

The Entitlement or Non-entitlement of a Refusing Co-claimant to Property Recovered through a Supplementary Oath

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Article Info

Article type:
Research Article

Article history:
Received

26 October 2023

Received in revised form
30 December 2023

Accepted

14 January 2024

Available online
22 December 2025

Keywords:

one witness,
multiple claimants,
refusing claimant,
supplementary oath

ABSTRACT

There is no disagreement among Imami jurists regarding the establishment of jointly owned property by means of the evidentiary device of “one witness and an oath”, nor regarding the requirement that all claimants and co-owners must take the oath and that the rights of those who refuse to take it are not established. Their disagreement concerns the entitlement or non-entitlement of the refusing co-claimant to the property recovered by the swearing claimant. On this issue, for which there is no well-known dominant view among jurists, some have distinguished between specific property and debt, holding that in cases involving specific property the recovered property is shared between the swearing claimant and the refusing co-claimant, whereas in cases involving debt it belongs exclusively to the swearing claimant. Others maintain absolute co-entitlement, whether the case involves specific property or debt. A third group maintains absolute non-entitlement. Statutory law likewise contains no provision explicitly addressing this issue and determining its ruling. Given the importance of the matter, the central question is whether, where some co-claimants refuse to take the supplementary oath, the refusing co-claimant or co-claimants are entitled to the property recovered by the swearing claimant or claimants. This article identifies the existing juristic opinions on the issue, analyses and critiques the supporting arguments for each, and ultimately concludes that the preferable and well-substantiated theory is the distinction between specific property and debt. Accordingly, in cases involving specific property, the refusing co-claimant shares in the recovered property by virtue of the swearing claimant’s acknowledgment. In cases involving debt, however, the recovered property belongs exclusively to the swearing claimant by virtue of the rule of specification of debt. The competing opinions, given the weakness of their supporting arguments, are unable to establish their claims.

Cite this article: Hatami, S. (1404). The Entitlement or Non-entitlement of a Refusing Co-claimant to Property Recovered through a Supplementary Oath. *Studies of Islamic Jurisprudence and Basis of Law*, 20(2), 3-27. <https://doi.org/10.22034/fvh.2023.17307.1860>



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DOI: <https://doi.org/10.22034/fvh.2023.17307.1860>

Introduction

One of the important means of proving claims in Imami jurisprudence and Iranian statutory law is the composite evidentiary device known as “one witness and an oath” (*shāhid wāḥid wa yamīn*), also referred to as the supplementary oath. The legitimacy of this method has been established by reference to juristic consensus and numerous traditions transmitted from the Prophet (peace be upon him) and the Imams (peace be upon them), and it has been accepted by Shi‘i scholars as well as by most Sunni legal schools.

The supplementary oath applies in cases where it is not possible to produce full proof through complete testimony, namely two witnesses. Its administration is also contingent upon the claimant’s request. Unlike the decisory oath, it cannot be referred back to the opposing party, namely the denier/defendant. If the claimant refuses to take the oath, his or her right is not established.

However, an important issue in this regard, one that has remained ambiguous or unaddressed both in juristic texts and in statutory law, arises where there are multiple claimants, such as heirs, and the subject matter of the claim is held jointly among them by virtue of a single cause, such as inheritance. The key questions are as follows: In such claims, is it necessary for all co-claimants to take the oath? If some of them take the oath, hereinafter referred to as the swearing claimants, while others refuse to do so, hereinafter referred to as the refusing co-claimants, are the latter entitled to share in the property recovered by the former?

Methodology

This study adopts a descriptive-analytical method and a problem-oriented approach. Data were collected through library research, based on the study and analysis of primary juristic sources, including argumentative Imami works of jurisprudence by both classical and contemporary jurists, as well as Iranian statutory law.

The stages of the research were as follows. First, the juristic arguments supporting the requirement that all co-claimants must take the oath, as well as the non-establishment of the rights of those who refuse to take it, were identified and analysed. Second, the three principal juristic views concerning the second question—namely, the entitlement or non-entitlement of the refusing co-claimant to the recovered jointly claimed property—were examined separately. These three views are:

1. the distinction between specific property and debt;
2. absolute co-entitlement, both in cases of specific property and in cases of debt; and
3. absolute non-entitlement.

For each view, its supporting authorities and arguments were set out and then subjected to critical evaluation.

Literature Review and Research Background

According to the author's search in reputable academic databases, including *IranDoc*, *Noormags*, *Magiran*, and the *Comprehensive Portal of Islamic Sciences*, no independent study has so far specifically addressed the issue of the entitlement of a refusing co-claimant to property recovered in a joint claim. This article may therefore be regarded as the first independent study devoted to this issue.

Findings

The findings of this study may be presented in two main parts.

The Requirement That All Co-claimants Take the Oath

Relying on six well-founded arguments—namely, that the claim is personal to each claimant; that the oath is personal to the oath-taker; the multiplicity of the causes of co-ownership; the general purport of the traditions concerning one witness and an oath; the principle that a claim is not established by the oath of someone other than the right-holder; and the reported consensus—this study demonstrates that the well-known view among Imami jurists is correct and well-supported. According to this view, all multiple claimants must take the supplementary oath, and the rights of those who refuse to take it are not established. There is no significant disagreement among jurists on this point.

The Entitlement of the Refusing Co-claimant to the Property Recovered by the Swearing Claimant

After examining and critiquing the three existing views, this study concludes that the correct and defensible view is the one that distinguishes between specific property and debt.

In cases involving specific property, the property recovered by the swearing claimant is shared between him or her and the refusing co-claimant. The basis for this is the implied acknowledgment by the swearing claimant of the existence of co-ownership. When the swearing claimant obtains the property from the defendant, he or she is in effect acknowledging that the property was jointly owned by him or her and the other co-claimants, and that the division made between the swearing claimant, acting on his or her own behalf, and the defendant is defective. This is because the division of jointly owned property is valid only with the consent of all co-owners.

In cases involving debt, however, the property recovered by the swearing claimant belongs exclusively to that claimant, and the refusing co-claimant has no right to it. The basis for this conclusion is the rule concerning the specification or individualisation of debt. A debt is a universal obligation in the debtor's liability. Once the debtor intends to pay a specific portion of the debt—for example, the share of one of the creditors—and that amount is received by the creditor, namely the swearing claimant, the property acquires external specification and enters the individual ownership of the swearing

claimant. In this situation, the swearing claimant's acknowledgment relates to the existence of the joint debt as such, not to co-ownership in the specific property received.

Discussion

A comparative analysis of the juristic views indicates that the theory distinguishing between specific property and debt is the more robust position. In cases involving specific property, the swearing claimant's acknowledgment of co-ownership provides the basis for the refusing co-claimant's entitlement to share in the recovered property. This is because the division of undivided jointly owned property without the consent of all co-owners is invalid, and the swearing claimant is aware of this fact.

In cases involving debt, however, the rule of specification of debt entails that the recovered property belongs exclusively to the swearing claimant. This is because a universal debt, once specified by the debtor and received by the creditor, becomes externally determined and enters the individual ownership of the recipient.

By contrast, the theory of absolute co-entitlement conflates distinct legal issues and improperly extends traditions concerning the payment of a joint debt to the case of payment of an individual share. Likewise, the theory of absolute non-entitlement rests on the erroneous assumption that refusal to take the oath amounts to a waiver of the right, whereas refusal to take a supplementary oath merely means that the right has not been proved at the present stage; it does not mean that the right has been permanently extinguished.

Accordingly, the theory of distinction is more consistent with juristic principles and also offers a practical solution for courts confronted with this issue.

Conclusion

The final conclusion of this study is that the preferable and well-substantiated theory regarding the issue of the entitlement or non-entitlement of a person who refuses to take the supplementary oath to property recovered in a joint claim is the theory of distinction between specific property and debt. Accordingly, in cases involving specific property, the refusing co-claimant shares in the recovered property by virtue of the swearing claimant's acknowledgment. In cases involving debt, however, the recovered property belongs exclusively to the swearing claimant by virtue of the rule of specification of debt.

Given the existing legislative gap in this area—namely, the silence of statutory law or the lack of explicitness in existing provisions, such as the Note to Article 279 of the Iranian Code of Civil Procedure, which concerns the oath

of confirmation—it is proposed that a provision with the following content be added to the Code of Civil Procedure or to other relevant legislation:

“In all financial claims capable of being proved by one witness and an oath, where there are multiple claimants, all co-claimants shall be required to take the oath. If some of them refuse to take the oath, their right shall not be established. As regards the property recovered by the swearing claimant, if the recovered property is specific property held jointly, the refusing co-claimant shall share in it; however, if the recovered property consists of a debt, the refusing co-claimant shall not share in it.”

This approach is consistent with sound juristic principles and can also serve as a clear and equitable practical basis for judicial courts, while preventing secondary disputes after the issuance of judgment.

Declarations

Author Contributions: The author’s contributions to the article are as follows:

- Data collection: Sedigheh Hatami
- Preparation of the research report: Sedigheh Hatami
- Data analysis: Sedigheh Hatami

Data Availability Statement: Not applicable.

Acknowledgements: The author does not wish to express gratitude to any natural or legal person.

Ethical Considerations: The author has observed ethical principles in conducting and publishing this scientific research, and this has been confirmed by the author.

Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Conflict of Interest: According to the author’s declaration, this article involves no conflict of interest.

Declaration on Generative AI and AI-assisted Technologies: The author did not use artificial intelligence at any stage in the writing of this article.