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The Nature Of The One- Third Condition In The Transactions Restricted By It

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Abstract:
This study aims to examine the nature of the one-third condition in actions restricted by it, which is perceived as a post-mortem succession of wealth. Both divine law and subsequent civil legislation impose limitations on certain actions taken by individuals with their property, particularly when such actions possess a unique nature—whether due to their consequences after death, their impact on others, or because these actions are themselves exceptions to a general rule. Among the constraints observed in divine law concerning certain actions is the stipulation of the one-third condition. The perspectives of Islamic jurisprudential schools and civil legislations have varied significantly in defining the essence of this condition. If we are to delineate the areas of disagreement, they revolve around whether the one-third condition is a prerequisite for validity or a requirement for enforceability.

Keywords:
Nature, condition, one-third, restricted, validity, enforceability.

Introduction:

This research focuses on examining the nature of the condition referred to as the "one-third condition," a stipulation imposed by divine law on certain transactions. To establish the foundation for the discussion, the introduction will be divided as follows:

First: Definition of the Study.
The principle in both divine and civil law is that an individual has the freedom to dispose of their property, as ownership inherently implies an unrestricted right of use. However, divine law—and subsequently, civil legislation—may impose restrictions on such dispositions, particularly when the transaction holds a unique nature, whether due to its post-mortem effects, its impact on others, or its exceptional nature as a deviation from a general rule. The focus of this research lies in examining such a restriction.

Second: Reasons for Selecting the Study Topic.
It is evident that civil legislations often fail to explicitly address certain issues or to provide detailed regulations for them. This gap leaves judges with considerable discretion to derive solutions from legal sources, including Islamic jurisprudence. Consequently, judges frequently face challenges in searching for relevant rulings within the vast body of Islamic jurisprudence and judicial decisions. Moreover, their judgments are sometimes influenced by the school of thought adhered to by the disputing parties or by the judges themselves, resulting in divergent rulings on similar issues, some of which are based on incorrect interpretations.

Third: Study Problematic.
This study raises several critical questions that require thorough investigation, analysis, and discussion to reach accurate conclusions and proper characterizations. The core issue of the study lies in the varying perspectives within Islamic

jurisprudence regarding the nature of the one-third condition, coupled with the lack of clarity in legislative texts and the absence of a definitive resolution to the ongoing debate surrounding the nature of this condition.

Fourth: Scope of the Study.

The study will focus on Islamic jurisprudence as articulated in the major schools of thought (Hanafi, Maliki, Shafi'i, Hanbali, Ja'fari, and Zahiri). From a legal perspective, the primary reference will be Iraqi law, particularly the Civil Code, the Personal Status Law, and the Juvenile Welfare Law, as Iraq serves as the case study for this research. Comparative references will include the laws of neighboring countries, particularly Syrian, Egyptian, and Kuwaiti laws, given their detailed treatment of the one-third condition. The study will also incorporate relevant judicial decisions wherever accessible.

Since the comparative analysis involves both Islamic jurisprudence and statutory law, each with its independent structure and principles, the study will inevitably encounter rulings present in one source but absent in the other. Such differences are typical in any comparative legal study.

Fifth: Study Methodology.

The research will adopt an analytical comparative approach. The analytical aspect involves identifying and examining the intellectual foundations and principles of the one-third condition, as well as exploring the extent of legal texts (both jurisprudential and judicial) associated with the nature of this condition in restricted transactions. This will enable a precise characterization and deeper analysis. The comparative aspect operates on two levels:

1. Jurisprudential: Comparing the rulings of various Islamic schools of thought.
2. Legal: Comparing the provisions of Iraqi law with those of other legal systems under study.

Sixth: Structure of the Study.

Given the divergence of opinions among Islamic jurisprudential schools and civil legislations regarding the nature of the one-third condition in restricted transactions, this research will focus on the perspective that considers the one-third condition a requirement for enforceability. The study will be divided into two main chapters:

1. The first chapter will address the argument supporting the view that the one-third condition is a requirement for enforceability.
2. The second chapter will present and critique the evidence supporting this perspective

ChapterOne:

The Perspective That Considers the One-Third Condition a Requirement forEnforceability

A group of Islamic jurists holds the view that the one-third condition in restricted transactions is a requirement for enforceability, not validity. According to this perspective, if an individual disposes of more than one-third of their estate, the transaction is deemed valid by consensus but remains suspended for the portion exceeding one-third until approved by those whose rights are affected. If they grant approval, the transaction becomes fully enforceable; otherwise, the excess portion is nullified. If some approve while others do not, the transaction is enforceable concerning the approving parties but invalid concerning the others.

This principle is articulated in *Bada'i al-Sana'i* of the Hanafi school:

"… The restriction to one-third of the estate applies when there are heirs and no approval is granted for the excess. Therefore, exceeding one-third is not permissible without the consent of the eligible heirs. The basis for this condition is the narration regarding Sa'd: 'One-third, and one-third is much.' Additionally, the Prophet (peace be upon him) said: 'Indeed, Allah has granted you permission to give away one-third of your wealth at the end of your lives as an addition to your deeds.' Since a will entails the transfer of ownership at the time of death, and at that time, the heirs' rights are attached to the estate except for the one-third portion, any bequest exceeding this limit infringes upon their rights, which is impermissible without their consent."

Moreover, the text differentiates between bequests and other forms of charitable donations, such as gifts and alms. It explains that in the case of these other forms, the state of health at the time of the contract is decisive. If the donor is in good health, the transaction is valid for the entirety of their wealth, as no one has a claim over their estate. However, if the donor is on their deathbed, the heirs' rights attach to the estate, restricting the transaction to one-third unless they approve the excess[(i)].

As stated in Sharh Fath al-Qadeer, the Hanafi school asserts:

"… Bequests exceeding one-third of the estate are not permissible based on the Prophet's (peace be upon him) statement to Sa'd ibn Abi Waqqas: 'One-third, and one-third is much,' which he said after disallowing Sa'd's wish to bequeath all or half of his estate. This restriction safeguards the rights of the heirs. However, if the heirs approve the excess portion after the testator's death, provided they are of legal age, it becomes valid[ii]."

From the Maliki perspective, Al-Dasuqi's Commentary cites Abu Muhammad and Al-Baji, stating:
"… Ibn al-Qassar and Ibn al-'Attar believed that such a disposition is not an initial act of gifting but rather an execution of the deceased's intent. Abu Muhammad and Al-Baji convey that this interpretation aligns with the Maliki madhhab. Thus, a bequest exceeding one-third, or made to heirs, is valid but contingent upon the heirs' approval. This approval does not require a subsequent acceptance once given[iii]."

This is further emphasized in Sharh al-Saghir, which states:
"… If a person bequeaths more than one-third of their estate, whether during health or sickness, the remaining heirs have the right to approve or reject the bequest[iv]."

The Shafi'i school, as noted in Nihayat al-Muhtaj, suggests:
"It is preferable for a person, whether their heirs are rich or poor, not to bequeath more than one-third of their estate. Ideally, they should leave less than one-third, as the Prophet (peace be upon him) regarded one-third as excessive, saying, 'One-third, and one-third is much.' Some scholars deemed exceeding this amount disliked (makruh), while others prohibited it outright, especially if it intended to deprive the heirs. If the heirs reject the excess, the bequest exceeding one-third is invalidated unanimously, as it infringes upon their rights."

The text continues:
"If we suspect the illness is terminal due to its recurring fatal nature, then a donation exceeding one-third (does not take effect) without the heirs' approval because it encroaches on their rightful share. If the donation surpasses one-third but is later approved by the heirs after the testator's death, the donation becomes enforceable. However, without their consent, it is nullified concerning the excess[v]."

Mughni al-Muhtaj concurs, stating:
"A person must not bequeath more than one-third of their estate… If the bequest exceeds one-third and the heirs reject it, the surplus is invalidated. However, if the heirs consent, their approval serves to validate and implement the testator's intent concerning the excess[vi]."

It was stated in "Minhaj al-Iradat" for the Hanbalis: "… The will is forbidden for someone who inherits other than a spouse in excess of a third for a non-heir, and for an heir for something, and it is valid, but it depends on the heirs' approval… If the heirs approve it with the words of approval, confirmation, or execution, it becomes binding, and it is considered an execution; it does not establish the rules of a gift, so the one who approved cannot retract…[vii]" .The author of "Hashiyat al-Rahwani" quotes from the Hanbalis, stating that they say: "If the patient disposes of something that he owns at the market price or what people commonly trade at, there is no disagreement regarding the validity of this sale, whether it is made to someone with a vested interest in the condition or to a stranger, as it is not a donation, as evidenced by the permissibility of selling the excess over the third at market value to a stranger. However, if favoritism is shown, and if the favoritism is equal to or less than the third, it is permissible; if it exceeds the third, the act is suspended until the approval of those to whom the condition relates…" [viii].

In "Subul al-Salam" by Al-San'ani, from the Zaydi perspective, in reference to the narration of Sa'd (previously mentioned), it was stated: "… The will for the entire wealth, according to Ibn Mas'ud, if the heirs approve the will for more than a third, it is valid as they have waived their right. The majority of scholars have held this view… If the heirs retract their approval, they cannot do so during the life of the testator or after his death, as it is severed upon death…" [ix]. Similarly, in "Al-Bahr al-Zakhar" by Al-Murtada, a Zaydi scholar, it is mentioned: "The will for an amount exceeding the third depends on the heirs' approval… The closest view in the school is that if the heirs approved the gift while unaware of the excess over the third, they can retract the excess, but if they approved it knowingly, there is no retraction by the apparent view…"[x].

It was stated in "Al-Tahdhīb" for the Shiite scholars: "What the Sheikh narrated from Muhammad ibn al-Hasan from Ahmad ibn al-Hasan from his father from Ali ibn Uqbah, from Abu Abdullah al-Sadiq (peace be upon him), about a man who was on his deathbed and emancipated a slave, and he had no other slave, but the heirs refused to approve it. What is the ruling in this case? He said: 'Nothing of it can be emancipated except a third, and the rest belongs to the heirs.'" (xi)

Clearly, from the statement "the heirs refused to approve," we understand that the act of disposing of more than a third is conditional upon the approval of the heirs. The reason the emancipation of the excess over the third is not valid is due to the lack of the heirs' approval. This implies that if the heirs had approved, the action regarding the excess would have been valid. If the condition here were a condition of validity, the excess would be invalid, regardless of whether the ones concerned with the condition's benefit approved or not, because invalid actions cannot be corrected by approval.

We find the same idea in "Tadhkirat al-Fuqaha" for the Shiite scholars: "It is required for the will to be valid that the bequeathed item is from no more than a third of the inheritance. If the will is for more than that, it depends on the heirs' approval. If they approve, the entire will is valid; otherwise, the excess is invalid by consensus…" (xii)
In "Masalik al-Afham" for the Shiite scholars, it is stated: "The scholars disagree regarding the final acts of the sick person who makes donations in this manner. The majority of them, including the Sheikh in al-Mabsut, al-Saduq, Ibn al-Junayd, and the other later scholars, hold that they are considered from the third, just like non-final acts…" (xiii)

This is clearly seen in the views of modern and contemporary Shiite jurists, as they consider the condition of the third a condition of enforcement, not a condition of validity, as evidenced by the necessity of the approval of those concerned with the condition's benefit for the excess over the third. They state: "It is required that the bequeathed item not exceed the third. If the will exceeds it, the excess is invalid unless the heirs approve it. If they approve some of the bequeathed items and reject others, the will is valid for what they approved and invalid for the rejected items…" (xiv)

They also say: "If he bequeaths a specific item and also bequeaths a third of the remaining inheritance, the will for the third is valid, and the will for the remaining two-thirds depends on the heirs' approval. For example, if he says: 'My horse is for Zayd, and two-thirds of the remaining inheritance for Amr,' his will for Amr is valid, and the will for Zayd is valid if the heirs agree, otherwise, it will be valid only for a third of the horse, with the two-thirds belonging to the heirs…" (xv)

They also add: "If the will is for something that exceeds a third of the estate, the heirs' consent is required for the excess, and if they do not approve, the will is invalid for the excess beyond the third…" (xvi)

Finally, they assert: "If his wills exceed a third, and the heirs approve the spending of the excess, all the wills are valid. If the heirs do not approve, only the will that equals a third of the inheritance is valid, and the excess will be invalid…" (xvii)

In summary, the view of this group is that the condition of the third in restricted transactions is a condition of enforcement, not of validity. According to their reasoning, if the condition were a condition of validity, the effect of its failure would be the invalidity of the action with respect to the excess. However, the action concerning the excess over the third is invalid, even if considered a condition of enforcement, if the concerned parties do not approve the action. They have evidence to support this view, which will be presented in the next section.

Chapter Two:
Evidence for the Viewpoint Considering the Condition of the Third as a Condition of Enforcement and Its Discussion

The main evidence cited by those advocating this viewpoint is the same as that used by those in the first viewpoint, but with a different interpretation and reasoning. The reason for the difference lies in the understanding of the words of the Messenger of Allah (peace be upon him) in the hadith: "If you leave… etc." The question is whether this should be understood as prohibiting the disposal of more than a third, and whether the reason for this prohibition is to preserve the right of those with a vested interest in the condition. If this ruling of prohibition is negated, or if the cause does not extend to the ruling, or by equating Muslims with those who have a vested interest in the condition, then the cause here becomes transferable. In any case, those advocating this viewpoint have relied on the following evidence:

First: They cited the hadith about the third, where the prohibition of exceeding the third is justified by preserving the right of those with a vested interest in the condition. The Prophet (peace be upon him) said: "The third, and the third is much. It is better to leave your heirs wealthy rather than leaving them poor, begging people." His saying "It is better to leave" justifies the prohibition on exceeding the third for the benefit of those mentioned. Therefore, the validity of the action that exceeds the third depends on their approval. Since the disposal of the excess over the third is contingent upon the approval of those with a vested interest, it is considered a condition of enforcement, not a condition of validity. If it were a condition of validity, as we have seen earlier, the failure of the condition would result in the invalidity of the excess in any actions bound by it.

Second: The act of disposing of wealth in actions bound by the third condition is considered an act of transferring ownership at death. Since disposing of the will or similar actions that exceed the third is an act of the person concerning someone else's property (the excess), the principle in actions involving someone else's property is that they are "suspended" until the owner's approval (according to the majority of scholars regarding actions by a proxy). The suspension of the act and its dependency on approval means that the nature of the condition is one of enforcement. Therefore, the action exceeding the third is not valid unless approved by those concerned with the condition's benefit.

Third: The argument based on the concept of the implied opposite (even if we accept the validity of the implied opposite) is possible here. The explicit wording of the hadith addresses the third, which is the ruling of validity and enforcement, while the implied portion refers to the excess, which is not valid. This implied ruling, as we see, differs from the explicit ruling. This assumes we accept the validity of the implied opposite.

Fourth: The Shiite scholars have narrations from their Imams (peace be upon them) that they use to support the idea that the condition of the third is a condition of enforcement and that disposing of the excess over the third depends on the approval of those concerned with the condition's benefit. In case of their disapproval, or partial approval from some and not others, the excess over the third applies only to the one who approved it.

This is clearly demonstrated by what was narrated by the Shiite scholar from al-Ṭā'ifah about Ḥasan ibn Ali ibn Yaqṭīn, from his brother Ḥusayn ibn Ali ibn Yaqṭīn, who said: "I asked Abu al-Ḥasan (peace be upon him) about what a man has of wealth at his death. He said: 'A third, and a third is much…'" [(xviii)] Also, in the authentic narration from Shu'ayb ibn Ya'qūb from Abī Baṣīr, he asked Imam al-Sādiq (peace be upon him) about a man who dies with wealth. He said: "A third of his wealth, and the woman's too…" [(xix)]

And if we were to discuss the evidence presented by the proponents of this viewpoint, we would say:

First: The argument that the prohibition is justified by the right of those with a vested interest in the condition can be refuted. The Prophet (peace be upon him) did not clarify the reason for the prohibition of disposing of more than a third in the hadith of Sa'd (may Allah be pleased with him). Therefore, there is no apparent cause, but rather it is a divine ordinance established by Allah for His servants. The hadith of Sa'd does not indicate that the prohibition is linked to the right of those with a vested interest in the condition; rather, the prohibition is intended to convey the wisdom of the rule — that "a third is much," meaning the wisdom behind this legislation, not the reason behind the prohibition, which is assumed to be a presumption of the rule.

Second: As for their argument based on the hadith of the Prophet (peace be upon him): "Allah has donated to you a third of your wealth, so spend it as you wish," this can actually be used against them. The implication of the hadith is that you have a third, not more than that, and the cause here is transferable. Therefore, the increase in actions exceeding the third would logically result in the invalidation of the action, not merely its suspension. As for the Shiite narrations, they are binding upon their followers, not others.

However, a response to this criticism is possible through two points. First: The nature of the condition can be clarified from the foundation that the third condition was originally based on. We see that the Prophet (peace be upon him) explained the rationale behind this amount in the will in the same hadith, which was the basis for the condition (this is one of the rare instances where the reason is mentioned with the ruling). Second: We benefit from the narrations prohibiting actions exceeding the third, which we have encountered, that the excess belongs to those with a vested interest in the condition, and the prohibition was enacted to safeguard their rights. If they waive this right by their consent, the prohibition

is lifted, and the previously prohibited action becomes valid. Thus, the action conditioned on the enforcement of the excess (over the third) is considered a valid condition.

From what has been discussed, it can be said that the root of the disagreement on this matter lies in the interpretation of the prohibition mentioned in the hadith of the Prophet (peace be upon him) narrated by Sa'd, regarding disposing of more than a third. Those who believe the prohibition necessitates the invalidity of the action argue that the prohibition on the excess is a condition of validity. In contrast, those who believe the prohibition does not necessitate invalidity, because it is directed toward a non-essential aspect — the excess over the third — which is harmful to those with a vested interest in the condition, are closer to the view that the condition is one of enforcement. According to this view, the concerned party has the option to approve or reject the excess.

The practical outcome of this disagreement is reflected in the following: According to the first viewpoint, the excess over the third is considered a gift from the one approving the action to the recipient, and thus it falls under the rules of gifting. According to the second viewpoint, it is a confirmation of the action itself, remaining subject to its conditions and rulings.

It seems from the comparison that the viewpoint of the second trend is more accurate, due to the strength of their evidence. The hadith of the Prophet (peace be upon him) as mentioned earlier: "It is better for you to leave your heirs wealthy rather than leave them dependent, begging from others," establishes the right of those with a vested interest in the condition. If they consent to waive their right, the impediment is presumed to be lifted, and the action becomes valid. This necessarily means that this viewpoint sees the condition concerning the third as one for the enforcement of the will or similar acts, not as a condition for its validity. Consequently, an action exceeding the third is valid but is suspended pending approval from those with a vested interest in the condition. If they approve it, the excess becomes valid with retroactive effect; if they reject it, the excess is invalid, also with retroactive effect.

On the other hand, the consequence of adhering to the first viewpoint would be that the stipulation of the third in actions exceeding it is a condition of validity. The action within the third is valid, but the excess is invalid, regardless of whether those with a vested interest in the condition approve or not.

Since the second viewpoint is more accurate in its characterization of the third condition, most Arab legislations have adopted it, including:

1. Egyptian Law: Article 37 of the Egyptian Will Law No. 71 of 1946 states: "The excess over the third is valid only if it is approved by the heirs after the testator's death, and the heirs are able to make a donation, being fully aware of what they are consenting to."
2. Syrian Law: This is also the approach of the Syrian Personal Status Law No. 59 of 1953, where the second paragraph of Article 238 states: "The will does not apply to the heirs or the excess over the third unless approved by the heirs after the testator's death, and the one approving is fully capable."
3. Yemeni Law: Similarly, Yemeni law follows this approach, as Article 236 of the Yemeni Personal Status Law No. 20 of 1992 states: "The will for someone other than an heir in excess of one-third of the estate is not valid unless approved by the heirs…"
4. Kuwaiti Law: The Kuwaiti legislator followed the same path in the Kuwaiti Personal Status Law No. 51 of 1984, where Article 247 states: "The will for someone other than an heir is valid within one-third of the estate remaining after debts are paid, without the approval of the heirs… If some heirs approve the will for an heir or for excess over the third for someone other than an heir, and others do not, the will applies to those who approved it."

This is clearly reflected in Article 287 of the Kuwaiti Jaafari Personal Status Law No. 124 of 2019, which states: "It is a condition that the bequeathed amount does not exceed the third. If it exceeds, the will is void unless approved by the heir. If some approve and others reject, the will applies to the share of the approving heirs and is void for the others."

5. Qatari Law: As stated clearly in Article 208 of the Qatari Family Law No. 22 of 2006, which states: "… The will for someone other than an heir in excess of the third is valid with the approval of the adult heirs within their shares."
6. Jordanian Law: The Jordanian legislator follows the same approach in the Jordanian Personal Status Law No. 36 of 2010, where Article 274/B states: "The will is valid within the third of the estate for someone other than an heir. Any excess over that will not be executed unless it is approved after the testator's death."
7. Emirati Law: The Emirati legislator's approach aligns with the previously mentioned legislative trends, as stated in Article 243 of the UAE Personal Status Law No. 28 of 2005: "The will is valid within the third of the testator's

estate, after fulfilling related rights, and valid for any excess over the third, within the share of the adult heirs who approve it."

As for the position of the Iraqi legislator regarding the nature of this condition, it has adopted the viewpoint of the second trend and aligned with them in many instances, which is the considered position in this regard. This is clearly understood from the second paragraph of Article 1108 of the Iraqi Civil Code No. 40 of 1951, which states the general rule: "The will may be made for an heir or non-heir up to one-third of the estate. It does not apply to any excess over one-third unless approved by the heirs." The implication of this text is that the approval of those with a vested interest in the condition regarding the excess over the third is not a condition for the validity of the act, regardless of the extent of the act, but rather it is a condition for the enforcement of the act under Iraqi law.

This meaning is affirmed by the general rule established in Article 70 of the Personal Status Law No. 188 of 1959, which states: "A will may not exceed one-third unless approved by the heirs…" [(xx)] This principle is further confirmed by the third paragraph of Article 249 of the Real Estate Registration Law No. 43 of 1971, which states: "The registration of a will is not subject to the heirs' approval unless the bequest exceeds one-third of the estate. In this case, their approval must be obtained for registration concerning the excess over one-third."

The general principle regarding other restricted transactions that are subject to the provisions of the will follows the same rule (the restriction to one-third and considering it a condition for enforcement). Accordingly, acts of a person on the verge of death are considered akin to a will, as stipulated in the first paragraph of Article 1109 of the Civil Code, which states: "Any act of transfer of ownership made by a person in the illness of death, intended for donation or favoritism, is considered either in full or in part as an act added to the time after death. The provisions of the will apply to it, regardless of the label given to it."

Thus, the Iraqi legislator has adopted the general principle that considers the condition of one-third in restricted acts as a condition for enforcement, not for validity, with the approval of those with a vested interest in the condition. No approval can validate an invalid act if the condition of one-third is considered a condition for validity and not enforcement.

Some commentators argue that this general rule is restricted[(xxi)], as the Iraqi legislator, in some instances, considered the condition of the third as a condition for validity, not for enforcement. This would necessitate the voiding of the excess if the condition is not fulfilled, and the approval of those with a vested interest would not remedy it.

They base this view on the second paragraph of Article 109 of the Civil Code, which states: "The wills of the insane are valid for one-third of their property," without granting the right of approval to those with a vested interest. This implies, by implication, that failing to meet the condition of one-third in the will of the insane [(xxii)] results in the invalidity of the excess over the third. They also refer to Article 43 of the Juvenile Care Law No. 76 of 1983, which states: "A bequest to a minor, equal to the share of the least heir, provided it does not exceed one-third of the estate, is obligatory and cannot be revoked."

However, the aforementioned view can be countered by asserting that the Iraqi legislator did not intend to declare the invalidity of the bequests of the insane beyond one-third. Rather, it aimed to regulate and correct the actions of the insane in this context, without declaring the invalidity of their approval for the excess over the third. Especially since this is supported by the idea that the concept of implication lacks legal weight. As for what is stated in the Juvenile Care Law, it does not imply the invalidity of the bequest for the excess over the third. Rather, it implies the assumption of the bequest for at least one-third, an assumption that cannot be disproved [(xxiii)]

On the other hand, Arab jurisprudence generally accepts considering the condition of the third as a condition for enforcement, not for validity. This acceptance is the result of scholars' determination that the excess over the third does not invalidate the act but makes its enforcement contingent upon the approval of the heirs with a vested interest. Therefore, most scholars agree that ownership of the excess portion is not attributed to the one who approves it by their consent, but to the act itself (the will or similar acts). The ownership is attributed to the act of disposition, not to the initiated gift. Thus, the excess over the third does not require possession or an official contract, unlike a gift, which, under civil laws, is a real contract requiring possession or formal contract. Therefore, ownership of the excess is valid without requiring these conditions [(xxiv)]

The Egyptian judiciary and the Arab legislations compared have consistently regarded the condition of one-third as a condition for enforcement, not for validity. This has been clarified on several occasions, including in Appeal No. 0816 dated 06-12-1977, where the Egyptian Court of Cassation stated the following principle: "The provisions of the Inheritance Law No. 71 of 1946, which governs the case, stipulate that the will does not apply without the approval of the heirs, except within the limits of one-third of the estate of the testator after settling all his debts." Similarly, in Appeal No. 0012 dated 03-01-2012, it was decided: "The will does not apply to the excess over one-third of the estate unless the heirs approve the excess. If the bequeathed property exceeds one-third of the estate, it will be implemented proportionally according to the value of each asset in relation to the value of one-third of the estate"[(xxv)]This principle is entirely correct, as the condition of one-third here is a condition for enforcement, not for validity, as evidenced by the heirs' approval. An invalid act cannot be corrected or validated by approval.

Similarly, the Federal Court of Cassation in Iraq has confirmed the nature of the condition of one-third as a condition for enforcement, not for validity, in its ruling No. 487 dated 24/10/2012, which stated: "The submitted evidence is a will that is added to what occurs after death and is within the one-third limit. It does not apply to the excess over one-third unless approved by the heirs" [(xxvi)] Likewise, in a previous case: "… if it is less than or equal to one-third, it is ruled valid, but if it exceeds one-third, the heirs must be consulted. If they approve the excess, the transfer of ownership is deemed valid; if they do not approve it, only the part that equals one-third will be valid" [(xxvii)]

Conclusion:

After reviewing the discussions and topics of the research on the subject

(i) 1. Alaa al-Din Abu Bakr ibn Mas'ud al-Kasani al-Hanafi, *Bada'i' al-Sanayi' fi Tartib al-Shara'i'* [The Beginning of Crafts in the Arrangement of Laws], the previous source, Volume 7, p. 370.

(ii) Al-Kamal Ibn al-Hammam, *Sharh Fath al-Qadir*, the previous source, Volume 10, p. 415.

(iii) Shams al-Din Muhammad ibn Ahmad ibn Arfah al-Dusouqi, *Hashiyat al-Dusouqi*, Volume 4, p. 427.

(iv) Ahmad al-Sawi, *Al-Sharh al-Saghir*, the previous source, Volume 2, p. 436.

(v) Shams al-Din Muhammad ibn Abi al-Abbas al-Ramli, *Nihayat al-Muhtaj*, the previous source, Volume 6, p. 54.

(vi) Muhammad ibn Ahmad al-Khatib al-Sharbini, *Mughni al-Muhtaj*, the previous source, Volume 3, p. 46.

(vii) Taqi al-Din Muhammad ibn Ahmad al-Fatuhi Ibn al-Najjar, *Muntaha al-Iradat*, first edition, Science of Books, no place of print or publication year, Volume 2, pp. 38–39.

(viii) Muhammad ibn Ahmad ibn Muhammad al-Rahwani, *Hashiyat al-Rahwani 'ala Sharh al-Zarkani*, first edition, Bulak Press, no place of print, 1306 AH, Volume 5, p. 351.

(ix) Ahmad ibn Qasim al-Ansari al-San'ani, *Subul al-Salam* (Explanation of Bulugh al-Maram from the Evidence of the Laws), third edition, al-Istiqama Press, Cairo, 1369 AH, Volume 3, pp. 108–109.

(x) Ahmad ibn Yahya ibn al-Murtada, *Al-Bahr al-Zakhar* (The Comprehensive Jurisprudence of the Lands), Dar al-Hikmah al-Yamaniyyah, Sana'a, 1947, Volume 5, p. 309 and beyond.

(xi) Muhammad ibn al-Hasan al-Tusi, *Al-Tahdhib*, the previous source, Volume 2, p. 388.

(xii) Al-Hasan ibn al-Mutahhar (Al-Allamah al-Hilli), *Tadhkirat al-Fuqaha'* (Wills), unnumbered edition published on the website (http://shiaonlinelibrary.com/).

(xiii) Zayn al-Din ibn Ali ibn Ahmad (Al-Shahid al-Thani), *Masalik al-Afham* (Wills), unnumbered edition published on the website (http://shiaonlinelibrary.com/). A more detailed explanation of this will follow in due course – God willing.

(xiv) Abu al-Qasim al-Khui, *Minhaj al-Salihin* (Transactions), first edition, Dar al-Murtada, Beirut, 2006, p. 212.

(xv) Ali al-Husayni al-Sistani, *Minhaj al-Salihin*, Volume 2 (Transactions), no publisher or place of publication, p. 366.

(xvi) Sadiq al-Husayni al-Shirazi, *Al-Masail al-Islamiyyah al-Muntakhabah*, 28th edition, Dar Sadiq for Printing and Publishing, Karbala al-Muqaddasa, 2005, p. 436.

(xvii) Muhammad Taqi al-Madrasi, *Ahkam al-Islam*, third edition, Dar Mahabbat al-Husayn, Najaf al-Ashraf, 2006, p. 243.

(xviii) Muhammad ibn al-Husayn al-Tusi, *Al-Tahdhib*, the previous source, Volume 2, p. 401.

(xix) Abu Ja'far Muhammad ibn al-Hasan al-Saduq, *Man La Yahduruhu al-Faqih*, the previous source, Volume 2, p. 267.

(xx) The Personal Status Law Project does not deviate from this principle. Article 19 states: "The conditions for the subject matter of the will are as follows: … Fourth: it should not exceed one-third of the estate, otherwise the excess will be subject to the approval and acceptance of the heirs."

(xxi) For this view, see: Alaa al-Din Khurufah, *Sharh Qanun al-Ahwal al-Shakhsiyyah*, al-Ma'arif Press, Baghdad, 1963, Volume 2, p. 84 and beyond. Also: Dr. Abdul-Mutal Muhammad Abdullah, *Al-Rajih fi al-Qada' al-Madani*, Dar al-Sanhouri, Baghdad, 2017, p. 137.

(xxii) It is noteworthy that the actions of the imbecile before the interdiction are like those of a non-interdicted person, unless the action was fraudulent or done in collusion with the recipient of the imbecile's actions in anticipation of interdiction. Therefore, the will of the imbecile is valid for one-third of their property, and the approval of those concerned with the inheritance condition is required for any amount exceeding that.

(xxiii) In a case decided by the Federal Court of Cassation in its decision numbered (4003/ Personal/2002, dated 21/8/2002), it was decided that if the defendant was registered in the civil records through the adoption issued by the Juvenile Court of Rusafa, the defendant's right is related to the financial support and must be provided with the equivalent of the smallest heir's share, not exceeding one-third. It is an obligatory will that cannot be revoked. This decision is published in the *Journal of Justice*, issues three and four, Volume 56, p. 254.

(xxiv) For this view, see: Muhammad Abu Zahra, *Sharh Qanun al-Wasiyyah*, al-Ittihad Egyptian Library, Cairo, no publication year, p. 194. Also: Ali al-Khafeef, *Ahkam al-Wasiyyah* (Comparative Research – Including Explanation of Law No. 71 of 1946 on Wills), first edition, Dar al-Fikr al-Arabi, Cairo, 2010, p. 365.

(xxv) Referenced in the Arab Lawyers Network website: https://www.mohamoon.net/.

(xxvi) Published in the *Journal of Justice*, issues three and four, Volume 56, p. 128.

(xxvii) A decision by the Federal Court of Cassation, numbered (141/961, dated 10/4/1961), referenced in: Baqir Khalil, *Tatbiqat Qanun al-Ahwal al-Shakhsiyyah al-Mu'adhal*, al-Rashad Press, Baghdad, 1966, p. 335.

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