Contemporary Readings in Law and Social Justice
ISSN: 1948-9137, e-ISSN: 2162-2752
Vol 17 (1), 2025
pp. 69 - 82

The Substantive Provisions of the Applicability of Optional Wills in Algerian Family Law - A Legal and Sharia Approach

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Abstract:

The Algerian legislator opened the chapter of donations with the will, and singled it out in 18 legal articles, which indicates his interest in it, as does the Islamic Sharia, which dealt with all its parts and regulated its terms and conditions. On this basis, the Sharia and the law allowed persons to bequeath their property during their lifetime, but surrounded this will with legal and legal controls, as the voluntary will is considered one of the voluntary acts issued unilaterally as a reason to acquire property in the Civil Code. In general, this study aims to clarify the substantive provisions of the validity of the optional will by enumerating its elements, conditions of validity, and its conclusion, as required by the Sharia and the law, in order to conclude the study on the extent to which the legislative provisions comply with the Sharia objectives.

Keywords: Voluntary will, Unilateral disposition, Authorization of heirs, Enforceability of the will.

Received:02February 2025 **Accepted:** 07 March 2025 **Published:** 30 March 2025

Introduction:

The will is one of the most important topics in Islamic jurisprudence related to people's daily lives. Scholars, may Allah have mercy on them, have addressed it in many legal issues and dedicated specific rulings to it in their writings. Each scholar has presented their opinion based on the evidence and arguments they found most compelling, allowing for an understanding of the scholars' views and identifying the most valid ones according to the evidence they provide. The topic of the will contributes to illustrating the importance and authenticity of Islamic legislation and its applicability to all times and places.

From this perspective, Sharia and law have permitted individuals the right to bequeath their property during their lifetime, but they have surrounded this will with legal and Sharia controls for protection and to avoid infringing on the rights of creditors and heirs. Therefore, the freedom of the testator to dispose of their will as they wish is not absolute; Sharia and law strive to protect the rights of creditors or heirs, or both, aiming to reach a ruling on the non-enforceability of the act concerning them. This is what the study aims to address by highlighting the key justifications that prevent the enforcement of the will in order to protect the rights of creditors and heirs.

The Algerian legislator, under Article **775** of Ordinance No. **75-58** concerning the amended and supplemented Civil Code, (01) referred to the applicability of personal status law and the texts related to it in the chapter concerning methods of acquiring property. He did not dedicate a specific law to the will, as some Arab legislations have done, (02) but included specific provisions for it in the Family Code No**. 84-11,** amended and supplemented, from Articles **184** to **201.** (03).

This research paper aims to explore the rules that provide protection for heirs against concealed (or fictitious) wills, focusing solely on Algerian law in all its sources, without delving into what comparative legislations have provided.

Based on the above, the following question can be posed: **To what extent has the Algerian legislator aligned with the objectives of Islamic jurisprudence when organizing the provisions of the optional will in terms of validity and enforceability?**

In this study, we have relied on two methodologies: a descriptive approach when presenting the legal and Sharia definitions, and an analytical approach to interpret some of the relevant Sharia rulings and derive related rules. Since the study is both legal and jurisprudential, a comparative method has also been employed to compare jurisprudential rulings with legislative texts.

To comprehensively address the elements of the topic, we must divide it into two sections. The first section will address the optional will, detailing its conditions for validity and conclusion, while the second section will discuss the rules that limit the freedom of disposition, explaining the Sharia and legal foundations that surround the will with these controls.

Section 1: Definition of the Optional Will.

The study requires clarifying these rules related to the will. We will discuss the concept of the will in general, including its definition, elements, and conditions, according to what the Algerian legislator has stipulated and what Islamic jurists have established. We will define the will and identify its elements, detailing its conditions (first subsection), without delving into the specifics of the legal and Sharia rulings on the will. The substantive conditions are those that determine the validity and legal existence of the will (second subsection), such as capacity, its impediments, the reserved share for heirs in the estate, the permissible amount to be bequeathed in the presence or absence of heirs, the individuals to whom one can bequeath, and the capacity of the legatee to accept the will.

Subsection 1: Definition of the Will.

Research has generally followed the practice of defining subjects by providing a linguistic definition before a technical one. Therefore, we will adopt this approach, starting with the linguistic definition (first branch) and then the technical definition (second branch). Upon reviewing ancient and modern jurisprudential texts, it is rare not to find a definition of the will, as it is an important issue that scholars have studied. We find that these definitions vary or differ based on their differing opinions on some of its rulings and conditions.

Section One: Definition of the Will in Language.

The term "will" has several meanings in language, including:

First: **A covenant to another:** "The man bequeathed and advised him," meaning he entrusted him. "I bequeathed to him and advised him of something," and "I bequeathed to him if I made him your executor." "I bequeathed and advised him" refers to the act of bequeathing and advising.

Second: Connection: "The thing is connected," and "the land is connected with vegetation." The land is said to be "connected" if its vegetation is continuous.

Third:To advance to another with an accompanying admonition. "The people advised each other" (04), as evidenced by the saying of Allah, the Exalted**: "And they advised each other to the truth and advised each other to patience"** (05).

Fourth: Command: As in the saying of Allah, the Exalted: **"And He enjoined me to establish prayer and to give zakah as long as I remain alive"** (06).

Fifth: Obligation: This is supported by the saying of Allah: **"Allah instructs you concerning your children"** (07).

Section Two: Definition of the Will in Terminology.

First:Definition of the Will in Sharia.

Scholars have differed in defining it, even within the same school of thought, and their definitions have varied due to differences regarding whether the will is a contract, a disposition of property, or if it is limited to the will itself. Therefore, we will limit ourselves to one definition from each school as follows:

1-**Definition according to the Hanafi school**: "It is a transfer of ownership added to what comes after death through donation, whether that is in assets or benefits." (08).

2-**Definition according to the Maliki school:** "It is a contract that establishes a right in one-third of the testator's estate, which is binding upon his death or on behalf of him thereafter." (09).

3- Definition according to the Shafi'i school: "It is a donation of a right added to what comes after death." (10).

4-**Definition according to the Hanbali school:** "It is a donation of property after death." (11).

From the above, it appears that the chosen definition of the will is that of the Hanafi scholars, which states that it is a transfer of ownership added to what comes after death as a form of donation, whether in kind or benefit. This is the most accurate, comprehensive, and general definition, as it encompasses everything a person bequeaths after their death. Additionally, the will may include the executor's responsibility for caring for minor children. (12).

Second: Definition of the Will in Algerian Family Law.

The Algerian legislator defines the will in family legislation as: "A transfer of ownership added to what comes after death through donation." (13) From this text, we can derive the following from the terms used in this definition:

- The use of the term "transfer of ownership" makes this definition comprehensive and restrictive, encompassing all types of wills, whether obligatory or recommended, and whether they involve property or not. The will includes ownership transfer, relinquishment, and specification of allowances, in addition to bequests of benefits such as housing in a house or farming on land, as well as bequests of assets, whether movable or immovable.

- When discussing the phrase "added to what comes after death," it means that the execution of the will occurs only after the testator's death, which implies that a gift does not fall under this definition.

- It can also be inferred that the term "donation" excludes wills that rely on selling or renting to someone, as the will is executed without compensation, being a donation imposed by the testator from their property after their death.

Section Two: The Rules Governing Wills and Evidence of Their Legitimacy

In this section, we will address the legal rulings that pertain to wills (Subsection One) and the ruling on optional wills (Subsection Two).

Subsection One: The Legal Rulings Pertaining to Wills

First:The Mandatory Will: This is the will that a debtor is obligated to fulfill, such as the will related to debts owed to Allah Almighty, including unpaid zakat, expiation for fasting, or obligatory pilgrimage that has not been performed; in addition to debts owed to individuals. It is particularly emphasized for those who have debts to others that must be settled or possess deposits, and so forth, so that rights are not lost by neglecting them, in accordance with the mandatory will as stipulated in the Algerian Family Law, **Article 196 and subsequent articles.**

Second: **The Recommended Will:** This is a will that is considered a mandatory act of kindness, such as a will for the poor and needy, if the testator is financially capable. It also includes bequests to relatives and

kin to assist them and foster goodwill, in accordance with the saying of the Prophet Muhammad (peace be upon him): **"Exchange gifts and you will love one another."**

Third:The Permissible Will: This refers to a will made for wealthy relatives or distant kin, without the intention of maintaining family ties or fostering goodwill.

Fourth:The Disliked Will: This pertains to a will concerning something undesirable (disliked), issued by a poor person who has many dependents relying on him, with the intent to harm the heirs through a will that constricts them. For instance, this person may direct his will to wealthy individuals who do not need it, or he may bequeath the construction of domes over graves.

Fifth: **The Prohibited Will:** This is a will concerning something that Allah has forbidden, such as building a house of entertainment or immorality, etc. (14).

Subsection Two: The Ruling on Optional Wills

While the default ruling on wills is invalidity by analogy, as they are considered ownership transferred to after death, the majority of jurists have agreed on the validity of wills based on preference contrary to analogy. The evidence for the legitimacy of wills will be demonstrated from the Quran, the Sunnah, consensus, and even public interest.

First:From the Quran: Allah, the Exalted, says**: "It is prescribed for you that when death approaches any one of you, if he leaves wealth, that he make a will for the parents and near relatives in a fair manner. This is a duty upon the righteous."** (15). He also says**: "After any bequest he may make or debt."** (16).

Second: From the Sunnah: In the hadith of Sa'd ibn Abi Waqqas, he said to the Prophet Muhammad (peace be upon him): "O Messenger of Allah, should I bequeath all my wealth?" He said: "No." I said: "Then half?" He said: "No." I said: "Then a third?" He said: "A third, and a third is much; for you leaving your heirs wealthy is better than leaving them in need, begging from people." (17).

Third: Consensus: The companions of the Prophet (may Allah be pleased with them) and those who came after them have reached a silent consensus on the legitimacy of wills, and none of them has opposed this.

Fourth: Public Interest: Allowing the obligated person to rectify any shortcomings during their life regarding certain duties; thus, it opens the door for reward to compensate for it through the will from the bequeathed wealth. It is recommended that priority in bequests be given to relatives who do not inherit, and it is particularly emphasized for the poor, orphans, and needy.

Section Two:The Substantive Rules of Optional Wills

Referring to the provisions of family law and Islamic Sharia, it is required for the establishment of a will that several elements be present, which most jurists have divided into four: the formula, the testator, the beneficiary, and the bequeathed item. We will address these as follows: the elements and conditions of the formula and the testator (First Requirement), and the elements and conditions of the beneficiary and the bequeathed item (Second Requirement).

Requirement One:The Elements and Conditions of the Form and the Testator.

In this section, we will address the form (First Subsection) and the testator (Second Subsection).

First Subsection:The Form.

The general rule regarding the forms of transactions is that they should be executed. However, there is one exception, which is the will, where the principle of execution is rejected. This is due to its nature, as it is a transaction related to what happens after death. Therefore, its form can only be linked to a specific term, (18) which in this case refers to the death of the testator. The form of the will can also be conditional (dependent on a condition); when this condition is fulfilled, the will becomes effective. Nevertheless, it remains linked to a term. Scholars have differing opinions regarding the element of form in terms of the

agreement of the two wills, namely the offer and acceptance, and they have divided into several views on this matter:

The Hanafi school, particularly Imam Zufar, holds that the will becomes binding upon the death of the testator without the need for acceptance, and it cannot be revoked by refusal at that moment. The justification for this is that the ownership of the bequest is established through succession, just as happens with the ownership of heirs.

The majority of jurists believe that the beneficiary has the right to reject it, as nothing can enter a person's ownership forcibly except for inheritance as stipulated by law. Granting the beneficiary the right to reject is essential to avoid potential harm, as the harm of a gift may exist and some individuals may refuse it. Additionally, the bequest may require expenses that exceed the benefits that can be derived from it. (19) It has been agreed upon that:

-Acceptance can only occur after the death of the testator and has no value during their lifetime.

- The will is established by the offer made by the testator, which is its fundamental element, but the condition for the establishment of ownership or its binding nature is acceptance after death; because acceptance is considered a means to confirm ownership rather than to create the transaction, thus it has no value except upon the execution of the provisions of the will.

- Furthermore, acceptance or rejection does not need to occur immediately upon the death of the testator; it can take place later, and acceptance may be made on behalf of the insane, the mentally ill, and the minor who is not discernible by those who have guardianship over them. (20) .

As for family law, it has stipulated that acceptance of the will can be explicit or implicit after the death of the testator, (21) clarifying the legislator's intention to consider the will as a transaction arising from the unilateral will of the testator. It has emphasized that acceptance occurs after death, and thus is not linked to the offer (the offer is not coupled with acceptance). Therefore, acceptance is considered a condition for the validity of the will, and it is through it that the ownership of the bequest is established, as if the Algerian legislator has determined the time of entitlement to the will.

Regarding the form, opinions have differed on the means of expressing the will, whether it be through words, writing, or gestures, etc. (22) Referring to the general provisions of civil law, Article **60** states that the expression of will can be verbal, written, or through recognized gestures, and it can also be made through a clear position that leaves no doubt about its indication of the intent of its owner. This expression may be implicit according to Article **60/2**. This pertains to the element of form; as for the other elements such as the testator, the beneficiary, and the bequest, some jurists consider them essential conditions for the validity of the will, and the will cannot be valid without them. (23).

It is worth noting that the Algerian legislator considers official writing a condition for the validity of the will, unlike Islamic jurisprudence scholars, for whom form is not a condition for validity; because it is a consensual transaction, the form is for proof purposes, and thus the will can be proven by witness testimony or by the acknowledgment of the heirs. (24).

Section Two: The Testator

The Family Code stipulates conditions that must be met by the testator for the validity of the will, including that the testator must be of sound mind and at least nineteen **(19)** years old. (25)This means that the testator must have the capacity to make a donation, which requires the following conditions:

First: Sound Mind: According to Article **186** of the Algerian Family Code, the will of a person who is insane is considered absolutely void, as they are deemed to lack legal capacity. This provision also applies to those who are mentally deficient.

Second: Age of Majority: A will is a financial donation and is one of the acts that causes pure harm, as it is not compensated by any worldly return. Therefore, a will made by a minor who has reached the age of discernment is considered absolutely void, (26)in accordance with Article **43** of the Civil Code. This aligns

with the principle stated in Article **40** of the Civil Code, which defines the age of legal majority as reaching a full nineteen years, (27) the same age mentioned in the Algerian Family Code. (28)It is also known that the basis of legal responsibility in Islamic jurisprudence is reaching maturity.

Third: Consent: The testator's consent must be present at the time of making the will, as is the case with other transactions, especially in gifts and donations; otherwise, the will will be invalid. Therefore, scholars and judges agree that a will made under duress, in jest, or by mistake is considered void, and a will made by an intoxicated person is invalid because they lack intent, which could harm their heirs. The applicable rule in this context is "no harm and no harassment." (29).

Section Two: The Elements and Conditions of the Beneficiary and the Bequest.

In this section, we will address the beneficiary (Subsection One) and the bequest (Subsection Two).

Subsection One: The Beneficiary.

It is required that the beneficiary be present, identifiable, capable of ownership and entitlement, and not be a party to sin, nor a murderer of the testator or their heir.

First: The beneficiary must be present at the time of the will's creation, and their presence can be real or hypothetical (estimative), such as an unborn child or a non-existent person. Accordingly, a will can be made for an unborn child, provided they are born alive (30) An unborn child only inherits if born alive, and is considered alive if they cry(31) out at birth or show clear signs of life. This is stipulated in Article **25/2** of the Civil Code, which affirms that the fetus enjoys the rights defined by law, provided they are born alive. All these provisions agree on the necessity of birth accompanied by a clear sign of life, (32) which aligns with the provisions of Islamic jurisprudence.

A will can also be made in certain cases for a person who was not present at the time of the will's creation but is likely to exist in the future, whether they exist at the time of death or only afterward. (33) This is known as a will for a non-existent person, and it does not refer to someone who was present and then became non-existent. This situation is not specifically addressed by Algerian law, so the provisions of the Maliki school, which permits wills for non-existent persons, apply. The will remains valid as long as there is hope for the beneficiary's existence, in order to protect their interest until despair of their existence is realized (34).

Second: **The beneficiary must be identifiable:** This can be done through designation, either by reference or by name, such as "So-and-so son of So-and-so" or "the charity of such-and-such," or by defining them through description, such as "the poor students of knowledge." This condition aims to ensure that the beneficiary is not absolutely unknown or excessively ambiguous; otherwise, the will will be considered void. For example, if someone bequeaths to a university student without mentioning their name, the will would be invalid.

The majority of jurists have decided that the acceptance of the legatee is a necessary condition for the execution of the will, as the will only becomes binding upon the acceptance of the designated person. (35) However, they have made exceptions for wills directed to God Almighty and charitable works, due to the concept of solidarity present in these types of wills. Additionally, charitable acts are considered a single type despite their diversity, as they share a common goal.

Thirdly, the legatee must be capable of ownership (entitlement): for instance, a will cannot be valid for an animal, as it is considered void because the legatee is not qualified to own it. Nevertheless, Algerian family law has overlooked this condition, and some jurists believe that in certain cases, a will can be valid for a person who is not entitled, such as a will for the construction of a mosque or school, but it is not considered for ownership; rather, it is merely a will for action, meaning the allocation of funds from the estate (36).

Fourthly,the legatee must not be associated with sin: "the association with sin" refers to the prohibited entity according to Sharia; wills have been established as a means of drawing closer to God and reforming,

not for corruption or deviation from reason. Therefore, a Muslim cannot bequeath to an entity prohibited by Islamic law, such as places of entertainment or churches, or institutions that do not pertain to Muslims. The entity to which the bequest is made may not be inherently prohibited, but the motive behind the will may be unlawful, as in the case of a will aimed at perpetuating an illicit relationship between the testator and his mistress. In this case, the prevailing opinion among the Malikis and Hanbalis, including Ibn Taymiyyah and Ibn al-Qayyim, is that this will is void because the intention and motive are paramount, and the motive here contradicts the objectives of Islamic law, rendering it invalid, (37) which may also reflect what the legislator intended in civil law (38).

Fifthly, the legatee must not be the killer of the testator: different jurisprudential schools have differing views on the type of killing that prevents the will; the Hanafi school considers that the killing referred to here is wrongful killing, whether intentional or accidental, while causing death does not prevent inheritance or bequest, with the possibility of heirs permitting it. The Hanbalis believe that the killing that prevents inheritance and bequest is wrongful killing, whether intentional or accidental, whether done directly or indirectly. If the will is made after the person has sustained injuries leading to death, the will is valid; on the other hand, the Shafi'is believe that the killer is entitled to the will, whether the killing was intentional or accidental, as the will is considered a transfer of ownership like a gift, and killing does not invalidate a gift, thus it does not invalidate the will. The Malikis, however, believe that killing prevents entitlement to the will based on the Prophet's saying: **"There is no will for a killer,"** (39) but they consider that a will is valid for an accidental killer, as it is a transfer of ownership like a gift. If the killing was intentional after the will was established, the legatee is deprived of the will according to the legal maxim **"Whoever hastens to something before its time is punished by being deprived of it,"** (40). and the will issued after the injury leading to death is executed in respect of the testator's wishes and intentions.

Referring back to Algerian family law, we find that the legislator adopted what was stated by the Maliki jurisprudence, as it stipulates that a killer cannot benefit from the will (41). Thus, it pertains to intentional killing that is done aggressively and without right, not accidental killing, which is confirmed by family law(42).

Accordingly, a person who intentionally kills the testator does not deserve the will, whether he is the principal perpetrator or an accomplice in the crime, or even a false witness whose testimony led to a death sentence being issued and executed. Likewise, one who was aware of or planned the killing and did.(43) not inform the relevant authorities is not entitled to the will. This is inferred from the broad interpretation of the provisions of Articles **135** and **137** of family law.

It is evident from these provisions that they align with the general rules in Algerian legislation, including family law, civil law, and criminal law.

Sixthly,the legatee must not be an heir of the testator: this is in accordance with the Prophet's saying: "Indeed, Allah has given each rightful person their right, so there is no will for an heir,".(44). and Ibn Abbas reported that the Messenger of Allah said: "There is no will for an heir unless the heirs wish." .(45).

The laws of Islamic countries have varied regarding the permissibility of bequests to heirs, while the Algerian legislator has adopted this condition in family law.(46).

Section Two: The Bequest

It is required that the bequest be an inheritable asset, that it has value and is transferable. It must also exist at the time of the will's issuance, not be encumbered by debt, and not exceed one-third of the estate.

First: The bequest must be an inheritable asset: There are two types of assets that can be bequeathed:

- One type of asset is suitable for inheritance, meaning it can be part of an estate, such as real assets; for example, money, tangible items, and rights associated with them like easements, etc.

- Another type of right that is not inheritable but can be the subject of a bequest, as it can be contracted during life, and thus can be bequeathed after death, includes hypothetical assets, such as benefits like living in a house or farming land, etc. The bequest is considered a means to expand the options of the testator, facilitating charitable acts, and is often not intended for personal gain. (47). Family law recognizes this, allowing the testator to bequeath assets they own and that fall under their ownership before death, whether they are tangible or benefits. (48) Accordingly, both religious and legal frameworks permit bequests of benefits for a specified or unspecified period; in the latter case, the bequest ends upon the death of the beneficiary. (49).

Second:The bequest must be valuable and transferable: This condition pertains to the bequest when it is an asset and not merely a benefit or a personal right. It is understood that the valuable asset must be legitimate; thus, a bequest of items like carrion is invalid. The asset that can be the subject of a bequest must be of a permissible nature, such as wine, pork, drugs, or anything that is forbidden or considered sinful, as these are deemed non-valuable according to Islamic law. (50).

As for the transferability of the bequest, it means that it must be something that can be owned through a contract such as a sale or a gift, where the bequest is considered a type of ownership that is added after death. (51) Therefore, a bequest of permissible assets that cannot be owned through a specific contract, nor of public positions, public assets, or any purely personal or professional rights, is invalid.

Third: The bequest must exist at the time of the will: This condition is agreed upon when the asset is specifically identified or is a shared part of a specific asset; the bequest must be owned by the testator at the time of drafting the will. Therefore, a bequest of someone else's property is invalid, even if the bequest becomes the property of the testator after writing the will and then they pass away. If the other party agrees to this after death, it is considered a gift from them and can only be completed through possession. (52).

These provisions have been affirmed by the Algerian legislator in family law, which permits bequests of assets owned by the testator at the time of writing the will, (53) referring to specifically identified items. However, if the bequest is not specifically identified and is not part of a specific item or type, but is common in all assets, it must exist at the time of death; otherwise, the bequest is considered void.

However, there is a case where a bequest is accepted even if the bequest does not exist at the time of writing the will or at the time of death, such as when a person bequeaths the yield of their orchard; future yields are considered theirs as long as they are alive. This is because the bequest of yield is considered a bequest of benefits, which can be bequeathed even though they are obtained at different times after the testator's death. (54).

Fourth:The bequest must not be encumbered by debt: For the bequest to be valid, the testator must not be in debt that exhausts all their assets, as the debts of individuals take precedence over bequests and inheritance, given that creditors' rights are attached to the debtor's assets. Debts come second after funeral and burial expenses to the extent permitted, (55) and the payment of these debts is obligatory; while the bequest, which is not considered obligatory, is classified as recommended or permissible, and the obligatory takes precedence over the recommended and permissible in legal rulings.

As for the basis of prioritizing debt over the bequest, it is based on the Almighty's saying**: "After a bequest which he (the deceased) may have made or a debt"** (56); meaning that the bequest is presented after the debt. It has been narrated from Imam Ali (may Allah honor his face) that he said: "You read the bequest before the debt, and I witnessed the Messenger of Allah (peace be upon him) starting with the debt before the bequest." Thus, the Quran's presentation of the bequest over the debt was not to prioritize it in rank but to clarify its importance and the obligation to implement it so that heirs do not neglect it. A bequest can be valid for an asset encumbered by debt if creditors absolve the testator of their debts or if they agree to execute the bequest before settling the debt.

Fifth:The bequest must not exceed one-third of the estate: The bequest must be within the limits of one-third of the estate, and any amount exceeding one-third requires the consent of the heirs. These are

the limits set by religious and legal frameworks for bequests, as mentioned in the noble hadith of Sa'd ibn Abi Waqqas, where the Prophet (peace be upon him) said to Sa'd in his deathbed: "One-third, and one-third is much."(57). The Prophet (peace be upon him) also said: "Indeed, Allah, the Exalted, has made for you one-third of your wealth at the end of your lives as an increase in your good deeds." (58).

Conclusion:

Through what has been mentioned, it is clear that the Algerian legislator has organized the provisions of the will in the Family Law, relying on the provisions of Islamic law contained in **Articles 184 to 201**. This organization addresses the definition of the will, its elements, as well as the conditions for its validity, methods of execution, and its invalidating factors. In general, the study has reached a set of results and suggestions that we summarize as follows:

First: Results:

- The Algerian legislator defines the will as "a transfer of ownership that takes effect after death as a form of donation."

- The elements of the will, according to the majority of jurists, consist of four components: the testator, the beneficiary, the bequeathed item, and the form. The form can be expressed in various ways, either through verbal expression, which is the offer and acceptance, or through actual expression such as writing or gestures.

- The inheritance of property is tightly regulated through the system of inheritance, while those seeking to dispose of their assets are restricted by actions that take effect after death, including prohibitions on bequeathing to heirs and the limitation that the bequeathed item should not exceed one-third of the estate without the consent of the heirs.

- There is almost complete agreement between religious law and civil law regarding the provisions of the will on one hand, and the restrictions imposed on it on the other; regardless of their terminologies and implications.

- It ensures that what is stipulated by the wise legislator regarding the fair distribution of the estate is not violated, granting the testator the freedom to dispose of it without harming some or all heirs.

- The legislator has addressed any actions aimed at circumventing fair rules and granted the judge the authority to adapt actions to ensure the protection of heirs. This is in accordance with **Article 777** of the Civil Code, which establishes a presumption regarding the intention to bequeath, where an action to an heir while retaining possession and enjoyment for life is considered a will, and its provisions apply.

- To protect heirs from actions taken by the testator that may conceal a will, the legislator has included these actions under the provisions of the will. Thus, to achieve this protection, the judge applies the provisions of the will to these actions in disputes presented to him.

Second:Suggestions.

In light of the subject and its legal and religious purposes, we propose some suggestions that require legislative intervention to amend certain texts related to the provisions of the will to avoid ambiguity and confusion, thereby ensuring the correct application of the law:

- It is suggested to include a new article in the Family Law concerning the execution of the will, which could be formulated as follows: **"The will shall not be executed until the estate is inventoried, whether movable or immovable, and evaluated through a consensual or judicial expert report."**

- The possibility of enacting and including an article, for example: **Article 184 bis** in the Family Law, to enumerate the elements of the will, similar to Article 9 in the Endowments Law No**. 91-10**.

- Adding a provision in the Family Law that explicitly states: **"Registration and publication of the will,"** similar to what is stipulated in the provisions of gifts in **Article 206** of the Algerian Family Law No. **84-**

11,especially since general rules and principles of dealing in real estate ownership require the publication of the will as a guarantee and security for real estate transactions, and to protect the beneficiary; by amending **Article 191** of the Algerian Family Law: **"... by the testator's declaration before the notary, and drafting a deed thereof, and the obligation to register and publish it in real estate, and the specific procedures for movable property...".**

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2. Law No. 84-11 dated 09 Ramadan 1404 corresponding to June 9, 1984, containing the Family Law (Official Gazette No. 31, issued on June 12, 1984), amended and supplemented by Order No. 05-02 dated 18 Muharram 1426 corresponding to February 27, 2005 (Official Gazette No. 15, issued on February 27, 2005).
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Footnotes:

(01) Article 775 of Order No. 75-58 dated 20 Ramadan 1395, corresponding to September 26, 1975, amended and supplemented by the Civil Code (Official Gazette, No. 78, published on September 30, 1975), amended and supplemented by Law No. 88-14 dated 16 Ramadan 1408, corresponding to May 3, 1988 (Official Gazette, No. 18, published on May 4, 1988), amended and supplemented by Law No. 05-10 dated 13 Jumada al-Awwal 1426, corresponding to June 20, 2005 (Official Gazette, No. 44, published on June 26, 2005), amended and supplemented by Law No. 07-05 dated 25 Rabi' al-Thani 1428, corresponding to May 13, 2007 (Official Gazette, No. 31, published on May 13, 2007).

(02) The Egyptian Will Law issued by Law No. 71 of 1946.

(03) Law No. 84-11 dated 09 Ramadan 1404, corresponding to June 09, 1984, containing the Family Code (Official Gazette, No. 31, published on June 12, 1984), amended and supplemented by Order No. 05-02 dated 18 Muharram 1426, corresponding to February 27, 2005 (Official Gazette, No. 15, published on February 27, 2005).

(04) Abu al-Husayn Ahmad ibn Faris ibn Zakariya al-Qazwini al-Razi, "Al-Ma'jam fi Maqayis al-Lugha," edited by Abdul Salam Muhammad Haroun, Vol. 6, Dar al-Fikr for Printing, Publishing and Distribution, Damascus, 1399 AH / 1979 AD, p. 116.

(05) Surah Al-Asr, verse 3.

(06) Surah Maryam, verse 30.

(07) Surah An-Nisa, verse 11.

(08) Kamal al-Din Muhammad ibn Abd al-Wahid al-Siyawasi then al-Sikandari, known as Ibn al-Himam al-Hanafi, "Fath al-Qadir 'ala al-Hidayah," Vol. 10, 1st ed., Al-MaktabahwaMatba'at Musaf al-Babi al-HalabiwaAwladuh in Egypt, 1389 AH / 1970 AD, p. 11.

(09) Abu Abd Allah Muhammad al-Ansari al-Rasa', "Al-Hidayah al-Kafiyah li BayyanHaqaiq al-Imam Ibn 'Arafa al-Wafiyah," known as the commentary on the limits of Ibn 'Arafa, edited by Muhammad Abu al-Ajfan and al-Tahir al-Mamouri, 1st ed., Dar al-Gharb al-Islami, Beirut, Lebanon, 1993, p. 681.

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(12) Al-Arabi Belhaj, "Al-Wajiz fi SharhQanun al-Asr al-Jaza'iri," Vol. 2, 2nd ed., Dīwān al-Maṭbūʿāt al-Jāmiʿiyya, Algeria, 2004, p. 230.

(13) Article 184 of Law No. 84-11 containing the amended and supplemented Family Code.

(14) Al-Arabi Bakhti, "Ahkam al-Usra fi al-Fiqh al-IslamiwaQanun al-Asr al-Jaza'iri," (D, D, A, T), Dīwān al-Maṭbūʿāt al-Jāmiʿiyya, Ben Aknoun, Algeria, 2013, pp. 160-161.

(15) Surah Al-Baqarah, verse 180.

(16) Surah An-Nisa, verse 11.

(17) Abu Abd Allah Muhammad ibn Ismail al-Bukhari, "Sahih al-Bukhari," 1st ed., Dar Ibn Kathir, Chapter on Leaving Wealthy Heirs Better than Leaving Them in Need, Hadith No. 2742, 1423 AH - 2002 AD, p. 677.

(18) Omar Hamdi Pasha, "Contracts of Donations - Gifts - Wills - Endowments," Dar Houma, Algeria, 2004, p. 47.

(19) Muhammad Abu Zahra, "SharhQanun al-Wasiyyah," Dar al-Fikr al-Arabi, Egypt, 1988, p. 18.

(20) The Arabic text of Article 191 states: "The will is established by the testator's declaration before the notary and the drafting of a contract to that effect," and referring to the French version, we find the term "acteauthentique" corresponding to "contract," which means the document; however, the term "contract" is merely a mistranslation and does not imply that the will is considered a contract.

(21) Article 197 of Law No. 84-11 containing the amended and supplemented Family Code.

(22) Muhammad Abu Zahra, "SharhQanun al-Wasiyyah," previous reference, p. 14.

(23)Fathi Hassan Mustafa, "Ownership by Inheritance in Light of Jurisprudence and Judiciary," Manshat al-Ma'arif, Alexandria, p. 233.

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(25) Article 186 of Law No. 84-11 containing the amended and supplemented Family Code.

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(56) Surah An-Nisa, verse 12.

(57) Ahmad ibn Muhammad ibn Salama ibn Abdul Malik ibn Salama Abu Ja'far al-Tahawi, previous reference, Vol. 4, p. 380.

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