

Applicable Law In Inheritance Cases**Hind Fayez Ahmed, Firas Kareem Shiaan****Article Info****Article History**Received:
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Abstract

The problem of conflict of inheritance may appear between the law of the inheritor and the laws of the heirs and the law of the location of the money in the estate. It is necessary to choose one law between these laws to rule the dispute. To solve this conflict of laws and determine the law in which it is necessary to know the doctrinal trends in this matter. There is a trend that considers inheritance merely as a means of possessing money, and the inheritance is achieved because of its own property, which is the death of the owner of the property, as it focuses on the store, so it is not based on a single law. This is the direction of French law, as the latter is subject to the law of the deceased's domicile. As for the real estate law, the law is the location of the property, wherever it exists

1. Introduction

Nevertheless, there is another trend that considers inheritance from the personal law, i.e. the law of the country to which the hereditary belongs to his nationality, so the inheritance is considered as matters of personal status before it is considered a means of ownership, it is based on personal consideration and the relationship of kinship between the deceased and the heirs, and therefore the personal law of the inheritor must be applied without distinction between the nature of Money, whether it is transferred or real estate, and this best opinion is to work with it when determining the applicable law in the matter of inheritance because the latter if it is considered a means of owning the money other than that it is not like any way to transfer the ownership of the money such as buying and selling.

This trend was taken by the Iraqi legislator in Article (22) of the Iraqi Civil Law No. 40 of 1951, which stipulated, "Inheritance cases shall be subject to the law of the inheritance at the time of his death."

This is to avoid the multiplicity of laws governing inheritance, because the inheritance is one group. It must be subject to one law, such as the law of the location of money or the law of the inheritor 'nationality, and the law governing. And the inheritance is applied, as it is stipulated that the inheritor must be a real dead or a ruling, and the inheritance must be alive and when it is permissible to take this matter By judgment death and the extent to which the fetus that is born after the death of the heir inherits and determines the inheritors and the rank and rank of each of them in the inheritance and also the matter in determining the contraindications of the inheritance as the difference in the religion, also determines the inheritance nationality law at the time of fulfillment of the rights and obligations transferred to the heirs as this law is concerned with Determine if the heir accepts the inheritance with the condition of the inventory, or without condition or assignment thereof, while the inheritance in Islamic law is compulsory, and the heirs are established by virtue of the law and the heir is not permitted to refuse it as it includes the total financial rights without financial obligations that are not subject to the inheritance and we find some Laws, such as French law, obligate the heir without his heir, and creditors have the right to execute all of the heir's personal funds even if they do not originate from the inheritance. According to these laws, they are obligations that For inheritance, and this is contrary to Islamic law, as inheritance is compulsory, it is established by the rule of law, and the heir is not permitted to refuse it, as it includes all financial rights without financial obligations that are not subject to inheritance, and therefore it is not permissible to implement on the inheritor's personal funds to pay debts related to the inheritance itself .

In inheritance it is the compulsory succession of money due to death and the rule of law.

Accordingly, we will divide our study into two topics: the first to indicate the applicable law in accordance with Iraqi law, and in the second we highlight a statement of who is the competent court to consider such cases. And as following:

The first topic**The applicable law to inheritance according to Iraqi law**

The Iraqi legislator organized inheritance issues in the Iraqi civil law and indicated the extent of its adequacy, lack, or need for amendment or addition. Due to the fact that the applicable law is one of the important issues in private international law. so that any countries cannot live in isolation and block their doors in the face of foreigners and prevent them from entering, residing or settling in, especially after The changes that occurred in Iraq in 2003.

Accordingly, this topic will divide into three requirements, the first to define the applicable law and the scope of its application, the second one to address the factors that affect the determination of the law to be applied to, and the third to indicate the vacant estate as follows.

The first requirement

Determine the applicable law for inheritance and the scope of its application

The applicable law to this issue is determined at the level of the comparative law, as its application varies among the countries. The country that calculates inheritance on personal status matters, including Britain and the United States, specifies jurisdiction for the calculation of regional law. If the money is real property, then the relevant law is the law of the location of the property. And to calculate the law of the deceased's home if the money is transferred, this approach is that the property has a fixed location and the transferred money is moving, so the legislator assumes its location in the deceased's home and this means that the inheritance in the inheritance treats two transactions according to its nature whether it is movable or real estate and there are those who subjected the effect of the property to the real estate Or transferred to a single law, which is the law of the location of the money that is the estate in exchange for this trend, all the Arab countries, including Iraq, went to treat inheritance as a matter of personal status and distinguished in the ruling between personal issues of inheritance such as conditions of entitlement and impediments and determination of shares, where they subjected them to the law of inheritance and the testator, Finance dealt with it as an oasis treatment, whether the estate is real estate or transferred, so I subjected it to the law of its location from the mechanism of transferring its ownership from the predecessor (the inheritor) to the successor (the heir). The ruling confirmed Article (24) of the Iraqi civil law that stipulated "issues related to ownership, possession and other in-kind rights". In particular, the methods for transferring these rights by contract, inheritance, will and others, shall be subject to the law of the site.

As for the inheritance eligibility for him to own property through inheritance, it was regulated by the Iraqi legislator in its ruling in Article (22) of the Iraqi Civil Law, which states "inheritance issues to which the inheritance law applies at the time of his death." The reason for choosing an inheritor is that he does not multiply against the heirs and adopt his nationality because the nationality law is characterized by stability and easier to prove, and the adoption of the time of death is because it is the time when the inheritance is achieved and its elements are confirmed by the inheritance, inheritor and place of inheritance, so there are no such elements before death.

The second requirement

Factors affecting the determination of the applicable law

Article (22) affirms that the difference in nationality does not preclude inheritance in movable property and real estate. However, the Iraqi does not inherit it from foreigners unless the law of his country inherits the Iraqi from him. This restriction is specific to the inheritance of a foreigner to an Iraqi and does not include the Iraqi inheritance of the foreigner.

Accordingly, matters relating to the transfer of ownership of immovable property do not apply to the transfer of ownership of movable property, but the law of the country in which the transferor is located at the time of death applies to it.

If the matter is related to the property of the estate that is located in Iraq, it is not permissible for the foreign heirs to track these funds except after fulfilling the procedures stipulated in Iraqi law as the law of the location of the money. Especially the registration of inheritance in relation to real estate in the Real Estate Registration Department, as failure to register it results in the non-enforcement of the actions issued by the inheritor regarding the estate's estate.

In conclusion, it is necessary to refer to the law of the property of the estate, because of the matter related to protecting the rights of creditors. Therefore, in this case this rule should be applied to the inheritance money found in Iraq, regardless of the nationality of the inheritor.

The third requirement

The vacant estate

The factors are not limited to what was mentioned previously, so if the deceased leaves a legacy and does not have heirs, then the ruling of this legacy is transferred to the Iraqi state. This is what is stipulated in Paragraph (b) of Article (22) of the Iraqi Civil Law, which states: "A foreigner who has no inheritor will have his money transferred in Iraq to the Iraqi state, even if the law of his state states otherwise."

According to the provisions of this text, the money of an alien who has no inheritance and who is in Iraq is transferred to the Iraqi state. According to this restriction, this rule does not apply, and the legacy of the foreigner who is in Iraq will not be transferred to his country, but his money will be transferred in the event of the heirs' absence to the Iraqi state.

These factors have been modified several times, as the dissolved Revolutionary Command Council issued No. 1910 of 1982, the foreign husband's inheritance of his Iraqi wife was forbidden even if the law of his state allowed her inheritance from him. The Cabinet at that time also granted inheritance leave validity in this case. Finally, all laws and decisions that allow non-Iraqis to own real estate in Iraq were determined in accordance with the dissolved Revolutionary Command Council Decree No. 23 of 1994, for any reason of ownership, including inheritance and will.

The second topic

The specialist court in charge of inheritance cases

To determine the competent court to indicate the litigation procedures, it is necessary to determine whether the defendant is an Iraqi or a foreigner, and to demonstrate knowledge of the specific controls of inheritance. Therefore, we will address these issues on three requirements as following.

The first requirement

Nationality controls for the Iraqi defendant

Referring to the rules of Islamic Sharia, which states that (there is no inheritance except after paying off debts). As the debts of the deceased are paid in payment, then the estate is then divided into those who deserve it from the heirs from the religious side. As for the legal side, and by reference to the Iraqi law, we see that the Iraqi courts are competent to hear the lawsuit filed against the Iraqi even if he does not have a home or residence in Iraq, except for cases related to a property, and as we explained earlier and the property is located abroad. The introduction of citizenship controls according to Iraqi law has justifications for the opinion of some jurisprudence, given that the sovereignty of the Iraqi courts in relation to Iraqis, i.e. those who are considered patriots, their sovereignty is personal, on the one hand, and on the other hand, they have comprehensive regional sovereignty, whether the Iraqi is a resident or resident outside the region Iraqi.

There is another opinion that considers that the adoption of this condition is due to achieving the interest of the defendant himself based on the predominant issue of settlement in relation to the Iraqi in his country, which makes the jurisdiction of the Iraqi courts existing in most cases. Consequently, the plaintiff, whether national or foreign, will have a court with which the Iraqi defendant will have jurisdiction, with a claim that jurisdiction may not be available to any foreign court.

The second requirement

The jurisdiction in which the defendant's domicile is foreign

Iraqi courts also have jurisdiction to hear the claim for an inheritance, even if the defendant is a foreigner if he or she has a domicile or residence in Iraq with the exception of causes related to real estate abroad. And the justification for working with this rule is that the defendant's domicile or domicile is a link between the person and the state's territory and therefore has a link with the sovereignty of the country and the latter will be the one who has jurisdiction over him. There is another opinion that is due to the reason for the jurisdiction due to the actual residence, so it will have the enforcement force, meaning there are an effective idea and the implementation force in relation to the defendant's residence in Iraq.

As an exception to that rule, as we explained the property outside of Iraq, the jurisdiction of the court in which the property is located. In addition to that, the Iraqi courts are competent to look into that case if the inheritor brought the case before the Iraqi courts.

The third requirement

Qualitative inheritance terms

Originally, all procedures from the time of filing the lawsuit and paying the judicial fees and passing through the appointment dates for notification and ending with the methods of appeal after the issuance of judgments are technical and organizational procedures for the work of the courts and are among the important rules. It is not permissible to compact to violate it and be effective in the face of everyone, whether they are nationals or foreigners, taking into account the restrictions related to judicial immunity. It also depends on whether the conflict issue in Iraq is achieved in its entirety or part of it. Thus, these measures are from the public order because they relate to organizing the course of justice that the judiciary is responsible for achieving for all citizens residing in the state's lands, from patriots and foreigners. All of this will achieve the common goal that the rules of private international law seek, and not be perceived, except harmony between legal systems in a manner that ensures justice. Rules of private law. There is a tendency to see that these rules are considered one of the rules of conflict of laws by adopting the dispute judge as the law of the court that issued the rulings to ensure the correctness of the procedures followed in that country, and this was taken by the Iraqi legislator in Article 28 of the Iraqi civil law that came. "The rules of jurisdiction and all procedures are subject to the law of the state in which the lawsuit is initiated or procedures are initiated", Accordingly, the inheritance law is the one whose jurisdiction may be permitted on the occasion of the dispute over the inheritance and the law of the location of the money that determines who is entitled to file the lawsuit.

In conclusion, it is necessary to refer to the law of the site of the estate's money, in order to protect the rights of creditors. Therefore, in this case this rule should be applied to the inheritance money found in Iraq, regardless of the nationality of the inheritor.

The issue is not limited to the influencing factors only, as the judge is able to, as we explained earlier, to exclude the inheritance law if it violates the national public system. And since the inheritance rules in Iraqi law are considered to be the rules of a matter, then it is not permissible to work against them.

Conclusion

After our study of the issue of the law applicable to inheritance issues, some of the obtained results are listed below:

1. Solving the problem of the foreign element on issues related to inheritance, and this is what the Iraqi legislator touched upon by establishing organizational attribution rules by subjecting the legal actions in force after death to the inheritance citizenship law.
2. There are cases that require the intervention of some laws to govern certain aspects of these issues, such as the law of the location of money.
3. The provisions of foreign law collide with the principles that the Iraqi judge considers to be of public order, and they are not subject to prejudice over the territory of his country.
4. The problem with the judge's application of foreign law to inheritance disputes by defining the nature of foreign law through the treatment of the law is the treatment of reality on the land of the conflict state, i.e. the law to which jurisdiction has been assigned. The court does not apply the law on its own accord, but rather at the request of litigants.

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