

Procedures of Distribution of Estates in Courts

Sheikh Naasir bin Abdullah Al-Jarboo'

Judge of Withholding and Execution at the General Court of Unayzah

All praise belongs to Allah and peace and blessings be upon our Prophet Muhammad.

Distribution of estates is one of the cases that are commonly encountered in courts. It is of several types. In this paper, I wish to discuss important types and related procedures in order to make easy to concerned and interested people to understand these procedures. The most important types of distribution of estates are the following:

1. Distribution of cash estates,
2. Distribution of investment shares and funds,
3. Distribution of real estates,
4. Distribution of fungible estates,
5. Distribution of miscellaneous estates,
6. Documentation of agreement distribution of estates by heirs,
7. Documentation of agreement distribution of estates by the court,
8. Forced distribution of estates,
9. Distribution of non-Saudis estates,
10. Distribution of the estate of persons who have no heirs,
11. Distribution of the estate containing debts, and
12. Distribution of the estate containing mortgaged property

4. Use of communications and information technology tools by judges have become an inevitable necessity in the world of today. It is no more reasonable for judges to stay short from using these technological means which are being used in all walks of life.

The author provides the following recommendations:

1. Judicial work automation plans should be expedited and a special law should be laid down that gives judges the authority to write and sign judgments electronically.
2. It is necessary to hold training courses for judges on how to write judicial judgments and sign them electronically.
3. An electronic signature should be provided for each judge to be used in signing his works.
4. An awareness plan through the media about electronic services of courts should be laid down.
5. It is necessary for law jurists to give due care to the study of technological development in the field of communications and information technology so as to develop the judicial system and promote its services.

the judiciary or the automation of judicial work. Communications and information technology is currently used in the administration of judicial work either by the judge himself, the lawyer or the citizen.

The author finally reaches the following conclusions:

1. The Saudi Law of Procedure before *Sharee'ah* Courts and the Egyptian Civil and Commercial Law of Procedure have not provided for a specific tool for the writing and signing of judicial judgments. The terms of writing and signing have been provided for in general terms.
2. The literal meaning of the terms "writing and signing" should be verified and taken out from their content and goal; the terms of writing and signing should be understood within the scope of their objectives. Writing and signing the judgment do not mean the handwriting and hand signing of the judgment by the judge using any type of ink or pens only, for the judge can be considered as writing the judgment if he types it on the computer or any other means as long as he does this job himself.
3. Electronic writing and signing of judicial judgments does not breach the principle of confidential handling provided for in article 159 of the Saudi Law of Procedure before *Sharee'ah* Courts and article 166 of the Egyptian Civil and Commercial Law of Procedure. Technical and Technological measures under the automation of judicial work preserve the principle of confidentiality and prevent persons other than the judge from having access to the draft judgment prior to pronouncing it.

Use of Communications and Information Technology in Writing and Signing Court Judgments

Dr. Haazim Salaahudeen Abdullah

Personnel Specialist, Sues Canal Authority, Ph.D. in General Law

The world is currently witnessing fast changes in the field of information technology along with other developments in communication system. This combination of developments led to a revolution in communications and information technology or what is called “information revolution”. The advances in the field of information can be attributed to the huge advances in the field of communications technology, especially compute systems and the Internet. In the aftermath of this revolution, the world has changed into a small global village where distances are reduced and geographical borders vanish.

The continuous development of information technology and processing through the Internet has created more fast and positive communications between individuals around the globe. In this technological environment, it has become natural for change to affect our mutual dealings. As a result, a number of applications have emerged largely affecting a number of socio-economic and legal activities, most important of which the evolution of e-commerce and e-government.

The e-government system has widely spread and its applications have become numerous including the electronic management of

among states, it is necessary to accept electronic authentication certificates issued by any state without prejudice to the right of states to regulate their own requirements for issuing electronic authentication certificates.

- g. Article 30 of the Saudi Electronic Transactions Law states that the Minister of Communications and Information Technology should issue the executive regulations of the law upon a proposal from the Commission of Communications and Information Technology within one hundred and twenty days from the date of issue of this law; however, the executive regulations have not been issued yet. Therefore, we recommend that it is necessary to issue these executive regulations so as to regulate necessary actions including those related to licences for the providers of electronic authentication service, electronic authentication certificates and everything related to electronic authentication using such technology. Encouragement of e-commerce and transactions requires issuing these executive regulations as quick as possible.
- h. It is necessary to hold courses, symposia and seminars to disseminate awareness about electronic transactions system in general and electronic authentication in particular with a view to increasing awareness and knowledge of these modern technologies and their role in the authentication of legal transactions and actions.

technology and in the framework of adopting the e-government system which is an important step on the way of giving electronic documents and certificates the same recognition given to traditional written documents and signatures.

- c. Legal provisions that require traditional written documents and signatures or original documents to give certain legal effect or to prove a specific legal event should be addressed and limited to the narrowest cases if e-commerce is to be developed.
- d. National laws related to electronic authentication should be made consistent with those laid down in other countries by taking into consideration guiding laws like UNstral laws which basically aim at keeping laws of different countries consistent with each other. This can also be made through the adoption of legal principles prevailing among countries in the field of electronic authentication and electronic documents and signatures.
- e. It should be stipulated that the applicants for electronic authentication services providers licences should have minimum technical expertise to ensure the establishment of a defect free activity. Electronic authentication and encryption services should have high technological level that guarantee security and safety of correspondence in order to protect the parties to electronic transactions against any penetrations that may occur to data and information.
- f. As electronic transactions do not admit borders

has laid down uniform legal rules for the use of electronic transactions and signatures and made it easy to apply them in addition to giving these electronic transactions and records confidence and safety. The law will largely contribute to the prevention of the abuse and fraud in electronic transactions and signatures.

- f. Although the Saudi and Egyptian legislators have given all electronic writs and electronic signature authority of substantiation and made them equal to traditional writs and traditional signature, no cases have yet been filed before the Saudi or Egyptian courts related to documentation of electronic signature based contracts and other electronic documents which means that they still represent theoretical laws that have not been put into execution to explain how courts treat them from the application point of view. This also explains that electronic transactions and e-commerce contracts in Saudi Arabia, Egypt and other Arab countries are in the early stages of evolution and have not widely spread in use.

2. Recommendations:

- a. Arab legislators should amend commerce laws as well as those related to e-commerce. The current laws are not commensurate with e-commerce treatment.
- b. Arab legislators should give electronic signatures and documents the same legal authority as that of the written signature and documents, especially in the light of the fast changes in the information

signature. Information and communications technology has also produced electronic authentication certificate which is an electronic document issued by the provider of authentication services and is used to confirm the identity of the person holding the electronic signature system which contains the signature verification data.

- c. The confidentiality and safety of the electronic message is provided through encryption technology. The content of the message is concealed and encrypted so that it cannot be read by any person other than the authorized one. It also enables the recipient of the electronically signed message or record to verify the personality of the sender or the originator and the check the safety and confidentiality of the message.
- d. Legislators in different countries give authority to electronic writs, electronic authentication certificates and electronic signatures in the laws related to electronic transactions by documenting legal actions that are taken through them. Consequently, they take them out of the authority of the judge with regard to estimating their validity of substantiation and applicability to traditional substantiation rules. However, legislators have laid down measures and conditions in the electronic authentication certificates and electronic signatures in addition to conditions that relate to the providers of electronic authentication service and the licence to practice electronic authentication profession.
- e. The Saudi legislator has done well by issuing the electronic transactions law which regulates the issue of electronic signature and electronic authentication certificates. He

to issue electronic authentication certificates. In the second topic, I have defined the authentication certificate, pinpointed its importance and data in addition to the mechanisms of the protection of data (encryption). The third topic discusses the cases of withholding and cancellation of the electronic authentication certificate. In the fourth topic, I addressed the applications of the electronic authentication in the Saudi law. The study proposes some recommendations and conclusions as follows:

1. Conclusions:

- a. The condition of a written signature on documents has become unsuitable for electronic transactions. It is unconceivable to put a written signature on an electronic document. Therefore, there has been need for the electronic signature which is a signature in the traditional concept but is produced in an electronic way and put on the electronic document to authenticate it. These modern forms of signature need legal and judicial recognition and legislation so that they may have the desired legal effect and power given to traditional signatures.
- b. One of the most important problems that impede electronic commercial transactions is the safety and security of electronic messages and records. Therefore, the information and communications technology has produced what is called the "digital signature" the use and application thereof provides security, safety and confidentiality of electronic messages and records as well as provides the possibility of identifying the originator of the message or record. This means that the use of this technology is more than the mere use of traditional functions of the written

Electronic Signature and its Applications in the Saudi Law

Dr. Usaamah bin Ghaanim Al-Ubaydee

Associate Professor of Law, Institute of Public Administration, Riyadh

With the large increase in electronic transactions and those related to e-commerce, the problem of the safety of such transactions and correspondence arose because the majority of these transactions are concluded between parties not seen to each other due to the difference of the time and place contracting and the lack of direct relationship between the parties to the contract. They, most of the time, have never before entered in any transactions with each other.

Both trust and security should be made available for they are necessary for the development of electronic transactions and e-commerce. For this purpose, a third party should be present tasked with the mission of documenting transactions between parties who use electronic means in their transactions. The said party, who usually provides the service of electronic authentication, plays the role of confirming that the electronic signature is issued by its owner and that the signed data have not been distorted or amended by using technological means that protect the electronic signature system and transmitted data message.

The introduction tackles the nature of electronic authentication, parties undertaking this mission and their roles. The first topic discusses the obligations and responsibilities of the provider of authentication services and the conditions that should be met

putes in accordance with the established international commercial traditions and norms results in limiting the scope of law conflict and solving the problem related to the applicable law when it is ambiguously provided for. It cannot be denied that this might create risks that result in free arbitration that may rely on rules that are not known to parties. It should be noted that Syria has regulated the norms related to documentary letters of credit in the Syrian Commercial Law.

- Adopting a banking arbitration law for the settlement of disputes related to Islamic banking operations because it allows resorting to the rules of the Islamic *Sharee'ah* which govern Islamic banking forms.
- The central bank should encourage banks to implement final arbitration awards.



- Exclude application of any provisions by local banks providing for arbitration before the International Chamber of Commerce or in accordance with its rules or any other foreign center and include arbitration conditions that enable solving their disputes before local and national arbitration centres.
- Opening lists with arbitration centres listing names of specialists in the law or banking sector with all its various fields to choose from amongst them as arbiters or experts and assign from amongst them those who are suitable for cases that require experience in accounting, crediting, external operations, Islamic banking or otherwise for suitable fees that are paid by the centre for every case and considering this profession as not contradicting the requirements of one's job as long as it is carried out outside official working hours.
- Creating a committee at the central bank tasked with the mission of answering the queries of banks with regard to the application of the arbitration law. The said committee should inform banks of the principles established by arbitration provisions.
- If and when requested, the committee shall request arbitration boards considering cases to provide these boards with the resolutions and recommendations related to banking operations already taken by the central bank.
- Publishing relevant judicial precedents and arbitration awards to contribute towards forming banking norms. Resorting to arbitration in banking operations and solving dis-

impartiality of the arbiter while the judge might feel biased to the laws or citizens of his country. Arbitration evades enmity between disputants who obtain a final award that is executable on the international level. It also encourages investment and takes care of the confidentiality and privacy of Islamic and electronic banking operations.

The author proposes the following recommendations:

- Encouraging resort to arbitration in bank operations disputes due to the lack of national and international courts specialized in considering banking disputes and reinforcing the same by training programmes of law men and banks to understand the characteristics and procedures of arbitration in banking disputes so that the objectives prospected from arbitration can be attained.
- Adopting arbitration for solving banking disputes and including it in contracts between banks or banks and clients when opening accounts, credit grants, letters of guarantee, documentary letters of credit and any other contracts that the bank may conclude with others especially when these contracts include huge amounts of money.
- Arbitration agreements should be clearly formulated, thereby determining the applicable law in order to reduce deviations by the arbitration board and leaves no chance for the wicked party to object to the validity of the agreement or disrupt procedures by following zigzagging ways as a means of procrastination because the form of the agreement results in less invalidation probabilities.

Arbitration on Disputes in Banking Operations A Study within the Framework of the Syrian Law

Dr. Hussain Shahadah Al-Hussain

Associate Professor of Commercial Law, Faculty of Law, Aleppo University, Syria and Faculty of Law, Dar Al-Uloom University, Riyadh.

International commercial arbitration has become a basic tool for the settlement of international trade disputes in general and disputes in bank operations in particular because it gives due consideration to the nature of banking operations.

Arbitration normally quickly decides on banking disputes and provides several advantages for parties to the dispute. While these advantages are of interest to traditional banks, they are of special interest to Islamic banks.

The study aims at shedding light on the advantages and disadvantages of arbitration in banking operations. It gives an idea about the standardization of the methods of the settlement of banking disputes through arbitration at the international level because local laws address local disputes.

The study concludes that the difficulties associated with the judicial settlement of banking disputes depending on the requirements and conditions that these operations demand which arbitration does not require.

By studying the advantages provided by arbitration and comparing them to the disadvantages involved in arbitration, it becomes clear that these disadvantages can be overcome and are unremarkable compared with the advantages provided by arbitration including fast processing of cases, flexibility, confidentiality and experience of arbiters that may judges lack. Arbitration also provides

Ruling on the Condition of Islam of the Arbiter on Disputes

Dr. Khaalid bin Abdullah Al-Khudhair

Judge at the Board of Grievances and Member of the Saudi Judicial Society

Arbitration plays a vital role in the settlement of all types of disputes in the present time. The arbitration process have undergone a number of developments in terms of procedures and deliberations. Arbiters who settle disputes differ from the ones stipulated in the books of Islamic heritage. The parties to the arbitration has accepted it as a sound solution of their disputes through other than the way of the courts until it has become a prerequisite in many contracts. The condition extended to include appointment of arbiters as persons rather than through arbitration boards the parties to the arbitration have no idea who will be the arbiters. Originally, the authority of appointing arbiters belongs to the arbitration board. Some or all of the members of the arbitration board might be non-Muslims like the case between the government of Saudi Arabia and ARAMCO which was considered by the Swiss arbiter Sosser Heil who issued his decision on 23 August 1958.

Due to the importance of this subject, I wished to discuss the condition of Islam of the arbiter on disputes. I will discuss this subject in three topics as follows:

1. Opinions of jurists on the conditions that the arbiter should meet,
2. Ruling on the award issued by a non-Muslim arbiter on disputes,
3. Opinion on the condition of Islam of the arbiter on disputes.

comprises eight sections:

Section One: Who has the right to ask confirmation of the oath?

Section Two: The judge is the one who chooses the form of oath confirmation using the names and attributes of Allah.

Section Three: The authority of the judge to determine the subject for which the oath is confirmed.

Section Four: verbal confirmation of the oath

Section Five: Confirmation of the oath by place

Section Six: Confirmation of the oath by time

Section Seven: Confirmation of the oath by the condition of the swearing person

Section Eight: Confirmation of the oath by divorce and the like if requested by the litigant, is it permissible for the judge to request it?

Topic Five: Judge's discretionary authority in accepting excuse when failing to appear on the appointed time to take the oath.

Topic Six: Judge's discretionary authority in giving the person asked to take the oath a grace period.

Topic Seven: Judge's discretionary authority in deciding declining the oath or returning the oath to the claimant

Conclusions

Here are the most important conclusions and recommendations reached by the author:

6. Islamic justice is original, profound, flexible and viable. It is continuously developing.
7. Islamic justice combines both limitations in some aspects and controlled freedoms in some other aspects.
8. The term "discretionary authority", though new, has been used by old jurists in a number of forms and judges adopted it in the cases filed before them.
9. No controversy over terminology after understanding their meanings and being free from any harm.

The discretionary authority in judicial work is a room of freedom given to the judge under explicit or implied texts from which he derives strength to enable him to consider, deliberate and think over the case in order to reach the best judgment.

Judge's Discretionary Authority in Deciding on the Judicial Oath

Dr. Sa'd bin Umar Al-Kharaashee

Member of Faculty, Higher Judicial Institute

Judicial work, like any other work subject to laws and regulations, is sometimes controlled by certain conditions, procedures and the like that are derived from specific rules and provisions. Taking these limits into consideration, the judge has no choice but to enforce them as they are provided; he may not transgress or violate them. This is termed as "submission to the limited authority". However, sometimes the judge may be given some room of freedom through which he can exercise his discretionary authority. This authority is based on express juristic or legal statements or when the rules and provisions limiting this authority in practicing judicial work are absent.

Justice in Islam combines both limitations and freedoms; in some respects it is limited and in some others it is free. This is termed as the mixed judicial doctrine. It is stable, firm and flexible and combines both the judicial and real facts and at the same time gives the judge some room to exercise his controlled discretionary authority depending on conditions and circumstances. This method is adopted by the Saudi judicial system.

The study plan comprises the following:

Introduction: definitions of the vocabularies of the title consisting of three sections: 1) meaning of discretionary authority, 2) meaning of judge and 3) meaning of judicial oath.

Topic One: Judge's discretionary authority in preventing taking the oath by either party.

Topic Two: Judge's discretionary authority in amending the form of the oath.

Topic Three: Judge's discretionary authority in requesting the oath of istidhhaar (fact confirmation oath) and the like.

Topic Four: Judge's discretionary authority in confirming the oath. It

- a. Providing air easement rights,
- b. Issuing and approving plane operability certificates,
- c. Setting down conditions and restrictions for the training of pilots,
- d. Checking operability of planes, and
- e. Undertaking responsibility of the air control unit

The author proposes the following recommendations:

1. Form a unified league of Arab and Islamic airlines with the aim of facilitating easy transportation and communications between the citizens of these countries.
2. Hold conferences and symposia from time to time with the aim of developing aviation and trip routes to which researchers and representatives from Arab and Islamic national civil aviation authorities are invited.
3. A specialized technical committee should be formed as part of the league mentioned under (1) above to study the rules of safety in civil aviation and take necessary measures to put them into effect and work on avoiding errors resulting into accidents in collaboration and coordination with national civil aviation authorities in different countries.

All praise belongs to Allah and may Allah's peace and blessings be upon our Master Muhammad, the members of his pure family and his companions.

rational capability,

- f. Complying with applicable air rules and instructions,
- g. Taking necessary measures and actions as quick as possible when there is any danger, and
- h. Notifying the control unit when entering a no-fly zone.

After completion of the trip, the pilot is responsible for the following:

- a. Recording his notes about the plane that he may have noticed during the trip.
4. The investor's responsibility can be summed up in the following points:
- a. Appointing an efficient pilot,
 - b. Realizing conditions of operability of the plane which can be summed up in the following:
 - 1. Keeping technical records for each plane,
 - 2. determining the weight of each plane,
 - 3. equipping the plane with necessary equipment and instruments,
 - 4. Conspicuously showing the locations of emergency equipment and life support means,
 - 5. Monitoring the air trip,
 - 6. Providing insurance coverage on lives and property,
 - 7. Ensuring safety of the payload, and
 - 8. Educating passengers in the rules of security and safety.
5. The responsibility of the national aviation authority can be summed up in the following points:

and responsible for his herd.” Therefore, the pilot is responsible for the crew and passengers, the investor is responsible for the safer operation of the plane and passengers and the national aviation authority is responsible for staff and passengers.

The author provides the following conclusions:

1. Safety is one of the most important objectives of air transportation.
2. Modern laws and regulations have given air transportation special attention in terms of controlling technologies, especially those related to safety.
3. The pilot is the primary party responsible for the safety of the trip. His responsibility prior to the start of the trip can be summed up in the following:
 - a. Ensuring that the trip will be smooth and safe,
 - b. Accurately studying reports and prospects related to air transportation,
 - c. Ensuring that the plane has been provided with the necessary quantity of fuel,
 - d. Ensuring procedures related to the qualification of the plane to fly, and
 - e. Ensuring good medical and psychological health.

During the trip, he is responsible for the following:

- a. Complying with the aviation plan,
- b. Keeping alert during the trip,
- c. Not allowing anybody to enter the pilot cot,
- d. Quickly reporting unusual air conditions,
- e. Refraining from taking anything that may weaken his

Responsibility for Safety in Civil Aviation Through Modern Laws and Regulations

Prof. Dr. Abdullah bin Ibrahim Al-Mousa

Professor of Jurisprudence in King Faisal University, Al-Hasa

All praise belongs to Allah and may Allah's peace and blessings be upon the Master of Prophets, the members of his pure family and his rightly guided companions.

Transportation means have recently remarkably developed; a distance that needed several days or say months to travel can now be covered within hours by air. This, of course, is a blessing from Allah to his creatures. However, with the expansion of this circle of air transportation, the circle of the number of accidents and calamities resulting from air trips have equally expanded in many parts of the world. An increase in the quality of service and luxury corresponded by an increase in accidents and deaths.

As safety is a basic requirement and an ultimate objective of air trips, I would like to discuss here responsibility for safety in civil aviation through modern laws and regulations hoping to shed light on this aspect of life and seeking to realize safety as much as possible in air transportation.

In this paper, I have allocated this responsibility to three parties: the pilot, the investor and the national authority of civil aviation so that each party may undertake its duties and responsibilities pursuant to the Prophet's saying, "Every one of you is a shepherd

- form of acting up requires same as the original judge. In case of partial acting up on a specific case, the acting judge should not transgress to other cases except by permission.
14. The acting judge is equal to the judge in terms of dismissal if there is reason for the same for public interest. The ruler may dismiss the acting judge if the judge is not given permission to appoint an acting judge because acting up is similar to the power of attorney.
 15. If the condition of the acting judge changes to lack of practical religious commitment, he may be dismissed because joining the ranks of the judiciary requires piety and chastity.
 16. If the acting judge is dismissed he should be informed of the same and another one is appointed in his place if the original judge does not return to his post. After knowing of the dismissal of the acting judge, his judgments are considered null and void because he no longer has any judicial authority. However, before knowing this fact, his judgments are effective as they realize public interest.
 17. The acting judge may not invalidate any judgments issued by the original judge prior to execution. The acting judge may execute such judgments without consulting the one who appoints him.
 18. If the judgment issued by the acting judge on a case preceding his appointment in the presence of the original judge, the judgment is executed because non-objection to the judgment is a proof of approving it.
 19. If the acting judge issues a judgment on a case preceding his appointment in the absence of the original judge, his judgment may not be executed unless he approves it, is dismissed or dies.

6. There is no legal objection for serial judicial acting up when necessary as long as the permission is taken from the ruler.
7. Reasons that require acting up include the expansion of the work of the judge to an extent that he cannot perform all cases he has or when he needs to travel, gets sick, has an official leave or is unable to consider a specific case.
8. If the ruler does not give permission to the original judge, he may not appoint an acting judge and should refer to the ruler when necessary.
9. If the ruler does not give a clear permission for or forbid acting up, acting up becomes permissible when there is reason to do so. However, if the ruler does not permit acting up, the original judge may not appoint an acting judge.
10. One of the conditions of the validity of judicial acting up is that it should be prepared in clear and express form rather than probable as the case with the general authority. Probable forms of acting up should be associated with a proof supporting it.
11. Judicial acting up is general and special: general acting up covers all fields of the judicial system; acting up that requires permission from the ruler, especially if it relates to the public interests of the nation. The special acting up covers individual cases that do not require permission from the ruler.
12. Judicial acting up can be general in terms of time and may be limited to a specific period like one month or year. Limited acting up should be respected although extension is permissible upon permission when necessary. However, the general term acting up continues until the case subject of consideration is finalized or the reason of acting up terminates.
13. The acting judge has the right to act on everything that the

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Judicial Acting up

Dr. Ibrahim bin Naasir Al-Hammood

Member of Faculty, Higher Judicial Institute

The paper discusses an important judicial subject. The author studied the subject from all respects and ended up with the following conclusions:

1. The judicial system is a necessity of life in Islam; it is meant to establish truth and combat falsity, settle disputes and gives rights to those who deserve them.
2. Judicial acting up means that anyone who meets the conditions of the judiciary may act on behalf of the original judge in issuing judgments for reasons that require the same.
3. Judicial acting up is a type of written delegation of authorities by a judge to another judge for the reason of public interest.
4. The acting judge has the same authorities as the original judge as the designee always takes the position of the designer.
5. If a relative is qualified to assume the judge's authorities, he may be appointed as acting judge as this removes any suspicion.