principally tasked with preservation, lacking the mandate to manage the deposited assets, although they might be authorized to utilize them.

### ***Termination***

Depositors can promptly terminate a deposit by reclaiming their assets, thus exercising the prerogative to discontinue the arrangement at their discretion unless stipulated otherwise. In contrast, custodianship persists until a dispute culminates or a judicial decree or mutual accord concludes it. It is essential to recognize that while certain facets of guardianship may resemble trust arrangements, particularly instances involving movable assets, this similarity does not substantiate a shared essence or legal standing between them. The divergence between guardianship and trust remains conspicuous and unambiguous, as evidenced by the delineated distinctions.

### ***Second Aspect: Differentiating Guardianship from Agency***

The Jordanian legal framework expounds the agency contract as follows: "It is a contract whereby the principal designates another individual to act in his place within a recognized lawful context," as stipulated in Article (833) of the civil code. Within this framework, the agent, governed by the contractual provisions, is granted the authority to undertake management and preservation responsibilities. This confluence of duties parallels the role of a trustee, where their obligations extend beyond mere preservation to encompass managerial duties and accountability. Despite these parallels, a pivotal distinction endures between the two systems, as underscored by Dr. Al-Sanhouri,



who elucidates the divergence between guardianship and agency through the following points:

**1- Scope of Authority:** In custodianship, the custodian manages the entrusted funds without the power to dispose of them. Conversely, under agency, the agent can be empowered to perform various legal transactions, including management, disposal, and even donation.

**2- Principal Focus:** Guardianship centers around the preservation of the custodial funds, with management inherent to this safeguarding process. Conversely, agency entails active management, with the agent's role predominantly concerned with the client's interests.

**3- Remuneration:** Guardianship often involves a speculative contract with fixed, remunerative fees. By contrast, agency typically does not entail a speculative nature; the agent does not commonly receive a fee intended for profit. The fee's variability can be contingent upon mutual agreement.

**4- Awareness of Ownership:** A custodian begins their role without knowledge of the owner's identity and is bound to return the funds based on a judicial ruling. In contrast, an agent is aware from the outset that the funds belong to the client, and their obligation is to return them accordingly.

**5- Appointment Process:** In guardianship, the selection of the custodian originates from agreement or, in case of discord, by judicial nomination. In agency, the agent is invariably chosen through consensus between the parties. Consequently, the judicial custodian derives their authority from a court decree dictating their rights and obligations, while an agent derives authority from a contractual agreement.

**6- Termination:** Guardianship concludes with the identification of the rightful claimant of the custodial funds. Should the original claimant die before appointment, their heirs succeed them. In contrast, agency ordinarily terminates upon the principal's death. In light of these distinctions, it is evident that despite the similarities between guardianship and agency, wherein both agents and trustees oversee fund preservation and management, it is not tenable to equate guardianship with agency. Rather, guardianship is rooted in judicial legal representation. As detailed in the subsequent section, its source is legislative, grounded in the law authorizing judicial appointment of trustees and delineating their authorized scope. Judicial receivership does not stem from a contract; its origination lies in legal provisions and judicial rulings.

## Conclusion

This comprehensive study of custodianship, encompassing its conceptualization, types, and distinguishing features, has revealed the multifaceted nature of custodianship, with each variant carrying distinct legal implications and connotations. The synthesis of findings and considerations has yielded several noteworthy conclusions and recommendations that merit attention:

### Findings

**1. Diverse Forms of Custodianship:** This investigation has illuminated the myriad manifestations

of custodianship, meticulously analyzing each within the context of the specific legislative framework it pertains to.

**2. Categorization of Custodianship:** The study has effectively classified custodianship into three distinct categories: judicial, legal, and consensual custodianship.

**Discerning Characteristics:** The research has effectively elucidated the critical distinctions that set custodianship apart from analogous legal systems, notably the deposit and agency contracts.

**3. Juridical Disparities:** The exploration has underscored the divergent viewpoints and commentaries regarding the legal essence of custodianship, manifesting in its impact on the respective obligations of the parties involved and the differential legal norms guiding each form.

### Recommendations

Given the substantial significance and intricate legal character of custodianship, whether as a contractual undertaking or a precautionary measure.

We proffer a series of modest yet consequential suggestions to the Jordanian legislator, aiming to facilitate the judiciary's operations and fortify the scholarly endeavors within this realm:

**1. Conceptual Precision:** We advocate for an intricately detailed definition of custodianship, thereby eliminating any ambiguity that might engender confusion with parallel systems. Further, the harmonization of terminologies like "judicial guardianship" and "judicial receivership," which are synonymous, would enhance conceptual clarity.

**2. Harmonization of Legal Status:** A conciliatory alignment of the legal stances applicable to both judicial and consensual custodianship with their respective values-based counterparts is recommended. This entails establishing an unequivocal legal framework and character for each category, ensuring consistent usage of terminology, and distinctly articulating the duties attributed to each role.

**3. Precise Legal Provisions:** The imperative to distinctly delineate the legal provisions applicable to each variant of custodianship is highlighted, enabling a precise framework for its operation in diverse circumstances.

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