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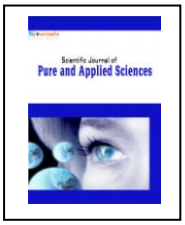

Original article

Persons without an heir in his will or judgment without an heir, from the perspective of jurisprudence and law

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ABSTRACT

Wills, legal matters and legal ordinances, which were subject to the death of the testator. Will, from the perspective of jurists and lawyers, is divided into two categories (Directive Possession - Abide). Unlike contract law, on behalf of the client 's life is a runner, of wills after the testator 's death. Examples of wills. Wills persons without heirs, or the judge has no heir. That is, with respect to personal property, which, while being the heirs of the deceased. Part or all of his property, the judgment is yours without an heir. Among jurists and lawyers about wills surplus to third parties without heirs, or the heirs there is no judgment. It seems that five major, there is separation. Noting the authors believe that the rule will, is applicable only to the third property, and on its surplus, subject to the permission of the heirs, in default of any person without testamentary heir or no heir rule, the rule Shedding person in life can any property be seized, and a will debate and process testator 's death, the heirs causal albeit limited to one person, it seems, in excess of one-third of wills is not right because it would infringe upon the rights of third parties, and Meanwhile Gradation rule sequence and confirm the story, which is primarily wills, inheritance and wills after the third Tuesday in the process of inheritance, the disorder is caused, therefore, it seems, wills Noting that the rules of jus conges, and the public order is this consistent with the norms and legal

principles, and governed solely operate the public order.

1. Introduction

We thank God, the revelation of the Quran to the Prophet 's heart sent to Nasser and guide our approach. Quran is most Cautious and most prestigious source for Islamic jurisprudence, religious or our rights to regulate social behavior in the community, and the hadith narrations cited from infallible, as interpreted and expanded provisions on various aspects of the Quran. Therefore, our scholars, these interpretations by the Quranic injunctions and hadith narrations valid for analysis, and jurisprudence warrants it, the action required to extract and states, and because Iranian law, drawn from a rich and vibrant Shiite jurisprudence, the jurisprudence and doctrine Stronger it has passed the law, and has been the basis for legal action. One of the fundamental issues involved, the rules, and will discuss its provisions, which Shia jurists in his books, which are extremely important, because a lot of emphasis on religious leaders, in different ways, rather than encouraging community the composition will be, the issue is where the prophet says, " though your will when you die, well let, perfect in goodness and wisdom are " (Toosi, 1414). With this important issue, requiring the judgment and its derivatives, Expertise and more controversial, because it has a lot of complexity, and the need to resolve the issues. The order requires, the legal status of any person 's property after his death, is known to people involved in the dispute, then he will stop. Our aim in this paper will explain the minutiae sentence, the right conditions and its influence on property without an heir, or property of individuals, sole heirs of his wife, is because there are many differences in the it is hoped that, from my perspective, is examined or explored, the solution is Eligibility and lit up.

Currently, the primary focus of the research in the paper is that, the person without an heir, or the death without heirs, may be more than one-third of his property, his will or not ? In any case, let his wife govern or testator, the will, more than a third would be effective or not?

In this regard, the researchers needed to define basic terms, the argue, and according to the Quran and authentic hadith, Jurisprudence ruling and opinions of the jurists, analysis, and opinion after knowing Stronger will review the legislative decree their rights, according to the opinions expressed are willing.

Books, articles, dissertations, many will have to discuss, most notably thesis, Amir Nasser Katoozian, and his famous book pages (Katoozian, 2003 AD. S) Legal aspects of the book will, Dr Seyed Mostafa Mohaghegh Damad, the religious aspect. (Mohaghegh Damad, 1989), but so far, the author of this article, but it has not been assigned, and the type of innovation. It should be noted that our data collection, method of field study and library.

2. Definition of terms and concepts

wills definition: of this term in Islamic and Iranian Quranic verses taken Provisions (verses 180 to 182 and 240 of Surah al-Baqarah - Verses 11 and 12 of Surah Nisa - Sura verses 106 to 108 Maedeh - the Quran, and...) and verbal, as opposed to a specific meaning, and its origin is disputed. (Mohebbi, 2011), but Actions means the person directly, or through the time of death, your property is.

No Heir: a person who has no heirs, after his death, a relative or in-laws that do not inherit from him, the language of rights, who after his death than His inheritance. is assumed. (Katoozian, 2003) Death without heirs: in proportion to personal property that, at the time of death, the heirs with him of part or all of his property, the death without heir of mine. As a wife, sole heir is even, or only heirs the murderer is his legacy. This section (in death without heirs), exclusively on financial matters. And focus our discussion in this section, only the wife and the husband.

Hence the term "sentence without an heir," the real estate property, and legal ordinances governing their situation is, in terms of its individual judgment call without an heir.

3. Persons without testamentary heir

According to the consensus of religious scholars, and legislators passed the Right to persons, living up to the third property, there is uncertainty, and individual liberty, their property seized, as will (after death), so too is the third, ratification and approval of heirs is void in excess of one-third. (Najafi 1377).

But our discussion in this regard is that, if an individual heirs to the enforcement, or lack thereof, such as a relative or is not causal, and in excess of one-third of the intestate, his duty is? Do not let it work or not ?

The Civil Code, Article 841 of the third indulgent to his will, not force, except with the permission of the heirs. In this regard, there are five main terms, which we will examine each separately, and finally we conclude:

I do not permit comments: Late Imami, including Sheikh Toosi, are of the opinion that no person could inherit, will, over a third of his wealth, and his attachment to this point have two reasons: First reason: Will the third level, the consensus accuracy is achieved, and there is no reason to surplus. After the ruling, it did not. The second reason: Maaz Ibn Jabal, the Messenger of Allah (PBUH) has narrated that the Prophet said: " Allah is the third of Your property, charity when you die is placed, the good deeds you higher returns " means: " Allah is the third of Your property, charity when you die is placed, the good deeds you higher returns "(Toosi, 1414) with the explanation that this hadith is absolute, and the differences among individuals without an heir, and the heir is not. Thus, according to this opinion, we conclude that, people without an heir in any way, will not be in excess of one-third, and no ruling on enforcement. Elders believe this comment (Toosi 1414) . 2-2. Additional licenses with third ruler: Saying to comment, argue that, like other persons without heirs who inherit, they can take as much as a third testament, the surplus of the ruling, which will allow or deny. In this view, a person is considered an heir to the ruler, and he is quite at liberty on ratification, or rejection in excess of one third have. They believe that a person without an heir is never found, and the person does not have any heir, Imam his heir, and it is known by the name Loyalty' Imamate, and the famous jurists have been introduced.(Helli, 2008,), and to prove their claims, the narratives of several I have cited, including: Ali Ibn Ibrahim, from his father who heard Imam Ali (AS) said: " the Imam heir is someone who does not have any heirs " the Imam heir is someone who does not have any heirs. (Horre Ameli, 1988).And other traditions, which come in the door, it God Loyalty, the Prophet and the Imam (AS) are known, and a person without heir as heir to Imam.

Lack of governing authority, the permitting and enforcement: some jurists who believe heirs without ruling on that person without heirs, his separation from others, and refused to allow the governing authority, and believes there has been limited that ruling is not in excess of one-third of the intestate, to enforce the requirements listed, this property is the Muslims' treasury, and can not prevail over common interests, to decide.Therefore, the group believes the ruling could be in excess of one-third, reject, but not allow it. No heir to the heir to the ruling party as their own, rather than toys is inherited (Helli, 2009). However, by virtue of the texts and Guides the law property of any person without heirs, the Imam or the ruler placed, but this does not mean that one causes hereditary Imam, and the Imam has the sole mandate specific heir. In my opinion, the interpretation of the verse of the sixth chapter of the parties can be confirmed this view, God said: " messenger Superior the believers, the Prophet himself, and women are the mothers of the believers, and relative Kinsfolk person (in the order of inheritance), some of the others in the book of God first., immigrants and the Supporters (who together have pledged fraternity closed), unless the goodness and kindness, his friends and helpers testamentary immigrants to that (inheritance relatives will dedicate time), the book is right Artifact" means " messenger Superior the believers, the Prophet himself, and women are the mothers of the believers, and relative Kinsfolk person (in the order of inheritance), some of the others in the book of God first., immigrants and the Supporters (who together have pledged fraternity closed), unless the goodness and kindness, his friends and helpers testamentary immigrants to that (inheritance relatives will dedicate time), the book is right Artifact. (Translation and Interpretation Elahi Qomshei, Quran - See the judgments passed, verses 11 and 12 of Sura Nisa). Correct that this verse relationship between immigrants and the Kinsfolk brotherhood, the inheritance remove from one another is negated, but well be that the verse cited in the order of inheritance, only blood relatives, are also recognized wife, and their origin and recognized no one, not the elimination of inheritance, the heir no heir is not dominant, and the said: " In front of and to the legacy of disasters ", meaning that No property owner or owner unknown, the ruler, the ruler of the community, for the cost of general interest. This constitution, in Article 45, and Article 866 of the Civil Code (Katoozian, 2001).

Surplus parties, charity: The fourth theory is that persons without heirs, may all your possessions, and you will take in excess of one-third, provided that the charity will be, but this is not a condition, such authority to one can not imagine.. saying to this view, the rest of the hadith, Imam Baqer (AS) has narrated, have been cited as saying: "... Recommend his money where wills and Muslims in Poor's and the wayfarer " that " he can own

property, for Muslims and poor, and the absence of a living will "(Helli 1408). Have narrated that Ali (AS) himself will have no heirs, all his property to the poor who will be allowed. And also many narrations in this regard has been quoted only for intestate without an heir to all the property, provided the charity (Ameli, 1367).

Absolute freedom of the individual without an heir: the theory is that a person without an heir, perfect freedom, and may all your property to anyone or any order; whether charitable or otherwise make wills. (Helli, 2009). The owners have taken the view that, Hazrat Ali (AS) has said: " It is recommended that one-third has reached term... " means: "... And the third is yours, and it will not be permitted unless they allow heirs " but who is the heir, he will admit that all his property to anyone he wants in any way he pleases. (Helli, 2009). Also have that Ahmad ibn Mohammad ibn Isa said: Muhammad ibn Ishaq Motayyeb, the Imam (AS) wrote, (... Our will, Mohammad Ibn Yahya ibn Daryab, we have doubts, because, lovers and servants it deserves a treat - have a mate parenting, no right to more than one-third will rub while Mohammad bin Yahya, who will own more than half of the Imam answered: if prior to parenting, it will has a will, he is correct, because his son after will was born) (Horre Ameli, B., vol 13, p 370, including Jurists that attaches to this view: Ibn Jonaid Sheikh Sadooq, Horre Ameli, Mohsen. Kashani and are Alvafi (Bohrani, 1984).

4. Excess of one-third of the intestate without heirs, the aspect of law

Lawyers are also resorting to jurists, have theorized about it, and disagreements within the jurists have differences. But civil law is silent on this issue. So in this way, some lawyers citing Article 866 BC. M., which stipulates: " In the absence of heirs, it is ruling on dead twigs," said testator can not, on the third extra will Wand, though heir is not because the other two thirds to be dominant (Langroodi, 2005), others will entitled to the entire property to one heir, bound to believe, that in no way to be intestate. the owners of these two terms, the ruling party without heir as heir, and argue that, in Article 861 BC. M. concludes that, by virtue of inheritance of two factors: lineage, because of Article 864 BC. M. stipulates: " the persons who, by virtue of inheriting result, each of the couples who, at the time of death is dead." the term " the people " have been cited in the above article, other than a spouse Bob led the inherited ruler can also have this condition may be, including, probably, because the ruling applies to other persons. They believe there is no person without an heir, and he is the ruler Heirs (Katoozian, 1997), and are referred to in Article 844 BC. M excess of one-third of the intestate, except with the permission of the heirs can not, and the heirs of the reigning know, enforce the ruling condition. And non-litigious matters in Article 334 of the law, without inheriting property Wand treasury (treasury) holds (Katoozian, 1997).

Article 45 of the Iranian constitution, Anfal While addressing the public wealth, without heirs, the put and placed it with an Islamic state, they act according to the public peace. Here, the Islamic State, or the heir or no heir put the public treasury, so do not assume that a person without an heir, and the duty of such person 's property after his death is unknown. (Mohaghegh Damad, 1999). All these reasons, the lack of penetration in excess of one-third, perhaps to keep the interest of the heirs, which are bestowed upon the death of the twig, and would not suffer, and stress the religious leaders will perform properly is one aspect, one must justice, in posthumously respect for property, and cause no harm to the heirs, the interest and the principle is that, up to a third will be yours, if it allowed heirs of action will force all it is (Mohebbi, 2011), published in Taghbostan, pp. 21 onwards - Quran, Surah al-Baqarah verses 180 to 182 – (Mohaghegh Damad, 2004), but in terms of intestate without heirs, excess of a third of the heirs do not want their interests to consider, therefore, in this respect, the father of Iran's rights, doctor Nasser Katoozian, comment on, and comment upon the end of the jurists, to complete the argument that when a person is alive, has a lien on all his property, and to protect the rights of the heirs, the testator is limited to the third, so there is a barrier, you have full authority accepted the testator (Katoozian, 1997), but this idea is objectionable because the relationship between the person and property, limited time in his life, and in the life of any decision that he could accomplish, and the testator died without an heir, testator with respect to his property is cut. (Mohaghegh Damad, 1999) It should be noted that the Iranian judicial approach, tends to be a doctor.

5. The wife is the sole heir of the testator

If a person dies, his wife, and his sole heir, and wife have wills, He wills is valid up to one-third, one-third of the surplus should be paired to allow or deny. Because the above premise, in case of death of wife all his property to be paired, but the Quranic verses sentences Nisa verse 11 and 12, we have: If the wife is a religion around his

neck, to be paid (the debt owed to the death, is present), and if that is testamentary, after the expulsion of religion from our Wand, it is calculated, and then the rest goes to the couple. But the question here arises that, in the hypothetical couple, but the wife is not heir, and the third will be a surplus, whether the will is valid, and a woman should be allowed or denied ?

This design issue, this is my initiative, and so far (in Wills), studies have, where we have encountered, who have investigated the issue raised. Now in its scope, and it ' take jurisprudential ruling: Given that, the verses of the Quran Provisions share in the next couple and the wife 's share of the other heirs, specify the share of the wife, the default calendar is a quarter of the property, and with respect to the rest of the property, in terms of religious laws (Article 994 of the Civil Code), the death without heir of mine. Here are the wife, as heirs has been our question is, whether it can enforce additional third is whether, in this regard, two comments can be made: 4-1. The wife, though, a quarter of What of leaving the owner, and he is right, it can take in excess of one-third, to allow or reject, authorize jurists, without inheriting the property is an absolute sense, and in this case, just that is, the addition of a fourth, the death without heir own, but will own one of jurisprudential and legal affairs, which can not be fully comparable with other contracts and Rhythms, and in the words of the jurists (and the traditions upon which) states that enforcement will, in excess of one-third, by the heirs is permitted to take place, and here also the heir, and the husband (wife) is his, and on the other hand, if we consider the ruling to allow or deny, or refuse to enforce wife, as sole heir of the testator, it seems preferable.

And if you believe in enforcing permit, or deny the wife in his will, to be in excess of one-third, and the remaining one-fourth of the testator (one- third of the testator 's will, much to the wife's right to property, in the absence of contrast) in favor of the wife (his wife), and will be, in this case, also ordered the wife of a license, endorsement or reject the offer ? In reply it may be said that, despite the general issue of enforcement, in excess of one-third of the heirs, the wife can, to enforce its will. The general principle here, we can assume, that, according to verses 11 and 12 of Sura Nisa, will be applied before sharing heritage, so the wife as heirs, yet he did not share the heritage and legacy right, that comment, because it is part of his legacy, and an additional third is involved in the ratification or rejection.

The second theory, can be constructed as follows: where religion and law, ratification or rejection in excess of the one-third of the known heirs, the heirs are entitled to one-third of the surplus, and if it does not allow the property to be the heirs the division of inheritance, and the enforcement of their right to pass and fulfill the testator 's will, but in default enforcement in excess of the third wife, legacy remained a quarter share in wife's death without heirs, property, and the wife no rights, no to the excess of their share, so here no heir to leave the building on the property, and the ratification or rejection of the surplus will, in five mentioned should be analyzed, and thus saying jurists (law) in Article 866 of the Civil Code, ratification or rejection of the tasks we govern. However, if the first view is accepted, the question arises, the surplus will be enforceable by the third wife, the wife 's contribution, in proportion to his share of the legacy, low- or no? This assumption, based on the put, we must use the general rule, that the various heirs, if (in excess of one-third of the intestate), to enforce some of them, others are rejected, compared to the stock ones that are enforceable, will be permitted in excess of one-third, compared to those who have rejected is not permitted. And if, as legatee of his wife, thus opening the way to third base and off.

6. Conclussion

In this research, in particular the rights and obligations of the legal person, we discuss and investigate where the marriage and turbulent flows Rhythm, and dominate a person 's property after his death. Yes Will and Testament, emphasizing the important things in life, and the life of a person, and the last will of the individual. Therefore, a detailed explanation of its provisions, it seems essential that a testator and survivors, and the ruling rather confused and mistake in not doing it. Ali already, in this study, that the situation will, without inheriting the property of the person or property of a person, the death without heirs, the different views of the jurists and lawyers have been delivered, each of these views, strengths and documentary narrative, and also has weaknesses, which I take these comments into five broad categories, are divided. Some people will have no heir, just as much as a third of property are permitted, and others like it, are subject to the governing authority, the ruling group in Facultative not allowed, and only the dominant criterion has been rejected, and those will a charity in excess of that allowed for only one-third, and final, absolutely no person has been authorized heir. In each of these views, there is room for a challenge, which is described in the text. But the law in this regard, silent, and apparently the

Iranian judicial procedures, consider the unconditional freedom of the individual without an heir, the will is accepted, it is a wonder because it is true that one of the reasons the third is to maintain the interest of the intestate heirs who inherit intestate without heirs, but a person in possession of the entire property is subject to a time in his life, and the death of the person, his property, his property relationship has been severed, and the reason can be that, in the interest of maintaining the property without heirs, the task of governing, and we can not govern one of the heirs (heirs laws) do, therefore governs only property holds the office. And personal property, his wife is his only heirs, the comments can be concluded that the wife Later and preferred to govern, in all conditions.

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