

(76) Addressing Inheritance, Testament and its Inhibition in Natural

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- Legacy of an illegitimate fetus

Regarding the inheritance of an illegitimate fetus, it can be stated: Under Article 6 of the Civil Code, illegitimate child does not inherit from his parents and relatives. However, if the permanent bar of the child in the relationship that the child is its fruit is proved by parents but it is not proved regarding the other due to reluctance or suspicion of adultery, the child will inherit by the later and his/her relatives. It has been stated in Article 4 of the Civil Code that a child born of adultery shall not be attached to the adulterer. In other words, adultery precludes the incorporation of legitimate and legal lineage. Now it is possible to add assumption such as the prohibition of sexual intercourse of the lawful couples in ihram because they become unmarried in this state and their offspring is considered a bastard and will not be inherited.

Conclusion:

According to this study, according to Article 875 of the Civil Code, two things play an important role in fetal inheritance. First, the conception is for the embryo's existence at the time of the deceased's death and placement of the estates between the heirs, and second, that the majority of jurists emphasize the survival of the fetus as a later condition and the excessive emphasis on the fetus and its definition without the term survival seems nonsense. That is because for inheritance, the fetus shall survive and even the fetus does not survive for a moment, it will be deprived of its inheritance. In French law, in addition to being born alive, the potential for being alive is a condition for succession. Of course, this seems very reasonable because the least doubt should happen and it should be such that one would make sure about its being alive. However, according to Iranian civil law, the presence of a small amount of oxygen in the fetal lung can be a positive reason for its survival.

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proved and it is not possible to act against their benefit. Secondly, causing the judge to doubt will cause to harm to the other heirs.

In addition, a group inherits the deceased in any case, such as the deceased's parents. The deceased's grandson may not inherit if the fetus is alive. If the fetus is born alive, the parents may fall from the highest to the lowest amount of inheritance. Here are two situations: In the first case, it seems possible to divide the parent's share but the grandchild's share must remain until determining the fetus's condition and in the case, it is permissible to divide the minimum inheritance to other heir and if the fetus does not survive, the residual will be redistributed.

- Artificial insemination fetal inheritance

According to Article 875 of the Civil Code, fetus belong to the man even if insemination occurs after death, it is considered as the deceased's child and there is no need to bring a verse because insemination is a fiduciary relationship obtained by joining one people's semen and this definition applies to frozen embryos even though inseminated artificially (Ardebili 1983, Shahid Thani, 1990; Taheri 1998). Therefore, if a man has sexual intercourse with his wife and dies immediately, the born child will inherit from his father through considering the presumptive evidence of the minimum time (Ardebili, 1983) (Rasekh et al., 2012 AH) (Gheblei Khoei, 2008).

Abortion

If the abortion is carried out, regardless of the crime, he will be inherited if it is aborted alive and if it is aborted dead, he will be deprived from inheritance, the estates will be left to the other heirs, and Muhaghegh has confirmed it in Shari'a (Shari'a, vol. 4, p. 44). Fetus enjoys the deceased's estates if he is aborted alive even if he is not complete and if he dies immediately, his inheritance reaches to his heir, even though his life is not established (Manhaj al-Salehin, p. 378).

- Making a will in favor of the fetus

In the will testament for the fetus, it is believed that if it is aborted by crime he would not have the right to enjoy and other heir will benefit from the estate and there is no difference between inheritance and will (Kefayat-al-Ahkan p. 292).

The most important condition that most jurists have emphasized on inheritance is the live birth (Shahid Thani, Najafi, 1984; Shahid Awwal, 1990) with signs such as crying and movement of some body parts (Emami). However, some do not consider the conditions of crying or movement because the child might be speechless or disabled ((Shahid Thani, 1990). Therefore, the child should be alive to inherit, otherwise doubting about his being alive at birth impedes his inheritance because that doubt is doubt in the fulfillment of the condition and the principle is its lack of fulfillment (Emami). Therefore, civil law in Article 876 says that inheritance is voided by doubting about being alive at the time of birth. In French law, in addition to being born alive, the potential for survival is a condition of succession. Of course, this seems very reasonable because the fetus should pass the doubt stage so that his being alive is ensured. However, according to Iranian civil law, the presence of a small amount of oxygen in the fetal lung can be a positive reason for his survival.

- Division of the deceased's estate with the fetus

Regarding the division of the deceased's estate in the case of a fetus: According to Article 6 of Iranian Civil Code, "when there is a fetus during the death of the deceased, the division of the deceased estate does not take place until the fetus status is clarified". The fetus prevents the inheritance of other heirs such as the assumption that it is the only child of the deceased and the deceased person's brothers and sisters will be deprived of the inheritance if the fetus is born alive. However, the fetus does not prevent the inheritance if the deceased has other children, the share of two boys will be set aside for him.

Now the question arises that now that advanced devices can determine the fetus, gender and its number, if the number of sons is more or less than two sons, can other heirs apply to court?

It seems that if the number is lower than the statutory presumption, the court must comply with the statutory minimum. However, if it is proved that there are three or four children in the womb, the court's justice requires keeping their share safe because according to the principle of presumed existence, their succession is

inheritance (Erth) means deserving because the heirs deserve their property due to the kinship or cause (Gheblei Khoei, 2010 p. 44).

Fetus (Haml): literally means a baby who is in the womb (Sayyah, 1975 p. 279). The legislator has used the word repeatedly in civil law, but most contemporary jurists have used the term embryo, which is synonymous to it (Sayah, p. 210) that according to Article 957 of civil law, the fetus enjoys civil rights provided she is born alive. Therefore, it can be said that the fetus also has a personality and can be entitled to the following rights: the right to life, the right to inherit, the right to receive gift, and the right to receive donation or inheritance (Safa'i, pp. 39-51). The term inheritance means the non-contractual transfer of a part of property from one person to another (Ragheb Esfahani, pp. 863, 1992). It also means the rest and the residual (Sayyah - p. 120-1975). In the legal term, it means the transfer of ownership of the property of the deceased after his death (Shahidi, pp. 15-2006).

The legislator, in his word, calls the person who received the inheritance as the heir and calls the deceased's property as the deceased's estate (Emami, 1997).

-The fetus capacity of inheritance

The fetus has a kind of legal personality that can be entitled to its right, i.e. it has the entitlement capacity. The validity of making a will on fetus or donating it as a living being is a reason for this claim. Moreover, the right to life has been established and no one can take it from him unless the contrary is proved and the fetus is exceptionally deprived of this right like the initial dedication to a fetus according to the famous jurisprudents, inheritance is a right that is not exempted and the fatwa are explicit about it, which is set forth in the Shari'a "العمل يرث بشرط انفصاله حيا" (Mohaghegh Helli, p. 16).

- Conditions of inheritance by fetus

A- Conception at the time of the legator

Conception refers to the amalgamation of male sperm and female ovule obtained after a short period (Emami, 2006). Considering this condition, it should be said that if a fetus is conceived after the legator's death, the child will be deprived from the heir.

B- Fetus live birth

Introduction:-

The baby inside the mother's is referred to as fetus from the time of settlement in the womb until the birth. According to Iranian law and jurisprudence, the fetus has unstable capacity to obtain rights, which is stabilized as soon as the child is born. Whenever there is a pregnancy at the time of the legato, the other heirs will not be divided until its condition is determined. If the pregnancy does not prevent the inheritance of other heirs and they wish to divide the heritage, they should set aside a full share for the fetus and then the share of each heir is receivable until the condition of the fetus is determined. The division of the heritage must be done in court with the participation of its parents or a trustee. The fetus prevents the inheritance of other heirs such as the assumption that it is the only child of the diseased and the deceased person's brothers and sisters will be deprived of the inheritance if the fetus is born alive. However, the fetus does not prevent the inheritance if the deceased has other children, the share of two boys will be set aside for him. In French law, in addition to being born alive, the potential for being alive is a condition for succession. Of course, this seems very reasonable because the least doubt should happen and it should be such that one would make sure about its being alive. However, according to Iranian civil law, the presence of a small amount of oxygen in the fetal lung can be a positive reason for its survival.

Now the question arises that now that advanced devices can determine the fetus, gender and its number, if the number of sons is more or less than two sons, can other heirs apply to court? It seems that if the number is lower than the statutory presumption, the court must comply with the statutory minimum. However, if it is proved that there are three or four children in the womb, the court's justice requires keeping their share safe because according to the principle of presumed existence, their succession is proved and it is not possible to act against their benefit. Secondly, causing the judge to doubt will cause to harm to the other heirs.

Concepts:

Inheritance: Inheritance is what a man leaves for others by means of kinship or cause (Al-Husseini al-Ameli, p. 44) the term

Abstract:-

With the death of any person, his property shall be inherited by his heirs in accordance with the provisions of civil law. In the discussion of the legal validity of natural inheritance, the fetus is said to have an unstable legal personality that can enjoy its rights after birth and according to the famous verse of the Qur'an and the fatwa, there are conditions for it that are applied with his birth alive. Otherwise, nothing will be given to him and the sentence on his lack of existence is declared at the time of his death. Besides, one of the issues that give rise to doubts about the inheritance is the existence of a fetus among the heirs that these cases as well as the heir of the laboratory fetus are discussed.

Key words: Carriage, Inheritance, Fetus, Inheritance, Fetus, Will, Illegal, Abortion, Artificial Fertilization.

المخلص:-

مع وفاة أي شخص، يتم توريث ممتلكاته لورثته وفقا للقانون المدني. في مسألة الصلاحية القانونية للإرث علي الجنين الطبيعي يقال إن الجنين لديه نوع من الشخصية القانونية المهزوزة و وفقا علي نص صريح قرآني و الفتاوي الفقهية يمكنه أن يتمتع من الحقوق بعد الولادة شرط ولادته حيا، فتسلب حقوقه بانتفاء هذا الشرط. يحاول هذا البحث أن يتطرق إلي قضايا مرتبطة بالجنين الطبيعي و غير الطبيعي في مسألة التوريث و حقوق الجنين بعد الولادة.

الكلمات المفتاحية: الحمل، الميراث، الجنين، غير المشروع، الإجهاض، الإخصاب الاصطناعي.

Addressing Inheritance, Testament and its Inhibition in Natural , Laboratory and Illegitimate Embryos Relative to other Heirs with Regard to Iran's Jurisprudential and Legal Principles

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نظرة على كيفية وراثة الجنين الطبيعي وغير الطبيعي وغير الشرعي وقضية وصيته بالنسبة للوراث الآخرين وفقا على المبادئ الفقهية والحقوقية الإيرانية

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