Legal nature of acceptance and rejection wand

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Abstract. We must conclude from existing legal articles and research that bequest ownership is not resulting of inherit will (or determination) and ownership does not take place by his satisfaction. The ownership of bequest is enforcement and that is, take place by the law verdict, and inherit determination don’t have interference in it and death die is initialized of it. The major effect of bequest accepts and reject is, in charge of that debts are on the hereditary obligation and remained from him with death. In fact, accepting or rejecting of bequest is of declaration will, in respecting or not respecting to family financial and who to continue deceased way. The accepting or rejecting of bequest is the voluntary action, that does not take place without heir will The purpose of accepting or rejecting is: accepting or rejecting bequest managements that’s depends to demand capacity and free will of heirs.

Keywords: Bequest -accepting or rejecting bequest-inheritance

INTRODUCTION

This inheritance is the divine duty, God is wise and sage (Nesa, verse 11). There is a closely relationship with the issues of wealth from the oldest and the most ancient human times, in terms of economic and social factor in their era. They has to fit some laws in order to survive it. The total laws related to inheritance and it is play an important role in protecting the properties. The thinkers laying foundation order for the property that is left by deceased, with pay attention to this fact that: the role of human property does not ended with his death. As a result, we should consider a traditional root for inherited; that is because of evolution and development of natural origin. The inheritance is a legal event and by the law judgment, bequest of inherited from his property transferred to the heir and it’s not depends to any of inheritance or heir will (Article867 and140gh,5,m).

The legislator give heirs the right of accept or reject of the bequest and raised the question that: Is heirs will in accept reject of bequest from contract acceptance or reject ? or at least like an officiousness contract accept or reject ? or has other nature? (Article242and252 qh,alef ,h). In this article, the nature and legal effect of this option is examined with attention to (due to) legal regulation and legal.

First part of bequest and its transfer to heirs

Concept of bequest

For the reason that, root of this term is in the holy Quran verses, instead of bequest we use another term that is called heritage. The jurist and layers are disagreeing about its concept. some of them consider it only the positive part of property and believed that: the death debts. Never transfer to his heirs, unless his property also transfers to them. Therefore the death heirs not inherit debts obligation and they are not responsible for payment, if any money left from him. However, some heirs without achieving any
financial heir from death under influence of emotion and religious thoughts accept his moral commitments responsibility with motivation that, free inheritable from his death.

The bequest is the properties and financial rights that the death has while his dead. The financial rights that is transferred to the heir are not vested with the deceased, because such rights disappears with his death and is not transferred to heirs like: option of condition that is take place in contract for one of the dealers to authorize and specific condition and it’s not transferred to the heir. According to others idea, bequest is dead sundries. For this reason that such right include other financial rights (like pre-emption) and nonfinancial rights (like rights to retribution and subject had), so the concept of bequest go exceed from the financial department and transfer of these rights (from heir to hereditary) is in accordance with the principle. It seems that, they are departure of their former view (or they are changed their former thought) because in the amendment of the civil code article 2554: They are consider negative properties of death as a bequest. Some other professors in their analysis of bequest expressed that: The impure bequest in the transitional period and treatment consider as a juridical personality properties. In such juridical personality, the right of heirs property and creditor in collection of mixed property, belongs to the collective personality.

The heirs and creditor in collection of mixed property belongs to the collective personality. The heirs and residuary are creditor of death because they was death partner and his company member. Bequest is treatment like company and benefit from the kind of declining character. It has a special director, residence and property and its debts must be given by the bequest. After the end of treatment, enforcement company and personality wind up and pure bequest join to heirs property. According to arguments and theory we must admitted that in Iran law, pure bequest transfer to death heirs and death debts and commitment belong to bequest.

**Bequest combination**

In general all the properties that consider as a heir property while he has died, transfer to his heirs as a bequest by his death. This bequest included all property parts, both movable and immovable, lords, benefits, rights, debts and demands. According to article 225gh.alef.h: all the debts and rights that is death responsibility, after the burial costs such as: bequest maintenance and administration should be given from bequest.

The heirs do not have to pay something to the creditors, except bequest and if it wasn’t sufficient to pay all debts it can be divided among all the creditors with attention to proportion of their demand.

Therefore, determination of absolute bequest combination or bequest in general meaning is necessary for: identification and determination of absolute bequest and property that can paid death debts from their place. Bequest as the general meaning (absolute) include all the remains properties and financial rights of death. But all the same properties that is belongs to the others and the death was possession of them should be given to their owner and it’s not in the bequest combination. Therefore, when the heirs want to trading with bequest, their trading is not applicable and debtor can disturb their trading, even if they clarify the death debts. For determination of bequest amount, it must be considered all the property that he owned at his death and however the subsequent waste.

The testator demands should be added to it, however it is from heirs and it is removed by their ownership (ma fe zame) and barter all the property that is join to heirs and its create by the heir consider as a part of bequest, for example: if his saving account or national bond purchases chose as winner of the prize or achieve to the big success or property during his life time, all these property situated as the heirs property and it is consider as bequest.

As well as, some public jurist has pointed to this note that: whatever that caused a heir provide a property after his death consider as a bequest. (As the wine vinegar and prey catch in the trap of the testator.
In spite of this, if the prize belongs to the person because of after death credit account and loan, and it’s not because of continuing of his account during heir’s life. It seems that, it considers as a heirs property and they are achieve to it because of their ownership of bequest (or its seems that is the number of heirs property that have acquired on the occasion of bequest property. They have benefits from it in the proportional of their share on the bequest) .because the bequest has a juridical personality more than refinement, prize belongs to this character and also its belongs to creditors right.

To proof this idea , all the properties was in the testator possession in the time of his death,(in addition :option right, pre-emption ,inhabitancy,(omri va raghabi),right to retribution demanding implementation(ghazf o la an), the right (result from )former right in permissible , the right to accept wills , fanaticism ,the right to abortion , the acquisition of foundling), by the virtue of inherited reasons arrive to the heir.

As the creditor claims from the debtor, the mortgaged right to the (eyn marhoone), right to privacy, to litigate right, (esteh laf) on the consequently transfer maim and the claims , will be transferred to the heir. To proof this idea , all the property was in the testator possession in his death time, should be consider as part of bequest and claims have to proof contrary of that.

Possession (amare) that is on the article (35 m gh), respected on this assumption and its used in the suits ownership claims on the heirs.

The heir’s ownership to the bequest

After the refinement, debts payment and exclusion from testament, the legal right of bequest is clear what ever belongs to heirs. But before the apportionment of bequest, portion of each one is common on the total of it and with bequest divides the given thirds of each one is determined. But before refinement and during that, situation is not so clear .on the other hand the testator has been lost his competence acquisition because of his death and remaining assets cannot be attributed to him. On the other hand the heirs ownership (is not clear) is observance and it is indeterminate.

According to the authors of the civil code, it’s not established, because if debts liability and heirs testament are as much as or more than its property, does not achieve any money to the heirs and it is logical to doubt in actuality of their property .assume of ownership of creditor is baseless .because the heirs can pay their rights from other property. So such wandering assets should be attributed to which character?

In one hand, the civil code also states that, the inherited be realized with death of testator (article867). And in the other hand with uncertainty note that: the heir’s ownership to death bequest not established unless after perform the rights and debts that belongs to bequest .Scholars have expressed different views to break this legal deadlock.

Some of the provisions in the law like: the heirs prohibition in bequest ownership and heirs debts belongs to it, achieve this admissible rights that, legislator consider impure bequest in the sentence of dead money order.

However, the fact is that, bequest go out of the deceased property. So based on this assumption law deal with this property owner as if, by the end of treatment is still the property of the testator. Because of this reason heirs do not have the authority to seize it .the death creditors remove their rights from the bequest and rain and (property interest) and benefits of property is part of this property.

Other group said that: bequest is heredity land and it considers as a heirs property only before refinement and debts payment. So the heirs don’t right to tenure in it.
Bequest is the creditor security of debts like other mortgage, before debts payment and released of source, they have possession right in bequest, but the bequest benefits belongs to them and the debtors doesn’t have any share from it.

Some other authors criticized both above theories and they are expressing that: both theories are based on authorized times analogy and opposite suppose to the reality, and the first justification has this defect that: it is the (tabdy) assumption from the external reality without have any basis in law.

The law, prohibits the possession of the heirs in the pure bequest, and because writers don’t realized why heir is deprived from this right, they are justify it with this combines assumption that, the bequest is property of death, While the fact is that, the death is not capable to be the owner of property.

The second group legitimate that consider bequest as a security of debts creditors, and consider legal statute of it like (ein mar hone), is based on incomplete diagnosis.

Because mortgage right is consider as objective rights, where as debtor don’t have objective right on each of the bequest property.

Furthermore, one of the provisions of mortgage is that, if the price of the property does not enough to pay the dues, Mortgagee for its remaining due have this right to refer to the other properties of debtors or forgive the mortgage and referring to debtors assets. (article 781 and 787 gh. M). While the heirs debts is not lay on the obligation of hereditary, because of lack of collateral or termination of the mortgage creditor refer to their property is possible.

Most importantly, mortgage contract needs to compromise and its forced kind is follows from the mind and imagination of the authors of this theory. For fixing these defects they are attributed to the fact that "impure bequest in the transitional period and implement has a legal personality. In such legal personality, the right of heir’s ownership, residuary hairs and creditors, in collocation of mixed property, belongs to collective personality. But residuary heirs and creditors of the deceased as a partner and member of the company, they are the creditor of this character.

Bequest like company is treated and that is benefits from declining personality. It has special manager, property and residence and its dues should be given from bequest. After the treatment of forceful company, personality is disappear and pure bequest join to the heirs property.

Second part: examine nature of accepting or rejecting bequest

A: legal rights related to legal nature of accepting bequest

1-Bequest concept and its accepting nature

In legal terms accept defined as: (unconditional satisfaction and (shart be mofad ijab).

The law prohibits the possession of the heirs of the gross Tark Khales, And writers did not know why an heir is deprived of this right, it combines with permitted justify with the assumption that as the bequest is belong to dead, While the fact is that lack of capacity for dead is to be the owner. The Justification of second group, the creditors seek bail and justify his bequest and they thought it is the same legal status as their Mrhnhe, The diagnosis is incomplete because of the rights of the creditor's lien is objective while Creditor has not right on any financing from the bequest. Furthermore, one of the provisions of mortgage is that, if the price of the beholden property does not pay enough for debt.

Mortgagee is entitled to revert the remaining property to other debt or pass mortgage refer to the debtor's assets. (Articles 781 and 787 gh.m). While religion of the testator is not put of the heirs until refer to their property would be possible from creditor due to lack of collateral or termination of the mortgage. Most
importantly, mortgage contract needs to compromise and the imposed kind follows the mind and the imagination of the authors of this theory. And then to fix the defects attributed to the fact that "impure bequest in the transitional period, has legal entity's assets." And the legal personality, property rights and residuary heirs and creditors combined assets belong to the collective character. But residuary heirs and creditors deceased as a partner and member of the company and they are the creditor of this character. Bequest is treated and benefit from a declining character. It has a special manager, Accommodation and assets and debts must have paid by bequest. After finishing the treatment the dissolved company and character must have closed the pure bequest joins assets of the heirs.

Part II: discussion the nature of the acceptance and reject bequest

A - Legal provisions on the legal nature of the bequest

1. **The concept and nature of the bequest**

In legal terms the "unconditional consent to the provisions required" is defined. The jurists also agree with "the later word that one of the parties is issued against the warrants. "The term later that is issued against the warrants by one of the parties."

The acceptance of the bequest means the heirs accept bequest and belong and claim that the bequest is in the ownership and possession of them. However, with regard to Article 242 and 243 of the Civil Code of the legislator merely referred either express or implied and in this case primarily what is the definition of acceptable is not mentioned.

Of course, what the acceptance bequest is as follows: expressing consent by person who law has nominated him, whether explicit or implicit bequest is, whether the action is, whether the word, in this case, the positive and negative bequest "the debt" to him and he would be responsible.

The purpose of the approval, the heir accept the vertical position of the testator and the position that legislator knows it is necessary for the management and treatment Bequest "general Bequest" of the program he is responsible for that. That is, they accept bequest that sticks in mergers and acquisitions. Accepting the consequences of this nature is nothing but a bequest, self-responsibility in the payment of debts "negative aspects of bequest" is also with the heirs to the person who accepts the positive aspects the positive aspects of an asset it must accept that the debts and liabilities of the deceased.

However, as passing, passing bequest does not mean accepting inherited "of 140 and 867 marks for gh.m" making inheritance heir does not depend on the will and capacity selection: It means accepting manage it. The purpose of acceptance of the bequest is that heirs accept the priorities of the legislative bequest tenure of office that has given to him with their authority and will. So pure bequest, though with mixed debts and obligations is as an unspecified part of the bequest is gross, without the will of the heirs to the property transferred and they do not need to pass. It is not mandatory to accept the legal rights among the heirs, they have the right to accept, reject or silence bequest. As passed, in the rule of law, more than a month of silence is tantamount is considered as acceptance.

So according to what was said: the bequest is as well as voluntary actions and when it will come true who will inherit has the "capacity and authority" and a reasonable person of incapacitated and Mkrh has no credit.

2- **The form of acceptance**

The passing of the law is twofold: the explicit and tacit acceptance, some law books in a variety of reasonably stated:
Frank admission: heir must declare their will. This announcement may not be explicitly expressed or implied in the concept of "clear determination "non-litigious matters with the general rules of law has chosen different criterion t. Section 242 BC. A.h says

"Frank admission is clear that under normal or acceptable official document to notify the court." After explicitly agreed to in writing and addressed to the court and it need to be direct expression of the bequest. Explicit acceptance is a ceremonal act with of the rules and that the public will accept the bequest separates. Express acceptance at the court meeting as his signature appears, accept the verdict is clear.

Tacit acceptance that it is operational, the discoverer of the bequest to do is pay debts Such as the sale and donation of peace and mortgages and the like, which are clearly the discovery of the bequest (Article 242) As agreed, would make voluntary and what is typically discovered it. It is discovered to be proven. So peace, gift, mortgage, sale, etc. They discovered the intention of the heirs to the treatment of the bequest, for if it is not intentional action as it does not possessions. Conversely matters is concerned to the bequest Such as necessary repairs or harvest crops and collect luggage in safe place to prevent embezzlement and waste reduction is the owner of his property. Typically, the discoverer of intent bequest cannot be accepted. Is that the 243-custodial Act says: "Preserving bequest and collect revenue collection and overall administration of the bequest explorer will not be accepted." "Unless external evidence should be attached to the discovery of an heir to accept the bequest will make, In this case what is needed to keep the bequest would be tacit acceptance.

3-The deadline for acceptance

The heirloom varieties are: the absolute and accepted in writing as bequest. The absolute bequest, has no specific deadline to the end of the bequest treatment possible and it seems that rejection of bequest is not absolute, Because the administration sticks by its original owners, and the final is more reasonable. Legislator also accept the silence of inherit more than a month after the death of the testator notification shall be accepted" article 250 of Q.a.h" has shown itself tendency to this logic.

Heir can be written as a bequest, bequest treatment to accept, Bequest manage and pay the debts of the testator to accept the bequest of value as article 255 BC. A.h states accept tis in such a way within one month from the date of death of the testator heirs to inform the competent court in accordance with twig bequest agree in writing, In this case, the heirs of the twig after twig writing must pay the debts of their testator and even seeking after adjusting the writing of the deceased established bequest till Bequest written up as the heir is required to pay and in accordance with Article 259 of the deceased's heirs bequest Q.a.h when after writing not to accept or reject to the court prescribed time limit as this is written as if the debts have accepted bequest.

4. The effect of the bequest on its possession

From what has been said about the bequest, bequest Nbabd concluded that the claimed effect is the heir will and the acquisition will not be realized except with his consent. Bequest acquisition is done by law enforcement and will and inherit does not have any interference with the entry and the beginning is the death of the testator. Section 867 BC in this area is explicit the "inheritance of death, real or presumed death of the testator to come to life." Article 140 gh.m , that means the share acquisition, Inheritance is independent and separate from the legal actions and it should not be considered voluntary termination of the collection. The main effect of the bequest is responsible for the debts of the testator's obligation and it is left with his bequest. In fact, the bequest's absolute determination to continue the deceased's family property is a delay in the leg.
a- The effect of the heirloom in accepting the obligations of the testator

Some authors have said that the commitment of heir on the payment of debt of the testator is the effect on acceptance of the legacy because in the first part of Article 248 it provides “If the heirs accept legacy each will be responsible for paying all the debts in proportion to their share”. In this part, the law for responsibility for payment of debt is subject to the acceptance of legacy, but the second part of the article says that:

“The effect of the heirloom in accepting the obligations of the testator

Unless they prove that they have debts in excess of legacy or prove that after the death of the deceased, legacy has been wasted without their fault and the remaining legacy is not enough to pay debts. In this case, it is not responsible for the waste of legacy”. Thus, according to the above description, it appears civil code and the law on non-litigious affairs in this case both have identical terms. “Debts of testator belong to its legacy and heir should however not pay any of his assets”. (Article 226 and article 869). The general rule always considers creditor the claimant and his claim is inconsistent with the principle of the absence of legacy. The legal guardian of non-litigious legal affairs, unconditional acceptance and the conditions of legacy are considered as enough evidence of the presence and puts. This legal circumstantial evidence is based on overcoming and appearance, because of the legacy is the principle of the state. As a result, the principle was inverted, claimant and a denier are changed and replaced. The heir who has accepted the legacy and is yet denied the existence and enough of legacy claims and has to prove the lack of enough and its wastes. Conversely, creditors who have circumstantial evidence "of legacy" to its profit, is denied and he does not need to prove the legacy. However, we should note two continuous important points:

1. The first part of Article 248 is not substantive and thematic. It is a rule based on predominance and appearance that disappears in direct contact with the legacy.
2. The main cause of heirs’ commitment is the rule of law, not the will of him: legacy acceptance should not be considered unilateral obligations that create commitment for the speaker. Shortly, the effect of the acceptance of the legacy is to provide for the implementation of the substantial evidence law, which the legacy is as debts.

b- The effect of acceptance of legacy in its administration

Legacy acceptance is effective to manage the jurisdiction of the heirs. If an heir accepts the legacy, he should manage it as well, though other heirs are not intended. Article 262 presents that “Whenever some of the heirs accepted the legacy, other heirs cannot demand refinement of legacy”. In this assumption, only the executor can participate in asset management or ask for refinement from the court (Article 261). It seems that the heir’s request is accepted when s/he is responsible for management of the whole or part of assets or an incapacitated tutelary that accepted the legacy by his representative. Because, the executor is the representative of the ward and have no right to him and in the case, that incapacitated representative has passed the legacy, the executor has no right to request for refinement. Article 258 also confirmed that the legacy has accepted heir provinces, states “while some accept and others rejected the legacy heirs, the heirs who have accepted the legacy perform necessary measures to manage the legacy and pay debts and the rights and the collection of receivables, etc. An heir who has rejected his legacy, he has no right to object to the operation: But if anything of the legacy stay after legacy refinement heir's inheritance, who has rejected legacy will be given to him. In this case, the heir who has accepted the legacy in exchange for the difficulties he has incurred to handle incurred compared to the other, he will be entitled to wages. Detection of wages is in the form of intransigence by the courts.

c- Obligation to acceptance effects

Acceptable legacy provisions should not be compared with the contract, because they do not have similar natures. The degree of heirs’ agreement, involvement is negligible in owning legacy against enforcement of meddling contract, because there is no effect in possession and the forbearance of heir makes no
obstacle in this way. One of the effects of this dichotomy is seen in obligation to accept, usually accept is obligatory in contacts and the speaker committed it to the provisions of the contract, except in some exceptional cases. But the heir commitment to accept of the works of legacy is subject to the possession of his legacy. Article 247 ق.ا.ح states:

“The heir who has accepted the legacy can rule out as long as s/he has not fake possession of legacy”.

**d. Accept of legacy as evidence of the existence of assets and the adequacy of legacy**

By virtue of article 226 ق.ا.ح “legacy accept adds nothing to the responsibility of real heroes and only makes this assumption that the legacy has been as much as debts. This Assumption lifts the burden of proof of the existence and adequacy of legacy away from creditors and is used against the heir who has accepted legacy. He must prove inadequacy or wasting of legacy otherwise would be responsible for the compensation payments. Although in terms of moral principles and traditionally also the heirs respect their testator and their families by accepting and managing legacy, but accepting of legacy explicitly and based on the dominance of asset support. Thus, if the deceased has left nothing of his property that could pay his debt by them often, the heirs do not agree legacy and prefer not to be committed and accountable against their creditors, conversely, when they accept managing of legacy that found positive items insufficient for payment of the debt of testator. Therefore, the accepting could be evidence of the existence of assets of the deceased's remains that heirs with accepting legacy and implicitly admit it.

In addition, not only evidence of the existence of accepting legacy is legacy existence but also it is also the evidence of survival. Article 248 ق.ا.ح state: “If the heirs accept legacy, each will be responsible for paying all the debts in proportion to their share, unless you prove after the death of the deceased legacy has been wasted without their fault and the remaining of legacy is not enough to pay debts in which case there would be no responsibility according to the remaining of the legacy”.

**B) The legal effect of consequences of refusing legacy and treatment of legacy**

1. The concept of refusing legacy and the transfer of the right to refuse to heirs

In the terminology of law in this case is “the word refuse means to reject and return”. In jurisprudence and civil law of inheritance "refusing" is used against "the premise and affinity", that is the deceased legacy and the owner of assumption of its portion and the remaining belongs to the owners of relationship. In general, the words refusing is against the word accepting, that is heir self-proclaimed the determination that denies the legacy. As prescribed in Article 249 ق.ا.ح heir who refuses the legacy must written or oral notice their will to the court. The aforementioned information will be recorded in the office. This refusing should be suspended or conditional. The announcement of decisive will of the heir should be addressed to the court to take effective and it is recorded in the office to the date is officially determined. Mostly decisive will need to refer to the rule and its application. It also refusing the legacy should be declared in a given period. According to Article 252 ق.ا.ح it provides “If the heir dies before the legacy refusing, the right to refuse will be transferred to his heirs”. The right goes to all the heirs of person who died before refusing legacy and whenever only one of them accept the legacy and others refuse it, they control the legacy alone. As the right to accept the legacy is passed to heir, the right to refuse will be transferred to the heirs of the deceased. Because the right or at least the right to control legacy is an advantage that the legislature is recognized to the heirs. This advantage like other financial benefits without interference of determination will be transferred to his heir after the death of a person.

**The deadline for refusing the legacy:**

According to Article 250 ق.ا.ح the deadline for refusing the legacy is one month from the date of knowledge of the heir to the death of the testator. About the principle of non-benefit of the heirs is aware of the death of the testator and its expressed ignorance should be accepted, unless otherwise his awareness
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would be proved. However, to end possible disputes, Article 251 of the date of notification written at the end of the legacy has put the heirs. The deadline for refusing legacy is extendable or renewal. Request additional deadline should be asked from the Court and if it is accepted that the heir has no excuse for failure to expressing in due time. Article 253 of the excuse may be internal or external and are caused by forces of nature of continent or the involvement of third parties. So, if the heir cannot announce refusing the legacy to the court because of illness or river flooding or strike within a month. The court may extend or renew the deadline. The guarantee of execution of deadline is that the legacy is assumed accepted and contrary of this assumption cannot be proven. As a result, the heir is responsible for paying the debts of the deceased to the ratio of its share of the legacy, unless the lack of legacy or die prove it. Thus, assuming accepted legacy, the legacy leads sufficient evidence and both are used to the detriment of the heir. With this difference that "assuming accepted legacy" is definitive and non-aggression, "evidence of adequacy of legacy" can be undone with the reason. Article 250 of the law say: “If refusing the legacy is not done in due time and it is accepted in order and included in article 248”.

The nature of refusing legacy

Refusing legacy does not mean to refuse the possession of legacy; this is done based on law and after the death of testator, neither does it need heir acceptance nor making any obstacles in the transporting legacy. Refusing legacy means avoiding from refinement of legacy and refusing the managing position which law has passed for heirs, the possibility of refusing legacy from the owners and interference of court in maintaining and managing this asset and refining it are the factors of existence of the legal personality in transportation period. Because of this, no owner can officially refuse his asset managing and ask the court to take the responsibility of this burden, except in the case of failed businessman. From this point of view his asset is like legacy. The right, which has been given to heir as refusing legacy, is his function of ownership and the province of legacy and it can be compared with refusing and requiring contracts or refusing the owner to deal with intrusion contract, such that it is inheritance (article 245 and 252) and it seems not to be necessary. Non-litigious matters law did not say a word about the possibility of deviating from the rejection and acceptance. But clearly seen that the legislator wish that keep managing of legacy to its original owners. So the heir silence is considered accepted. Therefore, if the heir refuses to accept it after rejecting legacy and be responsible for the debts of the testator, he should be accepted, at least, before the intervention of the administrator of legacy handle it to dead original owner. The court's involvement in the treatment is a favor that public officials assume from the (Hasabih) and if not necessary, it can be free, unless the risk of irregularity or waste reduction rights of residuary and creditors prevent the act.

The effect of refusing legacy

The main effect of refusing legacy is to eliminate the province of heir over legacy on the one hand and taking his commitment to addressing debt of testator is based on the presumption of adequacy legacy.

1) About the case of legacy, we should separate the assumption that all the heirs refuse the legacy and the case that some of them accept the legacy.

In the first assumption, Article 254 consider legacy as “the legacy of non-heir deceased” and finally mention, “If anything left from the debts of deceased, it will belong to heir”. This shows that the refused legacy is not without owner, the asset is without manager that the court deal with it as Hasabih.

So, we should see whether in the case that the heirs have rejected legacy, religion prove or the same property must be for the administrator of legacy. Doubts and questioning raise from the fact that in the assumption of refusing legacy, what has been given to the court has a specific owner, while the non-heir legacy has no owner or its owner is unknown. Then how we can make sense of a province where the legacy has been given to manager as imperative mandate, assuming that the legacy has owner, and consider both cases the function of on mandate. Furthermore, the result refer to articles 232 and 233.
disagrees while knows defending a lawsuit by the heirs of the deceased heirs or executor, because the heir who rejects legacy is the heir and it reference included the heir as well. Precedent still find not a chance to answer the question, however, from Article 254  ق.ا.ح that is the basis of legal presumption that shows legislation attention to implement the provisions of Chapter VIII about the legacy rejected and strengthens this possibility that rejected legacy from the point of refinement is non-heir legacy. But it should not be considered the property of non-heirs about the proof of debt and by order of 232  ق.ا.ح proof of claim is to be the heirs parties. In the second hypothesis, the province is of the heirs who have accepted the legacy and the heir who has refused the legacy, has no right to complain about the procedure”.

Article 258  ق.ا.ح has doubts about the need to prove religion or the same ownership of the heirs who refuses legacy, because the required province is cleaning treatment of legacy and debts of owner's peerage. So it is enough to proof the debt in such a way that they convince them to be imposed on others. But this possibility is weak considering article 232  ق.ا.ح, especially that whenever heir accept to consider claimant reasons insufficient, the prove of debts becomes necessary and the right of clearing the debt from heirs of administer is retractable with the need to prove debt to the parties of heir and there is no rejection.

2) We should add about the compliments of charging the debts of testator that the debt of testator is belonged to legacy, but because heir can pay the debts from his own property, the acceptance of legacy has been considered the enough amount to pay the debt by legislator. However, the purpose of the fall of commitment, as mentioned, is the commitment of the circumstantial evidence legacy, which was created at the expense of the heirs and has no value for the heir who refuses the legacy.

G. The effect of accepting and refusing in contracts related to the legacy

After the death of the testator, his property is to be forcible and involuntary to heirs. What property and asset is left after the death of deceased is heritage that are as a collection in the unstable property of heirs. Unstable from this point that the heirs are owner and they have no right to possess them until clearing debts to creditors, so although heirs (partners) have right in legal personality, but the exercise of this right is subject to the enforcement of creditors. The reason for avoiding the heir from possessing legacy is to maintain the right of creditors and because of fairness this avoidance has been established for heirs. While the debts of testator has not been paid any possessing of legacy from heirs would be blunt and it is related to the authorization or refusing of creditors, because the legacy is belonged to creditors in that time and possession is invalid without their acceptance and refusing.

CONCLUSION

By studying books and legal sources, it can be said that legacy is the part of property or asset of deceased that is ready to reach to heir after deduction of debts and departure of will. It is obvious that after the death of deceased, the property and asset are transferred to heir, but according to the Civil Code, besides accepting the ownership, the heirs do not have the right to seize in legacy. As long as the debts of creditors are paid the property becomes unstable. However, despite the inheritance is from the property and heirs are also the owner of legacy, but because of the presence of creditors compared to right reserved to legacy in addition of recognition of ownership of heirs and consider them as forbidden-possession to protect the rights of creditors. In the study of concept and nature of acceptance of legacy, there is no definition for non-litigious affairs in the jurisprudence and law and only in the law of non-litigious affairs it is stated that “maintaining legacy and revenue collection and collection of receivables and totally the actions for controlling legacy are not related to accepting”. By studying the books and legal sources, it can be said that legacy that is heir accepts legacy and belongings means they accept that legacy are their possession and it is obvious that in contrast, accepted i.e. return and reject of legacy, in addition the law is also like acceptance and do not provide about refusing. The commitment of deceased are those debts that are now belonged to legacy and by accepting it by heir, it should be paid unless there are additional debts
that in this case the heir have no responsibility and heirs are not required to give anything but legacy to the creditors. Some of the heirs take the responsibility of controlling legacy that other heir cannot ask for clearing legacy and conversely acceptance of refusing legacy results in voiding the province of heir and by voiding this province, the commitment of heir is ruled out to pay the debts of deceased and they have no responsibility to pay them. Finally, the ownership of pure legacy legally transports to heirs of deceased and accepting or refusing of heirs has no effect in them.

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