

Introducing the Electronic Legacy

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ABSTRACT

The idea of electronic inheritance is one of the jurisprudential questions that recently appeared on the scene during this decade which characterized by tremendous and rapid development in the information technology network and its various applications to the extent that this era has been described as the digital age, this imposed patterns of behavior and culture. Therefore, the individual had financial and non-financial accounts and electronic assets. There is the need to organize them in a way that it takes into consideration the interest of the user and the inheritors in order to reinforce confidence in the means of the digital age that continues to develop in a tremendous way.

Introduction

First: Definition of the Research topic

The huge and rapid development which is witnessed in the field of communications and the technology of digital and informational data transmission and what new technologies have produced has thrown a shadow over all sectors of life with the digital communication revolution that has become a feature of the current era. In fact, we find that the individual has become practicing many activities and businesses in the cyberspace. The legacy is no longer limited to material ones only. It also includes personal digital accounts, from e-mail accounts to blogs and electronic accounts for the sale and purchase of materials, services or applications.

Second: The importance of the Research

As a result of the great technological revolution in the field of information technology and smartphones and the resulting development the electronic property appears on the scene

nowadays. The electronic ownership contains a wide system of products, programs, websites and materials purchased online, virtual accounts on game sites, social media accounts, and e-mail accounts. Therefore, the real need to determine the fate of these accounts and electronic assets after the death of the owner has become urgent. The electronic legacy has become a subject that raises a jurisprudential, legal and judicial controversy that requires attention to its importance.

Third: The Problem of the Research

The research problem is embodied in the following paragraphs:

- 1- The rapid development in the world of the Internet drew the attention to the emergence of what is known as the electronic legacy which seems to raise a great problem in knowing the electronic properties.
- 2- The research faces a problem in qualifying the right of the user about the electronic assets in terms of being a right of property or another type of rights.

Fourth: Research Questions

- 1-What are the basic concepts of the question of the electronic inheritance?
- 2-What is the nature of the user's right to electronic accounts?

Fifth: The Previous Studies

There are few previous studies that dealt with the research in question, and these treatments have been embodied in two studies namely:

1-The digital inheritance (the concept and the legal challenges) by the researcher Abdul Nasser Ziyad Hayajneh, a research published in the International Journal of Law in 2016. This research presented a concise picture of the digital inheritance. But it never brings a comprehensive jurisprudential and legal treatment about determining the essential concepts of the electronic legacy. It does not discuss the question of clarifying the user's right to digital applications,

Whereas our research tries to tackle all the aspects of electronic inheritance, it shed light on the concept of electronic legacy, while clarifying the user's right to digital applications

2- The second research has been written by Safaa Mite'b Al- Khuza'i, Prof. Dr.. Haider Hussain Al-Shammari: The Digital Legacy (a legal study compared to Islamic jurisprudence), a research published in the Journal of Legal Sciences, College of Law, University of Baghdad, (the special issue of researches from the conference of the private law Section held under the title "sustainability of the rules of private law and contemporary challenges" for the period 6-7 / 2019). This research deals with the general concept of the digital heritage, and sheds light on the historical development of the emergence of the idea of digital heritage. This research gives a solution to the conflict between the digital inheritance and the right to privacy of the deceased. Throughout this research, it was concluded that the transfer of the restricted digital heritage is possible. As for our study, it gives a general concept of the electronic legacy. It also explains the qualification of the user's right to electronic applications.

Sixth: The Plan of the Research

Introduction

The first part : The Basic Concepts of Electronic Inheritance

The first section: The Electronic Inheritance and Will

The Electronic Assets and Applications **second section: The**

The third section: The Electronic Life and Death

The second part : The qualification of the user's right to the electronic applications

The first section: The electronic accounts of personal elements

The second section : The electronic accounts and usufruct right

The third section: The right of the user over the electronic accounts

The fourth section : The right of ownership of the electronic accounts

The first part

The basic concepts of electronic inheritance:

In this section , we present the most significant basic concepts of electronic inheritance and the most prominent one of which have a direct impact on electronic inheritance. we also deal with the concept of electronic inheritance, the electronic will and we refer to the meaning of electronic assets and applications. Then we move on to clarify the most influential concepts in electronic inheritance which are electronic life and death. In order to understand the abovementioned concepts, it is of great importance to divide this requirement according to the following sections:

First Section

The first section: The Electronic Inheritance and Will

This section consists of two paragraphs, the first one discusses the issue of defining the concept of electronic inheritance, and the second one is devoted to clarifying the meaning of the electronic will. Thus, we explain it as follows:

First: The electronic inheritance

Some modern jurists tried to put a definition of the electronic inheritance, they stated the following one :

. 1) The electronic inheritance is the identification of the legal means or methods through which the fate of the personal accounts of the deceased, his pages, photos, and texts left after his death is known, and the search for the system that governs them whether it is optional or compulsory⁽¹⁾.

2 – The electronic inheritance is the legal outcome of a person's electronic accounts and assets after his death or his exposure to a physical or mental accident that hinders his use of his electronic accounts and applications and the search whether these assets and accounts and their contents become the user's heirs are canceled by electronic service providers ⁽²⁾.

3- The electronic inheritance is the electronic property whose content is of values in which the personal aspect predominates over the financial side, such as social media pages, e-mail accounts, personal videos, pictures, books, etc ⁽³⁾

From what we have already mentioned concerning the definitions of electronic inheritance, it can be noticed that they fall short of capturing an inclusive and concise definition of the meaning of electronic inheritance especially after we learned that electronic inheritance has many and varied images, from products to programs and websites, as well as materials that are purchased via the Internet, and sites for books, files, games, music, applications, and many others. Therefore, we can give a definition of electronic inheritance.

¹⁾ M.Safaa Mite'b Al-Khuza'i, Prof. Dr.. Haider Hussain Al-Shammari: The Digital Legacy (a legal study compared to Islamic jurisprudence), a research published in the Journal of Legal Sciences, College of Law, University of Baghdad, the special issue of researches from the conference of the private law branch held under the title (sustainability of the rules of private law and contemporary challenges) for the period 6-7 / 2019 . p.67

²⁾ Abdul Naser Ziyad Hayajnah: Digital Inheritance: The Concept and Legal Challenges, a research published in the International Journal of Law, Issue (2), 2016.p.4

³⁾ Ibid, M.Safaa Mite'b Al-Khuza'i, Prof. Dr.. Haider Hussain Al-Shammari, p.67

In fact, it can be defined as (it is what the deceased user owns of electronic assets, whether they are e-mail accounts, social networking sites, applications and programs, regardless of the intangible or financial value of these assets).

It should be taken into consideration that the electronic property of a person is various and is increasing frequently. An unofficial statistics indicated that the British ownership of digital music files is estimated at (41) billion dollars. Likewise and according to a survey conducted by a local Chinese newspaper, one-fifth of the respondents answered that they have intellectual property whose median value is estimated at (800) US dollars per person ⁽⁴⁾

In addition to the financial value of electronic property, it has an intangible value that sometimes matches or exceeds its financial value. For this reason, the issue of electronic inheritance has become a subject of jurisprudential and legal controversy, and this is the reason behind most of the legislation seeking to create a legal cover to regulate the issue of electronic inheritance ⁽⁵⁾

Second: The Electronic Will

The electronic will can be defined as the instructions that the user clearly leaves in the form of an electronic will about the fate of his electronic accounts after his death ⁽⁶⁾. The reason behind the emergence of the electronic will comes as a result of the difficulty or impossibility of the heirs of the deceased in obtaining his electronic accounts. This is because the provider company usually refuses to hand over these accounts on the grounds that all the accounts that the user owns is a joint ownership between him and the provider company, but these companies give way to the inheritance of these accounts whenever they write a will from the user ⁽⁷⁾

The second Section

The electronic assets and applications

⁴⁾ Bassam Al-Kuntar: Whoever inherits electronic property, an article published on the website <https://abouh.me/bassam.kanter>. Date of visit 8/16/2019.

⁵⁾ Radhwa Muhammad Hummam: Our electronic accounts, are you leaving with us? Or transmitted to our inheritors? Article published on the website, <http://www.digitalqatar.qa/> Date of visit 5/1/2021.

⁶⁾ Lucy, ErwickChing: Dfter the death of the owners ... What happens to the digital assets, report published on the website <https://www.aleqt.com> Date of visit 11/22/2020

⁷⁾ Reem Al-Masri: Life after death online ... Where will your digital legacy go, an article published on the website <https://www.7iber.com> Date of visit 12/25/2020.

In this section, we address a statement of the concept of the electronic assets and their types, and the meaning of electronic applications as follows:

First. The electronic assets

The term electronic assets is a modern term; hence, some definitions have been given to this term:

- a. They are the e-mail accounts, social media, and images stored on the Internet, in addition to official documents and online services (⁸).
- b. They are the things that a person owns via the Internet or on his computer, such as blogs, e-mail accounts, and pictures (⁹).
- c. It is any electronic record that a person owns or controls, and this includes e-mail accounts, websites, social website accounts, financial accounts, electronic files or applications(¹⁰)
- d. They are the data, texts, digital messages, documents, and audio media such as audio and video recordings, video and social media content. They contain also the social network content, confidential numbers, electronic health care records, health insurance records, computer source codes, computer programs, software licenses, databases, or the like, including user names and passwords that are created, sent, transferred, shared, received, or stored by electronic means on an electronic device. But the electronic assets do not include the basic display devices or liability that results from damaging this and that are regulated by other provisions.(¹¹) From what we have just mentioned concerning the definitions of the electronic assets, it can be found that each of them displayed one or more pictures of electronic assets and did not degrade all these images, so it is better for electronic assets to be defined as (a person's electronic property, whether financial or those that affect his private life).

Second: The electronic applications

They are platforms that provide services to users in certain areas downloaded via mobile phones of all kinds (¹²) This definition does not include the general concept of electronic applications, as it defined them as applications for smartphones. Therefore, it is defined as all the services and processes that users obtain in exchange for their subscription to

⁸) Lucy, ErwickChing: Dfter the death of the owners ... What happens to the digital assets, report published on the website [https:// www.aleqt.com](https://www.aleqt.com) Date of visit 11/22/2020

⁹) Death plan How to manage your account on Facebook or Twitter after your death, an article published on the website [https:// www.christion-dogma.com](https://www.christion-dogma.com) Date of visit 8/16/2019.

¹⁰) What happens to digital assets on Round Island, report published at [https:// ar.vijersenkoi.info](https://ar.vijersenkoi.info) Date of visit 11/22/2020

¹¹) Delaware Secure Access for Digital Accounts and Digital Assets Act 2014 in force, citing M. SafaaMiteb Al-Khuzai, Prof. HaiderHussain Al-Shammari, a previous source.

¹²) Firas Al-Ali, The Importance of Electronic Applications, a report published on the website [https:// wikiwic.com](https://wikiwic.com). Date of visit 11/27/2020

the service organized by various agreements, including the terms and conditions agreement, and whether these services are paid or not. ⁽¹³⁾.

The Third Part:

The electronic life and death

In this part , we discuss the two most important and prominent issues in the subject of electronic inheritance, namely the electronic life and the electronic death of the user. To clarify each of the two issues, we divide them according to the following two paragraphs:

First: The electronic life:

After the transformation that occurred in the basic structures of society, the community has become more modern, especially in the use of electronic knowledge applications, including websites that provide services to users ⁽¹⁴⁾.The electronic life has become a reality that imposes itself in our societies, and electronic life refers to the electronic activity that a person carries out, and among these activities is the creation of accounts and blog and the use of electronic applications of all kinds with the possibility of modifying or canceling them, in addition to exchanging electronic materials and data through them ⁽¹⁵⁾.

Second: The electronic death:

By electronic death, it means the absence of a person's presence from the Internet as a natural cause of death ⁽¹⁶⁾ In a more clear sense that it stops a person from using his own electronic accounts and applications because of his death or because of his physical or mental disability that prevents him from using his own electronic accounts ⁽¹⁷⁾.

The electronic death may appear in two forms, the first is the natural death of a person, in this case the heirs deserve the electronic legacy of their inheritor after presenting the evidence and arguments that support the death of their deceased. The second form of electronic death that the person ceases to use his accounts and electronic applications for a period of time that

¹³⁾ Abdul Nasser ZiyadHayajneh, op. cit., p. 3

¹⁴⁾ Darren Barren, The Networked Society, translated by: Anwar Al-Jam'awi, 1st Edition, Arab Center for Research and Policy Studies, Qatar, 2015, pp. 234-236

¹⁵⁾ Abdul Nasser ZiyadHayajneh, op. cit., p. 3

¹⁶⁾ Abeer Hussein, Digital Death ignites conflict over inheritance, ibid

¹⁷⁾ Editorial Administration, Digital Inheritance, a report published on the Arab Informatics Supervisors Association website [https:// www.arab.cio.org](https://www.arab.cio.org) Date of visit 11/27/2020

makes him according to that under the name of electronic death. However, this type of death does not give the right to bequeath the person's accounts to his heirs because the basic condition of inheritance is not met, which is a natural death.

There is a question: What will happen to the accounts and applications of the person after his death, and what are the rights of the heirs of the deceased over these accounts and applications especially after the development in the issue of electronic inheritance, and the continuous development of applications in a way that allows people even after their death to add tweets to the pages of their accounts according to certain arrangements with the administration of these sites⁽¹⁸⁾

The second part

The qualification of the user's right to electronic applications

Given the great importance of the user's personal electronic accounts, especially in light of the scientific progress that we are witnessing nowadays, we find that a person now uses electronic accounts such as e-mail and websites in his daily life frequently. We can see him using it in his correspondence and his work, and he stores files or applications that are often of financial value. What is more, there are those who use it to save the numbers of his bank accounts, in addition to making sales and purchase contracts, as a result, what will happen to these accounts after his death? Here lies the problem of the subject, in order to reach the correct answer to the fate of these accounts, I have discussed the qualification of the user's right to clarify the fate of these accounts upon his death. The researchers have different views about the appropriate and more suitable legal conditioning of the nature of the account holder's right to his electronic account, and this is what we are discussing in the following sections:

The first section : The electronic accounts from personal elements .

The second section : The electronic accounts are a usufruct right.

The third section : The electronic accounts are the right to use.

The fourth section : The electronic accounts are a property right.

¹⁸⁾ Abdul Nasser Ziyad Hayajneh, op. cit., p. 3

First Section

The Electronic Accounts of Personal Elements:

The owners of this opinion go to the counting of the user's electronic accounts from the elements of legal personality, the same as in the case of name and nationality ⁽¹⁹⁾ .

The supporters of this opinion based their belief on the following evidence:

First: The left part of these accounts often includes the user's name and surname, even if that name is by default, since this name distinguishes the owner of the online account from others.

Second: This opinion is supported by judicial precedent. The idea of home for e-mail has been brought up before the Paris Court of Appeal in its 1996 judgment in the ENST case.

Its facts are summarized in the fact that one of the students created a website in his name through the school network and recorded songs for a number of famous singers in the world, prompting him to file a counterfeiting lawsuit against him before the court as he violated the sanctity of his virtual home that requires protection. But the court rejected this claim the reason being that when a person designs a website he directs it to Internet users and his use is not limited to its owner only.⁽²⁰⁾

The aforementioned opinion is not worthy of support, so comparing it to a personal account with a civil name, domicile or nationality is an analogy that is not appropriate. In fact, there are cases in which the user uses electronic accounts under a pseudonym or virtual name, and if he uses his real civil name, this name may be similar to other personal account names.

The Second Section

The electronic accounts are a usufruct

This opinion tends to consider the user's right over electronic accounts as a usufruct right, based on a usufruct contract between the provider of these accounts, who is the first party in the contract (the beneficiary of it) and this party is often a legal person in the form of a company. As for the second party in this contract, it is the beneficiary

¹⁹⁾ Prof. Ibrahim bin Daoud, Prof. Ashraf Shaat, Review of e-mail between the requirements of public order and the right to confidentiality of correspondence, a research published in the Journal of Policy and Law Books, Issue (16), 2017, p. 28

²⁰⁾ Prof. Ibrahim bin Daoud, Prof. Ashraf Shaat, op. cit, p. 28

(the user), and this party may be a natural person, and it may also be a legal person, such as institutions or companies, etc.⁽²¹⁾

The authors based their opinion on the following:

First: The user is only a user and a user of electronic accounts, and he does not have any ownership rights over them.

Second: The abovementioned opinion has been supported by the orientation of the judiciary of England and Wales in one of the famous judicial precedents. The Court of Appeal in England and Wales rejected the decision of the Supreme Court of the owner of the e-mail regarding the right of ownership over the contents of the e-mail of a person within the framework of the business relationship and correspondence related to him through e-mail or the person ⁽²²⁾. The aforementioned court approach clearly shows that the user is merely a beneficiary of the electronic accounts and not an owner of them. The researcher believes that the aforementioned opinion is not worthy of support for several reasons, namely:

First: The authority of the account holder over his account exceeds the authority of the beneficiary. The user does not limit his powers to the limits of using his electronic accounts, but rather extends to the possibility of exploiting these accounts and even disposing of them to others .

Second: Most of the jurists have argued that the electronic accounts of the deceased are transferred after his death to his heirs, and this contradicts the right of the beneficiary, which inevitably ends with the death of the beneficiary .

Third: The right of usufruct is limited to a period of time, while the right of the user on his accounts does not end with a specific period of time.

Fourth: The tendency of the judiciary in European countries often supports that the user's right over electronic accounts is a property right and not a benefit right.

²¹⁾ Sarah Ahmad Hamad, Internet Access Contract, research published in Al-Rafidain Journal of Law, Faculty of Law, University of Mosul, Volume (9), Issue (31), Twelfth Year, 2007, p. 155.

²²⁾ Abdul Nasser Ziyad Hayajneh, op. cit, p. 5

The Third Section

The electronic accounts are the right to use

The authors of this opinion claim that the user's right to electronic accounts is the right to use a specific field in a specific field.

First: The user of the personal account cannot transfer it , and he is obligated in most cases to pay cash to the authority concerned with registering his accounts, otherwise the user's right to use these accounts will be forfeited.

Second: The general conditions for using e-mail or other sites and accounts such as Yahoo and Hotmail stipulate the right of these sites to cancel the postal account when not using it and not communicating for a specified period of time, and this undoubtedly contradicts the nature of the property right.⁽²³⁾ Therefore, we consider that the abovementioned opinion is not worthy of support because criticizing the qualification of the user's right as a user of the account makes it not adapted as a right of use in the first order, since the right of use is broader than the right to use.

Fourth Section

The electronic accounts are a property right

The supporters of this opinion claimed that the user's right over electronic accounts is a property right, and they based their opinion on the following evidence:

First: The electronic accounts belong to their owner whether he is a natural or legal person, and since electronic accounts are the property of their user, they are undoubtedly considered a legacy and are transferred to the heirs of the user after his death and they are subject to the legal provisions on the rules of inheritance and transfer of inheritance, by analogy with the family papers and things related to the affection of the heirs ⁽²⁴⁾.

Second: Measuring the ownership of electronic accounts on the ownership of the papers, documents and certificates of the deceased, as it is a counterpart to it. For this reason, we do

²³⁾ Dr. Ramadan Qunfoudh, previous source, p.8

²⁴⁾ Dr. Ramadan Qunfoudh, The Legal Nature of E-Mail and Its Authoritative Evidence, pg. 8

not see any objection to legal legislation in its transfer to the heirs after the death of the user.
(²⁵)

Third: That the user, when subscribing to these accounts, he uses them under his responsibility, and that the supplier for this service gets rid of responsibility completely, therefore the user may be a counterfeiter or an impersonator. We should take into consideration that the service provider gets rid of the responsibility for the illegal use of these accounts, for this reason the ownership of the accounts is for the user (²⁶). This view has been supported by the American judiciary in a judgment by the Michigan Probate Court in 2005 that the family of the deceased person has the right to obtain the digital content of the mail of the deceased after his death after Yahoo refused it. The company is based on the fact that there is no provision in the service provision agreement to transfer any right related to e-mail to the user's family after his death and the personal accounts are canceled and deleted after the death of the user. However, Yahoo company complied with the decision of the aforementioned court that obligated it to grant a copy of the e-mail content to the family of the deceased user. The implementation of the court's decision by the Yahoo company came as the application of the terms of the service provision agreement that goes to the possibility of disclosing the electronic content of the deceased person in implementation of a judicial order and in other specific cases within the terms of this agreement (²⁷). This opinion is the same as the opinions that preceded it which were not without criticism from two sides and as follows:

First: The general conditions for using e-mail or other sites and accounts such as Yahoo and Hotmail stipulate the right of these sites to cancel the postal account when not using it and not contacting a specific period of time, and this undoubtedly contradicts the nature of the property right. It is possible to respond to the abovementioned criticism that this cancellation can be applied to accounts and correspondence that have no financial value as they are not inherited by the heirs or because they are related to the privacy of the deceased user. As for the deceased user's holdings of financial value, these are inherited, so it is not correct to cancel the user's electronic financial accounts after his death.

²⁵) Dr. Abdul Hadi Fawzi Al-Awadi, Legal Aspects of Electronic Mail, Dar Al-Nahda Al-Arabiya, Cairo, p. 46.

²⁶) Asaad Fadhel Mandeel, Aqeel Sarhan Muhammad: e-mail (legal study), a research published in the Journal of Comparative Law, issued by the Iraqi Comparative Law Association, Issue (57), 2008.

²⁷) Abdul Nasser Ziyad Hayajneh, previous source, pp. 5-6

Second: Some of the jurists said that it is incorrect to say that the user has ownership of his electronic accounts and then that it can be transferred by inheritance as a legacy because the electronic accounts usually contain private correspondence. This is subject to the legal rules regulating the secrecy of correspondence, which prohibit other than the sender from viewing them or disposing of their content ⁽²⁸⁾. It is possible to state that the abovementioned opinion is not worthy of support probably because considering the right of the user to his accounts as a property right does not prevent the inheritance of private and confidential correspondence that often has no financial value, but rather related to the privacy of the deceased user.

Preference of opinions

After the previous presentation of the different opinions that have been stated about the nature of the user's right on his electronic accounts, we find that the opinion that deserves support is the opinion which considered the user's right on his electronic accounts as a property right for the following reasons:

First: The user of these accounts usually pays money for obtaining them.

Second: These accounts approach the elements of intellectual property in that they do not refer to material objects, and that they relate to mental products and intangible values.

Third: The qualification of the user's right to electronic accounts as a property right is the closest to the right. The fact that the user exercises the authority of the owner over these accounts, he can use and exploit them and even dispose of them by deleting them or transferring them to another person. As far as it is the property of the user, it is considered a legacy and bequeathed to his heirs after his death without a doubt. But to take this opinion as absolute one it will contradict what is known as the privacy of the deceased's accounts, especially his confidential correspondence. This will forbid its transfer to the heirs, taking into consideration the problem of violating the privacy of the deceased. As a result, it is necessary to distinguish between the accounts of the deceased, which are considered private and may not be viewed, and what is considered a legacy transmitted by inheritance. As far as these accounts are the property of the user, they are undoubtedly transferred to his heirs after his death, and we discuss the details of this transfer in the next paragraphs of the second topic in this study.

²⁸⁾ AsaadFadhelMandil, M.M. AqilSarhan Muhammad, *ibid.*, p. 146

Conclusion

First: Results

After completing the definition of electronic legacy we reached a set of results as follows:

1- The basic concepts of electronic inheritance are electronic inheritance, electronic will, electronic assets and applications, as well as electronic life and death..

2- The opinions of modern jurists have varied regarding determining the nature of the user's right on his electronic accounts. Some of them claimed that it is a right attached to the personality, while others described it as a right of usufruct, and another argued that it is a right to use, and how another is the right of the user on his accounts is an ownership right This is the opinion that deserves to be supported

Second the Recommendations

After reviewing the subject of the electronic legacy in all its aspects, we propose to the Iraqi legislator to regulate the provisions of electronic legacy within the folds of the law. This organization includes all aspects of electronic inheritance issues, including the basic concepts of electronic assets. This regulation of the legislator should come in the personal status law and in particular in the inheritance section under the name of the inheritance of moral rights, provided that this regulation precedes the need for the Iraqi legislator to be bound by international agreements. Because most of the companies that provide electronic services are providers of electronic services and applications regarding the fate of the accounts whose users die. With the development of specific mechanisms that ensure the respect of the users' will to preserve their privacy, the Iraqi legislator should also participate in the agreements and contracts that are concluded between electronic service providers and users and regulate them with special provisions that regulate the rights and obligations of both parties. As for the legislative proposal that is hoped to be added to the Personal Status Law, we suggest that it should be based on the following texts:

First: The accounts, applications and other electronic assets are considered a legacy that is transferred to the heirs, provided that the privacy of the deceased should be taken into account in that transfer.

Second : After obtaining the electronic legacy, it is divided among the heirs according to the share of each of them in the inheritance rules.

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Fourth: Laws

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