

Provisions of Electronic Inheritance

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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. Therefore, the individual had financial and non-financial accounts and electronic assets. This provoked controversy over the fate of these accounts after the death of the user. This necessitated finding jurisprudential and legal solutions that determine the fate of the electronic legacy within frameworks consistent with the general laws of inheritance as well as the rules relating to the human right to private life. Thus, determining the provisions for the transfer of this legacy by inheritance are the subject of our present study. We hope that we attract the attention of the Iraqi legislator and users of electronic services to the need to take care of the question of electronic inheritance. 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 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 electronic devices and applications have imposed new patterns of behavior, culture and transactions. This major development reveals major challenges to the system of concepts prevailing in general and legal ones in particular. 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. These issues raise real problems in how this type of inheritance is transmitted.

Second: The importance of the Research

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- There is a problem that arises about the entry of all electronic property of the deceased into the legacy.
- 2- Another problem will arise namely how this legacy is inherited to the heirs. Will this be done within specific rules or according to the general rules of inheritance.
- 3- There is also another problem which requires the heirs to prove the ownership of their inheritor of the electronic assets, and the role of the public authority in managing these transactions.

Fourth: Research Questions

1 -Are the deceased's electronic possessions and accounts included in the legacy and then it passes to the heirs? Or is it necessary to distinguish between what are considered personal secrets that are part of the personal freedom of the deceased and what are considered private possessions of interest to the heirs?

2- How will electronic financial assets be inherited to heirs?

3 - If the electronic legacy in non-Muslim countries is transferred to the heirs through a will, is this type of transfer valid in Islamic countries, or will it be transferred according to the general rules of inheritance?

4 - Is a will in the electronic legacy the only way to access the electronic legacy?

5-How necessary is the presence of the tutor of the electronic legacy and what is the benefit of his presence?

6 - How can heirs prove the deceased's ownership of the electronic legacy and confirm their rights to the money remaining in his accounts?

7-How important is the necessity for state authority to intervene in opening, closing, freezing and canceling the accounts as precautionary measures in preserving users' money?

Fifth: The Methodology of the Research

The research methodology will be as follows:

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 ZiyadHayajneh, 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. In spite of the fact that this significant research has been the first start to deal with the issue of digital inheritance, and paved the way for researchers to address this topic in a comprehensive way. Whereas our research tries to

clarify the provisions for the electronic transfer of the legacy, whether this legacy is intangible or of financial value.

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 presents a comprehensive study of how the electronic legacy is transferred by inheritance, with the proposal of legal texts dealing with the electronic inheritance that the Iraqi legislator recommends adding it to the Iraqi Personal Status Law.

Sixth: The Plan of the Research

Introduction

The first part: The inheritance of intangible electronic holdings

The first section: Definition of non-financial electronic holdings

The second section: The principle of the human right to be forgotten

The third section : The methods of inheriting non-financial electronic holdings

The second part : The inheritance of financial electronic assets

The first section: Definition of financial electronic assets

The second section : The methods of inheriting electronic assets

The third section : The legislative regulation of electronic inheritance

The First Part

The inheritance of non-financial electronic holdings

The axes of this section expounds and clarifies the concept of non-financial electronic holdings , and addressing the principle of the human right to be forgotten. And then we move on to discuss the methods of inheriting non-financial electronic holdings. Therefore, it is necessary to divide this requirement according to the following sections:

First Section

Definition of non-financial electronic holdings

The non-financial electronic holdings are the electronic possessions of the deceased which have no financial value, but rather they have an intangible value because they often affect the emotion and feeling of the heirs.

The non-financial electronic legacy is no less important than the digital financial assets legacy because of its impact on the feelings of the deceased's heirs. There are many forms of non-financial electronic possessions, they may be private messages of the deceased through chats on social media or tweets or notes posted on his own account, whatever that account is Facebook, Twitter, Instagram, etc., and personal photos, audio and video clips are also a picture of these belonging.⁽¹⁾

The Second Section

The principle of the human right to be forgotten

The right to be forgotten is one of the old ideas that emerged in the 1960s.

It becomes clearer again when its idea collided with the imposed technical reality of the possibility of retaining personal data for indefinite or unknown periods, making it impossible to erase this data from the default map, and preventing the user's right to enter into oblivion.⁽²⁾

This right allows the user to ask service providers to remove all information related to it, and the companies responsible for providing electronic services are supposed to respond to the user's request.⁽³⁾ The right of the human being to be forgotten is a new proposition in the digital world, and it is part of the new concepts of human rights.

As for the definition of this right, there are those who broadened its definition and the others defined it in a narrow scope, and we will give some details as follows :

First: Those who narrowed the scope of this right defined it as the right that gives people the legal means enabling them to obtain their right to be forgotten via the Internet, by limiting the retention of personal digital data and the possibility of its cancellation .

Second: As for those who broadened the definition of this right, they defined it as the obligation of the person in charge of data processing of users to preserve it and ensure their right to demand deletion after the end of its purpose to protect the user from his past, this definition is in line with the technical reality of rapid and frequent development.⁽⁴⁾ There is a judicial precedent in a famous decision of a European court on human rights supported this right, so the court went in its decision in favor of a Spanish citizen against the company (Google). In this decision, the court obliged the company to remove an old link that appears in the search results, the news of the bankruptcy of the Spanish citizen, in complete harmony with a previous proposal of the European Commission in 2012 that gives the Internet user the right to be forgotten.⁽⁵⁾

¹⁾ Managing Editorial, Digital Inheritance ... Who Manages Your Life After Your Death, *ibid.*; Abeer Hussein, digital death ignites inheritance conflict, *ibid.*

²⁾ Dr. Moaz Suleiman Al-Mulla, The idea of the right to enter into digital limbo in modern Algerian electronic legislation, a research published in the Journal of the Kuwaiti International Law College, Research of the Fifth International Annual Conference 9-10 May 2018, Issue (3), 2018, p.117

³⁾ Editorial management, digital inheritance .. Who manages your electronic life after your death, *ibid*

⁴⁾ Dr. Moaz Suleiman Al-Mulla, *op. Cit.*, pp. 119-120

⁵⁾ Editorial Management, *op. cit.*, *ibid*

The Third Section

The ways of inheriting non-financial electronic holdings

In this section, we discuss the position of modern jurists on the issue of inheriting non-financial electronic holdings, and we address the judiciary's position on it according to the following two paragraphs:

First: The Jurisprudential Position

The controversy raged among modern jurists about whether or not the electronic non-financial legacy could be transferred to the heirs, so the opinion is divided into two directions.

First tendency: The inheritance of the non-financial holdings

The owners of this trend went to the possibility of transfer of non-financial deceased holdings to the heirs⁽⁶⁾, and these collections were made from letters, notes and personal images on non-electronic personal messages and photos. They said that they are a counterpart for those normal messages held by the person in his office staircase, and then after his death, his family can be accessed. The account of the deceased is his own electronic and what contains of personal photos, letters and memories that do not know his family does not know the password for this account is quite identical to his locked office and does not have the family.

The owners of this trend have violated their position that legislator in a number of countries such as the Egyptian Civil law, specifically in Article 905, which states that :

if the heirs are not agreed on the division of family papers or things that relate to the heirs of the manner, the court ordered either selling these things or giving them to one of the heirs, with their value or intentionally, and is considered to be known and surrounded by a personal circumstances⁽⁷⁾ The Egyptian legislator has been supported by the Syrian civil law agreed with Article (866)⁽⁸⁾ and the Libyan Civil Code (909).⁽⁹⁾ also the Qatari (1003)⁽¹⁰⁾. The legislation mentioned above fulfilled personal collectors without dispersed between whether e-collectors or materials.⁽¹¹⁾ It is important to hold moral value.

The second tendency: No inheritance non-financial electronic holdings

The owners of this trend denied the possibility of transferring non-financial electronic holdings to the heirs, and argued that they are close or inherent to the rights of the personality. The personal rights are defined as the inalienable rights of any person and for the mere fact that he is a human being whose objective is to protect the various manifestations of the elements of personality and its constituents from aggression by others.⁽¹²⁾ As far as the personal rights start from the beginning of the personality and end with its end, for this

⁶⁾ Management, Digital Inheritance, op. cit.

⁷⁾ Abdul Nasser Ziad Hiagne, op. cit., p. 8.

⁸⁾ Egyptian Civil Law No. (131) for the year 1948.

⁹⁾ Syrian Civil Law No. (84) for the year 1949 issued by Legislative Decree No. 84 by 18 May 1949 and applied from 15 June 1949.) Syrian Civil Law No. (84) for the year 1949 issued by Legislative Decree N

¹⁰⁾ The Libyan Civil Code of 1954.

¹¹⁾ Qatar Civil Law No. (22) of 2004

¹²⁾ Mariam Al-Jaber, the dead person's secret in his grave, article published on the website <https://www.alriyadh.com> Date of visit 12/21/2020

reason, the personal electronic holdings of letters, photos and tweets are not transferred to the heirs as they do not fall within the person's financial responsibility.⁽¹³⁾ The owners of this trend have justified their position in this way, that the messages and notes of the deceased are a sensitive area in the lives of some people, so every person has the right to have his own secrets. And to protect these secrets and privacy out of respect for the deceased and not tamper with these privacy, for a person's paradox of life does not give the right to his family and relatives to violate the inviolability of his privacy.⁽¹⁴⁾

Preference of Opinions:

From the previous presentation of the tendencies of the jurists concerning the possibility of inheriting the electronic non-financial legacy or not, it can be said that both directions are correct but do not succeed on attaining the required objective.

The first tendency has corrected the possibility of electronic holdings being transferred to the heirs.

The term electronic holdings has been mentioned by the jurists and a section of legislation was mentioned (If the heirs do not agree on the division of the family papers or the things related to the affection of the heirs towards the bequest, the court will order either to sell these things or to give them to one of the heirs with their value being deducted from his share or without deduction).The personal circumstances surrounding the inheritors are taken into consideration in this concern.⁽¹⁵⁾So the text came absolutely (and the absolute is to be launched unless there is evidence to restrict it).Therefore, the term includes traditional and electronic holdings, as they represent an intangible legacy that touches the sentiments and feelings of the heirs in analogy with the material personal possessions, but it is the right side to open the door to the transfer of these possessions wide.As for the second tendency , we find it also correct when it took care of the privacy of a person and his secrets after his death, and forbade tampering with them, since non-financial electronic possessions are considered personal rights that may not be viewed by the heirs.But it is right when the door is completely closed to any possibility of the transfer of these electronic holdings after the death of the user to the electronic accounts. Therefore, the researcher considers to reconcile the two aforementioned two directions merging them by taking an intermediate direction, so we find it more appropriate for the transfer of non-financial electronic holdings to be based on respect for the privacy of the deceased and lack of access to his secrets. Thus, the messages, notes, pictures, audio and video clips, etc. that are not shown to the public are rights that affect the privacy of the deceased user and must be forgotten, as they are considered private secrets that should not be tampered with and examined. As for other electronic holdings such as photos, audio and video clips, tweets, etc., if they are posted on the deceased user private account and were not confidential, and any public access to them, then it can be said that they are transferred to the heirs, The procedures for sharing this type of holdings may be less complex than the procedures for sharing physical personal ones.

The reason for this is that these electronic holdings can be kept by all the heirs, copies of them, which makes them less vulnerable to disputes between the heirs, as the possibility of

¹³⁾ Burke Faris Hussein Al-Jubouri, Personal Rights and Civil Protection, MA Thesis submitted to the College of Law, University of Mosul, 2004,

¹⁴⁾ Dr. Abdul-HadiFawzi Al-Awadi, The Right to Enter in limbo on the Internet, previous source, p. 68

¹⁵⁾ Article (905) of the Egyptian Civil Law No. (131) of 1984; And Article (866) of the Syrian Civil Law No. (84) of 1949; And Article (909) of the Libyan Civil Law (1954); And Article (1003) of the Qatari Civil Law No. (22) of 2004

acquiring them from all the heirs. But the problem with it lies in how to access these holdings, especially since most of the companies providing electronic services refrain from opening the accounts of the deceased and handing them over to the heirs. We have to keep in mind that the right to a private life or privacy and the right to confidentiality of correspondence is a right recognized by human rights and all constitutions, and its violation is criminalized by the penal law even if they are his heirs, and to keep everything related to the private life of the individual. The right to confidentiality of correspondence is within . Neither the heirs nor others have the right to violate the sanctity of the user's private correspondence, because of the secrets that may exist in this correspondence related to the privacy of the parties to the message.⁽¹⁶⁾

From its part, the Iraqi constitution guaranteed the protection of the right to private life, and Article (17) of it stipulated that ((Everyone has the right to personal privacy as long as it does not contradict the rights of others and public morals),⁽¹⁷⁾

The Iraqi legislator has incriminated any violation of one's private life through the text of Article (438) of the Iraqi Penal Code, which stipulates that ((punishable by imprisonment for a period not exceeding one year)) and a fine or either of these two penalties for anyone who publishes, by one of the means of publicity, news, pictures, or comments related to the secrets of private life even if they are true.⁽¹⁸⁾

Second: The Judicial Position

Concerning the judiciary in Iraq and the judiciary in all Arab countries, and to the best of our knowledge, we did not find a judicial precedent for them dealing with the issue of the possibility of transferring the electronic non-financial or even financial legacy to the heirs due to the novelty of the matter and its rarity. It is expected that such cases will arise in front of the Iraqi and Arab judiciary alike, after the tremendous development in the revolution in technology and Internet networks. As for the judiciary in European countries, we find that it has many relatively recent judicial precedents that dealt with such cases. We present some of these judicial precedents according to the following:

1- The famous judicial precedent for the American soldier who was killed in Iraq in 2004. The parents of the soldier wanted to create a memorial tape about their son's life using the messages and pictures that he sent or received using his e-mail. However, the parents were not able to penetrate their son's mail because they did not know the password for the mail, which led them to request that Yahoo provide them with the password. The company rejected the request on the grounds that the contract concluded between it and the deceased (like any other contract between it and all subscribers around the world) this imposes on it an obligation to maintain the confidentiality of his mail and prevents it from giving the subscriber's password to any person or any party except according to a provision in the law or Adjudication. Adding that that the terms of the contract between Yahoo also prevent the subscription to be transmitted by e-mail as it is an inheritance upon the death of the account holder. This refusal obliged the parents of the deceased soldier to file a lawsuit demanding that they obtain a copy of their deceased son's letters. The parents obtained a provisional

¹⁶⁾ Dr. Ouda Yousef Salman, Crimes relating to the sanctity of private life that occur through modern information technology means, Al-Rafidain University College, Law Department, p

¹⁷⁾ The Constitution of Iraq for the year 2005, published in (the Official Journal) Al-Waqa'i Al-Iraqiya, Issue No. 4012, Issue Date: 12-28-2005

¹⁸⁾ Iraqi Penal Code No. (111) of 1969 and its amendments published in Al-Waqa'i Al-Iraqiya, Issue No. 1778, Issue Date: 12-15-1969

initial decision obliging the company to keep the mail of the deceased soldier to the extent that the court ruled on the case and issued the final judgment. It is worth noting that the adjudication of this type of case was not an easy matter. The issue was not legally regulated at the time, and there is no legislative text or judicial precedent on which the court relies in issuing its judgment, and based on what the parents of the deceased stated that the objective behind obtaining the letters and pictures is to create a memorial record in which their son's notes are written. For this reason, the court decided to oblige (Yahoo) to give the soldier's family the right to obtain a copy of the contents of his e-mail.⁽¹⁹⁾

2- A decision issued against the company (facebook) providing that the right of the father of a young man who committed suicide in mysterious circumstances to obtain the contents of his account, given that the father of the deceased is one of his heirs.

However, the (facebook) administration refused the request of the parents to reveal the password of their son's account that is protected by privacy protection laws and the terms and conditions for using the facebook site. But Facebook's failure to comply with the court's decision did not prevent the parents from obtaining their son's account from Google, the owner of the email, in the G mail .⁽²⁰⁾

From the previous review of judicial precedents in Europe, we find that the judiciary wavering between considering non-financial electronic holdings as a legacy that could be transferred to the heirs. We can attribute the reason for the lack of consistency in the judiciary in Europe on one opinion in the case law to two reasons: The first reason: the novelty of this type of lawsuit. The second reason is the failure to issue comprehensive legislation for electronic inheritance in its entirety, and the laws that dealt with the issue of electronic inheritance still fall short of covering all aspects of electronic inheritance issues and issues.

The Second Part

The inheritance of electronic financial assets

The axes of the contents of this part concentrate on the meaning of digital financial assets, and then tackle the means or methods that ensure the transfer of these assets to the heirs, and then we finally discuss the issue of the legislative regulation of electronic inheritance, so this section must be divided according to the following Sections:

First Section

Definition of financial electronic assets

There is no specific definition of electronic financial assets. Rather, electronic assets are defined in general without specifying whether these assets are financial or non-financial. The electronic assets have been defined as image files, graphics, logos, animations, audio and video clips, presentations, pages, documents and other digital file formats. It is important to realize here that the digital file can be considered an asset if it contains information that can be used outside the file and the original that this information is valuable, useful, usable and easily accessible,⁽²¹⁾) From the aforementioned definition, we conclude that the term electronic assets often refers to electronic things that have a financial value,. If we try to

¹⁹⁾ Abdul Nasser ZiyadHayajneh, op. cit, p. 6; Who owns our email after our death

²⁰⁾ Ibid, p. 6

²¹⁾ Hayam Hayek, Online Digital Asset Management, report published on the website <http://blog.naseej.com/>
Date of visit 01/23/2021.

include a definition of financial electronic assets, we can define them as (data, texts, documents, records, documents, images, audio and video clips, social media content, etc. of financial value).

The Second Section

The methods of inheriting electronic assets

In this section, we point out the treatments through which financial assets are inherited to the heirs. These means are represented in the electronic will, the digital inventory, the password storage box, the technical programs and finally the principle of good faith. According to the following paragraphs:

First: The electronic will

After the increasing spread of users of electronic accounts, it has become necessary for the user of these accounts, especially those who have digital financial assets, to think about the fate of these assets, whether they are documents or financial accounts with Internet companies, applications, etc. after his death, and how his heirs can obtain them, for this reason the so-called electronic will appeared⁽²²⁾.

An 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.⁽²³⁾

It is more appropriate for this will to be official, that is to say highly documented by the notary and clearly specify the user's will to enable the person appointed in this will to access his personal accounts from an e-mail or otherwise after his death.

There are those who think that it is better not to put the information of their username or password in the electronic will, and instead of that they refer to an external document that contains all the information required with regard to electronic assets.⁽²⁴⁾ Among the applications on the electronic will, for example, we find that the company (Google) requires the user to create an electronic will that includes his will to allow a person to access his accounts and electronic assets. Or the provider cancels all accounts with their electronic content, provided that the implementation of this will take place after a period of time of the cessation of the user's activity. In fact, this period has been specified by the agreement for the use of (Google) services in a period of not less than three months and not more than eighteen months.⁽²⁵⁾ It is worth noting noted that the electronic will is not limited only to appointing a person from the heirs or others to enter into the user's accounts after his death in order to obtain his electronic assets, but it also includes the user's desire to close his account and cancel it after his death and not allow anyone to penetrate it, especially regarding his private correspondence.

Second: The Digital Inventory

The digital inventory is intended to create a confidential document that contains all the electronic assets, electronic accounts and applications that the user owns .The user may leave

²²⁾ AsaadFadhelMandil, M.M. AqilSarhan Muhammad: op. cit., p. 146

²³⁾ Reem Al-Masry, Life After Death Online ... Where Your Digital Legacy Will Go, previous source.

²⁴⁾ Death plan ... How to manage your account on Facebook or Twitter after your death, ,ibid.

²⁵⁾ Abdul Nasser ZiadHayajneh, previous source, p.8

this document in a bank or a safe place with a certain person⁽²⁶⁾ and it may be from the heirs or others, and this person is considered the special executor who will be able to access the user's accounts after his death.⁽²⁷⁾

Third: Technical Programs

The user of electronic accounts can guarantee the transfer of his electronic assets after his death to his heirs through various technical programs. We offer some of these programs according to the following:

1-Trust Verse Program

It is a digital inheritance program. This program implements a protocol that deals with electronic inheritance and includes the management and ownership of digital identities.

2- Program for the use of the dead man's key

It is an electronic program that transfers digital currencies in the event of the death of the owner, this program sends an e-mail to the user within specified and regular periods, and if the response to these messages does not arrive by the user in this case, a smart contract is automatically transfers digital currencies to the aforementioned account.

Fourth: Password Storage Box

Recently, websites have appeared which provide a box service to store electronic data and passwords for user accounts and assets. Among the most prominent of these sites is the (Legacy Locker) site. The idea of this box is based on providing a service to the user through a program that enables him to keep passwords for his account and store them on his device's browser. This program also enables the user to pass his passwords to his heirs or the person who appointed him in his electronic will. In fact, this program is an electronic wallet.⁽²⁸⁾ It enables the heirs or the executor of the electronic will to manage the electronic ownership of the user after his death, starting with the passwords of social media accounts and e-mail and ending with obtaining all his electronic assets for distribution to the heirs.⁽²⁹⁾

Fifth: The Principle of Good Faith

This principle can be used when the deceased user does not leave an electronic will or a digital inventory or subscribe to one of the technical program services for electronic inheritance management. In this case, the electronic assets must be obtained based on the principle of good faith. Because the relationship between the service provider and the user is a contractual relationship. Therefore, the companies providing electronic services must positively deal with the transfer of electronic assets, especially the financial ones, to the heirs based on the implementation of the principle of good faith.⁽³⁰⁾

²⁶⁾ Radwa Muhammad Hammam, our electronic accounts, are they deported with us or transferred to our heirs? Article published on the website [https:// www.digitalqater.qa](https://www.digitalqater.qa) Date of visit: 16/8/2019

²⁷⁾ What Happens to Digital Assets in Rhode Island, report published at [https:// ar.vijversenkoi.info](https://ar.vijversenkoi.info) Date of visit 11/22/2020.

²⁸⁾ Ali Al-Erian, Legalization of Virtual Currencies, Report published on the site almu7amy.blogspot.com Date of visit 12/25/2020

²⁹⁾ Lucy, Warwick Ching, after the death of the owners What happens to the digital assets, Ibid.

³⁰⁾ Abdul Nasser ZiyadHayajneh, ibid, p. 10; AsaadFadelMandil, M.M. AqilSarhan Muhammad, ibid, p. 147

The Third Part

The Legislative Regulation of Electronic Inheritance

In this section we come cross the role that the law plays in the matter of electronic inheritance, and since the Iraqi legislator has not regulated its legislation what indicates electronic inheritance. However, this does not prevent us from taking advantage of general rules in civil law and commercial law and conducting legal approaches in order to build a legal system for electronic inheritance. Consequently, we examine in this section the possibility of benefiting from the general rules in electronic inheritance. We try also to present a legal proposal to regulate electronic inheritance. Therefore, it is necessary to divide this section according to the following two paragraphs:

First. Taking advantage of general rules

There are many general rules in Iraqi laws that can be used in the issue of electronic inheritance, and these rules are as follows:

The powers of the owner over his property

The powers of the owner were decided on his property in the Iraqi civil law in the Article (1048) which confirms that ((full ownership would enable the owner to dispose completely what he owns in kind, benefit and exploitation, so that he benefits from the owned property, its wealth, fruits and its products, and he disposes in its own eyes with all permissible behavior,⁽³¹⁾ According to this text, the right of ownership authorizes its owner to exercise all powers over his property to use, exploit and dispose them ,⁽³²⁾ And since the electronic assets, including programs, applications and accounts, are considered things that can be possessed , and their owner enjoys the right of ownership, as mentioned above, the owner of these electronic assets has the right to exercise all the powers of using, exploiting and disposing of.⁽³³⁾

2- Consumer Protection Rules

Consumer protection in electronic transactions is witnessing a remarkable development at the level of national and international legislation, with the aim of providing special protection for consumers. For example, and at the international level, the Organization for Economic Cooperation and Development (OCDE) played a notable and prominent role in preparing guidelines to ensure consumer protection, especially the consumer via the Internet on December 9, 1999. This organization demonstrated the importance of cooperation between governments, enterprises and consumers at the national and international levels .⁽³⁴⁾ On the internal level, it can be said that the legal rules governing consumer electronic activity are the same - for the most part - the legal rules for obligations. Among these rules is the

³¹⁾ Iraqi Civil Law No. (40) of 1951 and its amendments published in Al-Waqi'i Al-Iraqiyya, Issue No. 3015, Issue Date: 09-08-1951

³²⁾ Dr. Muhammad Taha Al-Bashir, d. GhaniHassounTaha, In Kind Rights, Al-Sanhour Library, Baghdad, p. 4

³³⁾ M.D. Muhammad Ali Khalaf, What are computer programs in light of the rulings of Iraqi and English jurists, a research published in the Journal of Legal Sciences, College of Law, University of Baghdad, Volume (29), Issue (2), 2014, pp. 315-316

³⁴⁾ Dr. Nabil Muhammad Ahmad Subaih, Consumer Protection in Electronic Transactions, a research published in the Journal of Law, Kuwait University, Issue (2), Year 32, 2008, p. 168

implementation of the commitment in good faith and other legal rules established to protect the parties to the contract that can be employed in consumer protection .⁽³⁵⁾

3- Protection of the Obedient Party

The preponderant opinion is that the electronic contract is a contract of compliance because the user or consumer is always the weak party in electronic contracts that are conducted over the Internet, and considerations of justice require that the consumer consider Internet services as compliant in such type of contract ,⁽³⁶⁾ Considering the consumer of electronic services as a submissive party makes him eligible to enjoy the protection stipulated in the civil law for the submissive party in the compliance contract, this protection is embodied by Article (167) in its second and third paragraphs, The second paragraph states that : ((If the contract was made by way of compliance and it contained arbitrary conditions, the court may amend these conditions or exempt the compliant party from them, according to what justice requires, and every agreement to the contrary shall be void⁽³⁷⁾) By employing this paragraph on the consumer of electronic services, we find that it is permissible for the user, whenever he is a victim of arbitrary conditions, to resort to the judiciary to amend these conditions or exempt him from them, this is among the arbitrary conditions that are expected to be imposed on the user to cancel all his accounts upon his death by the companies providing electronic services and to prevent their transmission to the heirs under the pretext that the user agreed to the conditions included in the contract for the use of electronic services. Therefore, the user has the right to request the abolition of this condition or its amendment to achieve justice, and the justice requires that these assets be transferred to the heirs of the user. As for the third paragraph of Article (167); we can find that it stipulated that ((The interpretation of ambiguous expressions in compliance contracts may not be detrimental to the interest of the submissive party even if he is a creditor.)) This paragraph is also used on the user of electronic services. We find that it is in his interest, and if there is no mention in the contract for the provision of electronic services that indicates the fate of the electronic assets after the death of the user or the reference to them is ambiguous. Here, according to the text of the third paragraph, the doubt is explained in the interest of the user, and it is in his interest and the interest of his heirs that his electronic assets, especially those with financial values, be transferred to them .

4- The rules established for human rights and freedoms

The personal rights are one of the basic human rights, and these rights have been legally protected, whether at the international or local levels, as stated in the texts of most constitutions,⁽³⁸⁾ including the Iraqi constitution, where Article (17) first paragraph stipulates that ((Everyone has the right to privacy as long as it does not contradict the rights of others and public morals)) ⁽³⁹⁾. The article (40) explicitly stipulates the secrecy of electronic communications and correspondence, as it went that ((freedom of communications, postal,

³⁵⁾ Dr. Ali Mutashar Abdel Saheb, M.D. Ali Mutashar Abdul Saheb, Consumer Protection in Electronic Contracting, a research published in the Journal of Legal Sciences, College of Law, University of Baghdad, Volume (27), Issue (1), 2012, p. 216

³⁶⁾ Dr. Abdel Fattah BayoumiHegazy, Consumer Protection via the Internet, Legal Books House, Egypt, 2008, p. 45; Dr.. Osama Ahmed Badr, Buyer's Guarantees in the Electronic Sale Contract, New University House, Alexandria, 2011, pp. 33-34

³⁷⁾ Iraqi Civil Law No. (40) of 1951 and its amendments

³⁸⁾ Dr. Nabil Muhammad Ahmad Sobeih, previous source, p. 251

³⁹⁾ The Constitution of Iraq promulgated in 2005, published in Al-Waqi'a Al-Iraqiya, Issue No. 4012, Issue Date: 12-28-2005.

telegraphic, telephonic, electronic and other correspondence is guaranteed. It is not permissible to monitor, wiretap, or disclose it except for legal and security necessity and by a judicial decision. These established rules for human rights and freedoms can be used in the matter of electronic inheritance, especially since the user's private life secrets have become vulnerable to insulting them and accessing their privacy by breaching the barrier of their transmitters under the guise of considering them as inheritance. It must be passed on to his heirs,⁽⁴⁰⁾ on the basis of this correspondence affecting the sentiments and feelings of the heirs, but we are here in front of two interests, the interest of the deceased user not to divulge his secrets and violate his privacy, and in front of the interest of the feelings of the heirs to pass on the correspondence of their inheritance. He doubted that the interest of the deceased user here is more worthy of care than the interest of the heirs, as the right of a person to be forgotten and the inviolability of his correspondence and his personal freedoms can be observed in the issue of digital inheritance in accordance with the established rules for human rights and freedoms. This principle is one of the basic principles in all legal acts and dealings, and among the applications of that is what was stipulated in the first paragraph of Article (150), which stated that ((The contract must be executed in accordance with what it included and in a manner consistent with what is required of good faith)).

Second: The legislative proposal to regulate electronic inheritance

After reviewing the provisions of electronic inheritance in all its aspects, we propose to the Iraqi legislator to regulate the provisions of digital inheritance within the folds of the law. This organization includes all aspects of electronic inheritance, including the basic concepts of electronic assets, and works to solve the problem of assets that are transferred by inheritance that may not be transferred, in addition to organizing special texts that govern the rules of obtaining electronic inheritance. 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 linked to international agreements (since most of the companies providing electronic services are global companies) that regulate the rights and obligations of providers of electronic services and applications regarding the fate of accounts whose users die. With the establishment of specific mechanisms that ensure respect for the users' will to preserve their privacy, the Iraqi legislature should put its hand on 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 .

Conclusion

First: Results

After completing the study of the provisions of electronic inheritance, we reached a set of results as follows:

1- All electronic possessions belonging to the deceased user are not considered a legacy to be inherited by the heirs. Rather, a distinction must be made between what is considered the privacy of the user and his secrets. This is undoubtedly not permissible to be passed on to the heirs, as it affects the private life of the inheritor even if it touches the feelings and emotions of the heirs, so the interest of the user here is not to disclose his secrets more precisely than

⁴⁰⁾ Dr. WalidKhaledAttia, Electronic openness and its impact on the right to a private life, a research published in the Journal of Comparative Law, Iraqi Comparative Law Society, Issue (44), 2008, pp. 70-71

the interest of the heirs. As for what is not considered user-specific secrets from non-financial electronic holdings, they may be passed on to the heirs.

2- The inheritance of electronic financial assets to heirs occurs through many ways : either it is inherited by electronic will, digital inventory, technical software, password storage box, or the principle of good faith .

3-The electronic assets, after obtaining them from the service-providing companies, are distributed to the heirs according to the rules of inheritance, and not according to a will, as is the case in non-Islamic countries. Because this type of inheritance does not give the right to deviate from the rules of inheritance in the division of the estate among the heirs.

4-The electronic will is not the only way to obtain the electronic legacy and transfer it to the heirs. Rather, there are several methods that we have dealt with in paragraph 5 mentioned above.

5-There is an urgent necessity in the presence of the guardian of the electronic legacy, and the benefit is in his presence in obtaining the electronic assets and transferring them to the heirs, as he preserves for the heirs their rights to the electronic assets and ensures that they are not lost after the death of the user.

6-The heirs are able to prove the user's ownership of electronic accounts by submitting what confirms his ownership of these accounts, in addition to submitting a death certificate and other documents and documents that support their right to transfer electronic assets to them.

7-The Iraqi legislator's intervention is an urgent necessity in regulating the agreements concluded between users and the companies providing the service.

Second: Recommendations

After reviewing the provisions of electronic inheritance in all its aspects, we propose to the Iraqi legislator to regulate the provisions of electronic inheritance within the folds of the law. This organization includes all aspects of electronic inheritance issues, including the basic concepts of electronic assets, and works to solve the problem of assets that are transferred by inheritance and which may not be transferred, in addition to organizing special texts that govern the rules of obtaining electronic inheritance. 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: The electronic accounts and assets are obtained from the providers of electronic services, either through a will or the appointment of a person to obtain them, whether from

the heirs or others, or any method that guarantees the transfer of electronic assets to the heirs. If the deceased user does not leave a will or appoint a person to take over the electronic assets, the heirs must appoint one of them or another person to take over the collection of these assets .

Third: The guardian of the electronic legacy, its executor, or the person chosen to obtain it must provide the service provider company with proof of the user's identity, the death certificate and proof of his right to obtain the legacy within a period not exceeding six months from the death of the user .

Fourth: The deceased user's desire is taken into account not to transfer some of his electronic assets to the heirs, especially those related to his privacy and secrets, provided that he is not abusive in using this right .

Fifth: After obtaining the electronic legacy, it is divided among the heirs according to the share of each of them in the inheritance rules. The aforementioned proposal provided comprehensive solutions to the issue of electronic inheritance and guaranteed the inheritors their right to obtain financial assets in particular and some non-financial assets related to the feelings and feelings of the heirs, taking into account the user's side in not exposing his secrets and violating his privacy by breaching his private correspondence. It is to specify the heirs' claim for a period of time that is believed to be sufficient to notice the electronic legacy of their inheritance and expedite its collection before the accounts of the deceased are deleted by the service providers.

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