FACULTY OF LAW

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POST DIPLOMATIC-MASTER STUDIES

THEME:

TESTAMENT ACCORDING TO THE RIGHT OF SHARIA

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INTRODUCTION

All praise is due to Allah, the Lord of the worlds. May peace and salvation be upon his messenger the Muhammad,torch and guide, his pure and honest family, his faithful friends and all those who follow his instructions until the day of judgment.

Special thanks to my dear professor, mentor Prof. Dr. Kelmendi, I was fortunate to have him as a lecturer for one year in the Right of Obligations and Assets Rights.

I thank the AAB College in Prishtina, the academic staff of the Faculty of Law.

Islamic teachings are the undivided entirety, their implementation is a mandatory task at any time and place, especially for Muslim believers. From this reality appears that Islam-Sharia is not only spiritual but it connects the spirituality physical side.

Islamic Sheriat is not limited only in worships, but it calls and clearly shows to humans with an extraordinary precision on how to fix the relations between people.

One of the most important relations is the way of inheritance of property, the person who wants to leave testament a certain part of his property.

The division of inheritance (Faraiz) in Islamic Law (Sheriat) is a very important chapter which also includes the testament as a special right to leave the testament from the testator. No one is allowed to intervene and change the right of testators, but only under certain quota as I mentioned in this paper.

We are witnesses that family problems often arise in case of the death of the testator, there are conflicts, hatred between brothers, sisters, disintegration of families, raised proceedings in courts etc, even the devoted believer, but when it comes to inheritance, there are those who claim that the property belongs to them. Pretending that it belongs only to him, denying the rights of others.

If the testator has left a testament, not a written one, but an oral testament: "But leaves testament in cash (X euro), or certain parcel " will not be executed by the inheritors. To leave a testament, is a right that is allowed to testators from the almighty God, and it takes place right in the positive law almost everywhere in the civilized world.

Theme: Testament according to the Sheriat right, is a paper, and a study that I tried to elaborate while exploring and viewing more literature on the Islamic right (Sheriat) in Albanian and Arabic, not leaving aside the literature on the positive right and the Law on inheritance in Kosovo.

In this paper I brought different views of Islam jurists-scholars, as well as the positions of four school-directions (Medhhebes) legal and religious in Sharia, where I think that these enrich and strengthen this paper even more.

I graduated from the Sharia faculty of Islamic law in Medina, but honestlyI tell you that during the research and study I have also learned new things.

This master thesis has 7 chapters

In the first chapter I discussed the etymology of the testament, a testament in the positive right, the testament according to the Sheriat, in which cases it is advisable to write a testament, the testament of Muhammad A.Ş. friends and the practical examples on how to write a testament. In the second chapter, the history of testament of the old Greek, Roman, Arab people, and arguments from the Islamic Sheriat from the Qur'an, Hadith, Ixhmai- consensus and the logical argument.

The third chapter talks about the benefits and requirements of a will, testators, inheritance, item intestate, the quote of 1/3, a testament for a tribe, the marginalized and the child, for themurderer , the case when the testament changes for the pregnant for parents and relatives who do not inherit.

In the fourth chapter, types of the testament in Sharia: obligated, permitted, acceptable, preferred and forbidden.

While the in fifth chapter I discussed: Types of testament and legacy in positive law.

The sixth chapter, the testament for benefits, cases when is impossible for the inheritance to use these benefits, ways of implementing the testament and action in cases where a part of the heritage is lacking or is given as a debt. The seventh chapter which is the last one, has to do with the executor of the testament and its absolute nul and relative nul invalidity.

These seven chapters are discussed more extensively in this master thesis

I thank the AAB College, mentor Prof. MuhametKelmendi for the willingness, commitment and unreserved support and communication with me not only as a student candidate, but he had a close communication with me as a parent with his child, the Commission that is associated today by prof. Muhammad Kelmendi.

I wish that my sincere work will repay to all those who supported and helped me, especially my family, my brothers in exile in Italy, especially my two sons Munir and Ensar who helped me in the preparation of technical work of this topic. I love them so much.

And my very last wish is to thank the Allah, the lord of all worlds.

CONCLUSION

The theme of the testament even tough it's quite wide, it's impossible to summarize within such paper, but what I have researched and reviewed in this paper about a testament, there is also much to be said and written about the testament, and thoughts, different controversy among Islamic jurists of the four religion – law schools, but in this paper I have included what is the main, positively the essential things for this topic.

In this master thesis, I elaborated the testament even under the positive right, for the main issues. According to LTK the main characteristics of the testament as a juridical act: The testament is the unilateral expression of the will, the testament is a personal act, the testament is a juridical act strictly formal, and the testament is a revocable juridical act. The testament can be interpreted according to the rules for the interpretation of juridical actions in general. Interpretation must be made according to the purpose of the testator which means according to the will of the testator.

The testator may dispose by will, all wealth or a part of his wealth. The juridical action of the testament can be performed by any person who has reached the age of 18.But also a person of the age 16 but who is married and has gained the capacity of action.

The purpose of this paper is the real reflection of the testament and its connectivity in the lives of people. The need of people to know about the testament, which will encourage more and arouses interest for the researcher, for the AAB college and its students, why not to be a symbolic wealth a small gold plaque, and a precious handicrafts.

The importance of this paper is of great interest both in theory and in practice, because through this paper is given to us a real picture and the possibility of eliminating possible disputes between the inheritors in case of death of the testator.

In this paper I have noted, for all those who could have or have prejudices against the Sheriat right, claiming that sheriat is hard, not real, threat to the mankind, frightening, inconvenient and many other labels. I think that these prejudices were planted during the communist system, although earlier but even today there are those who think so.

May them be free from these prejudices for once and for all that such a prejudice is false because the word Sheriat itself, means the legislature-justice from God, and not from the mind of the man which often happens to be loyal, because the laws that people put at times are favorable for certain elite in power, for parties of different ideologies and leaders and totalitarian ruler. While Sheriat is fair to everyone, and it doesn't separate people, by position, race or color, even those who are not Muslims have a special treatment that cannot find in another right.

Sheriat- the Islamic right is based in the Quran- the word of the great God, who is immutable as the existence of this world, in the Hadith (sayings of Muhammad AS), as the two main sources of Sheriat. And every other right starting from the earliest, as in Egypt, Greece, the Roman Empire, and to us Albanians in the Kanun of law, even in contemporary positive law are variable-relative and not absolute. By this I mean that people makethe law and people can change it, either through parliamentary systems, presidential or royal-monarch.

Heritage-testament is part of the family civil law, so Sheriat (Quran and Hadith) treats it with a commitment and a special importance. Sheriatdidn't give the right to the mankind to do with their property whatever they want because as it is known,human is a great greedyof wealth and can easily make mistakes.If we stop and do a comparative study between Sheriat in one hand and any other rights on the other hand, I would exclude the contemporary positive law at this point, where we find out that women are deprived of the right of inheritance, we also find out that this deprivation of her in the Kanun of LekDukagjin where women cannot inherit neither form her father nor her husband, this deprivation had taken another connotation and blaming the Sheriat, which is not true. In Sheriat, the woman inherits just like the husband for example if the parent dies and has left two daughters and a son, the two daughters take a part of the heritage and the son takes a part as well, also when husband dies without inheritors and leaves only his wife, she deserves one of the fourth of her husband's wealth, if he leaves other inheritors, then the woman gets one of the eighth of her husband's wealth. Sheriat- Quran except that invites people to believe in one God, it is fairly a book of provisions and different laws in general, and is the biggest advocate of women's rights in matters of inheritance. If we stop at the testament as I have said in this scientific paper, Sheriat prefers the testament by the testator and as an act of charity, human but with a purpose of which is the inheritor usefulness and the reward form God for the testator, while the positive right doesn't define it like that, but only the material benefits of the inheritor. There is a question raised, why it s like this in the right of Sheriat.

Because the Sheriat right aims the material profit for the inheritor and the spiritual reward for the testator, where is well known that the human is created from these two components, if he is not happy with one, he will not have lasting peace and happiness with the other too.

Sheriat is also focused in the types of the testament and in the thing left as a heritage in order to not be forbidden, while in the positive right, they can't be forbidden except what the law provides.

I ask all people of knowledge and science, lawyers, law institutions and courts in Kosovo, the Kosovo Parliament as the supreme legislative body and the government, to approve laws, especially in civil law, to take it and distract from the sheriat right, to make a combination between the positive and Sheriat laws because they are in favor and benefit of the individual, family, citizens and society. I am aware that the Parliament of the Republic of Kosovo has approved the Law on Inheritance, which is the reference of this paper, but a combination and mix of laws, I think it is right and shot, without any tendency, prejudice or religious discrimination, racial, ethnic or political group.

Elaboration and review of this topic with arguments gives stronger endurance and efficiency to this work. So Sheriat (Quran and Hadith) makes a realistic assessment of the family right and inheritance right (testament) and invitesin its practices to improve, prevent and avoid problems that may occur later.