

## Calculating the Compulsory will according to Article 74 of the Iraqi Personal Status Law No. 188 of 1959 (Innovative method)

Researcher Firas Satar Jabbar<sup>1</sup>, Assistant Prof. Dr. Harith Ali Ibrahim<sup>2</sup>

<sup>1,2</sup>College of Law, University of Baghdad, Iraq

<sup>1</sup>Email: ssffgg198300@gmail.com

<sup>2</sup>Email: harith.a.ibrahim@gmail.com

### ABSTRACT:

The method currently in force in calculating the Compulsory will in the opinions of the Iraqi courts is contrary to the legal and sharia text, where the will is calculated as an inheritance, and there is a difference between the calculation of the will and the calculation of inheritance, we have presented in this research a method of calculating the Compulsory will using the famous method of inheritance science is reincarnation, where this method proves that the Compulsory will is extracted from the inheritance issue as a will, not as an inheritance.

### Keywords:

inheritance, an obligatory will, grandson, Compulsory will

### 1. INTRODUCTION

After the State of Egypt moved to codify the direction Who were said by the Compulsory will within the legislative reform by issuing the Law of Compulsory will No. 71 of June 24, 1946, there was a difference in the way to calculate the Compulsory will from the beginning of the work in its law, where its legislative texts came general and did not indicate the methods of calculation to extract the amounts of the due will, despite the fact that the law has shown the basis on through which the inheritance issues involving a Compulsory will are resolved. (Shalbi, 1982)

As a result of this difference between the commentators of Egyptian law, there were two mathematical ways to find amount of the Compulsory will, many years later followed by a third method that discounted the dispute and the difference between the previous mathematical methods (Abo-aineen, 2010).

The first method gives the owner of the Compulsory will a share of his asset without reviewing or re-calculate again among the living heirs only, and this method has been several criticisms, that we will see later in this study. (Abozakra, 2009)

The second method gives the owner of the Compulsory will a share equal to the share of his asset, which in turn may be the share of a son or a girl's share, and then add that share to the origin of the issue and produce a new origin that depends on the distribution of shares again, as well as this method was not without criticisms, which will also be clarified through investigation and analysis of the results. (Kablan, 1985)

Until 1960, the Fatwa Committee in Al-Azhar al-Sharif issued a new solution and had to adopt it, and this method is better than its predecessors in matching the legal and Sharia ruling in most respects, and it is followed until now.

Similar to Egyptian legislation, Iraqi law adopted the provisions of the due will, which was added by the legislature under Law No. 72 of 1979, the Third Amendment Law of the Iraqi Personal Status Law No. 188 of 1959.

But in Iraq, there was no visible difference in the calculation of the will, as in Egypt, because the executors of the Compulsory will in Iraq adopted the first method of calculation.

from that time until these lines were written, we don't know the reasons behind it, and if these reasons are found, what is the extent of their validity in the calculation, and Iraqi courts used to this arithmetic work without review by specialists and researchers, except for very little in their attempts to evaluate the computation of the obligatory will. (Sabah, 2013)

In order to find out the truth about this and to delve deeper into the mathematical calculations of the Compulsory will that are fully or as much as possible in accordance with the Sharia or legal judgment, and to indicate the aspects of the evaluation and weighting, I chose to research and go into finding the correct way to extract the Compulsory will in Iraqi law..

### 2. Study design and procedures.

In this research, we will adopt the applied approach and the analytical approach, we will analyze the legal text of the will to find the right way to calculate it and prove

conformity with the legal provision using the arithmetic applications of inheritance matters contained in the due will.

### 3. Calculating the Compulsory will according to the traditional method

#### 3.1 General Foundations

Iraqi law did not indicate a way to calculate the due will, but referred to the principles to be considered when calculating the due will:

- 1- This will should not exceed Ratio of one to three.
- 2- It should be as much as the share of the deceased boy in the life of one of his parents.
- 3- It should be carried out on the basis of a will and not a inheritance. (Abozahra, Explanation of the law of the will, 1950)

#### 3.2 How to calculate

This method, which is currently in force in the organization of Inheritance shares document under Sharia, is summarized in two steps:

1- The first step: The deceased boy in the life of one of his parents is supposed to live and inherit, and then the inheritance issue is solved according to the islamic rules to know his share as if he were alive and also to know the share of the other heirs..

2- The second step: this share is transferred to the beneficiaries who are the grandson on the basis of the male double the female, if it is equal to Ratio of one to three or returned to Ratio of one to three if it is greater (Al-Wandawi, 2017).

#### 3.3 applications

A person died, leaving behind a wife, a daughter, two sons and a grandson, whose father died during his grandfather's life. (Hasan, 2017), as in the table 1 below.

the table 1		8	8
	wife	1	1
	daughter	7	1
	son		2
	son		2
An obligatory will: son	son		2

#### 3.4 Disadvantages of the traditional way

This method carries out the Compulsory will as a inheritance, not as a will, and this is contrary to the legal and sharia text.

### 4. An innovative way for the researcher to calculate the due will

#### 4.1 Method steps:

- 1- Solve the matter with the assumption of the dead boy in the life of one of his parents as if he were alive and inherited.

2. The share of the dead boy is the amount of the due will.

3- Collecting the shares of other heirs and separating them from the amount of the Compulsory willshare.

4- Resolving a new inheritance issue for the living heirs only, without regard to the dead boy in the life of his parents.

5- Using the method of reincarnation and finding the whole issue of those two issues. (Abozahra, Explanation of the law of the will, 1950)

#### 4. 2 applications

Same as the previous example, as in the table 2 below

table 2 the		8	8	8	8	40	160
	wife	1	1	6	1	5	15
	daughter	7	1		7	7	21
	son		2			14	42

	<b>son</b>		<b>2</b>			<b>14</b>	<b>42</b>
An obligatory will: son	<b>son</b>		<b>2</b>	<b>2</b>	-	-	<b>40</b>
				<b>20×</b>	<b>5×</b>	<b>3×</b>	

### 4.3 Features of the innovative method

1- The Compulsory will can be calculated in manner Corresponds with Inheritance shares document under Sharia

without the need to know the amount and assets of the Property of the deceased in the manner of numbers. (Gilawi, 2012)

2- The Compulsory will is carried out on the basis that it is a will and not an inheritance, which means that it is the opposite of the previous way. (Amer, 2006)

### 5. Conclusion

After the end of this research, it will shed light on a set of findings and recommendations as follows:

#### First: Findings.

1- It is clear to us that the traditional method used in calculating the Compulsory will is wrong and contrary to the legal provision in article 74 of the Iraqi Personal Status Law No. 188 of 1959, because it carries out the Compulsory will as an inheritance and not a will, which is not provided by law.

2. The innovative method of calculating the Compulsory will is correct and conforms to the legal and Sharia ruling of the due will, as it executes the will as a will and not as an inheritance, and this is what the Iraqi legislator intended.

#### Second: Recommendations.

We call for the generalization of this method to all judicial and Sharia authorities concerned with the application of the law of due will.

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