

Comparing Jordanian and Iraqi legal systems regarding inheritance and will issues

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ABSTRACT

The significance of regulating inheritance and wills within the context of legal jurisprudence is clear given the diversity of legislation and its requirement for precision and clarity in order to protect individual rights and accomplish justice. The regulation of property distribution and the administration of bequests after death are directly impacted by the fundamental legal and social issues of inheritance and wills. They are also connected to the jurisprudential and Sharia concepts that underpin the legislation in these domains. The purpose of this research is to compare the laws pertaining to inheritance and wills in Jordan and Iraq in order to identify legislative similarities and differences, as well as relevant court decisions, and to assess how well or poorly they align with respect to legal and jurisprudential principles. In order to provide precise scientific insights that result in a deeper understanding of these issues, the research used a methodology of theoretical and comparative analysis of legislative texts, applicable legal texts, and judicial rulings issued in each country. It also made use of pertinent jurisprudential sources. The findings of the study showed that the broad rules governing wills and inheritance shared a number of similarities. Fundamental distinctions exist, nevertheless, with regard to certain requirements, will types, and inheritance distribution plans. These variations show the jurisprudential ideas and legislative influences that each law has embraced. The findings also demonstrated that while Jordanian and Iraqi laws show flexibility and progress in regulating certain sections, there are still issues with implementing court decisions or bringing principles together to guarantee better execution and enforcement of the law. In order to improve the quality of legislation and protect stakeholders' rights, the study highlights the significance of updating laws in line with social and economic changes while taking into account a true grasp of Sharia and legal principles.

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1. Introduction

Given their intimate relationship to governing people's financial and legal rights after death, inheritance and wills are essential subjects of enormous significance in both Islamic law and the modern legal system [1]. Along with affecting people's lives and the stability of families and

societies, they also bring up moral, social, and security concerns about the rights of heirs, trustees, and relatives. Sharia principles, judicial norms, and jurisprudential interpretations that have developed over time are all strongly related to the topic of inheritance and will regulation, which has continued to be a source of legal and intellectual disagreements amongst different legislative bodies [2].

Given that both laws are based on a long history of Islamic jurisprudence, but are subject to contemporary legislative principles and judicial determinants that differ in their application and procedures, it is imperative to comprehend the similarities and differences between the legal systems of Jordan and Iraq when it comes to inheritance and wills [3]. By contrasting these two legal systems, it is possible to assess how well they align with one another in terms of judicial decisions, legal procedures, and guiding principles as well as how responsive they are to societal issues and personal demands [4].

The current research gap, which highlights the practical difficulties society and the judiciary face in applying pertinent laws while upholding Sharia principles, is apparent in the dearth of studies that integrate the analysis of legal and legislative texts in both countries, given the continuous legislative development [5]. In order to accomplish legislative integration that satisfies the requirements of both social and familial contexts, the study also offers a scientific reference that aids researchers and legislators in reviewing and developing pertinent legal systems [6].

With a careful evaluation of the similarities and differences between Iraqi and Jordanian law, as well as an explanation of the rationale behind these differences using legal and jurisprudential frameworks, this research attempts to offer a thorough, comparative, and analytical study of inheritance and wills issues between the two countries. It then makes suggestions that will strengthen fairness and transparency in the implementation of the law while also increasing the efficacy and integration of legal systems. By doing this, the study aims to improve the intellectual and cognitive components of Islamic law and the contemporary legal system, as well as to offer a contribution that is both scientific and intellectual in nature and that improves the performance of the judiciary and the sustainability of individual rights.

2. Literature Review

The ideas of "inheritance" and "will" serve as essential cornerstones for governing people's rights and posthumous financial arrangements. Since they are the main tool used to control the distribution of rights and the transfer of ownership between the living and the dead, they occupy a prominent place in Islamic jurisprudence and positive law.

The transfer of a testator's rights to their heirs after death is known as inheritance in its broadest definition. In line with Sharia or civil law, it embodies the values of social justice and fair asset allocation. It is a system of rules and principles that creates a framework for inheritance, guaranteeing that the estate is distributed in a way that respects both acquired and legal rights, in line with the values of equality and justice. Inheritance is not just the transfer of wealth. Ascending and descendants, kinship, legal principles, and social interests are all taken into consideration when choosing shareholders, their shares, and inheritance preferences [7].

Through the use of a will, a testator can specify how a portion of their fortune will be distributed after their death, whether for charitable causes, to recipients other than their natural heirs, or to further their own personal goals. As long as it conforms with legal or jurisprudential requirements and conditions and is subject to safeguards that guarantee the rights of legal heirs are not compromised, a will is conceptually an instrument that protects a person's right to distribute a portion of their wealth prior to death. The rules governing inheritance and wills, which seek to ensure equitable distribution and flexibility in arrangements following the death of the individual while respecting the legal and jurisprudential frameworks that govern them, demonstrate their natural connection even though they represent two distinct methods [8].

2.1. Fundamental Rules Governing Wills and Inheritance in Islamic Sharia and Legal Documents

Islamic jurisprudence and the legal writings embraced in contemporary systems, whether they are positive laws or based on Sharia, are both founded on a set of fundamental rules that govern inheritance and wills. The following are among the tenets of Islamic jurisprudence [9, 10]:

- Fairness and the distribution of the property among the legitimate heirs: The distribution of the estate is based on Sharia-determined shares based on family and legal rights, as per the Holy Quran and the Sunnah. According to the Quran and Sunnah, these shares—such as the share for the husband, kids, parents, grandparents, and other family members—should be precisely defined.

- Arrangement in accordance with accepted inheritance laws: In accordance with the guidelines of Sharia scriptures, some divisions, such as the fard (fardh), riḍ (return), and ta'sīb (agnatic inheritance), provide a systematic framework that is applied to all estates to guarantee their equitable and transparent distribution.

- Restricted and limited wills: According to Islamic law, a will may be made that leaves no more than one-third of the estate, unless the heirs agree. It is subject to requirements that set it apart from a gift or endowment and take into consideration the heirs' rights as well as the testator's interests.

However, the following are among the tenets of contemporary legal requirements and civil laws [11]:

- Both justice and flexibility are guaranteed by the law, which permits a portion of the estate to be inherited in accordance with the intentions of the deceased while upholding the legal rights of heirs who are legally entitled.

- Fixed and Variable Rights: The laws governing inheritance and wills clearly outline people's financial rights. The system takes into consideration social and economic shifts and permits the introduction of optional wills, so long as they don't interfere with the rules of lawful distribution.

To ensure its validity and efficacy, organizing a will necessitates a number of controls and requirements, the most notable of which are [12, 13]:

- The greatest amount that can be included in a will is three-quarters of the estate. Without the consent of every heir, it cannot surpass one-third of the estate. By doing this, the rights of the rightful heirs are safeguarded and the general inheritance is not harmed.

- Legality of Content: The will's provisions must be legal in order to avoid going against Sharia law. For example, it cannot restrict any heirs' rights without their permission, bequeath something that is prohibited, or oppress any of them.

- Good Intention, to guarantee its acceptance and non-nullity, the testator must be sane and in control of their will at the time of documentation, and the will must be solely intended for God's sake. Additionally, if it is documented, it must be time-bound and free from fraud or coercion.

- Attestation and documentation: To minimize disagreements and guarantee correct execution, it is best if the will is recorded and made public, particularly if it is valuable financially or is meant for non-heirs.

- Legislation, for the will to be enforceable and effective, it must abide by all applicable laws, whether they are civil laws or Sharia rules, and it must not contain any infractions that would render it void.

3. Legislation in Iraqi Law

In addition to judicial decisions, civil legislation, and Iraqi private law, Iraqi law is a comprehensive legislative framework that governs inheritance and wills issues. Additionally, Islamic references impact legislation on Sharia-related issues, especially those pertaining to inheritance and wills.

3.1. Iraqi Law Regarding Inheritance Regulation

In terms of the distribution of estates, Iraqi civil and criminal law started by defining broad guidelines that were in line with Islamic norms. Law No. 188 of 1959, which established the Iraqi Personal Status Law, contains more thorough guidelines on inheritance. The rules include determining who is legally entitled to inherit within the parameters established by Sharia law, identifying heirs, and allocating the estate in conformity with Sharia norms, taking into consideration the requirements for a will to be deemed invalid. These include allocating first-degree heirs' shares equally while accounting for instances where relatives and in-laws disagree [14].

3.2. Rules of Wills and Regulation

A will must be written, specific, and legitimate; it must not conflict with Sharia law; it must not contain any form of fraud or deception; it must be purely and sincerely intended for the sake of God; and it must not seek to harm the rights of his or her spouse or other heirs. Iraqi law generally states that a will is valid if it is limited to only one-third of the estate. This rule is based on Islamic Sharia law, which forbids the testator from exceeding this limit without the consent of all heirs, protecting the rights of the legitimate heirs.

When it comes to interpreting and implementing inheritance and will rules, the Iraqi judiciary has been crucial. The Federal Supreme Court has rendered a number of decisions that show how closely laws follow the tenets of Sharia law, especially when it comes to disagreements about inheritance distribution, the legality of wills, or their restrictions in light of Sharia law. These clauses highlight the fact that a will cannot contain more than one-third of the estate. They also place limitations on the requirements for a will's validity, namely that it be completed in writing and that witnesses be present. In the event of a conflict, they also call for the use of standards of facilitation and legal flexibility [15].

Many of the laws of Iraqi law are derived from Islamic jurisprudence, especially when it comes to governing inheritance and wills, in accordance with the Sharia principle of text interpretation and application. The distribution of heirs, their rights, and the requirements for a will's validity all make this quite plain. The law's provisions are frequently in line with the tenets of Islamic jurisprudence, however civil legislation has made some changes to make procedures easier and more explicit.

With numerous legislative amendments aimed at facilitating the implementation of rulings and codifying procedures in line with societal realities, while simultaneously guaranteeing the rights of heirs and stakeholders and developing legal tools that aid in the equitable and balanced regulation of rights, it can be argued that Iraqi law is more in line with Islamic principles in its regulation of inheritance and wills. The judiciary continues to be the most crucial institution for interpreting and applying these scriptures in a way that upholds Sharia law and legal principles while ensuring justice and advancing societal goals [16].

4. Legislation in Jordanian Law

In the Jordanian legal system, inheritance and wills are governed by a body of laws that preserve the basic Islamic legal principles while bringing Sharia rules into line with contemporary civil norms, especially when it comes to inheritance and wills. In order to develop a system of justice and balance between different rights while adhering to Sharia norms, this legislative

framework continues to aim to protect individual rights, set clear guidelines for the division of estates, and regulate wills [17].

4.1. The Law of Jordan Concerning Inheritance

Jordanian law started using divine provisions drawn from Islamic law to regulate heirs' rights. In accordance with the teachings of the Quran and Prophetic hadiths, which have a direct impact on the inheritance system, explicit legislation was passed to ascertain each heir's portion and categorize heirs based on divisions and priorities. Depending on the individual's decision, the legislation at the civil law level mandates that estates be distributed in accordance with either a civil legal system or Islamic Sharia rules. Nonetheless, Sharia laws derived from Islamic jurisprudence (fiqh), specifically from the Hanafi school—the officially recognized school—are typically cited.

Jordanian law organizes inheritance according to specific standards that specify the legal shares and deal with special circumstances such complicated inheritance cases or obstacles between heirs. This organization is distinguished by its focus on allocating the estate according to a particular hierarchy and necessitates the use of Sharia analysis to ascertain inheritance. The law guides reliance on relevant civil laws, Islamic jurisprudence, and Quranic sources [18].

4.2. Will Jordanian law's regulations and rules

When it comes to the regulation of wills, Jordanian law starts by outlining the legal requirements for a will's validity, making sure that it is just and equitable. Without the consent of all heirs or those specified by Sharia law, the testator can leave a bequest of up to one-third of his fortune. The official school of thinking in Jordanian law, the Hanafi school, is consistent with this. The fundamental guidelines for a will are as follows: the testator must be of legal age; the will must be in writing and witnessed; it must not be in conflict with Sharia law; and it must be carried out in a way that does not impair the heirs' legal rights.

Regarding the requirements for a will to be deemed valid, the lawmaker stipulates that the will must be precise, clearly define the bequest, and take the deceased's interests into consideration. Except in cases where the heirs agree or where applicable Sharia law dictates otherwise, the will cannot contain more than one-third of the estate. In terms of implementing the provisions, the judiciary remains the authority for interpreting the legitimacy of a will and verifying its compliance with Sharia and legal provisions. Judicial rulings have been given great importance in regulating matters and resolving disputes that may arise regarding its validity or limits [19].

The Constitutional Court and the Sharia Court in particular have made significant contributions to the interpretation and application of inheritance and will laws through their judicial decisions. These decisions highlight the requirement that a will stay within the one-third restriction. While attempting to apply the principles of justice and balance, the judiciary may, nevertheless, take into account unusual instances, such as those that jeopardize heirs' rights or raise questions regarding the legality of a will.

By using Islamic jurisprudence to interpret legal texts and considering modernizing legislative implementation to streamline procedures and accomplish the interests of all parties, these court rulings show that courts uphold the principles of proportionality and fairness in disputes while also adhering to Sharia law principles generally. Court decisions also emphasize how important it is to carry out a will's requirements, such writing and witnessing, in order to guarantee its legality and correct execution. Jordanian court decisions highlight the need to meet the requirements set forth by the legislature for a will, including that it be in writing, executed by a competent adult, well-described, and witnessed in compliance with the law [20]. In situations when there is disagreement regarding the validity of a will, court decisions are useful in interpreting its terms and guaranteeing adherence to Sharia law, especially when it comes to the one-third inheritance cap and the heirs' right to challenge a will if it goes above that cap. While maintaining the rights of all heirs based on the will, the judiciary also adheres to the principle of proportionality between the rights of heirs and testators. It makes decisions that uphold the principle of justice while taking into consideration the

goals of Sharia in regulating inheritance and meeting the interests of priority groups, such as family and relatives. The validity of a will necessitates the testator's sound intentions and total freedom of will, free from outside influence or coercion. Judicial rulings also address issues of fraud, negligence, or fraud that may be practiced against the testator in drafting their wills [21].

While Jordanian law places a strong emphasis on the need for wills to follow Sharia principles, court decisions give the court a crucial tool for determining which wills are legitimate and which are not, as well as for offering guarantees to protect heirs' rights, particularly when there is tampering, forgery, or uncertainty regarding the authenticity of witnesses or signatures. Therefore, within the bounds of Sharia, the judiciary plays a crucial role in upholding the balance of the legal system, bringing about justice, and putting the principle of respecting the testator's will into practice.

5. A Comparative Analysis of the Two Laws

5.1. Similarities between Wills and the Regulation of Inheritance

According to the research, the fundamental rules governing the administration of inheritance and wills, which are drawn from Islamic jurisprudence and the legislative texts that serve as the legislative foundation of each system, are mostly shared by Jordanian and Iraqi laws. Both statutes, for instance, protect the rights of rightful heirs and limit a will to three-quarters of the assets in the gift, with the potential to go beyond this cap in extraordinary circumstances. They also stress the importance of using witnesses and free will to confirm the authenticity and validity of a will.

A common denominator is the idea of equitably dividing the estate in accordance with the established inheritance laws, which are mainly based on texts from the Quran or existing legislation. This promotes the idea of justice and divides rights in a way that maintains a balance of interests, whether in will or inheritance cases. Additionally, these systems follow Sharia and legal regulations to guarantee that there is no fraud, exploitation, or manipulation—reflecting the essence of laws founded on strict and compassionate guidelines [22].

5.2. Legislative Variations and Court Decisions

Notwithstanding these commonalities, the two systems differ fundamentally, especially in how wills and inheritance laws are governed by the law. For instance, Iraqi law clearly defines the forms of wills, the requirements for their legality, and the rights of heirs. It also devotes a whole chapter to the regulation of wills. It gives the judiciary extensive authority to determine whether a will complies with the law and Sharia [23].

Although Jordanian law is similar, it emphasizes more respect to Islamic jurisprudential principles and has specific regulatory procedures to protect heirs' rights, especially when it comes to the restriction on the power to bequeath a third. Both systems' judicial decisions uphold the idea of defending heirs' rights and concur that a will that is void or unenforceable is invalid. They vary, meanwhile, in how much the court gets involved in interpreting texts or judging their validity, with the judiciary having a major say in how they are implemented.

It's important to remember that contested wills, questions regarding their validity, and assets exceeding one-third of the estate are frequently the subject of Iraqi court decisions. Jordanian courts, on the other hand, concentrate on matters pertaining to wills' adherence to documentation and fairness standards, giving special weight to witness considerations and a valid will [24].

5.3. Examining the Root Causes and Effects of Disparities

A number of reasons, such as variations in each nation's legal model, legislative priorities, legislative history, and cultural context, are responsible for the disparities between the two systems. Particularly following the revisions, it underwent in recent decades, which saw issues and overlaps between Sharia and the law, Iraqi law, which largely references contemporary laws and court decisions, represents a more regulatory and planned approach to ensuring human rights. On the other

hand, with a few exclusions from civil laws, Jordanian law is mostly founded on Islamic Sharia. It is dedicated to upholding genuine jurisprudential principles while providing some latitude in the way court decisions are applied, indicating increased textual and judicial interpretation stability [25].

The results of these variations can be seen in the frameworks that specify the rights of testators and heirs, the ease with which disputes can be resolved, and even the differing degrees of application flexibility. The Jordanian system is still more devoted to the jurisprudential tradition, which provides stability but may limit some judicial interpretations. In contrast, Iraqi law, which is always evolving, has allowed more room for review and modification of court decisions [26].

5.4. The Drawbacks and Advantages of Every System

There are drawbacks to both systems as well as advantages. It is necessary to comprehend the nature of the distinctions and how they affect the way the law is applied in order to comprehend these difficulties. Challenges in Iraq, such as the overlap between civil and Islamic law, demand increased investigation to ensure the protection of the rights of all parties and to eliminate any ambiguity or overlap that threatens justice. The difficulties in Jordan center on applying jurisprudential concepts in a way that strikes a balance between the flexibility of legal processes and the tenets of Sharia, particularly in light of the requirement to update laws to reflect societal developments.

Because of these parallels, judges and attorneys can more easily handle inheritance and will-related matters within a single framework, which strengthens the stability of the legal system. The resemblance also shows how Sharia concepts are incorporated into contemporary legislation, which gives people justice and comfort and boosts the confidence of those who work with these books [27].

6. Results and Discussion

The study produced a number of significant conclusions that illustrate the parallels and discrepancies between the legal systems of Jordan and Iraq with regard to wills and inheritance.

6.1. Similarities between Wills and the Regulation of Inheritance

According to the study, there are a number of fundamental similarities between the two legal systems. The most notable of these similarities are that both systems divide the estate in accordance with Sharia provisions, clearly defining the legal shares and heirs. These similarities are based on Islamic legal principles based on the Holy Quran and the Sunnah, with modern legislative amendments and developments introduced that aim to comprehensively regulate the relationship between wills and inheritance.

The two systems also regulate the matter of wills in a similar way, requiring that a will be valid and meet specific requirements, including being in writing, being made by a person with the legal capacity to dispose of it, and not infringing on the rights of the legal heirs. These parallels demonstrate the common Islamic character that upholds individual liberties and strikes a balance between the interests of guardians and heirs.

These parallels show that both statutes have strong jurisprudential underpinnings, which facilitates judges' and lawmakers' handling of comparable circumstances. Additionally, they highlight their common goal of protecting heirs' legitimate rights while allowing for some legislative flexibility to accommodate modern needs. These parallels did not, however, preclude the existence of unstated elements that differed, these variations cast doubt on the laws' adaptability and capacity to take into account societal changes [28].

6.2. Legislative Variations and Court Decisions

Despite the apparent similarities, the study finds that there are a number of key differences between Iraqi and Jordanian law, chief among them being that Iraqi law more closely combines the provisions of Islamic Sharia with the civil system, and it allows for more flexibility in regulating wills through provisions that allow the distribution of a portion of the estate to unconditional bequests, so long as this does not negatively impact the legitimate heirs, according to certain jurisprudential interpretations. Conversely, Jordanian law has placed greater emphasis on applying well-established jurisprudential texts, placing more stringent limitations on wills to make sure they don't go beyond Sharia law's bounds, and closely monitoring the terms of inheritance, especially when there are disagreements.

According to the study, judicial decisions made in Iraq typically apply Islamic law more loosely, and they are seen as a valuable source of interpretation, especially when it comes to cases involving agnatic kinship and wills. Jordanian verdicts, on the other hand, typically follow clear texts and stringent Sharia norms. This illustrates the disparities in the ability to resolve conflicts and the degree to which laws are enforced. The Jordanian system exhibits a dedication to implementing the texts more accurately, which may have an impact on the speed and flexibility of conflict resolution. In contrast, the Iraqi system is flexible in the face of social and jurisprudential developments. In order to guarantee sufficient legal protection for all parties, the difficulty here is striking a balance between stability and authenticity on the one hand, and flexibility and modernization on the other [29].

6.3. Examination of the Reasons and Effects of the Disparities

There are a number of reasons why the two laws differ, such as the accepted jurisprudential references, the legislative history, and the impact of social and political influences on the creation of laws. Because of its historical and jurisprudential position, Iraq frequently combines civil laws with Islamic law, giving it more flexibility in regulating some concerns while trying to adjust them to social reality. On the other hand, Jordan, which has a more conservative legislative procedure and mostly relies on Sharia-derived laws, prefers to implement the texts more rigorously, setting clear boundaries to guarantee the stability of legal provisions.

Regarding the impact, these variations have real-world ramifications that have an immediate effect on how justice is administered and rights are upheld. The rules' ambiguity and diversity can occasionally result in drawn-out legal proceedings or situations where more latitude is required to guarantee individual justice. Furthermore, disagreements between guardians and heirs may arise as a result of differing interpretations of the texts, necessitating the use of efficient legal procedures to evaluate and settle these conflicts in a fair and consultative manner. Additionally, because people might not fully comprehend their rights and responsibilities, these disparities have an impact on society's level of legal awareness. In order to attain justice and improve social stability, it is more necessary to update laws and inform pertinent authorities about the significance of striking a balance between fixed and flexible texts [30].

To guarantee the efficient and dependable protection of rights and the attainment of social justice, laws must be continuously developed in accordance with social advances while honoring Sharia principles and local community situations. This is generally highlighted by the contrasts between the two laws.

7. Conclusion

To sum up, the findings of this study demonstrate how crucial it is for Jordanian and Iraqi law to control inheritance and wills. In addition to highlighting legislative distinctions and court decisions that highlight the distinctiveness of each system and its conformity to local community

needs and legal constants, the study revealed fundamental similarities in the fundamental legal provisions and principles that underlie both systems.

The findings showed that knowing the legislative distinctions between the two laws can greatly aid in facilitating the application of court decisions and settling inheritance and will-related disputes in a fair and open way. Additionally, it can raise stakeholders' and individuals' level of legal awareness. Furthermore, it was unanimously agreed upon after comparing legislative texts and court decisions that legislative modernization and ongoing development help to avoid legal roadblocks and support the stability of rights, including those of heirs and guardians, in a way that respects legal principles and keeps up with societal advancements.

This study's importance is found in its sound scientific foundation, which enables a more thorough comprehension of will and inheritance systems. It also lays the groundwork for upcoming efforts to create laws and strike a balance between contemporary legal texts and jurisprudential ideas. As a result, the research's conclusions and suggestions offer lawmakers and legal scholars a useful scientific resource. They also urge more research aimed at modernizing legal documents and advancing the legal system to guarantee the defense of rights and the more successful achievement of social justice.

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