

The terms of "legacy" in the jurisprudence of the five religions

شروط الوصي به في المذاهب الخمسة

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Abstract

"Legacy" is financial that is being will to, therefore, considering that one of the most important parts of the will is the "Legacy" of the will. Therefore, the jurisprudents of Islam also for the correctness of those conditions and to make it, subjected several conditions. Therefore, some of the conditions for the correctness of the "Legacy" are: a) be the property, because the will is vesting possessory rights and what does not exist, is not acceptable; b) it has a price and the profitability of it should be correct; c. It should be able to possession, even it does not exist when the person is willing, therefore, the jurisprudents believe in the correctness of the will to the benefits, and also the will and the impersonal, such as the will of the corn and the fruit and etc. D. It should have been owned by the testator, therefore, the jurists have conditioned that if the "legacy" exists, it should be the property of the "testator" at the time of the testate, because the will of the property is non-false. E. It should have the legitimate rational benefit because, in their opinion, they intend to make a correction of the blessing of the testator while s/he was alive, therefore, the will not be permitted to testate to sin, as the jurists have said in the will of depriving some of the heirs that such an act is forbidden: it has the ability to transfer, because some of the rights, including the right to sue, the right to nemesis and etc. cannot be willed. However, the jurists have considered two conditions in order to enforce the will in "legacy": first, the debts of the testator should not include all the assets and the heritage of him/her, because in this case, the debt does not enforce the will; and secondly, most jurisprudents of the religions believe that if they have inherited heirs, they should not be "more than

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one third of the heritage". However, they have controversy over the lack of inheritance.

Keywords: will, legacy, legatee

Statement of the problem

The will in the social life of Muslims in special and non-Muslims can play a significant role, but for Muslims, there are many consequences of the worldly and the latter. Due to its importance, this has led many scholars of jurisprudence, and also law scholars, decided to consider its quantity and qualities, so its topic has four special pillars: Sigheh, testator, legacy, and legatee, and each of them also has a lot of discussions and specific terms and conditions, but the main discussion of the article has focused on the topic of legacy that is the widest part of it and has a lot of debates, so that the terms and conditions surrounding it are briefly outlined. As mentioned, "legacy" or whatever is testated, is one of the essential element of the testate. Although jurisprudents and lawyers agree on some of its terms and conditions, but their disagreements on some of the terms and conditions of "legacy" has created significant effects on the will of the jurisprudents of religions and lawyers, so some of these differences are defined as the property that affects the difference in permissions on the testate of the benefits. Among other dissidence, we can mention the important issued of will to a vague or obscure property, or so on, and therefore the existence of these differences and the implications, embodies the necessity of research in this regard. It should be noted, however, that the term has two main pillars, namely: 1- the terms of legacy and 2: the verdicts of the legacy, which this research has only been made in the context of the "legacy" condition, according to the jurisprudents of the 5 religions, and do not attention to the "legacy" sentence in a variety of ways.

The concept and the pillars of the testate

1. The concept of testate: Testate is the partial possession to the others after death voluntarily. (Samarqandi, 1414 AH, 250/3, Kassani, 1404, 330/7, Novi, Bi Ta, 357/15, Sitouti, 1417 AH, 355/1, Touijeri, 1431 AH, p. 788, Ameli, Bi Ta, 363/9)

2. The pillars of the testate: Jurisprudents did not have a single promise in relation to the constitution of testate, therefore, there are many differences in this field, but after research in this field, most of them believe that the pillars of the testate of most religious scholars are four. (Rabieh, 1408, A.H p. 57; Seriti, 1997, p. 24; Ibn Abedin, 1412 AH, 650/6; Bardisi, 1391 AH, p. 13; Shalabi, Bi Ta, pp. 31 and 32; Desuqi, Bi

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Ta, 423/4; Khalvati, Bi Ta, 584/4; Jeziri and Yasser Mazah, 1419 AH, 379/3): Sigheh, testator, testate and legacy.

Sigheh

The term is meant an external sign which implies what is within human beings, such as the tenderness in the creation of contracts and possessions, and by virtue of which the decrees without inner will, which is intention and wanting to do, are related to it. (Rabieh, 1408 AH, p. 57). The Sigheh of the will consists of two parts. First, the Exigency and the second consent (Seriti, 1997, p. 24). Of course, the owner of the book, Al-Dir al-Mukhtar, a scholar in Ahnaf, says: "The testate has only one pillar, which is from the pleading of the claim on the testator's behalf, therefore, he says that the way of expressing the will is such that the testator says that: "I will testate such a thing for such and such person; and what that is implied in the use of the words is sufficient." (Ibn Abedin, 1412 AH, 650/6)

Exigency: The purpose of the exigency in the testate is to provide a rhetorical statement from the testator person, as saying: "For such and such person, I made a testate." (Seritti, 1997, p. 24)

Consent: The purpose of acceptance in will is the words that can be acquired by the "legatee", as **saying:** I accepted the will. (The same source)

Of course, the jurists, in connection with the words exigency and consent, demanded that every term that implies an esoteric will and, in such a way as to be honest, that it is competent to be mentioned as the seizing term, then they have said that it does not matter whether the words, the text, or to be pointed out, but with the difference that the principle is words in the interpretation of what is in the same words, because it is a term for a way of understanding between people at all times. Therefore, the concept of seize by any useful word which implies the purpose of seized property and is in any word whether Arabic or non-Arabic, eloquent or non-eloquent, truthful or permissible, and it is true when it is clear in the meaning of the signification, and in this case, there is also no difference between jurists. (Bardisi, 1391 AH, p. 13; Shalabi, Bi Ta, Pages 31 and 32; Rabiah, 1408 AH, p. 57). Therefore, the jurists also said in connection with the testate that (sighe) of the testate will be written with every expression that it implies, and it does not differ from the word as it is explicit, as saying: I have given you that or that amount of will... or it is in the words of a allegory, but the intention of the will is understood from the same, as the saying: "Give such and such thing to

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such and such person after I passed away" (Desuqi, Bi Ta, 423/4; Khalvati, Bi Ta, 584/4; Jaziri and Yaser Mazeh, 1419 AH, 379/3).

Testator: The second pillar of the testate is the testator, and s/he is a person who wills to another person by means of a financial will from her/his property. (Nasafi, 1311 AH, p. 169)

Legatee: The third pillar of the will is "legatee", and "Legatee" is one who is given to him a property by means of a financial will. (Previous source)

Legacy: And finally the fourth and the last pillar of the testate is "Legacy" which this study also contained in the terms of the willing, so first of all, the literal and idiomatic meaning of it among jurists, and then its conditions in a coincidence way among the 5 religions (Hanafiyah, Maliki, Shafeiyeh, Hanbali and Imamiyeh) are discussed.

Linguistic Concept: The jurists have said that the term "legacy" means what is willed by a person, that is, the act or the thing that is made by it. (Nasafi, 1311 AH, p. 169; Fiumiy, Bi Ta, 662/2)

The terminological concept; but in the term, "legacy" in the words of the jurists, has several definitions that Ibn Arafah has said in a general concept that: "legacy" is whatever that will be the property of a person due to the willing of another person. (Abdari al-Gharnati, 1416 AH, 520/8). Of course, Ibn Arafah's intention is that all that can be acquired by will is that it has the will of possession and ownership that it must be, that it has the willfulness conditions It should be noted that there is a lot to mention because, for example, being drunken or other sins that are not religiously capable of possession, cannot be willed because otherwise, his definition would be illegitimate in terms of jurisprudence. Therefore, he has acknowledged this as he continued his speech (The same source). But from the viewpoint of some of the contemporary authors, the "legacy" is for what human beings want to will from his/her property and during his/her lifetime as a tribute to us after his death. (Al-Mousoua al-Fiqhiye al-Kuwaitiyah, 1404 AH, Vol. 325/39)

Documented "legacy"

In connection with the documentary, "legacy" the Islamic jurists, in the verse 132 of al-Baqarah Surah: "Abraham and Jacob, have commanded to their sons: that God has chosen for you the religion, so that you will not die unless you are Muslims".(Holy Qoran). And the 12th verse of Nisaa chapter and verse 151 of Surah an'am: "That is your commandment", they are cited. (Gheitabi, 1415 AH, 387/13, Novi, Bi Ta, 397/15; Ibn Mufleh, 1418 AH, 228/5, Sivatti, 1415, 441/4,

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Mazandarani, 1382 AH, 81/6). But in the meantime, a strong doctrine of the jurists is to quote the 12th verse of Nisa's Surah, which Allah states in this verse that: "... after a will you recommend it ..."

Therefore, the jurists say that the word of will in this verse is the noun and it means gerund; therefore, they have said that although in this verse the word "will" is written, but (in fact) it means "legacy". (Baberti, Bi Ta, 412/10; Qunowai, 1424 AH, p. 111; Mazandarani, 1382 A, 81/6; Najafi, 1404 AH, 15/513). We document our narrative for the legitimacy of "legacy" is narrated based on what is narrated from Talheh Bin Zubair, which says: I asked Abdullah bin Abi Ofi (peace be upon him), whether the Prophet (peace be upon him) had made a will? He replied: "No. How is the will being necessary to be made to the people, or how he ordered people to do the will? I asked. He answered that the Prophet (peace be upon him) had made a will against the Book of Allah. (Bukhari, 1424 AH, 3/4; Darmi, 1412 AH, 2029/4). However, as previously mentioned in the introduction, the jurists of the religions have made several conditions for the correctness of the "legacy" and consider 2 conditions in order to validate it, which are briefly stated below:

Correctness conditions of the "legacy"

The jurists have made several conditions for the correctness of the "legacy" and two conditions for the validate of these:

1. "legacy" correctness conditions

1.1. It should be the property. It means that "legacy" be a property that is capable of being inherited from someone, because it is a possession will, and that what does not exist, do not have the capability to be the property of someone. Therefore, the jurists have said that the will of the property, is what the inheritance is in it and that it should be correct to be the place of the contract in the time of the life of the "testator" person (Samarqandi, 1414 AH, 208/3, Cassani, 1406 AH, 352/7, Mawardi, 1419 AH, 194/8, Helli, 1388 AH, 479/2, Seriti, 1997, p. 63).

1.2 "Legacy" should be valuable in the Shari'a's law; the second condition of "legacy" is to be priced in the Shari'a law, that is, use of it must be proper in Shari'a's law, therefore, the jurists have said that the will for a Muslim and also a will by a Muslim person for a property that is not permissible according to the law, such as dogs and pigs and wild animals that are not capable to be hunted by human being, is not permissible, because they are not useful according to Islam's Shari'a and using of them is not permissible, but the Hanafi's jurists say that the will of these things is permissible by a Christian for another

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Christian, because it is permissible to use such a thing in their beliefs (religion). (Kasani, 1406 BC, 352/7). The jurists have also said that it is not permissible to make a will to do anything in vain or to give money to kill someone. (Desuqi, Bi Ta, 427/4). According to the Sunni religions, it is not correct to will anyone to pray or fast for him/her instead of him/her, but the will to read the Qur'an on the dead body—albeit there are dissensions- it is accurate (Zahili, Bi Ta, 7480/10)

From the point of view of the Hanafi Jurisprudents, will to the trained dog and the wild animals that can hunt are correct because, if lost, the victim will be the guarantor of it, and it is legal and according to the Islam's law to deal it or donate it to another person. (Kasani, 1406 AH, 352/7; Gheitabi, 1420 AH, 387/13). But from the point of view of the majority of other jurisprudents of other religions, absolutely will to something in which there is a lawful benefit and without property, such as a hound, a watchdog from sheep and or dog in farmland, etc., which are special for guarding and possible to achieve it, is permissible. (Khatib Sharbini al-Shirbiny, 1415 AH, 266/5; Ameli, 1410 AH, 49/2). Also, the jurists have said that because of the will is a kind of donate, then in non-property it is the same as property; therefore, the early jurists have said that the will to the oil is forbidden (for the mosque) but it is permissible for another places except the mosque, because they have had a beneficial interest, including the use of its light and brightness, but it is not permissible to will it to the mosque (Nefravi, 1415 AH, 389/1)

From the point of view of the Sha'fiyya and Imamiyah's jurists, the will to the Halal drinks- that is, a drink which is taken from grape juice in order to make the vinegar, not to make the wine- is permissible and also the will for the fertilizer which is used, such as the dung mixed with ash, is permissible. (Novi, 1425 AH, 189/1; Qomy, 1359 AH, 437/2)

1.3. "Legacy" should be of possession, although it does not exist while willing; the third condition of "legacy" is that it should be able to be the possession of someone, although it does not exist while willing; that is, will is to possess a property to someone else and it is not permissible to will what is not able to be the property of someone, and it is proper to will the property exactly as what it is and as a cash or as a goods, because the s/he will be the owner of the property because of the donating of the selling contract, and a will to the properties which are allowable due to renting it, such as the habitation at home and the service of slave and the fruit of the garden, and what are like them are permissible, and this is the promise of most religious scholars. (Gheitabi,

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1420 AH, 387/13; Ibn Abedin, 1412; 654/6; Ghazali, 1517 AH; 282/5; Omrani; 1421 AH; 170/8). Also, the jurists believe that the will of the testator to his/her debt, which is by the such and such a person, is permissible, because, in fact, this will, is like the same as a will, and it is like to will a money for a person who owed to him/her. (Ibn Najim, Misri, Bi Ta, 476/8)

The jurists of Hanafi have said that the will to the fruit of a tree is permissible forever, because the purchase of agriculture crops before its existence is permitted by the legal (Salam) contract. (Ibn Abedin, 1412; 649/6)

In connection with this condition, the religious jurists have said: Absolutely, the will to what will vanish is permissible, because at the lifetime of the testator, he accepts and pledges with Salam and Mosaaqaat contracts, so the will is correct. Also, all Islamic religions, except Hanafi religion, believe that it is permissible to will to what is in the womb of the cow or sheep, etc. But from the point of view of the Hanafi jurists, it is not permissible to will to what the sheep will give birth, because it is not permissible with any contract, according to the Shari'ah, and the only thing that is permitted by Hanafi jurists is the willing of an unknown thing that is likely to be created, therefore, they decided that the existence of the "legacy" is not the condition at the moment. The same source, 650/6; Asbahi, 1415 A, 25/15, Novi, 1412 AH, 160/6; Ibn Qudamah, Bi Ta 180/6; Helli, 1420 AH, 293/1). But the condition that the jurists of Hanafi used to will and also for ability to be the possessor of the property, is that it should be created in the future, but the existence varies according to the type of property: so, if it is a certain property, such as certain place (house) or a certain farm, it must exist when the person wills. Or if it is spread over its entire property, such as a will to a one third or a quarter (one forth) of his/her property, it must be available at the time of death of the testator, because that time is the time of the validation of the will. Therefore, if it is a part of his/her property, such as the will of a one third of its sheep, (in this case), if it has sheep's when s/he wills, it is conditioned that they exist as the first type in the will, but if s/he has not any sheep at all when s/he wills, thereafter, as in the case of the "legacy", there will be among all its assets, which will be conditional upon that it exists when she dies, because it is not certain to be bound (Ibn Abedin, 670/6)

But, the condition of "legacy" from the point of view of the religious jurists except Hanafi jurists is that it exist at the time of death of testator.

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Asbahi, 1415 AH, 25/15; Novi, 1412 AH, 160/6; Ibn Qudama, Bi Ta, 180/6; Helli, 1420 AH, 293/1), and the reason of the jurist who strictly believes in the verity of will to an extinct property such as: Garden's crop for a certain time, or always, or for what his/her sheep or cattle will deliver a birth, is that it is permissible for him to be owned by the Salam or Mosaqat contract, so s/he can be possessor by a will. (Khatib al-Shirbini, Bi Ta, 393/2; Hemo, 1415 AH, 75/4), but the reasoning of Hanafi jurists is that given the fact that it is not permissible, in accordance with the law, to inquire what sheep will give birth, is that the testator is not able to be the possessor by any contract. (Ibn Abedin, 1412 AH, 670/6)

The religious jurists of Islam also agree that it is permissible to will indeterminate and the thing that s/he is not able to surrender it, because "the legatee" possess one third of her/his property/assets of the dead person after her/his death. Therefore, they say that when it is lawful for him to be the successor of the dead heir in such cases, it is permissible that legacy also be her/his successor. Soghdī, 1404 AH, 823/2, Khatib Sherbini, Bi Ta, 393/2; Ibn Ghodama, Bi Ta, 253/6; Helli, 1388 AH, 480/2), and it is also agreed that the will is permissible to be shared. (Previous sources)

1.4 If it is determined, it must be in the property of the (belong to the) "testator" person at the time of the will; the fourth condition of "legacy" is that If it is determined, it must be in the property of the (belong to the) "testator" person at the time of the will, because a certain testament requires that should be the property of a person, therefore, it should be the property of the testator because the testament of a determined property necessitates that property should belong to the testator, then, it is necessary that the property be in the possession of the testator, because willing of a property that does not belong to the testator, is not permissible so if someone says: I'll will Mahmoud's property, such a will is void from the point of view of the Islamic jurists, because the property belongs to the other person and testate to the property of others is corrupt and void. (Khatib Sherbini, 1415 AH, 69/4; Hemo, Bi Ta, 396/2).

1.5 "legacy" not be a prohibited action from the Shari'ah's point of view; the whole point of the view of the jurists of the religions in relation to the fifth condition of "legacy" is that the "legacy" not be a forbidden action/thing from the Shari'ah (that is, the place of the will, which the possession for the "legacy" proves, should be Halal and not be

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forbidden by the Shari'ah). In this regard, all jurists of Islam believe that the testament of what is not property of a person, is not correct, such as dead body of the animals and pork and etc. or like that which is not able to price by the Shari'ah to the parties, such as: wine in relative to the Muslims, because it must be said that the purpose of the will to compensate for the life of the testator, therefore, it is not permissible for the will to be guilty. In fact, it can be said that anything that is forbidden to profit from it is not true to make a will to it. (Kasani, 1406 AH, 341/7; Khatib Sharbini, 1415 AH, 68/4; Bajirimi, 1415 AH, 347/3; Bali, 1423 AH, 532/2; Helli, 1420 AH, 340/3)

1.6. The "Legacy" should be transferable and able to delegate it to others: the sixth condition of "legacy" is to the ability to transfer and delegate it to the others; all jurists and scholars of the Islamic sects state that in the possessory wills, the "legacy" should be able to transfer from the "testator" to the "legatee", therefore some rights that cannot transfer to others, cannot subject as the will, as well as the right to sue, the right to qisas, the right of accusation, and so on ... (Bujairamei, 1415 AH, 337/3; Khatib Sharbini, 1415 AH, 74/4; Bali, 1423 AH, 530/2; Jaziri and Yasser Mazeh, 1419 AH, 381/3; Ameli, Bi Ta, 440/9).

2. Conditions of affirmation "legacy"

That is, what is seized in the "Legacy" in order to authorize it. As mentioned earlier, the jurists have considered two conditions for the fulfillment of the will in the "legacy" that, without realizing that will, will be invalidated and will be void:

2.1. The forbiddance due to debt (the first condition); that is, if the debt involves all assets and properties of the testator, then in this case, the debt does not authorize the will in the "legacy".

The jurists have made it clear that the debts owed to testator, should not be so much that include all of her/his properties, because if s/he had made a will and then passed away, therefore, if s/he has a debt to another person, the religious jurists say that, after funeral and interment, giving his/her debts is prior to everything. And jurists and commentators have also stated that the reason for the imposition of will on the debt in verse 12 of the Surah of Nisaa, which says: "... after the commandment you recommend or religion ...".

Do not imply on the primacy of the will on the debt, but it is in order to understand it's importance and necessity of affirmation of the will by the heritors, because if the testator is owned, but the creditors let to validate the will, so the will is void. (Zuhaili, Bi Ta 7487/10) So, on the

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sidelines of al-Shilabi, the explanation of the truths in connection with this verse states that: the meaning and context of this verse is that the repayment of the debt is before make the will; because the will is a recommended action that the testator person makes it, but (while) repayment of the debt is an obligate action, and it is understood that the obligated action is superior to their recommended action. (Zilai, 1313 AH, 185/6) Imam Shafei (PBUH) also in connection with this verse stated that: There are a few points and meanings in this verse, therefore, so says: When among the people of science (towards the priority of religion to will) there is no difference, I have understood that the owner of debt (creditor), during the life of debtor, is more deserving of all to obtain his right to seize his/her property, and the heirs will possess the properties of the dead person if s/he personally owned them. (while the dead person owned the property of others with loan and debt), and this is an obvious matter (ie, the right of priority repayment the debts on the wills), and Allah knows it. (Shafei, 1427 AH, 543/2)

And he says again: I know that there has been no difference among the scholars on this issue that debt is prior to the will and inheritance of the dead person, and that Muslims also agree that it is not a will and inheritance except after repayment of the debts (that is, the condition for the implementation of the will and inheritance is subject to post-repayment of the debts), and does not make any difference that the debts were committed at the time of the health or of the illness of the testator, it is proved with the confession, or by the proof, or by any other method that is proved, Because God has not mentioned a particular debt. (Same p. 544)

And the Sunni narrative document, which implies the necessity of the priority of repayment of the debt to wills, are some influences that one of the most famous ones is given below:

“Peace and blessings of Allaah be upon him, and ...”

Tarmuzi, 1395 AH, 906/4; Qazvini, Bi Ta, 906/2. Sheikh Albani also says that this Hadis is belong to the Hassan. Tarmuzi, 1395 AH, 906/4.

2.2. Making the will, not more than one third of the property (second condition): According to that the second condition for the validation of the will, is that the testator should not will more than one third of his properties, so most religious scholars believe that if the testator has a heir, the “legacy” should not be more than a third of the bequest. Because they believe that the consensus of the scholars of Islam is based on the requirement of the decreasing of the will to the third one of the bequest,

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and it is documented based on the narration by Saad Bin-Abi waqas (PBUH), which is fixed in the tradition: in the year of Hajjat al-Wada' (the last year of life of the Holly Prophet of Islam, Muhammad (PBUH) while I suffered from a severe illness and pain that had put me in death and (finally) I was saved from death (in that case), the Holly Prophet of Allah, Muhammad Bin Abdullah (PBUH & HP) visited me: I told him that you see that I have suffered from such an illness, and I am a wealthy man with a lot of wealth and, I have no inheritance to inherit from me except a daughter, can I donate two thirds of my property as alms? "No" The Prophet Muhammad (PBUH & HP) replied to him. Sa'ad asked again that can I donate half of my property as alms? "No", you can donate only one third of your property, but one third is too much, because it is better if you put your heir rich instead of poor and needy people.

But almost all of the juries in all religions believes that if someone will more than one-third of the property, and if there are heirs, will to more than what is willed, depends on the permission of the heirs, so if the heirs allowed more than one-third of the property to another person, the will, is validated, Otherwise the will is invalid. (Samarqandi, 1414 AH, 3/207; Mardavi, Bi Ta, 192/7; Ansari, Bi Ta, 33/3; Suleiman, 1424 AH, 328/1; Helli, 1388 AH, 500/2). But if the testator has no heir, Religious scholars have disagreed whether it is permissible to make a will to all the properties or not? According to the faithful's view, the hypocrites of Hanafiyah and Hanbaliyah, making will more than one-third of the properties is permissible and it will be valid, although "legacy" is all his/her assets, so it will not be validated without their permission, so if there is no heir, there is no right for no one. (Kassani, 1406 AH, 370/7; Mardavi, 1406 AH, 192/7)

But some other jurisprudents believe that if a person does not have any heir and orders more than one-third of his property, his/her will is permissible only in one-third of the property, and this is based on the viewpoint of the jurisprudents of the religions of Maliki, Shafi'i, and also according to a narration in the Hanbali religion, Imam Ahmad ibn Hanbal, as well as the viewpoint of some of the Imami jurists. (Namri, 1387 AH, 381/8; Zarghani, 1424 AH, 118/4; Mawirdi, 1419 AH; 195/8; Mardavi, 1406 A; 192/7; Helli, 1413 AH; 378/6). But according to some of the Shafi'I, Al-Maliki and Hanbali jurisprudents, as well as some of the Imamiye's jurists, such as Sheikh Tusi, essentially the will is void, if it is more than one-third and if there is no heir. (Previous sources)

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And the jurists have added that permission will not be valid except with the two past conditions in the will for the inheritance: first, it be after the willful death. Secondly, one who allows, be forgiveness and known to "legacy". Therefore, if only some of the heirs allow, it will be applicative for them, and will be void for the others. (Zohailu, Bi Ta, 7487/10)

Result

In summary, we can conclude from the summary of the discussion in this study that:

1. The true and existential nature of the will and the proving of this right to the "legatee" is precisely tuning the conditions which the validity of the will is related to, therefore, from the Shariah and legal point of view of the jurists and lawyers is, in the absence of the health conditions of "Legacy", any kind of will, and in any area, it is untrue.
2. In accordance with the terms of legacy, it should be noted that all what the Islamic jurists have stated, in the first step, is for the veracity of the testator person's will, but the next step is for the fulfillment of his will, which is the most important part for the implementation of a religious and lawful will, which it is based on two principles: First, the non-assignment of the right of the other is related to the principle of the assets. Therefore, if such a situation arises, according to the use and deduction of the texts after the funeral of the dead body, repayment of the debts that is a part of the assets is prior to all thing. And although in appearance the verse is opposed to this act, it implies the importance of this subject. But the second type, to enforce a correct will, is not possession in the other's right, that is, the extent of his proper seizure in the will, is the extent to which the third is, and in other cases, and in the case of the existence of the heir, the will is valid only in the strict sense of the heirs, but this also have two types that if the will has heir and allow, it is true, but if s/he does not have heirs, and given many differences of opinion among the jurists, we are convinced that s/he is dissatisfied with such an action.
- 3- Considering the way in which the wise judge's interact style about the preparation of the deceased person is to the extent that he has permissible making the will to be prescribed and permitted by analogy and wisdom in normal circumstances to invalidate such a decree, but in regard to the justification of the jurists in this regard,

which say that the will of the vastest contract is among the contracts, so the judge in action, has allow a wide range to them, therefore, using the statements of the jurists, "legacy" can be something that the inheritance is in it or when the testator is alive, it be the place of contract. Therefore, it can be said that in the will of the interests, despite the objections mentioned in the jurisprudential texts, and also with regard to what the scholars do not regard as interests, but it can be said that because they are like the nobles and with the exchange contract and the inheritance will be the property of the person, therefore, the promise of the verity of will is superior to it, and we briefly mention the promise of most of the jurists in relation to the verity of the will, and in relation to the extinct and unknown will and what is in the sense of both, is the same rule because they are inherent by the contract or inheritance, so the will to them cannot have any prohibition, though that some people in this subject have incorrect interpretations.

الملخص:

الموصي به عبارة عن ثروة يوصي بها. لهذا بالنظر إلى أن أحد أهم الأجزاء في الوصية هو الموصي به، وضع فقهاء الإسلام عدة شروط لصحة تلك الشروط وتنفيذها. من جملة تلك الشروط هي: الف: أن تكون ثروة و مالا لأن الوصية أمر تمليكى و الشيء الذي لا يحتوي على الضريبة غير قابل للملكية. ب: لديها سعر و الانتفاع بها صحيحة. ج: قابل للتميك و ولو غير موجودة حين الوصية لهذا يؤمن الفقهاء بصحة الوصية إلى المنافع و الوصية إلى المجهول و المعدوم كالوصية إلى الحبوب والأثمار. د: أن تكون لديها الملكية، لقد شرع الفقهاء في أنه إذا كان "الموصي به" معينا بالذات يجب أن يحضر في ملكية «الموصي» عند الوصية لأن توصية الممتلكات غير باطل. ذ: لديه ميزة عقلانية شرعية لأنهم يعتقدون أن المقصود من الوصية هو التعويض عما فات طيلة حياة الموصي إذن لا تصح الوصية بالمعصية كما قد قال الفقهاء في حكم وصية بحرمان بعض الورثة و هذا العمل حرام. ر: أن تكون قابلا للانتقال لأنه لا يكمن الوصية ببعض الحقوق كحق الشفاعة و القصاص... أما الفقهاء فجعلوا لتنفيذ الوصية في «الموصي به» شرطين: أولا: يجب ألا تشمل قروض الموصي جميع الأموال و ثرواته لأنه في هذه الحالة، فإن القرض يسبب عدم تنفيذ الوصية. ثانيا: أغلبية فقهاء المذاهب

قائلون بأنه إذا كان لموصي وارث يجب ألا يكون «الموصي به» أكثر من ثلث الميراث ولو لديهم الجدل حول عدم وجود الميراث.
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