



## JUDICIAL PRACTICE IN WAQF DISPUTES: A COMPARATIVE ANALYSIS OF THE FOUNDER'S STIPULATION, REVOCATION AND THE TRUSTEE'S LIABILITY

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**Abstract.** *The article compares three principal categories of waqf disputes – the interpretation of the founder's stipulation, the revocation of a waqf or recovery of its property, and the liability of the trustee – on the basis of judicial practice in Qatar, Saudi Arabia, Jordan, Indonesia, the Malaysian state of Selangor and Türkiye. The analysis is organised by subject matter rather than by country, showing how the same legal problem is resolved through different instruments in different systems. The findings help to identify the issues to be taken into account in regulating waqf relations in Uzbekistan.*

**Keywords:** *waqf, founder's stipulation, trustee, waqf dispute, judicial practice, Qatar, Jordan, Indonesia, Selangor.*

### INTRODUCTION

The legal stability of waqf relations is not measured solely by the rules of establishment, registration or administration. The real capacity of the system becomes visible when a dispute arises: when the founder's intention later changes, when the heirs demand the return of the property, when the trustee fails to discharge his duties properly, or when waqf property becomes intermingled with state or private property, the solution offered by the law and by the courts acquires decisive importance.

On this question it is not sufficient to group countries merely by geographical or constitutional criteria. Judicial practice shows that the same legal problem is resolved in different countries through different instruments: in one place the question is settled by reliance on a classical maxim of fiqh, in another by a special statutory provision, and in a third by comparison with constitutional rights. It is therefore appropriate to conduct the comparison on the basis of the subject matter of the dispute and of the mechanism by which it is resolved.



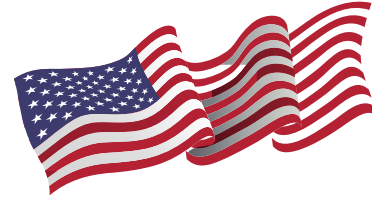
The aim of the present article is to analyse comparatively the three principal types of waqf dispute and, on that basis, to identify the legal questions that must be taken into account in regulating waqf relations in Uzbekistan.

## MAIN PART

The study examined decisions of the courts of Qatar, Saudi Arabia, Jordan, Indonesia, the Malaysian state of Selangor and Türkiye relating to waqf, together with the relevant statutory provisions. The materials were divided into three groups according to the subject matter of the dispute – the founder's stipulation, the revocation of a waqf, and the liability of the trustee – and within each group the legal basis of the decisions and the method of reasoning were analysed. The work employs comparative-legal, case-law analysis and functional methods (Kenjaboyeva, 2026).

The legal force of the founder's stipulation is recognised in all the systems examined, but its limits are not identical. In classical fiqh this relationship is expressed through the maxim that the founder's stipulation is like the text of the Lawgiver, and in Qatar this approach has been converted directly into a statutory provision: article 12 of Law No. 9 of 2021 on Waqf provides that the founder's stipulation is to be interpreted, in terms of understanding and indication, as the text of the Lawgiver (Law of the State of Qatar No. 9 of 2021: art. 12). At the same time the law does not make the founder's will absolute, and states expressly that stipulations contrary to the Shari'a or destructive of the interest of the waqf are of no effect. In Saudi judicial practice, too, a dispute is resolved first of all on the basis of the text of the waqfiyya: in a case heard by the General Court of Jeddah the claimant demanded the full share of waqf income enjoyed by his father, while the trustee showed that in the waqfiyya the beneficiaries were divided into generational classes and that, once a given class came to an end, the income was to be distributed among all the interested parties of the following class; the court examined the terms of the waqfiyya, found the distribution applied by the trustee to be correct and dismissed the claim (Kenjaboyeva, 2026).

The practice of the Supreme Shari'a Court of Jordan shows the limits of the founder's stipulation still more clearly. In the case in question the founder had first endowed a particular plot of land to a society for the preservation of the Qur'an, and then attempted to direct the same property to another purpose. Relying on Hanafi law, the court estab-



lished that with the first endowment the property had left the ownership of the founder, and held that the right granted to the founder to alter the stipulations may not be exercised in a manner that causes harm to others; here the principle that the removal of harm takes precedence over the attraction of benefit was taken as the basis (Kenjaboyeva, 2026). The case of Kamarolzaman bin Hajar v Majlis Agama Islam Selangor, heard in Selangor, reveals the tension between the founder's intention and the legal classification adopted by the administering religious body: while confirming that the body must comply with the founder's stipulations, the Shari'a Court of Appeal indicated that the formalisation of the special status of the waqf is to be carried out through the procedures laid down in the law (Kamarolzaman bin Hajar v Majlis Agama Islam Selangor, 2016: 44). In Türkiye a historical waqfiyya stipulation retains its legal significance, but its application must also satisfy constitutional requirements: in a case concerning a waqfiyya of 1722 that gave preference to male descendants, the Constitutional Court, without denying the legal significance of the waqfiyya, held that the application of this stipulation had led to the discrimination of female descendants on the ground of sex and had infringed the prohibition of discrimination connected with the right to property (Türkiye Anayasa Mahkemesi, Ayşe Tezel ve diğerleri başvurusu).

The second group of disputes is connected with demands for the revocation of a waqf or the recovery of its property. Decision No. 163/2013 of the Court of Cassation of Qatar established a clear principle on this question: where a founder subsequently attempts to transfer back into his own name immovable property endowed for a charitable purpose, the court held that the property leaves the founder's disposal, that it is not possible to withdraw from the endowment, and that after the founder's death this property does not pass to his heirs, and it therefore set aside the conclusion of the lower court (Qatar Court of Cassation, 2013a). The Supreme Shari'a Court of Jordan likewise emphasised that, once the first endowment has fully come into being, the founder may not endow the same property again in favour of another person or institution. In Indonesia such disputes are often intermingled with questions of inheritance and family property: in a case heard by the Religious Court of Selong in which the heirs of the founder demanded the return of land endowed for a mosque, and in a case heard by the Religious Court of Mungkid in which it was claimed that the land was the common property of a married couple and that consent had not been obtained, the courts examined the evidence, dismissed the claims



and relied on the rule laid down in article 3 of Law No. 41 of 2004 that a declared waqf may not be revoked (Law of the Republic of Indonesia No. 41 of 2004: art. 3). Thus in all three systems the general rule is the same: once a waqf has lawfully come into being, neither the founder nor the heirs may recover it as ordinary private property; but before applying this rule the court verifies that the property genuinely belonged to the founder and that the waqf was established in accordance with the legal requirements.

The third group covers questions of the trustee's liability and of his removal from office. In a case heard in Saudi Arabia a beneficiary of a waqf demanded the removal of the trustee from his post on the grounds of his advanced age and of his having leased waqf property at a low rent; the trustee showed that the rent had been assessed by experts and that the claimant himself had previously received a share of the income on the same basis. The court found the evidence submitted insufficient for removal, and the court of appeal upheld this conclusion (Kenjaboyeva, 2026). An important practical rule follows from this case: mere dissatisfaction is not in itself a ground for removing a trustee; it must be proved by sufficient evidence that he has caused harm to the interest of the waqf or has breached his duties. In Qatar the legal status of the trustee is determined in the law itself: article 32 of the Law of 2021 defines the trustee as a person in whom trust is placed and his hand as the hand of a depositary, and establishes liability in cases of transgression or negligence (Law of the State of Qatar No. 9 of 2021: art. 32). Decision No. 6/2013 of the Court of Cassation shows that this status applies also in relation to a state body: the registration of waqf property in the name of the General Directorate of Awqaf does not convert it into state property, since the body acts here not as owner but as trustee (Qatar Court of Cassation, 2013b).

The analysis of the three groups above shows that the stability of waqf law rests on three elements: the precise expression of the founder's intention in the document, the existence of a norm defining its limits, and the legally precise determination of the liability of the administering person. If one of these elements is lacking, the resolution of a dispute is left to the discretion of the court and practice becomes unstable. At the same time the example of Türkiye raises a further important question: when historical waqfiyyas are applied within a modern legal system, certain of their stipulations may collide with the requirements of human rights, and in such a case the court may limit the application of a particular stipulation without denying the legal significance of the waqfiyya as such.



## CONCLUSION

The comparative analysis shows that in the three principal types of waqf dispute solutions have taken shape that are close to one another but not identical. The founder's stipulation remains a strong legal source in all the systems: in Qatar it has been raised to the level of a statutory provision, in Saudi Arabia and Jordan it is applied as a rule of Shari'a law, in Selangor it is coordinated through special religious and administrative procedures, and in Türkiye it is interpreted together with constitutional requirements. On the question of revoking a waqf, practice is considerably more uniform: a waqf that has lawfully come into being may not be recovered by the founder or his heirs, although the court first verifies that the property belonged to the founder and that the waqf was lawfully formalised. The liability of the trustee remains the most delicate point, since on the one hand his powers are broad, while on the other precise evidence is required for his removal. In the present conditions, when the question of the legal regulation of waqf relations is being discussed in Uzbekistan, the conclusion to be drawn from this experience is clear: the future normative framework should not be limited to the rules on establishing and registering a waqf, but should also cover the force and the limits of the founder's stipulation, the principle of the irrevocability of the waqf, and the liability of the administering person together with the grounds for replacing him.

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