LEGAL BENEFICIARIES OF THE OBLIGATORY BEQUEST AND THE CONDITIONS GOVERNING THEIR ENTITLEMENT

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Summary

The principle of down looping that came with the Algerian family law, which is known as the obligatory will, is included in the legal obligations that bind the incompetent alike, because downloading was required by a legal text that made it enforceable in the estate of the deceased even if the owner of the estate did not recommend it because he derives his strength from the spirit of this law is to take the rule of in heritance in this case.

Key words: grandchildren, tenzil, will, inheritance

INTRODUCTION

In Islamic law, inheritance is regarded as a form of economic activity because it incentivizes diligent effort during one's lifetime and aims at the welfare of society. It fosters a strong communal bond among family members and eradicates discord, envy, and resentment within the same household so long as each individual sincerely feels that they have neither been wronged nor deprived of the share divinely allotted to them. Consequently, the family unit remains cohesive and cooperative.

A recurrent issue in inheritance arises when a person predeceases their father or mother, thereby depriving their own offspring—the grandchildren—of the inheritance that they would have received had they survived their parent.

This exclusion occurs because nearer heirs stand in the way of their claim, often leaving the grandchildren in destitution while their paternal uncles and aunts enjoy ample means.

Grandchildren (aḥfād, obligatory bequest) may be especially dear to their grandparent, who might wish to bequeath a portion of their estate to them but is overtaken by death before doing so. To remedy this situation, the Algerian legislator has mandated such bequests under the term tanzīl (compulsory bequest), drawing upon the opinions of certain Tabiūn jurists and the Andalusian scholar Ibn Ḥazm. **This gives rise to the following research questions:**

What is meant by "grandchildren" (aḥfād) in Article 169 of the Algerian Family Code?

What are the conditions governing tanzīl?

To answer these questions, the study is structured as follows:

Section I: Definition, Beneficiaries, and Legitimacy of Tanzil .

Section II: Conditions and Extent of Tanzil.

Section I: Definition, Beneficiaries, and Legitimacy of Tanzil .

The law grants orphaned grandchildren the right to inherit from their grandfather's estate in cases where their father predeceases the grandfather. However, controversy persists to this day regarding the true concept of these grandchildren as legal heirs, due to the broad and ambiguous terminology employed by the Algerian legislator. This section aims to clarify some of these terms.

Subsection One: Definition of Tanzil:

1. Linguistic Definition of Tanzil:

The term "tanzil" is derived from the Arabic root “nazala", meaning "to descend" or "to alight." For instance, the expression “a guest descended upon them” implies that a guest arrived or settled. Likewise, rain is said to "descend" from the sky. The noun forms "manzil" (home or dwelling) and "manzilah" (rank or status) refer to the location or degree of descent. In the hadith concerning the inheritance of the grandfather, it is narrated that Abu Bakr “anzalahu abā” meaning he placed the grandfather in the status of the father and granted him his share of the inheritance. **2. Jurisprudential Definition of Tanzil:**

Classical Islamic jurists did not provide a definition of tanzil as the issue is a modern development subject to the reasoning (ijtihad) of contemporary scholars and jurists. According to later Maliki jurists, tanzil is considered a form of obligatory bequest. It has been defined as: the act by which a person places a non-heir in the position of an heir, and it is categorized under the rules of wills (wasaaya) that are executed prior to the distribution of the estate.[1]

It is noteworthy that this definition does not specify the beneficiaries of the tanzil, nor does it clarify its extent. Furthermore, it presents tanzil as a discretionary bequest dependent on the will of the testator, without legislative imposition.[2]

Tanzil may be viewed as a legal mechanism for the transmission of estate assets, functioning as a compulsory will that is executed before the distribution of the estate and potentially affects the shares of the other heirs.[3]

In light of the aforementioned and other definitions, tanzil can be defined as:

"The act by which a grandfather or grandmother places their non-inheriting grandchildren in the legal position of their deceased parents (who were rightful heirs), thereby granting them the prescribed share their parents would have received, provided that this share does not exceed one-third of the estate."[4]

3-Legal Definition of Tanzil :

In certain Arab legal systems, the concept of Tanzil is referred to as an obligatory bequest, as in Egyptian legislation, which did not originally provide for this mechanism prior to the promulgation of Law No. 71 of 1946 on Wills.[5]

In Algerian legislation, however, Tanzil is not explicitly defined within the Family Code. As is often the case, the Algerian legislator has deferred such matters to Islamic jurisprudence (fiqh) and its interpretative rulings. Nevertheless, the legal provisions governing Tanzil are codified under Articles 169 to 172 of the Algerian Family Code.

Article 169 provides a concise definition of the concept, stating:

"A person who dies leaving grandchildren whose parent predeceased the decedent or died simultaneously with him shall be subject to Tanzil, whereby such grandchildren are placed in the legal position of their deceased ascendant in the inheritance, subject to certain conditions."[6]

Legal scholar Belhadj Al-Arabi defines Tanzil as follows:

"Tanzil is the legal placement of a person’s grandchildren in the position of their parent within the estate of the grandfather or grandmother."

This legal mechanism seeks to address the issue of grandchildren whose father or mother dies during the lifetime of a grandparent and who are consequently excluded from inheritance due to the presence of paternal uncles or aunts who legally block their right to succession.[7]

The Algerian Supreme Court, Personal Status and Inheritance Chamber, has also defined Tanzil in its judicial precedent as:

"The substitution of a descendant in the place of a deceased child of the decedent, where the substituted descendant inherits the share of the deceased parent, in accordance with the provisions established by law and Islamic jurisprudence."[8]

Subsection Two: legal Beneficiaries of Tanzil

Following the various definitions previously discussed, which failed to precisely delineate the scope of the term "grandchildren," a divergence has emerged among legal scholars as to the exact meaning of this term. The central point of contention lies in whether it refers exclusively to the male-line descendants (i.e., the sons of a son) or whether it also encompasses the maternal-line descendants (i.e., the sons and daughters of a daughter).

A considerable number of legal jurists have adopted the view that, under Islamic law, the term "grandchild" (ḥafīd) refers specifically to the son of a son (ibn al-ibn), whereas the descendants of a daughter are classified as dhawu al-arḥām (uterine relatives), who are not entitled to inherit under the default rules of succession, and thus are not eligible for Tanzil. This interpretation is supported by a textual reading of Article 169 of the Algerian Family Code, which confines Tanzil to "those whose ascendant predeceased the decedent" using the masculine pronoun "mawrithuhum" (their ascendant), rather than including the feminine form "mawrithatahum." Consequently, the provision has been interpreted as limiting the application of Tanzil exclusively to the descendants of a son, to the exclusion of those of a daughter.

However, upon a thorough examination of the legislative texts governing Tanzil, particularly Article 169 of the Algerian Family Code—which stipulates that if a person dies leaving grandchildren whose ascendant predeceased or died simultaneously with him, such grandchildren shall be placed in the position of their ascendant in the inheritance—it becomes evident that the term "grandchildren" (aḥfād) is to be interpreted broadly. This inclusive reading supports the conclusion that maternal grandchildren (i.e., the children of a daughter) are to be recognized as legal beneficiaries of Tanzil on equal footing with paternal grandchildren (i.e., the children of a son), for the following reasons:

A. The term aḥfād in classical Arabic linguistics denotes the "descendants of one's child" in an unrestricted sense, encompassing both male and female progeny alike. The term walad, from which this is derived, includes both sons and daughters without distinction. Notably, none of the authoritative Arabic lexicographers has confined the meaning of ḥafadah to the male-line descendants (i.e., the sons of a son) to the exclusion of the descendants through a daughter.[9]

Therefore, it is reasonable to interpret the statutory term aḥfād as inclusive of both paternal and maternal grandchildren. Linguistically speaking, the legislator might have opted for a more precise term such as ḥafadah or ḥafadāʾ, as both are widely accepted plural forms of ḥafīd (grandchild). This is affirmed in the Qur'anic verse: "And He has made for you sons and ḥafadah" [Al-Nahl73]. The plural aḥfād is thus regarded as a commonly accepted yet linguistically irregular form.[10]

B. Additionally, the term aḥfād used in the statutory text is a general expression (ʿāmm). According to the principles of uṣūl al-fiqh (legal theory), a general term must be interpreted in its generality unless a specific limiting provision (takhsīṣ) is provided. In this case, the proponents of restricting Tanzil to the paternal grandchildren have not adduced any textual or juristic evidence, either linguistic or derived from the Islamic science of inheritance (ʿilm al-farāʾiḍ), to justify such an exclusion.

C. It is further agreed upon by linguistic and legal scholars alike that the term walad (child) by default includes both male and female offspring. This is firmly established in the Qur'anic verse: "Allah commands you regarding your children (awlādkum)", which serves as decisive and authoritative

evidence that walad is a gender-inclusive term. Consequently, the expression walad al-walad (child of one's child), used synonymously with ḥafīd, must likewise be interpreted inclusively.

D. The term aṣluhum (their ascendant) appearing in Article 169.170 of the Algerian Family Code is meant to refer to the ascendant of the grandchildren, including not only the father and paternal grandfather, but also the mother and paternal grandmother. This interpretation is reinforced by Article 171, which explicitly states that the "ascendant" (aṣl) may be either male or female: "The grandchildren shall not be entitled to Tanzil if they are already inheriting from their ascendant, whether that ascendant is the grandfather or the grandmother." Since the legislator has equated the grandfather and grandmother as equally being considered aṣl (ascendants), it necessarily follows that the mother-being a direct ascendant-is even more justifiably encompassed within this term. This is particularly so given that Tanzil was instituted to remedy the deprivation of inheritance suffered by the descendant from their direct ascendant, thereby granting them compensation up to one-third of the estate.[11]

E. Moreover, Article 172 of the Family Code provides as follows:

"The grandchildren must not have inherited from their father or mother an amount equal to or exceeding the share to which their ascendant was entitled from the grandfather or grandmother."

This provision stipulates that Tanzil is only obligatory if the grandchildren did not already receive, through inheritance from their parent, a share equal to or greater than that which their parent would have inherited from the grandparent. Given that the underlying rationale (ḥikmah) for Tanzil is to compensate the grandchildren for the loss of their parent's share in the estate of the grandparent, the inclusion of the mother within the condition implies a legally recognized line of inheritance between the mother and the grandparent. Accordingly, for the mother to inherit a portion on behalf of the grandchildren, she must be among the direct descendants of the grandparent.

Thus, it is evident that the grandparent in question—be it the grandfather or the grandmother—may be connected through either the paternal or maternal line. The generality of the legislative language affirms this conclusion; had it been otherwise, the legislator would not have explicitly included the term "mother" in the statutory text.[12]

Subsection three: Legitimacy of tanzil

The underlying rationale (ḥikmah) behind the institution of Tanzil lies in alleviating the harm suffered by grandchildren in instances where their father or mother predeceases the grandfather or grandmother, thereby resulting in their exclusion from inheritance. According to the established principles of inheritance law, a nearer heir precludes the more remote one (al-aqrab yuḥjib al-abʿad), and as a consequence, grandchildren are deprived of inheriting from their ascendant so long as their paternal uncles or aunts (i.e., the children of the deceased grandparent) remain alive. This raises the critical question: should the children of the predeceased son be entirely excluded from the estate without any entitlement? Islamic jurisprudence addresses this issue through several mechanisms:

The First Matter: It was incumbent upon the grandfather to make a testamentary bequest (waṣiyyah) in favor of these grandchildren. This form of bequest is considered obligatory and mandatory (farḍ) by certain jurists among the early Islamic scholars (salaf), particularly in situations where the legatees are close relatives who are not legal heirs. The condition, according to classical jurisprudence, is that the beneficiary of the bequest must not be an heir. The Prophet Muhammad (peace be upon him) stated: "Indeed, Allah has granted every rightful claimant their due right, so there shall be no bequest to an heir."[13]

Furthermore, following the revelation of verse (180 of Surah al-Baqarah), it became impermissible for heirs to receive bequests, although such a testament remained valid in favor of non-heirs—for instance, the son of a son in the presence of the son. The verse reads: "It is prescribed for you, when

death approaches one of you—if he leaves wealth—that he should make a bequest to parents and close relatives, according to what is acceptable—a duty upon the righteous." [Al-Baqarah180]

The term "kutiba" (prescribed) in this context denotes obligation and mandatory status, similar to the use in "kutiba ʿalaykum al-ṣiyām" (fasting is prescribed for you) in verse 183 of the same chapter. Accordingly, God has imposed upon the wealthy testator the duty of making a bequest in favor of those relatives who are not otherwise entitled to inherit, and this is to be done in accordance with accepted standards of equity (bi-l-maʿrūf). Deriving from this textual and juristic foundation, a number of early Muslim scholars viewed such a testament as obligatory. It is upon this very principle that legal scholars in many Arab jurisdictions have formulated the basis for the so-called Compulsory Bequest Law (Qānūn al-Waṣiyyah al-Wājibah), a statutory regime within personal status legislation. The core principle of this law is that the grandfather is under a legal obligation to make a bequest in favor of his grandchildren who are otherwise excluded from inheritance due to the predecease of their parent, provided that such bequest does not exceed one-third of the estate.[14]

The Second Matter: Addressed by Islamic Law in Remedying Such Situations

It was incumbent upon the paternal uncles, upon partitioning their father's estate, to allocate a portion thereof to the children of their deceased brother. This obligation is expressly stated in the Holy Qur'an, wherein Allah Almighty says: "And when division is attended by relatives, orphans, and the needy, give them something out of the estate and speak to them words of kindness." (Surah al-Nisa, 8)

How could it be justified that these relatives are present during the division of the estate, witnessing the distribution of wealth, yet receive nothing? The Qur'anic directive prioritizes relatives (ūlū al-qurbā) because of their greater entitlement. How much more so, then, the orphaned children of a brother, whose deceased father was once among those entitled to the inheritance? It was incumbent upon the uncles to agree amongst themselves to allocate a sufficient portion of the estate to these children, particularly when the estate was substantial, to adequately meet their needs.

In cases where the grandfather failed in fulfilling this obligation, it then devolved upon the uncles to rectify the omission and provide for their brother's (or sister's) children, who are among the nearest of kin (ūlū al-qurbā), and who suffer the compounded hardship of orphanhood, poverty, and deprivation.

The Third Matter:

The Islamic law of maintenance (nafaqah) is distinguished from other legal systems by the imposition of an obligation upon affluent relatives to provide for their indigent kin, particularly where one would otherwise have been entitled to inherit from the other. According to the Hanbali school, such maintenance is obligatory if inheritance would otherwise have occurred, and according to the Hanafi school, it is obligatory if there is a prohibited degree of consanguinity (raḥim maḥram), such as between a paternal uncle and his brother's children.

Thus, maintenance becomes a binding obligation enforceable by the judiciary upon the filing of a claim. It is impermissible for a wealthy uncle to possess ample means while his nieces and nephews are left destitute and their impoverished mother is forced to labor for their sustenance, despite his capacity to provide for them.

In this respect, Islamic law stands uniquely distinct from all other legal systems and religious codes.[15]

Moreover, the codified laws mandating Tanzil (compulsory bequest) have drawn upon the view of Ibn Hazm al-Ẓāhirī, who held that making a bequest is obligatory both in terms of religious duty (diyānah) and enforceable by judicial decree (qaḍāʾ), specifically in favor of parents and relatives who are excluded from inheritance due to the presence of a legal impediment.[16]

This is in accordance with the principle that "in wealth, there is a right beyond the payment of zakat," thereby granting the authority (waliyy al-amr) the power to issue binding orders based on public interest (maṣlaḥah ʿāmmah), and once such an order is issued, obedience thereto becomes mandatory.

Section II: Conditions and Extent of Tanzīl.

Just as inheritance is subject to certain conditions for an heir to rightfully receive their share of the estate, so too must specific conditions be met for grandchildren to benefit from the compulsory bequest. While the general conditions applicable to inheritance remain relevant, additional criteria must be satisfied for a grandchild to qualify under tanzil. Furthermore, as a general rule, the amount allocated under this legal device may not exceed one-third of the estate.

Section One: Conditions of Tanzil

The conditions are as follows:

The Estate Must Be Substantial:

A prerequisite for applying tanzil is the presence of a considerable estate, so as not to cause harm to the original heirs—particularly if they are of limited means. The determination of “substantial wealth” is left to prevailing customary standards, in accordance with the testator’s assessment. This is based on the verse:

“If he leaves wealth, then a bequest for parents and near relatives is prescribed.” (Surah al-Baqarah.180)

and the Prophetic narration: “A third, and a third is much. To leave your heirs wealthy is better than to leave them destitute, begging from others.”[17]

Estimating the sufficiency of wealth is a relative matter, and the testator must strike a balance between the needs of the legatees and those of the original heirs.[18]

No Prior Allocation of Equivalent Entitlement:

The grandparent must not have previously granted the grandchild, during their lifetime, an amount equivalent to the compulsory bequest—whether through a will, endowment, or donation without compensation. If such a grant has occurred, the grandchild shall not be entitled to tanzil. However, if the grandchild was granted less than their entitled share, then the remaining balance shall be completed from the estate, provided the total does not exceed one-third.

The Descendant Must Be Disinherited:

The descendant must have no legal entitlement to inherit from the deceased—be it the grandfather or grandmother. If even a minimal share is inherited, tanzil shall not apply. This is because the rationale for the compulsory bequest is to compensate for the loss of inheritance due to legal exclusion, such as where a son’s son is precluded from inheritance by the presence of the son himself.

The Bequest Must Be Equivalent to the Share the Parent Would Have Received:

The grandchild shall receive under tanzil an amount equivalent to what their deceased parent would have inherited had they been alive, provided that this amount does not exceed one-third of the estate. Should it exceed one-third, implementation requires the express consent of the heirs.[19]

No Equivalent Inheritance from the Intermediate Parent:

The grandchild must not have inherited from their immediate parent (father or mother) an amount equal to or exceeding what that parent would have received from the grandparent, had they been alive. If the grandchild inherited less, tanzil shall be applied to make up the shortfall. Conversely, if the grandchild inherited more than the parent’s hypothetical share from the grandparent, then no

tanzil shall apply, nor shall any compulsory bequest be due—since the inheritance already suffices to meet their needs and shield them from hardship. In such a case, depriving the closer heirs (the uncles or aunts) of their rightful inheritance in favor of more distant heirs (the grandchildren) would be unjustified.[20]

Absence of Legal Impediments to Inheritance:

The grandchild must not be subject to any of the impediments to inheritance enumerated under Articles 135 and 138 of the Family Code, namely: intentional homicide, li'ān (denial of paternity), and apostasy. These same prohibitions apply to the application of tanzil.[21]

Section Two: Extent of Tanzil

Article 170 of the Family Code stipulates that the shares of grandchildren shall correspond to the share their ascendant (i.e., their deceased parent) would have received had they been alive, provided that such share does not exceed one-third of the estate. This provision clarifies that the cumulative shares assigned under tanzil must not exceed one-third of the decedent's estate. Therefore, if the total shares attributable to the ascendants of the eligible grandchildren fall within one-third of the estate or are equal to it, then such total shall constitute the amount due to the grandchildren. However, if the calculated shares surpass the one-third threshold, only one-third shall be distributed under tanzil. Any portion exceeding that limit, even if explicitly bequeathed by the deceased, shall be treated as a discretionary bequest (wasiyya ikhtiyāriyya), and its execution shall be contingent upon the approval of the legal heirs, in which case it would be deemed a gift from them.[22]

As for the mechanism of calculating the compulsory bequest, although not explicitly delineated in statutory text, it is generally established as follows: The grandchild shall receive a share equivalent to that which their deceased parent would have inherited, limited to one-third of the estate.

The portion allocated under tanzil must not exceed the one-third share of the total estate. The allocation of tanzil is to be executed as a compulsory bequest and not as inheritance, which implies that any resulting reduction in shares affects all heirs collectively.[23]

The Legal Computation of Tanzil Proceeds as Follows:

1-Hypothetical Reinstatement of the Deceased Child:

The child who predeceased their parent is notionally considered alive at the time of the parent's death. Their hypothetical share of the estate is calculated as if they had survived. Any child who died without leaving eligible descendants—or whose descendants are not entitled to the compulsory bequest—is excluded from this calculation.

2-Comparison with One-Third of the Estate:

The notional share ascribed to the predeceased child is then compared to one-third of the total estate.

-If the notional share is less than or equal to one-third, the grandchildren receive that exact amount by way of an obligatory bequest.

-If the notional share exceeds one-third, the grandchildren are entitled only to one-third of the estate. This sum is then apportioned among them according to the rule that a male receives twice the share of a female.

3-Deduction and Final Distribution:

The amount allocated under the compulsory bequest is deducted from the estate. The remaining estate is then distributed among the actual heirs in accordance with the standard rules of succession. The predeceased child is treated as if they never existed for purposes of the inheritance division.[24]

Conclusion

From the foregoing analysis, it can be concluded that the concept of tanzil (compulsory bequest) has been mandated by the legislator under the Family Code. This legal construct represents a hybrid between inheritance and testamentary bequest (wasiyya), yet it more closely resembles inheritance, despite being commonly referred to as a "compulsory bequest." In fact, it would have been more appropriate to classify it as statutory inheritance, given that the will of the legislator effectively substitutes for the testator's volition.

Under tanzil, grandchildren are granted the share their deceased parent (the ascendant) would have inherited, within the limit of one-third of the estate, and such share is to be divided among them according to the principle that a male receives the equivalent of two females. The compulsory bequest thereby takes precedence over any discretionary bequest.

There has been scholarly divergence among proponents of tanzil concerning the precise scope of eligible beneficiaries. While there is a general consensus that the recipients are the grandchildren, differences arise as to whether this includes only the children of sons or also extends to the children of daughters.

The latter opinion is deemed more persuasive and has been implicitly adopted by the legislator in certain provisions of the Family Code. As for the method of calculating tanzil, it is based on the hypothetical assumption that the deceased child of the testator (i.e., the grandchild's parent) was alive at the time of their own parent's death.

The share that would have been due to them is then calculated, deducted from the estate, and allocated to their children, provided it does not exceed one-third of the estate. The remainder of the estate is subsequently distributed among the rightful heirs in accordance with the rules of inheritance.

The application of tanzil is subject to the following conditions: The amount granted must not exceed the share that the deceased parent (the ascendant) would have received if alive. The grandchildren must not be legal heirs to their grandparent, whether paternal or maternal.

The grandparent must not have previously granted the grandchildren, whether by bequest, endowment, or gift, an amount equivalent to the share due under the tanzil, nor must they have inherited such amount from their deceased parent. The beneficiaries must not be subject to any of the legally recognized impediments to inheritance.

Nevertheless, the legitimacy and conformity of tanzil with the foundational principles of Islamic jurisprudence remain a subject of ongoing debate and legal skepticism. This is primarily due to the fact that the delineation of inheritance rights, shares, and beneficiaries is a matter exclusively reserved for divine ordinance. Allah Almighty, whose knowledge encompasses all things, has explicitly assigned shares to rightful heirs in the Qur'an. The mandatory designation of grandchildren as beneficiaries through a statutory bequest, to the exclusion of other relatives such as the parents mentioned explicitly in Qur'anic verse 180 of Surah Al-Baqarah, constitutes a direct contradiction of divine text and undermines the scriptural basis for inheritance law. As such, any argument supporting the validity of tanzil lacks a firm legal foundation.

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