

THE FUNDAMENTALIST STUDIES OF THE PROVISIONS OF THE WILL

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Abstract

Allah Almighty has legislated the Will provisions in His Wise Book and the Sunnah of His faithful Prophet, upon reflecting on these texts, we find that they have included fundamental issues and legal purposes, It was studied in this research tagged (fundamental issues in the provisions of the Will) Its provisions demonstrated the supremacy of Islamic legislation in achieving justice and benevolence, It is not permissible for the Will to harm the heirs, nor favor one of them over the others, Rather, this is achieved a great benefit to the testator and the legatee when considering the fundamental issues, I also searched the legally obligatory Will, which is a contemporary and jurisprudential problem, there was a lot of controversy about its legal basis, and I tried to combine the sayings of scholars in it, and we followed by solving mathematical issues in the Will. We used a descriptive, deductive and applied method: The descriptive in defining some terms and mentioning and discussing evidence, and deductive by extracting the fundamental issues and a statement related to the legal ruling, and an applied way, by solving mathematical issues from its provisions in a contemporary way, in order to make it easier for minds and approximate the science of commandments.

Keywords: will, fundamentalist issues

THE INTRODUCTION

Praise be to Allah, Lord of the worlds, and prayers and peace be upon our master Muhammad and his family and companions.

The importance of research: The importance of research in Islamic legislative sciences is to show the virtues of Islam: By urging good deeds during a person's life and after his death, And he earns from the great reward, with increased this reward, and the continuity of the result of his work after his death, with what brings him closer to his Lord, and what connects his family and relatives, and what benefits his society from the doors of goodness, in addition to the obligation to discharge his debts, Allah Almighty has legislated the provisions of the will in His wise book and the Sunnah of His trustworthy Prophet, upon reflecting on these texts, we find that they have included fundamental issues and legal purposes, It was studied in this research tagged (fundamental issues in the provisions of the Will) Its provisions demonstrated the supremacy of Islamic legislation in achieving justice and benevolence, It is not permissible for the Will to harm the heirs, nor favor one of them over the others, Rather, this is achieved a great benefit to the testator and the legatee when considering the fundamental issues, I also searched the legally obligatory Will, which is a contemporary and jurisprudential problem, there was a lot of controversy about its legal basis, and I tried to combine the sayings of scholars in it, and we followed by solving mathematical issues in the Will.

Research Methodology: We used a descriptive, deductive and applied method: The descriptive in defining some terms and mentioning and discussing evidence, and deductive by extracting the fundamental issues and a statement related to the legal ruling, and an applied way, by solving mathematical issues from its provisions in a contemporary way, in order to make it easier for minds and approximate the science of Will.

Research plan: The research was divided into four sections. In the first section, the definition of the Will and its ruling, and in the second section, fundamental issues in the implementation of the Will. The third section: the rule of the legally obligatory Will and

its basis, and the fourth section: mathematical applications in resolving the issues of the Will.

THE FIRST SECTION: THE DEFINITION OF THE WILL AND ITS RULING

THE FIRST REQUIREMENT: THE DEFINITION OF THE WILL.

Defining the Will in language: Ibn Faris said: (The first and second letters: an origin that indicates the connection of something to something. And I commanded the thing: I connected it. And it is said: We stepped on a bequest land, meaning that its plants are connected and have been filled with it. And I commanded the night for the day: I reached it, and that is in the work that you do. And the commandment of this analogy, as if it is a word that is recommended, that is, it is connected. It is said: His will is a recommendation, and his Will is a will) (Standards of language, p. 116/6).

The Will is defined idiomatically: the commandment was known by many definitions, most of which agree in meaning, even if their wording differs. Therefore, I chose one appropriate definition, mentioning its limitations.

Will: ownership added to after death by donation (Tuhfat al-Fuqaha, p. 3/205) (Al-Mughni, p. 6/138) (al-Jurjani's Definition, p. 252).

(Ownership) is a genus that includes different types. Ownership may be for consideration, such as selling, or it may be for no consideration in the event of life, such as a gift or charity.

(added to after death) and this is a restriction by which ownership in real life is brought out, such as gifts and charity.

(By way of donation) is another restriction by which ownership is taken out for consideration, such as selling and renting.

The relationship between the linguistic and terminological definition: It was given this name, because the deceased in the will wants to connect with it what was in his life after his death; because when he bequeathed it, he connected what was in his life with what came after it in terms of his death (Al-Zahir in Gharib Al-Afaz Al-Shafi'i, p. 1/181).

The wisdom of the legitimacy of the commandment: A person may neglect in his life the deeds of righteousness and goodness, and it is from Allah's mercy to his servants that he legislated for them the will; An increase in closeness and good deeds, and to compensate for what was neglected in his life, so the Almighty made the Muslim a share of his money that he imposes before his death in acts of righteousness that return to the poor and needy with goodness and favor, and return to the testator with reward, and increase in good deeds, or a reward for someone who has done a favor, and the relationship of relatives Non-heirs, and fill the need of the needy people.

THE SECOND REQUIREMENT: THE ORIGIN IN THE RULING OF THE WILL

The rule of the Will is desirable (Consider the ruling on the will in the building, p. 13/388) (Al-Shawkani, Fath al-Qadeer, p. 10/411) (Al-Ma'wna ala Madhhab Alam Al-Madina, p. 1/1621) (Nihayaat Al-Muttalib, p. 10/5) (Al-Mughni, p. 6/138), so the perpetrator of the commandment will be rewarded, and whoever abandons it does not deserve to be punished (The delegate is not rewarded for his action and he is not punished for leaving him to look at the waiting period in Usul al-Fiqh, p. 2/375) (Explanation of the wave on the explanation, p. 2/250), so, if the testator has money and his heirs are rich, then it is better for him to bequeath what the testator deems beneficial to him after his death; Because the commandment is legitimate for us, not against us. On the authority of Abu Hurairah - may God be pleased with him - he said: The Prophet - may God's prayers and peace be upon him - said: "God made for you a third of your wealth at the end of your life as an addition to your deeds." (Musnad Ahmad) (There is no will for an heir, p. 2/904) (Sunan al-Daraqutni, p. 5/263) (Musannaf Ibn Abi Shaybah, p. 6/266) And legislation for us is neither obligatory nor compulsory, but

rather it is delegated (The Building Explanation of Al-Hidaya, p. 13/388), and Ibn Abd al-Barr said from Malikya in its ruling: (And they agreed that the will is not obligatory except for someone who has a right without evidence, or who is entrusted without testimony, If this is the case, then the will is obligatory for him, and he is not allowed to spend two nights without witnessing that, As for volunteering, no one is obligated to recommend it, except for a deviant sect that is obligatory) (Introduction to the Muwatta' of meanings and isnads, p. 8/384).

And that most of the companions of the Messenger of God - may God bless him and grant him peace - did not say that they have a Will, And he did not deny that, and if it was obligatory, they would not have been without it, and let us quote from them an apparent quote. And because it is a gift that is not obligatory during life, it is not obligatory after death as a gift to a foreigner (Al-Mughni, p. 6/138).

However, there may be evidence of a will being diverted from permission to other provisions, including: The bequest is obligatory: if he owes a debt that only God Almighty knows and the owner of the debt, it must be stated; Because "any obligation that can only be fulfilled by it is an obligation. (Al-Iddah in Usul Al-Fiqh, p. 2/419) (Al-Bahr Al-Muheet fi Usul Al-Fiqh, p. 1/ 296)" He must be acquitted by performing his debt, even if he is in great danger due to non-fulfillment of the debt. Likewise, a bequest is obligatory if it has a right to God Almighty, such as zakat, expiations, vows, and the like.

The will may be forbidden if he wants to harm the heirs by preventing them from the inheritance that God Almighty has imposed, or if he bequeathed to an heir from them. It will also be detailed.

THE SECOND SECTION IS THE FUNDAMENTAL ISSUES IN THE IMPLEMENTATION OF THE WILL

The legal evidence and its rules indicated the time and amount of execution of the will, how to implement it, and the way to prove it, and it will be shown to us according to the following demands.

The first requirement: the evidence of the Sunnah and the unanimous consensus on presenting debts to the Will as a rule.

The commandment and debts are associated with multiple places in the Holy Quran, and the mention of the will on the debt is presented, mentioning the Almighty saying: (From a commandment to be recommended) Surat Al -Nisa from verse 11 (from a commandment that they recommend or a debt) (after a bequest made or a debt) Surah Al-Nisa, verse 12, The aforementioned submission does not require the presenting of the ruling, but the Sunnah indicates that debt take precedence over the will in execution, and there was consensus on that.

The evidence of the Sunnah for presenting debts over the will is the saying of Ali bin Abi Talib, may God be pleased with him: "The Prophet, may God's prayers and peace be upon him, imposed the debt before the will, and you agree, Will before religion (Musnad Ahmad, p. 2/ 331)" (Sunan al-Tirmidhi, p. 3/ 506) (There is no will for an heir, p. 2/906) (Mustadrak al-Hakim, p. 4/373) (al-Sunan al-Kubra by al-Bayhaqi, p. 6/392) (Musannaf Abd al-Razzaq, p. 10/ 249), The Sunnah is clear to the ruling of the Qur'an and clarifies the meaning, whether by what he said, may God's prayers and peace be upon him, or by what he did, as in the saying of Ali, may God be pleased with him, in giving precedence to the debt over the Will.

The consensus was that the debt should begin before the Will, and they agreed that the bequest is not permissible except after paying people's debts, if something remains, the Will is valid, otherwise not." (Explanation Mukhtasar al-Khalil, p. 8/198), and Ibn Kutheer said: (The scholars, both predecessors and successors, have unanimously agreed: that the debt takes precedence over the Will, and that upon careful consideration is understood from the content of the noble verse) (Interpretation of the great Qur'an Ibn Katheer, p.

2/228) It is preferable that the basis of the Sunnah has been sensibly indicated by it, because the debt is attached to the obligation of the deceased during his life, but the Will is not related to the responsibility during his life, as evidenced by the validity of retracting it as long as he is alive, and the person needs to fulfill his debt and discharge his obligation.

The legal purposes in mentioning the will before the debt: The context of presenting the Will over the debt as a mentioned with its delay as a rule, and it has legitimate purposes, because the letter (or) does not require order, Among the purposes of presenting the will in several ways:

The first aspect: Paying attention to the Will, because it is less obligatory than the debt, in order to emphasize its implementation, as it is suspected of negligence, or the suspicion of concealment, and because it is money that is given without compensation, so getting it out was hard on the soul, so it was an eloquent and wise method to take care of its implementation, and one of the manifestations of this care was its introduction in the saying (Sharh al -Sarrajiya, p. 5) (The conquest of the Almighty, p. 1/449) (and from the rule of rhetoric is to present what must be taken care of by explaining and clarifying it, and the payment of the debt is known and its matter is clear, because it is the right of the creditors and prevented them from injustice, so he started with what needs to be explained) (The joy of sight, p. 32).

The second aspect: The commandment is similar to the inheritance in that it is taken without compensation, so its removal is difficult for the heirs and they do not please themselves with it, so its performance was likely to be negligent, unlike debts, because their souls are reassured of his performance, so I applied to the debt as a mission for its obligation and hasten to take it out with the debt.

The third aspect: that the Will is the share of the poor and the destitute in most cases, and the debt is the share of a debtor who demands it forcefully, and he has an article in it, and the Will is obedience, goodness, and righteousness that the dead do before his death, benefiting those who will bequeathed to them, and debt is the benefit of himself, and he is blameworthy in most cases, and the Prophet, may God's prayers and peace be upon him, sought refuge in him, so he started with the best.

The fourth aspect: that the Will is similar to debt on the one hand and similar to inheritance on the other hand. Al-Razi gave this appropriate guidance and said: (The difference between debt and Will on the other hand, which is that if something perishes from the money, the decrease will enter into the shares of the owners of the wills and in the shares of the owners of the inheritance. The debt is not like that, because if something of the money perishes, the entire debt will be fulfilled from the rest, and if it takes it, the right of the legatee and the right of all the heirs will be invalidated, the Will is similar to the inheritance from one aspect, and the debt from another aspect, as for its similarity to the inheritance, as we mentioned that when something perishes from the money, the decrease becomes in the share of the owners of the Will and the inheritance, as for its similarity to debt, it is because the shares of the people of inheritance are considered after the will, just as they are considered after the debt) (The keys to the unseen, p. 9/518).

All of these aspects are considered among them by scholars in presenting the Will over debts in words, although debt is presented to them in judgment and implementation.

THE SECOND REQUIREMENT IS THE RELEASE AND RESTRICTION OF NON-HARM IN THE WILL AND ITS VALUE.

The Absolute: It is the reach of one, not a specific one, on the basis of a comprehensive reality of his gender (Rawdat Al -Nazer, p. 2/101) (Al -Amidi was known for the denial in the context of evidence of rulings, p. 3/3), and he expressed it with the expression that

deals with an unspecified individual, meaning that the individual covered in absolute terms is a common individual in its genus, as if you say a man is a non-specific individual, in other words he deals with one and not with his specificity, and if you say a Muslim man in the absolute restriction that he is a Muslim and this is called restricted, the restricted is what deals with a specific or described in addition to the reality of his gender, so the word in the restricted is defined by a description restriction that reduces its prevalence (he definition of the absolute and registered is seen by explaining the clarification, p. 1/188) (Al-Bahr Al-Muheet fi Usul Al-Fiqh, p. 5/6), The commandment was mentioned in a restrictive place by negating harm after mentioning the kalalah - the brothers to the mother - in the Almighty's saying (after a bequest made or a debt that is not harmful) Surat Al-Nisa from verse 12 and in the three places it was mentioned in absolute terms, without a mention that is not harmful in the inheritance of children, parents and spouses; Because the intent to harm parents, children and spouses is rare, unlike the inheritance of brothers and sisters from the mother.

And this restriction must be absolutely restricted in the three sentences presented in his saying (after a will bequeathed or a debt); Because these absolutes united rule and reason, the absolute is carried on the restricted (Al-Tahrir wa Al-Tanweer, p. 4/226). This is the first restriction from the book that there is no harm in the Will.

There were hadiths in the Sunnah limiting the denial of harm, so the harm of a Will is one of the major sins. Ibn Abbas - may God be pleased with him - said: "Doing harm in a Will is a major sin." (It is arrested on Ibn Abbas, as in the Great Sunnah of Al -Nasa'i, p. 10/60) (Al -Maqdisi, p. 11/382) (Sunan al-Darqutni, p. 5/266) (Al -Sunan Al -Kubra Al -Bayhaqi, p. 6/444)

On the other hand, it was stated in the Sunnah to restrict the value of the Will, which was absolutely mentioned in the Qur'an, by not exceeding one-third by an amount, according to the hadith of Saad bin Abi Waqqas: "One-third, and one-third is large - or a lot - that if you leave your heirs rich, it is better than leaving them poor, begging people) (Sahih Al -Bukhari, p. 2/81) (Sahih Muslim, p. 3/1250).

As for what is more than one-third, it does not appear that the bequest should be presented, because the right of the heir in it prevents the bequest unless the heir permits it, and after executing the bequest, the inheritance is divided (Al -Mabsut, p. 29/138).

Likewise, from harm in the will also: that it is for one of the heirs, and it is not permissible, according to a hadith on the authority of Amr bin Kharijah, the Messenger of God, may God's prayers and peace be upon him, said: "God has given everyone who has a right his right, so there is no will for an heir." (Musnad Ahmad, p. 29/29) (Al -Bahli, p. 3/114) (Sunan al-Tirmidhi, p. 3/504) (Sunan Al -Nasa'i) (There is no will for an heir, p. 2/906) (Musnad Al -Tialsi, p. 2/450) (Al -Tabarani Al -Kabeer Glossary of Abi Imamah, p. 8/114) And the implementation of the commandment by paying off the damage and reforming the will is indicated by the Noble Qur'an, in which the Almighty says: (So whoever fears dishonesty or sin from a testator and reconciles between them, then there is no sin on him. Indeed, God is Forgiving, Merciful.) Surah Al-Baqarah verse 182 Amendment of the will, provided that he wants to reform it and pay the damages.

Harm in the bequest is of two types: sin and scoliosis. Sin is harming the bequest with intent, while scoliosis is harming the bequest unintentionally. Whoever recommends an increase of more than one-third is harmed intentionally or not, so the heir may return this will. And if he bequeathed a third or less, and it was not known that he intended to cause harm, it must be signed. If the legatee knows that the testator has only recommended harm, it is not permissible to take, and if the testator admits that he has recommended harm, it is not permissible to help him sign this Will.

And God Almighty has permitted the annulment of the will of scoliosis and sin, and that the guardian or others may reconcile between the heirs and the legatee, And the Almighty said: {So whoever fears dishonesty or sin from a testator and makes peace

between them, there is no sin on him} Surat Al-Baqara: 182 And the meaning of reform in the will is that whoever finds in the will of the testator harming some of his relatives, By depriving him of his will, or by someone who is farther from his lineage, or by bequeathing to a rich relative and leaving their poor, he sought to fix that and asked the testator to change his will, so there is no sin on him for that; Because he sought to reconcile them, or a rift occurred between the relatives after the death of the testator because he preferred some of them, and that is why he followed it by saying: (Indeed, God is Forgiving, Merciful) and in it is a mention of preserving the implementation of the commandments of the testators until he made changing their injustice in need of permission from God Almighty and stipulating that He is forgiven (Liberation and Enlightenment, p. 2/154).

The legitimate purposes in preventing a will for the heirs is that the will is a method of transferring ownership from the testator to the legatee after the death, so that the legatee is not an heir, because if the legatee was an heir, justice would not have been achieved between the heirs and injustice would have occurred between them, the dispute.

From a social and educational point of view, bequests to some heirs without others lead to envy and hatred among the heirs, resulting in family disintegration that is forbidden by Sharia. And on the authority of Ali: "Bequeathing a fifth of my money is more beloved to me than bequeathing a quarter of my money, and if I bequeath a quarter of my money is more beloved to me than bequeathing a third of my money, and whoever bequeathed a third of his money left nothing. (Al -Bayhaqi, p. 6/270) (the summary, 1439, p. 3/205)"

Among the specification of the Book in the Sunnah is what came in the hadith of Umar, may God be pleased with him, when the Prophet, may God's prayers and peace be upon him, said: "A murderer has no inheritance." (There is no will for an heir, p. 2/884) (Sunan al-Daraqutni, p. 5/168) (Al -Sunan Al -Kubra Al -Bayhaqi, p. 12/455) So he singled out the generality of the verses of inheritance (The kit in the fundamentals of jurisprudence, p. 2/552) (Al -Mutashali sees, p. 249) (provisions in the principles of rulings, p. 2/322), the Will is not executed if the legatee kills the testator by analogy. And because killing is prohibited on the prevention of inheritance, since the inheritance is more certain than the will, so the will is more deserving of prevention, and dealing with it contrary to its intent, For a rule, whoever hastens something before its time is punished by depriving him (The rules of Ibn Rajab, p. 1/230). So whoever hastens to kill the testator for him in order to obtain the will, in addition to the death penalty, he will be punished by another punishment, which is preventing him from the will. The commandment is invalidated and not implemented.

THE THIRD REQUIREMENT IS THE FUNDAMENTAL ISSUES IN PROVING THE WILL

FIRST: GENERAL SPECIFICATION IN WITNESSES AND ITS PURPOSE.

The Holy Qur'an urged to take care of the will, so it legislated testimony as a must in all temporal contracts whose implementation requires a specific time, such as a will, in order to preserve rights, prevent their loss, and keep away from injustice and corruption, The request for the testimony of two just persons on the will is confirmed in order to prevent its denial or delay in its implementation and failure to fulfill its right to those who deserve it. And the provisions of martyrdom were mentioned in the Holy Qur'an, as a condition of Islam, in the words of the Most High: "And call two witnesses from among your men" from Surat Al-Baqarah, verse 282, The genitive plural is mentioned in the verse by the Almighty saying (of your men), and it is useful to the general public (Kashf al-Asrar, p. 2/540) (Bayan al-Mukhtasar, p. 2/232) (Nihaayat al-Sol, p. 1/188), for this reason that the scholars of Islam are unanimous in not accepting the testimony of non-Muslims against Muslims in other than the Will in travel, and they differed in the testimony of the Will in travel, so was the testimony of its permissibility specified by non-



Muslims on the Will in travel? By the Almighty saying: (O you who believers the testimony between you, when one of you attends the death when the will two men of you are just, or two others, if you are injured, then the calamity of death befalls you) from Surat Al-Maida verse 106.

The majority of Hanafis, Malikis, and Shafi'is (al-Mabsoot, p. 30/273) (al-Hawi al-Kabir, p. 17/105) (al-Thakhira, p. 10/224) are of the view that the testimony of non-Muslims is not accepted at all, in accordance with the generality of (of your men), and it is not specified for them, and what was mentioned in Surat Al-Ma'idah is abrogated (Abi Yusuf, p. 1/166) (al-Hawi al-Kabir, p. 17/105) (Al -Mabsut, p. 30/ 273), By analogy with the immoral, by way of the most worthy; And that is because God Almighty commanded to stop in the news of the immoral, for His saying: {O you who have believed, if an immoral person comes to you with news, investigate So that you do not harm people out of ignorance, and become remorseful for what you have done.} (Al-Hujurat: 6). And here it is more appropriate, since the testimony is confirmed by the news (Fatih al-Qadir, p. 7/417).

And the Hanbalis went, and it was narrated on the authority of the group of companions and followers to the permissibility of non-Muslims testifying against Muslims with a Will in travel (Al-Muhalla bi-Athar, p. 8/496) (Al-Mughni, p. 14/170) (Al-Jami' al-Ahkam al-Qur'an al-Qurtubi, p. 6/250), and they cited as evidence the Almighty's saying: { O you who believers the testimony between you, when one of you attends the death when the will two men of you are just, or two others, if you are injured, then the calamity of death befalls you lock them up after the prayer, then they swear by God, if you doubt, we will not buy a price with it, even if it is a relative, and we will not conceal the testimony of God then we are among the sinners} (Surah Al-Maidah). Al-Qurtubi said: (In his saying: {from you} a pronoun for the Muslims {or two others from other than you} for the unbelievers, so the testimony of the People of the Book against the Muslims is permissible in travel if it is a testament, it is more like the context of the verse, with what has been established from the hadiths, and it is the saying of three of the Companions who witnessed the revelation. Abu Musa al-Ash'ari, Abdullah bin Qais, and Abdullah bin Abbas) (Al-Jami' al-Ahkam al-Qur'an al-Qurtubi, p. 6/250) the hadiths that al-Qurtubi referred to what al-Sha'bi narrated "That a Muslim man was about to die in Duquqa (Daquqa by opening its first, joining the second, and after the waw another waqf, and a thousand extended and maqsura: a well-known city between Erbil and Baghdad) (al-Akhbar wa al-Futuh, Mu'jam al-Buldan, p. 2/459), and he did not find any of the Muslims to testify about his will, so two men from the People of the Book testified, so they came to Kufa, and they came to Abu Musa Al-Ash'ari, so they told him, and they presented his legacy and his will, so Al-Ash'ari said this is a matter that did not happen after what was in the era of the Messenger of God, may God's prayers and peace be upon him, so I made them swear after the afternoon by God that they did not betray, lie, substitute, conceal or otherwise, and that it is the will of the man and his inheritance, so I document their testimony." (Sunan al-Darqutni, p. 4/166) (al-Hakim's mustache, p. 2/343) Significance: Abu Musa, may God be pleased with him, decided to accept their testimony in the aforementioned manner, and his action was lifted from the Prophet, may God's prayers and peace be upon him, and it indicates that this judiciary is from the Sunnah, and in his judging that after the death of the Prophet, may God's prayers and peace be upon him, is evidence that the ruling is not abrogated, and that Surah {Al-Ma'idah} is from the last part of the Qur'an when it was revealed until Ibn Abbas, Al-Hasan and others said: It is not copied (Keys to the Unseen, p. 11/306) (The Collector of the Rulings of the Qur'an, p. 6/250), And what I claim of abrogation is not correct, because abrogation must prove the abrogator in a way that contradicts the combination of the two with the indolence of the abrogator; And because the infidel may be trustworthy with the Muslim, who will accept him when necessary; There is no abrogator in what they said, so it is more likely to accept the testimony and to say that the verse of al-Ma'idah is specified and the

implementation of the two evidences is better than neglecting one of them by abrogation.

The purpose of accepting the testimony of a non-Muslim is what appears to be a case of necessity; Because some Muslims travel and mix with others, That is why the rule of (the verse of al-Ma'idah) remains valid, whenever the necessity calls for the testimony of the unbeliever, so that the rights of Muslims are not lost; Because if the matter narrows, it becomes wider, and if it becomes wider, it becomes narrow, and Islam treats all circumstances and conditions with its rulings.

Second: Writing the Will is one of the means of proving the Will, due to the hadeeth of Ibn Omar that the Messenger of God, may God's prayers and peace be upon him, said "It is not the right of a Muslim who has something he wants to bequeath to spend two nights without having his will written with him." (Sahih Al -Bukhari, p. 4/2) (Sahih Muslim, p. 3/1249) He did not mention anything extra than writing, this indicates that it is sufficient, as it is not permissible to delay the statement until the time of need (Usul al-Fiqh, p. 3/724) (Al-Mustafa, p. 192) (Al-Bahr Al-Muheet fi Usul Al-Fiqh, p. 5/107) and the need is fulfilled here, and because he, may God's prayers and peace be upon him, wrote to his workers and others obligating to act with that writing, as well as the Rightly Guided Caliphs after him, and because writing informs about what is intended, so it is like uttering. (Al-Mughni, p. 6/191)

It may be understood from the wording of the hadeeth as affirmative, and the scholars answered it with answers, including the words of Ibn Hajar Al-Asqalani: (His saying what is the right of a person, that what is meant is decisiveness and precaution, because death may surprise him while he is not in a will, and the believer should not be negligent about mentioning death and preparing for it, And this is on the authority of Al-Shafi'i, and others said that the truth is the language of the established thing, and he applies legally to what the ruling is established by, the fixed ruling is more general than being obligatory or recommended. It may also be called permissible, but with a few Al-Qurtubi said it. He said: If it is associated with it or something like it, then it is apparent in the obligation, otherwise it is on the possibility and on this estimate. There is no argument in this hadith for those who say that it is obligatory. Rather, this right was coupled with what indicates the assignment, which is delegating the Will to the Will of the testator, as he said to him something he wanted to bequeath. If it was obligatory, he would not have made it dependent on his Will. (Fath al-Bari, p. 5/358) (al-Umm, p. 4/92) (Ahkaam al-Ahkam Sharh Umdat al-Ahkam, p. 2/162)

THE THIRD SECTION: THE RULE OF THE LEGALLY OBLIGATORY WILL AND ITS RELIANCE

It was presented in the ruling on the will that the principle is that it is desirable for the majority of scholars (Al-Bannaah, p. 13/388) (Al-Shawkani, Fath al-Qadeer, p. 10/411) (Al-Ma'wna ala Madhhab Alam Al-Madina, p. 1/1621) (Nihayat Al-Muttalib, p. 10/5) (Al-Mughni, p. 6/138), and some scholars, such as Al-Zuhri, Masruq, Tawoos, Ibn Majles, Dawood Al-Zahiri Al-Tabari and Ibn Hazm (Al-Zuhri Ibn Hazm and Al-Shawkani see it as absolutely obligatory Al Muhala, p. 8/493) (Neil Al-Awtar, p. 6/3) (Building, p. 13/388), went to the obligation of the will in general for relatives who do not inherit, Ibn al-Mundhir said: (A group said: The Will is obligatory according to the apparent meaning of the verse. Al-Zuhri used to say: Allah made the Will a right, whether it was less or more, and it was said to Abu Majaz: Every dead person has a will? He said: For everyone who left behind good) (Al-Ashraf, p. 4/401) and Ibn Hajar explained those who say that there is existence and their evidence (and he cited a hadith on the authority of Abdullah bin Omar, may God be pleased with them both: that the Messenger of God (peace be upon him) said: "It is not the right of a Muslim person who has something to bequeath in it, to spend two nights without having his will written with him." (Sahih Al -Bukhari, p. 4/2) (Sahih Muslim, p. 3/1249) With the apparent meaning of the verse on the obligation of

the will, and with it Al-Zuhri, Abu Mijlis, Atta, and Talha bin Musraf said in others Al-Bayhaqi narrated it on the authority of Al-Shafi'i in the old, and it was said by Ishaq and Dawood, and it was chosen by Abu Awana Al-Isfarayni and Ibn Jarir) (Fath al-Bari, p. 5/358) (Al-Shawkani, p. 6/41) (Al-Tabari, p. 8/351) (Ibn Hazm, p. 8/351). And the saying of those who say that it is obligatory has become a basis for saying the obligatory commandment that has been proven in most Arab laws. (The obligatory will law was enacted in Egypt in 1946, in Syria in 1953, in Tunisia in 1956, in Morocco in 1957, in Yemen and Kuwait in 1971, in Jordan in 1976, and in Iraq in 1979)

Among that is the Iraqi Personal Status Law, the third amendment to the Personal Status Law of Iraq No. 188 of 1959, according to Law No. 72 of 1979, which added Article 74.

(1- If the child dies, whether male or female, before the death of his father or mother, then he is considered as living by virtue of the death of either of them, and his entitlement is transferred from the inheritance to his children, whether male or female, according to the legal rulings, as an obligatory bequest, provided that it does not exceed one third of the estate.

(2- The obligatory commandment according to paragraph (1) of this article shall be preceded by other commandments in the fulfillment of one-third of the estate) (Al-Zalami's Book of Inheritance Rulings, p. 63).

The obligatory bequest by law requires that the grandfather bequeath to his grandchildren the share of their father by no more than one-third, so the law introduced the obligatory bequest system according to the opinion of the legislators in the law to address the problem of depriving the grandson of the grandfather's money, that is, his grandfather died after his son, who is the father of the deprived of inheritance, the son of the deceased (the son of the deprived) was born in deprivation of his father's share, who died early before his father, and he would have contributed to the creation of the grandfather's wealth with a significant share, so the need and the loss of the father would meet with them, And since the grandchildren are not heirs in the event of their father's death, due to the presence of the custodian, and they are the sons of the grandfather (i.e. their uncles), the guardian may limit the capacity of the non-heir to them for the sake of interest, and because they are the people who are the most worthy of the grandfather's money.

If the grandfather or grandmother did not make such a will for these grandchildren as their parent's share, then the will is obligatory for them to make God the Most High obligated with such a share, provided that it does not exceed one-third. (It was stated in the decision of the Federal Supreme Court No. 121 \ Federal \ 2013 on 5/5/2013... that presenting the obligatory bequest over other bequests is a legislative option and that this is consistent with tolerant justice and does not violate)

The reason for establishing this law is the failure of the grandparents in what should be done towards their orphaned grandchildren. This is the obligatory Will in the law and it is different from the ruling on the absolute Will, and its ruling is different among scholars. And the evidence for it is verse 180 in Surat Al-Baqarah and a hadith of the Prophet, so we will mention them and then explain the sayings of the scholars about them, and the many sayings of those who oblige the commandment to be consistent with the obligatory commandment contained in contemporary laws.

The verse of the Almighty saying: (He was written on you when one of you attended death if you leave the best of the commandment for the parents and those closest to kindness are a right upon the righteous." Surat Al-Baqarah 180.

And the hadeeth on the authority of Abdullah bin Omar, may God be pleased with them both: that the Messenger of God (peace be upon him) said: "It is not the right of a Muslim who has something to bequeath, to spend two nights without his will being written with him." (Sahih Al -Bukhari, p. 4/2) (Sahih Muslim, p. 3/1249)

And an explanation of the ruling on the bequest is that it is obligatory if a person owes a debt for which there is no evidence and no one knows it except God - the Most High - and the owner of the debt, Here, the trustee must recommend the payment of his debt; Because that which is not required to be fulfilled without it is also obligatory, So the Will is obligatory with what he has and what he has of rights that are not proven. In order not to lose rights. In addition to this, there were many sayings of scholars about it. The majority of scholars held that it is recommended, and some of the followers and Dhahiriyyah considered it obligatory. Among the texts cited by scholars regarding it: Al-Sarkhasi of the Hanafis said in the ruling on the will: (The will is a contract delegated to him that is desired and is neither obligatory nor obligatory according to the majority of scholars, Some people said that the bequest to the parents and relatives if they are among those who do not inherit from him is obligatory, and according to some of them the bequest is obligatory for someone who did not inherit from him ... And our argument in that is that the bequest is legitimate for us, not against us. He said - peace be upon him -: "Allah has endowed you with one-third of your wealth at the end of your life, as an addition to your deeds, so put it where you want or he said where you like. (Musnad Ahmad, p. 45/475) (There is no will for an heir, p. 2/904) (Sunan al-Daraqutni, p. 5/263) (Musannaf Ibn Abi Shaybah, p. 6/266)") (Al -Mabsut, p. 27/141) (Sharh Sahih Muslim, p. 11/75) (Collective Ahkam Al-Qur'an, pp. 2/259-260) (Al-Shawkani, Fath al-Qadeer, p. 1/205) (Tafsir Al-Madhari, p. 1/168) What confirms the saying of al-Sarkhasi is the presence of the word good in the verse, which is money. Abd al-Razzaq narrated in his interpretation with his chain of transmission, Urwa, on the authority of his father, that Ali entered upon a man from his people who was visiting him, and said to him: Shall I make a will? Ali said to him: God only said that if he left a good will, and you only left a small thing, leave it to your son. (Abd al-Razzaq's workbook, p. 9/62) (Tafsir Ibn Abi Hatim, p. 1/ 298) (Tafsir Saeed bin Mansour, p. 2/659) (Al-Mustadrak on al-Sahihayn, p. 3084) (al-Dhahabi, p. 2/301) (Selected Hadiths, p. 2/389)

This meaning is indicated by the Qur'an in His saying: {And indeed, it is for the love of goodness that is intense} [Al-Adiyat: 8] It means the love of money.

Ibn Ashour said: "It was said: The verse is decisive, it was not abrogated, and what is meant by it from the beginning is a bequest to someone other than the inheritor from the parents and relatives, such as unbelieving parents, slaves, and relatives who have no inheritance, This is what al-Dahhak and al-Hasan said in the narration and Tawus, and al-Tabari chose it, And the first is more correct, and those who say that the ruling of the will remains after copying are those who said: It remained obligatory for the relatives who do not inherit, and this is the saying of al-Hasan, Tawoos, al-Dahhak and al-Tabari, because they said: It is not abrogated, and those who said it was abrogated were Ibn Abbas, Masruq, Muslim bin Yasar, and Al-Ala bin Ziyad, and some of them said: She remained delegated to the relatives and others, and this is the saying of the majority, except that if his relatives are in need and he does not make a Will for them, then what he did is evil, and the Will is not invalidated). (Liberation and Enlightenment, p. 2/150)

Customization takes precedence over copying

The saying of specification is better than the saying of abrogation, The verse of the will in Surat Al-Baqarah is abrogated by the verse of inheritance and the hadith (There is no will for an heir). (Musnad Ahmad, p. 29/212) (Al -Bahli, p. 3/114) (Sunan al-Tirmidhi, p. 3/504) (Sunan Al -Nasa'i, p. 6/247) (There is no will for an heir, p. 2/906)

And the specification is that the rule of the Will does not apply to those who have an inheritance, so there is no Will for him, and he remains on the basis of his generality in those who have no inheritance from among the relatives, so the Will is obligatory for him, and because specification is easier than copying, its commitment was more important, since copying is not working with one of the two evidences, and specification is working

with both evidences, and working with both evidences is better than working with one of them.

Saeed Hawwa collected the sayings of the commentators on the ruling of the verse in terms of abrogation or not, so he said (Is the first verse in this paragraph abrogated by the verse of inheritance found in Surat An-Nisa? Or is the verse of inheritance explained to it? Or is the verse of inheritance only removed the ruling of some individuals as evidenced by the generality of the verse Will? Three sayings in the verse, which the majority of jurists have is the first. What al-Razi transmitted on the authority of Abu Muslim al-Isfahani is the second, then al-Razi said: (It is the saying of most of the commentators, and considered among the jurists). And the third saying was held by many, including Ibn Abbas, Al-Hasan, Masruq, Tawus, Ad-Dahhak, Muslim bin Yasar, Al-Ala bin Ziyad, and others (The Basis of Interpretation, p. 1/402).

Therefore, the rule of the verse in the hypothesis is transferred to the inheritance, and the rule of its hypothesis and its obligation in its enforcement and submission remains absolute. It is also indicated by the verses after it, and it is indicated by the Almighty's saying: In the verses of inheritance {after a bequest that he bequeaths or a debt} [Al-Nisa 11] and all of this is indicative in its understanding of its desirability for non-heirs.

As for the Will being a recommendation for other than that, it is apparent, because the continuation of the recitation and the abrogation of the ruling is indicative of the removal of the obligation and the continuation of the assignment. It is necessary to benefit from the survival of the recitation. It is indicated by the commandment of relatives and their submission in the verse of righteousness and other verses.

THE DIFFERENCE BETWEEN THE LEGALLY OBLIGATORY WILL AND THE OBLIGATORY WILL ACCORDING TO SOME SCHOLARS

And we find that there are multiple differences between those who absolutely obligated the bequest according to some jurists (Al-Zuhri, Ibn Majles, Al-Tabari and Ibn Hazm) and the obligatory bequest in law:

- 1- Jurists obligated the bequest to those who do not inherit from relatives without specifying a specific percentage of the will, so it is permissible to bequeath a quarter, a fifth, a sixth, a tenth, or something else. In the legally obligatory will, the amount of his deceased father's inheritance shall not exceed one third.
- 2- The jurists did not specify a specific relative, so he will bequeath to his maternal uncle, aunt, or mother's father, who do not inherit, such as if they are veiled by the closest relative or relatives, In the legally obligatory will, it is specified for the son of the son and the daughter of the son with the presence of the son, means the brothers of their deceased father before their grandfather.
- 3- And according to the jurists, if he dies and does not make a will, he is sinful, but only the heirs are given from his money without a will, and in the legally obligatory will, the son and the daughter of the son are given, even if he does not make a will.

And I say that the obligatory will can come out in accordance with the sayings of the scholars:

Which is to depend on the permission of the heirs, because if the heirs permitted such behavior and were satisfied that the grandchildren were given the will, then there is no legal objection to accepting that and being permissible, It does not harm the law that this depends on the permission of the heirs, because if the heir took it out of his own accord and goodwill, that was permissible, Rather, he will be rewarded if he intends by it to be related to relatives, to help his relatives, or for other things that are legally considered.

If the grandfather did not make a will and died, then the paternal uncles (brothers of the deceased first son) can remedy this by giving their nephews some of the inheritance that



suffices them and fulfills their needs and does not prejudice the right of the heirs, in accordance with the words of God, Blessed and Exalted be He :(And when relatives, orphans, and the needy attend the division, provide for them from it, and speak kind words to them.) An-Nisa verse 8.

The fourth section: mathematical applications in solving Will issues

Imam the Two Holy Mosques al-Juwayni explained the method of dissolving the bequests by saying: (If he bequeathed a common part, and he has heirs, then the best way is to correct the obligation of inheritance by correcting it, if it is in need of correction, or it is correct from its origin, Then we make the part of the bequest obligatory, take out the bequest, and look at what remains of the obligatory bequest. If that remainder is divided according to the share of the heirs, then it is a blessing. And if that remainder is not divided according to the share of the heirs, If that remainder does not agree with the duty of the heirs, then we multiply the duty of inheritance by the duty of the will, so what is reached, from which it is correct to calculate the will and the inheritance as a whole. And if that remainder agrees with the obligation of the heirs with a part, then we take the part of agreement from the obligation of inheritance, and multiply it by the obligation of the will, from which the whole calculation is correct. The sentence is that we make the commandment obligation along with the inheritance obligation as two obligations in the issues of copies, and the obligation of the will is the first of them; The right of the will is to be presented in its proper place, and the remainder of the part of the will is like shares for some of the heirs who die and leave behind heirs). (The end of the requirement in the study of the doctrine, p. 10/12)

That is, we start by solving the issue of wills, then solving the issue of inheritance, then we combine them in the overarching issue, so the steps for the solution are according to the following:

The first step: the issue of the will: it is correct from the way out of the will, that is, what was bequeathed is the origin of the issue, if he bequeathed a sixth, its origin is from 6, and if he bequeathed a quarter, its separator is from 4, and if he bequeathed a third, which is the highest commandment, its separator is from 3.

The second step: the issue of the heirs. We take the origin of the issue from the common multiplier of the shares, then divide it by their denominators, extracting the shares.

The third step is the overarching issue and it emerges according to the following: We divide the shares of the heirs in the issue of the will / the origin of their issue, then abbreviate if there is an abbreviation and multiply the numerator in the shares of the heirs and the denominator in the will (Journal of Islamic Sciences, 2017, p. 111).

It was expressed by the hypothesis Dr. Mouloud Mukhlis Al-Rawi by multiplying matter by issue and shares by shares (Arithmetic Methods in Solving Inheritance Problems (Old and New) An Applied Study, p. 253)

He means the shares of the heirs in the issue of the will / the origin of their issue in the issue of inheritance.

We multiply the shares of the heirs in the will issue, that is, the numerator x the shares of the heirs in the issue of the heirs, the origin of the issue the heirs x the origin of the will issue, taking into account the abbreviation between the numerator and the denominator before multiplication.

Practical mathematical examples of the provisions of the Will

He died and left behind a husband, a son, and a one-sixth bequeathed to him.

| overarching issue | the issue of the heirs | | The issue of the commandment | | |
|-------------------|------------------------|-----|------------------------------|-----|---------|
| 24 | 4 | - | 6 | | |
| 4 | - | - | 1 | 6/1 | legatee |
| 5 | 1 | 4/1 | 5 | - | Husband |



| | | | | | |
|----|---|--|--|--|-----|
| 15 | 3 | | | | son |
|----|---|--|--|--|-----|

Explanation of the issue: We start by solving the first issue, the subject of the will, and its origin is from the amount of the will = 6

We will solve the second issue, the issue of the heirs: the husband has a quarter due to the presence of a descendant who is an inheritor, and the son of the rest has to be agnate. The origin of the issue = 4. The husband has one share, and the remainder goes to the son with three shares.

We take out the third comprehensive issue according to the law, which is to divide the shares of the heirs in the will / the origin of the issue of the heirs and multiply the numerator x the shares of the heirs from their will and the denominator x the bequeathed.

4/5 There is no abbreviation. We multiply by 5 x the shares of the heirs, 4 x the legatee. In other words, we multiply the shares (5) x the shares (1) (3), and the principal (4) x the principal (6).

He died on behalf of a husband and a son, and a third was bequeathed to him

| 6=overarching | 4= the issue of the heirs | | The issue of the 3= commandment | | |
|---------------|---------------------------|-----|---------------------------------|-----|---------|
| 2 | | | 1 | 3/1 | Legatee |
| 1 | 1 | 4/1 | 2 | - | husband |
| 3 | 3 | | | | son |

The case of the issue is similar to the previous issue. Explanation of the issue: We start by solving the first issue, the question of the will, and its origin is from the amount of the will = 3, which is the highest value in which the issues of the will are solved.

We will solve the second issue, the question of the heirs: the husband has a quarter because there is a descendant who is an inheritor, and the son of the rest has the right to be agnate, so the origin of the issue = 4. The husband has one share, and the remainder goes to the son with three shares.

We take out the third comprehensive issue according to the law, which is to divide the shares of the heirs in the will / the origin of the issue of the heirs and multiply the numerator x the shares of the heirs from their will and the denominator x the bequeathed.

2/4 there is an abbreviation to be 1/2 multiplied by 1 x the shares of the heirs, 2 x the legatee. In other words, we multiply the shares (1) x the shares (1) (3), and the principal (2) x the principal (3).

He died and left behind a husband, son, daughter and relative bequeathing a sixth

| 24 overarching | 4 Heir issue | | 6 Will issue | | |
|----------------|--------------|---|--------------|-----|----------|
| 4 | - | | 1 | 6/1 | legatee |
| 5 | 1 | | 5 | - | Husband |
| 10 | 2 | 3 | | | Son |
| 5 | 1 | | | | Daughter |

The issue is to put the issue of the will, and the origin of the issue is from the amount of the will = 6.

We solve the issue of heirs for the husband a quarter, and the son with the daughter is a league. The origin of the issue of the heirs is from 4, the husband has one share, and the

remainder goes to the son and daughter, for the male, like the shares of the two females, two shares for the son and one share for the daughter.

We take out the comprehensive issue according to the law, which is to divide the shares of the heirs in the will / the origin of the issue of the heirs and multiply the numerator x the shares of the heirs from their issue and the denominator x the bequeathed

= $5/4$ There is no abbreviation. We multiply by 5 x the shares of the heirs, 4 x the legatee.

CONCLUSION AND RESULTS

The ruling on Will is desirability, as proven in the Sunnah, and it may be obligatory for those who have rights, or it may be forbidden if it is harmful, among the wisdom of the legislation is the reform in the Will because of its social and educational effects, because the Will for some heirs without some leads to envy and hatred among the heirs, and results in the disintegration of the family, which is forbidden by Sharia.

Restricting the absolute Will from the sides by denying the harm, its amount is not more than a one-third, and there is no heir.

The commandment is established by witnesses, and the texts have specified the permissibility of non-Muslim witnesses according to some scholars, And I chose it out of necessity, because if the matter becomes narrow, it expands, and Islam treats all circumstances with its rulings.

And prove the commandment in writing, as indicated by the hadith, and if another condition was stipulated with writing, it would have delayed the statement from the time of need, and it is not permissible in principle.

In my opinion, it is more likely to give preference to the specification over the copies in the conflict between the verses of the commandment and the verses of inheritance. Because the ruling of the will is not for those who have an inheritance, and it remains on the origin of his generality among those who have no inheritance from among the relatives, so the Will is obligatory for him; and because specification is easier than copying, its commitment was more important, since copying is not working with one of the two evidences, and specification is working with both evidences, and working with both evidences is better than working with one of them.

The Will is legally obligatory in some documents with those who believe that the Will is obligatory, and they are a few scholars such as Al-Zuhri, Al-Tabari, Ibn Hazm and others, with substantial differences in that, The jurists obligated the bequest to those who do not inherit from relatives without specifying a specific percentage, And there is no specific legatee for him, it is not implemented when it is not present with the sin of the testator, and in the legally obligatory will it is determined for the son of the son and the daughter of the son with the presence of the son, so that, the brothers of their father who died before their grandfather, In the legally obligatory will, the son and the daughter of the son are given, even if he does not make a Will, in solving will issues, it is necessary to benefit from contemporary mathematical laws, while documenting the old methods of solving them.

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