

Legal Responsibilities of Inheritors about Legator Obligations and Issues Relevant to Inheritance or Patrimony in Rules of Islamic Republic of Iran and Religious and Rules of Some Countries

Nader Fulad panjeh¹, Rasoul Abafat², Ali Abbasi³

¹Legal Counselor, Tabriz, Iran

²PHD Student of Legacy

³MA student of private law at International University of Are, Iran

NaderFu@yahoo.com

Abstract: The most important issues of society, which create complicate questions one problems due to legator commitments about inheritors. By supposing that, all claims during legator life, can be said to inheritors in tribunal, after his / her death most of problems have clear answer by thinking about religious law and Islam rule. So, in this paper, claims and winning or loosing parties of legator, legator claims during life, patrimony and legal will are bases of research in order to consider the legator responsibilities about commitments. Finally, all claims or commitments of legator during his/ her life can be perused after his/ her death and inheritors must obey them canonically and legally in addition to commitments, inheritance or patrimony have their own problems and finally judgment of court will follow probate up to action of any claim of pro or con. So, the best supporter of inheritors is legator's will which probably states the root of problems. So, this paper speaks about three main indexes as foundations of solving inheritors problem in claims.

[Nader Fulad panjeh, Rasoul Abafat and Ali Abbasi. **Legal Responsibilities of Inheritors about Legator Obligations and Issues Relevant to Inheritance or Patrimony in Rules of Islamic Republic of Iran and Religious and Rules of Some Countries.** Journal of American Science 2011;7(9):674-678]. (ISSN: 1545-1003). <http://www.americanscience.org>. 88

Keywords: Legator Commitments, Legator Will, Debts, Legator Claims, Probate, Patrimony, Possessions.

1. Introduction

Human being has been eager to subjugate his/ her own destiny and possessions for many years. This action is clear in different ways in remaining traces of large civilizations and present behavior of human.

Iran, Egypt, china and India are eastern religion based civilizations which have symptoms of this eagerness.

Islam/ gives its followers the belief that It is responsible for all ages and generations by attention to research based and heavenly religious juris prudence.

Now, the belief of human passage to immortal place after death, and the desire of acquiring wealth cause the motivation of thinking about their science of legal, states and debts after death.

By deep consideration, a lot of questions have been made and different interpretations and answers have been presented by law gives the question that who and how determine remaining properties, rights and claims of defunct?

Law, public prosecutor or legator will or a person who was considerable for rights owner

This research wants to discuss the attitude quality of human society through detailed questions and search about required answers through laws by considering word of in heritance among these three

words, claims, inheritance and will, in Iran and religious jurisprudence and rights laws.

Undoubtedly legator claims and quality of legator enjoying and aims form the most important parts of each legal system its reason is clear because duty of humans life fruit are cleared up by these rules. Considerable point is that each person loves or hates some different people and desires, all his/ her properties, will be attained to loved one, and vis versa, keep at a distance the haitfuls from these properties. Everybody depends on deceased person according to some reason that they cause the deceased person come into existence such as father and mother, or deceased person cawes their existence such as children, so naturally, these people should be companions that become deceased person's sub-delegate and possess his / her legacy due to affinity to deceased person.

These relations can consists two states. Whether they are consanguinity relatives who are relatives due to relation or they have relation comprehensive, such as birth from unique person.

But this kindness can be created between two persons due to other case, such as cause (marriage), so couples can share each other patrimony.

According to following principles, people who are inheritors after death of a person, should be known and be the member of different here dittany

levels expected by law and another necessary point is that it is possible the deceased person has special opinion toward a person and has special insertion to do some works after his/her death. So this right and authority for appraisement of his/ her properties after death is limited to law text.

Inheritance is considered to clear up legal responsibilities of inheritors about claims, debts, convictions, and claims of legator in religious and law by the priority order of effect on inheritors responsibilities in claims and winning or losing conviction of legator.

2. Subject expression

Inheritors responsibilities in claims and winning or losing conviction of legator to reach will aims and to do remaining claims of inheritor and possession of properties should be determined.

Which legator have spent time to attain them and in inheritors require them.

Human is compelled of determining limitations and making clear rights of all parts in social life, so expressing details of rights is one of the necessities of human life in this paper are consider that the deceased person expects his/ her inheritors to do his/her rights whether sin against God or sin against mankind.

First God satisfaction to ward issues which there was no time for legator to do them or didn't do.

Second, sin against mankind, right owners that legator hasn't paid their debts due to negligence, and it is essential for inheritors to provide them to make free the deceased person from people debts, and debtors and claimants reach their juridical and legal rights.

3- Research hypotheses

Civil law of Islamic Republic of Iran and religious are capable of supplying human requirements.

Dispute of judgment and method of court and other factors don't decrease responsibilities of legatos about his/her remaining claims, and legator and inheritors can pay debts.

Necessity of research

Islamic belief, believes that human is not only responsible for his/her actions and behaviors but also owner at rights. So, God enact laws for humans to reach these rights.

It is essential for Muslim lawgivers to give the issue completely and in comprehensive way to Islamic society.

Record of research

Responsibility of human specially muslim human is in his/ her nature. So, chiefs of religious and Islamic Law write a lot in this case and

Method of research

Writing of this paper has been done by library and descriptive method. In addition to these collections and descriptives, analysis have been presented.

Importance of inheritance

Inheritance is important from two points:

1) more and complicated issues which are considered upon properties of dead person .i.e. they make clear the fruit of human age. These issues obey special system which is not seen in any contracts obligations and claims. Order of patrimony consumptions can't be simple and instantaneous order, it needs more studying and it is essential to give help up duty of dead person's family, and distinguish and determine their relation with dead person, debtors, creditors and also their relation ship with each other.

Inheritance helps family and culture maintenance: if there is cultural- artistic inheritance in a family, this inheritance will be destroyed because of poverty and lack of support by society but if there is patrimony, young talents will look after the inheritance by using patrimony. We know families who have looked after family culture and have lived in honored way.

Using inheritance in bad way is not because of bad rules and inheritance thinking.

Science of inheritance

In the past, importance of inheritance was so that formed special course of law science. Inheritance experts were educated, senior experts were in court to solve inheritance problem, all of them called presumptive, and inheritance science was called obligatory duties science. Book (...) of Hanbali jurists is the best work in this case which gives us necessary information inheritance:

Clause 867 states: inheritance is fulfilled to real death or supposed death of legator. This clause doesn't state: what is inheritance? But says about its fulfillment. Then, clause 868 stated: proprietor ship if inheritor about the deceased person's patrimony isn't settled unless rights and debts belonging to dead person's patrimony are paid. Are inheritance and patrimony synonyms? Law is silent for this question, and these two should be cleared:

Inheritance means permanence, inheritor means reminder, and inheritor in one of God's names. Inheritance and inheritor have some meaning.

Inheritance is used by the meaning of merit, and we can explain clause 867 by this meaning, because inheritor merit is verified as soon as legator dies but this merit is unstable and this instability should be removed by clause 868. like this order:

First- inheritance, is merit

Second- patrimony belongs to merit, so there is difference between inheritance and patrimony.

Inheritance is each of shares which belongs to inheritor, because each share is part of total patrimony, so there is difference between inheritance and patrimony the same as there is difference between total and part. Teras is used by the meaning of inheritance.

Definition of inheritance

There is no definition for inheritance in our rules and tests of commendable religious law. Jurists state these three definitions:

A) heritage consists of everything a person merits individually because of death of other person for existence of blood relationship or cause. Merit case may be one of the following issues:

- 1) Property, both dignitary and interest
- 2) Property appurtenance i.e. financial law such as option and preemption
- 3) other issues such as relations right and Gezf right.

First- reminding blood relationship and causative relationship is for putting away the will from inheritance definition.

Second- stating individually is for putting away second level merit of endowed property Mogof Allehem from inheritance definition, because, second level merit depends in first level death of Mogof Allehem .

But second level is religious duty of financial affairs and by attention to idiomatic definition of inheritance, it consists of non financial affairs such as relation right and Gezf .

Factors of patrimony:

Knowing factors of patrimony is so important. Patrimony definition gives us brief information, but considering factors of patrimony causes our awareness. Factors of patrimony are as follow:

- 1) Nature of patrimony isn't allocated to financial affairs, and consists of relation and swear right. Now, swear right is considered in clause 1325 civil law. Also clause 10 at civil responsibility law 1339/02/07 says: a person whose prestige and responsibility or family credits have been damaged, can ask for compensation of financial and moral damage. When importance of damage and kind of fault are requires, court can pass judgment of not

only financial damage but also removing damage through other ways such as apologizing and inserting judgment in the press, if damage is proved.

Right due to court judgment, come down b inheritance to inheritors of winning party, if the right is non financial and winning party died before enforcement of judgment.

2) transmission of right from dead person to inheritor is necessary for fulfillment at patrimony of right transmission from dead person to inheritor, in an other words, rightful of patrimony should treat his/her right from the deceased person. Treating right from dead person, is the main factor of patrimony which cannot be neglected.

This issue can be disputable such as:

1-1) blood money is part of patrimony and self blood money is self substitute, and if a person is alive, there is no substitution and when person dies, he/ she isn't owner of blood money.

So, how do the killed person's inheritor, asks for blood money from deceased person who hasn't been owner of blood money just for a minute?

Imagine that this right belongs to killed person, so if after incidence of battery ends to killing and before incidence of killing, killed person wants to neglect probable blood money and to relinquish it, so he can do them, and this is enough to imagine about the belonging of blood money to Majni Allah.

Or we should say: blood money is property of death person. The same as check tantamount to formal documents and judgmental symbols, aren't in less amount in law science about law leveling and people duties.

1-2) clause 24 of insurance law, approved 1316/02/07 states:

Life insurance fond which should be paid after death, is paid in instance document during insurance contract or after that. So in this case insurance fund belongs to a person whose name is in insurance document.

Discussion is in the first sentence of this clause, insurance fund which come down by inheritance, even if it didn't belong to dead person before death so that inheritor as inheritor of insurance fund ask for fund, nevertheless, insurance fund such as blood money is tantamount to dead person property.

Undecided transmission:

Transmission which was considered in second factor both unconditional transmission and undecided transmission.

Clause 17 of insurance law, approved 1316/02/07, considers good example of undecided transmission and says: if the insured died or insurance was transmitted to other one and if

inheritors or assignee perform all commitments which is duty of the insured because contract, insurance contract is in the interests of inheritors or assignee is left over his validity. Insured or inheritors or assignee can revoke the contract.

This revocation:

1) didn't transmitted from legator to inheritor and isn't applicability of option inheritance, also of law sentence, they have created for inheritors after death of legator.

2) right of revocation, denotes the transmission of law due to insurance contract for returning to inheritors because option right is incidental and should be aware of other right, and is part of that right's effects.

Conclusion: from the part of insurance contract there is right for inheritors by death of the insured. But denotation of this right, is undecided until inheritors perform for insured duties which are for the insured because of contract. So, right of the insured inheritor which is created as soon as he/ she died is undecided, there is no tax until it become unconditioned.

Effect of debt on patrimony transmission:

Does debt prevent transmission of patrimony or cause suspension of that?

If it prevents patrimony transmission, second factor hasn't been verified in the same time, and patrimony subject isn't true because extemporaneously transmission of right from dead person to inheritor should be factor of patrimony and if this factor is canceled patrimony won't be verified. This is appearance of reasoning, but reality is other than this, first the difference between these two should be cleared up:

1) patrimony

2) to come down by inheritance

Patrimony is verified when a person's death is real or preemption. There is difference in this factor.

Remaining rights of the deceased person which come down by inheritance by others, attain to other by no interference of the deceased person.

This is distinguished factor of patrimony about legacy because will power of testatrix is important about will.

Note: there is no fault among dedication, descend and patrimony and no necessity needs to compare these issues. Fourth factor can separate well patrimony from dedication.

Law cases of probate affairs have attractive confirming points about this case:

1) patrimony isn't allocated to financial affairs. Clauses 188, 203, 217 of probate affairs law denote this case because writings of the deceased

person and his/ her commercial notes are parts of patrimony.

2) patrimony before his/ her death is part of his/ her rights- all clauses about patrimony and writing of patrimony and sealing up patrimony mean this, the word of patrimony is enough to this meaning.

3) patrimony consists of positive part of dead person's property, clauses 190, 206, 211, 213, 218, 222, 225 of probate affairs law denote this case.

4) probate affairs law has discussed about real and preemption

5) fourth factor is self evident truth of problem.

Rights which belong to the deceased person consist two parts, a part which comes down by inheritance and a part which doesn't come down by inheritance because of some conditions. We study these two parts in two segments. Rights which come down by inheritance are as follow:

1) option right

Clause 445 states: each of options are transmitted to inheritor after death. So there is no difference among options.

2) preemption right

Clause 823 states: preemption right is transmitted to inheritor his/ her inheritor after death of preemption. Clause 824

Discussion: preemption right is allocated to joint property (clause 808) inheritor isn't joint property, his/ her financial rights in the interests of his/ herself as a sub- delegate inheritor is sub- delegate of legator.

If we know this title as prevention for coming down has inheritance and by considering clause 821 which states that preemption right is urgent, can inheritor uses preemption right before payment of dead person's debts?

Since, possession of patrimony is possible to the extent that it isn't detriment for Diyan and managing patrimony by inheritor has no fault. If using preemption right doesn't cause inheritance but causes entrance of object of sale in Melk patrimony, is faultless if it isn't detriment for Diyan

3) refutation right and permission of unauthorized contract

Clause 253 states: in unauthorized contract if owner dies before refutation or rent, this refutation or rent charged with his/ her inheritor.

4) mortgage entailment right Mortgage must Egtabas Rahineh to mortgaged during mortgage contract (clause 772). Mortgaged can keep Rahineh until collection of his/ her debts. This right is called mortgage entailment right.

Non heredity rights:

The deceased person's rights consist of two parts: apart which has 19 important clauses is hereditary and can reach to other samples. These cases are not hereditary

Custodianship right upon endowments and refutation and remained one third, supervision right of supervisor, trusteeship right, guardianship and administrator ship right, lawyer's right (clause 777) right at withdrawal to revoked divorced woman, money of expenditure, dwelling and Kesveh rights, right of custody, Haggosabag in mosque and schools and inn and parks and also public rights (such as advocate license) right of returning from donation don't come down by inheritance.

Note 1: right of vow is not hereditary

Note 2: if contract affirmation was said but its approval has been remained and death happened before that, do inheritance have right of approval announcement? Theories of civil law is the best case to accept this affair classical theory governed by custom and practice and these two are changed.

Does the existence of dead person's debt prevent transmission of debt from patrimony of dead person?

Islamic religion has three theories for this case:

1) patrimony is transmitted to inheritors before payment of the deceased person's debt. (Unless he/ she didn't state the approval of patrimony) but ownership are paid.

Clause 878 states: inheritance is verified to real or supposed death of dead person. Time of patrimony transmission proves patrimony refutation by imitating admission from stated affair in clause 249 of probate matters, he/she doesn't have any responsibility about payment of dead person's debts and he/ his properties are immune from detain.

If there is doubt that presumption juries is absolute or relative, will power freedom principle is expedient to treat that presumption juries as a relative are until its opposition proved so it is relative one.

1-4) regulation of formal documents fulfillment approved 1322/09/28 has been approved after probate matters law. So, Iranian law juries says that regulation is allocated for law.

2) before paying debts of dead person, patrimony isn't transmitted to inheritors. So who is owner of patrimony?

Jurists say that patrimony is property of dead person and he/ she has legal personality to this extent.

4- Consideration:

This thought has not been accepted in our law. This isn't a good solution from legal science point of view.

3) enacting patrimony after death of the deceased person who his/ her is passive and Marae: if inheritor pay debt from his/ her own property, it will be clear that, patrimony has been transmitted in the time at legator death. If inheritor doesn't pay debt from his/ her own property, it will be clear that it hasn't been transmitted to inheritor in the time of legator death.

Consideration:

This is the worst legal solution that its owner has imposed his/ her imagination upon outer with out any reason. So it has few number of fans.

5- Conclusion:

Saying why and explaining human responsibility is a subject which cannot be discussed in framework of a theory. It was distinguished in subject of responsibilities aims that we can face with different attitudes and can draw social policy and individual judgment about dead people as an Islamic and humanity principal and present as a religious and legal symbol for organizing society. Anyway, responsibility in every form is inevitable factor, even if it is deceased a lot and continually in the society.

Certainly, society needs these operational models for health of its own life, when this subject is designed and stated clearly in our belief, its executive protection will be society realities.

Islamic society of Iran contains imitated basic principles in its resources and by relying on religion and legal principles in Iran society, the largest duty of prophets for Islamic society and all existence, so existence of mental, faithful and virtue system which results in good behavior and being responsible for Islamic society is necessary.

Corresponding Author:

Nader Fulad panjeh, Legal Counselor, Tabriz, Iran
NaderFu@yahoo.com

References

1. Civil law of Islamic Republic of Iran.
2. Civil rights published by Dr. Langhroody second book.
3. Asna Ashrieh published by Mameghany, Egheh publications.
4. Vafy published by Molafeizeh kashani, first book.
5. Effect of will power on civil law published by Dr. Amani Mizan publication.
6. Dombati published by Mohammad shata- subject of Eaane Talebin publication at Haya Ashras Berotdar
7. Mostanad Shieh second book published by shahid sani.
8. Alekhtiyar Altahamol Almokhtar Published by Abdollah Mardod Ebn Almoseli Alkhngi
9. Documented and sectarian second book, Beirout publication Daralkheri
10. Religion published by Abdolazia ebn alberaj altrablbsi.

8/27/2011