

Appeal of Court Rulings on the Distribution of One-Third of an Estate Issued by Provincial Courts of Appeal

Ghader. Nouri¹, Jalal. Jafari^{1*}

¹ Department of Law, Shq.C., Islamic Azad University, Shahr-e Qods, Iran

* Corresponding author email address: J.jafari56@iau.ir

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The appeal of rulings concerning the distribution of one-third of an estate issued by provincial courts of appeal lies at the intersection of “probate matters” and “financial rights,” encountering the challenge of a “closed appeal” system. Despite Articles 367 and 368 of the Civil Procedure Code explicitly allowing appealability of one-third rulings, courts of appeal often declare their judgments final, citing the absence of explicit mention of “distribution of one-third” in the list of exceptions under Article 368. This situation, combined with divergent practices regarding the “temporal criterion for one-third” (death, testament, or minimal estate value) and conflicting interpretations of the nature of the dispute (non-financial), has resulted in the beneficiaries being defenseless and in either incomplete or excessive execution beyond one-third. The present study employs documentary and comparative analysis methods to examine four primary and appellate court judgments along with Supreme Court ruling No. 542. Findings indicate that the prevailing practice recognizes the jurisdiction of civil courts and does not consider estate inventory as a prerequisite for review. However, from the appellate perspective, since the final judgment is issued at the same appellate stage, ordinary appeal channels are closed, leaving only extraordinary remedies. The results suggest that a precise definition of “one-third in appeal” and clarification of the fundamental policies of the Supreme Court in probate matters require legislative specification or a judicial decree, to harmonize practices, safeguard beneficiaries’ rights, and ensure the finality of appellate decisions while maintaining uniformity of precedent.

Keywords: *appeal; distribution of one-third; provincial courts of appeal; probate matters; uniform practice; Article 368 of the Civil Procedure Code.*

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1. Introduction

Cassation appeal is one of the methods of challenging judicial decisions, provided for in Book Five of the Iranian Civil Procedure Code, and it assigns the task of reviewing final judgments to the Supreme Court as the highest judicial authority in the country. In the Iranian legal system, the principle is the non-cassationability of court judgments, and cassation appeal is available only where the law has expressly provided for it. This is stated in Articles 337 and 338 of the Civil Procedure Code. Articles 337 and 338 of the Civil

Procedure Code respectively require that an “objection to a judgment” and an “appeal” be submitted to the court that issued the judgment within the statutory period, namely twenty days from the date of notification, and be accompanied by payment of court costs; otherwise, the judgment is deemed final. These provisions provide a temporal enforcement guarantee for the legal system, so that, upon expiry of the period, first-instance or appellate judgments acquire stability without requiring further review and prevent the endless continuation of litigation. Thus, both the appellant’s right is preserved and the order and finality of the judicial process are maintained.



These provisions regard judgments issued by first-instance and appellate courts as cassationable in certain specific cases. Since the principle is non-cassationability, identifying the instances of cassationable judgments and determining the competent authority for establishing them are essential and sensitive matters in the civil justice system (Matin Daftari, 2019).

In this context, judgments related to endowment are among the cases expressly introduced as cassationable judgments in paragraph 2 of Article 367 and paragraph "A" of Article 368 of the Civil Procedure Code. Article 367 of the Civil Procedure Code provides that judgments of first-instance courts that have become final due to the absence of an appeal are not subject to cassation appeal, except judgments in which the claim exceeds twenty million rials or judgments issued concerning specific non-contentious and civil matters such as the existence of marriage, annulment of marriage, divorce, filiation, interdiction, endowment, one-third, life estate, and trusteeship. Likewise, orders dismissing or rejecting a petition, orders terminating proceedings, or orders concerning the incapacity of one of the parties are also subject to cassation appeal if the principal judgment related to them is itself cassationable. Article 368 of the Civil Procedure Code provides that judgments of provincial courts of appeal are deemed final and are not subject to cassation appeal before the Supreme Court, except judgments issued concerning the "existence of marriage, annulment of marriage, divorce, filiation, interdiction, and endowment," or certain specific orders such as dismissal or rejection of the petition, termination of proceedings, and incapacity of one of the parties, provided that the related principal judgment is also cassationable. Accordingly, this article establishes a closed list of exceptions to cassation appeal and generally blocks the path of appeal from appellate judgments, except in specific and limited cases related to family rights and non-contentious matters. In practice, however, the interpretation of the term "existence" in these clauses has faced challenges: whether "existence" applies only to marriage or extends to all subsequent instances such as endowment, filiation, interdiction, and divorce has always remained ambiguous. This ambiguity also exists regarding the expression "judgments concerning endowment": does it refer only to judgments issued on proving or denying the endowment, or does it also include liquidation-type judgments such as

confirmation of the trustee, distribution of revenues, or permission to sell endowed property? These questions have, in practice, led to conflicting judgments and inconsistency in judicial practice. In this regard, the Supreme Court, as the final authority for interpreting laws and creating uniform precedent, has attempted, through unification-of-precedent judgments such as Judgment No. 666 dated June 8, 2004, and Judgment No. 793 dated August 4, 2020, to clarify the boundary between the "principle of endowment" and "liquidation matters" and to prevent inconsistency in practice. Some writers and jurists have also analyzed these statutory provisions and offered their own interpretations, which in many cases align with the judicial interpretation of the Supreme Court. In comparative law, in countries such as France and Switzerland, cassation appeal is also recognized as one of the "extraordinary remedies" that may be brought only in cases expressly provided for by law. For example, Article 580 of the French Code of Civil Procedure states that extraordinary remedies may be brought only in cases specified by law (Hasani, 2016). This term was also used in the Iranian Civil Procedure Code enacted in 1939; however, in the current Code enacted in 2000, the term has been omitted (Matin Daftari, 2019).

Cassation appeal against judgments concerning the distribution of one-third of the estate is one of the challenging issues in Iranian civil procedure. It lies at the intersection of "non-contentious matters" and "financial rights" and currently faces the problem of "conflicting judgments" and the "closure of the cassation route." From the perspective of the Civil Procedure Code, distribution of one-third is an act performed after estate inventory and judicial confirmation of the will in the Special Civil Court, and it falls within the jurisdiction of Civil Court No. 2. If this judgment is affirmed or modified by the provincial court of appeal, it is no longer subject to ordinary cassation appeal, except through extraordinary remedies. In practice, however, because this action is not included in the list of exceptions under Article 368 of the Civil Procedure Code and, upon finality of the appellate judgment, is treated as "cassation-barred," an evident legal gap has emerged (Emami, 2000).

In recent years, the Supreme Court has emphasized, in cassation judgments, the criteria that "the decedent's assets at the time of death are determinative" and that

“the express consent of all heirs is required for validation of any excess over one-third.” Nevertheless, some branches of the courts of appeal, disregarding this practice, take either the time of making the will or the lowest amount of assets between death and possession as the relevant criterion. This conflict has increased the number of cassation applicants who, relying on Article 845 of the Civil Code and the above-mentioned practice, request reversal and remand. Therefore, examining the cassation frameworks governing judgments on distribution of one-third not only clarifies judicial practice but also requires the creation of a uniform and predictable precedent (Katouzian, 2019).

In practice, heirs who seek to separate one-third of the estate from the decedent’s assets and deliver it to the will beneficiary encounter two obstacles: first, provincial courts of appeal, relying on the “one-third” clause of Article 368, consider themselves “excluded from cassation” and declare their judgments final, as in Judgment No. 9109970220600701 dated September 17, 2012, Tehran; second, in some cases, these same authorities take the “time of making the will” or the “lowest amount of assets” as the criterion for determining one-third, which conflicts with Unification-of-Precedent Judgment No. 542 of December 25, 1990, and Cassation Judgment No. 9109983461301432 dated August 24, 2015, which expressly considered the time of death to be determinative and rejected cassation appeal due to the “non-financial” nature of the subject. This inconsistency leaves the will beneficiary defenseless and leads either to incomplete execution or to execution exceeding one-third.

The existing research gap is that, despite Articles 367 and 368 of the Civil Procedure Code expressly referring to the “cassationability of judgments concerning one-third,” it is still unclear whether the “distribution of one-third of the estate by provincial courts of appeal” falls under the same exception in Article 368. Since the Supreme Court has accepted the criterion of the time of death in scattered judgments, while some branches have applied the criterion of the time of making the will or the lowest amount of assets, the absence of a “uniform precedent” and a “precise definition of the instance of one-third in cassation” has caused inconsistency in appellate judgments and the problem of “cassation closure” for the will beneficiary. This requires a comprehensive study that, through a comparative

analysis of Articles 841 to 845 of the Civil Code and unification-of-precedent judgments, clarifies the boundary of cassationability in judgments concerning the distribution of one-third and offers a solution for unifying judicial practice. By precisely interpreting the above-mentioned judgments, the present study seeks to clarify the boundary between the “principle of one-third” and “liquidation matters,” explain whether “distribution of one-third” in judgments of provincial courts of appeal falls under the exception in Article 368, and consequently provide a legal solution for unifying judicial practice in cassation appeals against judgments on the distribution of one-third of the estate, so that the rights of the will beneficiary are preserved and the finality of appellate judgments is guaranteed while respecting the uniform practice of the Supreme Court.

2. The Concept of Cassation Appeal

Cassation appeal, which is provided for in Book Five of the Civil Procedure Code as one of the remedies against civil judgments and entails review by the highest judicial authority, namely the Supreme Court, has a long historical background; nevertheless, its foundational policies have rarely been articulated. This institution, which was first expressly recognized in the Constitutional Law as the “Supreme Court of Cassation” and was later transformed in subsequent legislation into the “Supreme Court,” has from its establishment to the present borne the important responsibility of “quality control of judgments” and “creation of uniform precedent.” At the same time, however, neither official legislative texts nor even judicial theories have ever clearly explained its macro-objectives, including preventing the violation of individual rights, reducing inconsistency in judgments, and creating a sense of justice-centeredness in society. This lack of a “policy statement” has caused many attorneys and even judges to regard cassation merely as a “third appellate stage,” whereas the Supreme Court in the Iranian legal system is a “reviewing court for legal correctness,” not an “appellate court” under Article 355 of the Civil Procedure Code; it merely “quashes” and has no authority to issue a new judgment. This structure turns cassation into a “quality filter” that must control judicial error before the case enters the enforcement stage. On the other hand, the broad scope of non-cassationability established in Article 368 of the Civil Procedure Code, which excludes

more than thirty types of matters from cassation, together with the single-stage nature of Supreme Court review, has placed unprecedented pressure on this institution. In cases such as “distribution of one-third,” which are not listed among the exceptions but practically become final upon appellate judgment, the claimant or defendant must resort to extraordinary remedies, including retrial, third-party objection, or an allegation of violation of Sharia or mandatory laws. This situation requires the legal policymaker to move the macro-objectives of cassation from an “implicit” state to an “explicit” one and to state, in the form of a “strategic document” or a “judicial decree,” what types of errors the Supreme Court is intended to control, how much of its resources it should devote to unifying precedent, and how it should prioritize cases in the face of heavy inflow. Unless these foundational policies are clarified, cassation appeal will remain a powerful but insufficiently understood instrument in the hands of attorneys, and individuals will understand not its “purpose” but only its “form.”

3. Distribution of One-Third

The term estate, derived from the root meaning “to leave,” has entered legal language to denote what a person leaves behind after death, and it is also used in the Qur’an in the form of “what is left” (Kulayni, 2009). Technically, the estate consists of the total positive and negative assets of the deceased at the moment of death, which acquire a legal personality independent from the heirs and constitute the basis for determining one-third and inheritance shares (Emami, 2000). A will has four elements: the testator, the will beneficiary, the object of the will, and the executor. In terms of amount, a will is divided into two categories: first, a will up to one-third of the estate, which is effective without the heirs’ permission; second, a will exceeding one-third, whose effectiveness depends on the express or implied ratification of the heirs. One-third of the estate means one-third of the net assets remaining after deducting burial and shrouding expenses and all debts from the decedent’s property. This portion is the permissible limit of testamentary disposition without the heirs’ consent. Whenever the will exceeds this limit, the heirs have the right to accept or reject the excess, and the will is implemented only up to the amount of one-third (Katouzian, 2019). The decedent’s net assets consist of

three components: real rights such as ownership, personal rights such as claims, and incorporeal rights such as trademarks and literary works. Moreover, whatever is added to the estate before or after death, such as blood money or a festival gift caught in a net cast by the decedent, is included in the estate. Debts, shrouding and burial expenses, and taxes accrued up to the date of death are deducted before calculation of one-third (Katouzian, 2019).

Distribution of one-third means separating one-third of the estate after a complete inventory of assets and debts. This act is performed before division of the inheritance so that the one-third portion belongs to the will beneficiary and the remaining two-thirds are placed at the disposal of the heirs. If the will exceeds one-third, execution of the excess depends on the heirs’ permission; in case of refusal, the will is executed only up to one-third (Maqdisi, 1968).

The court of the decedent’s last domicile has jurisdiction. The request for distribution of one-third is a non-financial action and is considered among non-contentious matters, requiring the submission of a petition for estate inventory. The required documents include the death certificate, certificate of inheritance, certified copy of the will, national identity card, and bank card receipt.

Jurists and legal scholars have offered five views regarding the relevant moment for valuing the estate: first, the time of death, which is the well-known view in Imami jurisprudence; second, the time of making the will, adopted by some Shafi’i jurists; third, the time of ratification by the heirs; fourth, the lowest value between death and possession; and fifth, a distinction between death and possession. Article 845 of the Civil Code expressly adopts the time of death as the criterion in order to prevent subsequent fluctuations, and this view is also established in Iranian judicial practice (Emami, 2000). Precise determination of one-third of the estate at the moment of death establishes a balance between the decedent’s freedom of testamentary disposition and the protection of the heirs’ rights. Proper implementation of the process of estate inventory, calculation of net assets, and distribution of one-third before division of inheritance prevents violation of the rights of either the will beneficiary or the heirs and guarantees justice in the system of inheritance and wills (Emami, 2000; Katouzian, 2019).

The action for distribution of one-third of the estate is a legal instrument through which the testamentary portion of the decedent's assets, up to one-third of the net assets after deduction of debts and burial and shrouding expenses, is separated from the estate before division of inheritance. This action is brought when the heirs refuse voluntary execution of the will or doubt its validity. Its conditions include the existence of a valid will, whether official or duly certified ordinary will, precise identification of the property subject to the will, absence of conflict with mandatory laws, and non-execution by the heirs. The required documents include the certificate of inheritance, list of assets, documents proving the applicant's interest, and confirmation of the will. Until the one-third is separated, division of the estate remains incomplete; therefore, review of this action takes priority over division of inheritance, and use of an attorney specialized in inheritance law for drafting the petition and defending the rights of the will beneficiary is recommended so that formal or substantive objections do not prevent realization of the right (Katouzian, 2019).

4. Judicial Practice Regarding the Estate and One-Third

Judicial practice in dealing with a "claim by one of the heirs to ownership of part of the estate" may be summarized in two major approaches. The first is the "separability" approach, under which, relying on Article 322 of the Law on Non-Contentious Matters and judgments such as No. 9709977132201166 dated December 19, 2018, Branch 2 of Niriz, and No. 14030239000210702 dated April 19, 2024, Branch 1 of Kahak, the court first separates, with the assistance of an expert, the "undisputed" property from the "disputed" property, issues a judgment for division or sale concerning the first part, and suspends review of the second part until the ownership action becomes final. This approach has been accepted in order to accelerate realization of the rights of the other heirs and prevent the entire proceedings from being halted. The second is the "impossibility of separation" approach, seen in judgments such as No. 9309975207401014, Branch 1 of Sarvabad, and No. 930997414800813, Branch 2 of Darab, in which the court, relying on the jurisprudential principle of prohibition of partial division of shares in undivided property and Article 2 of the Civil Procedure

Code, rejects the action for division or issues an order of non-hearing until the dispute is fully resolved. However, in Judgment No. 9109983461301432 dated August 24, 2015, the Supreme Court expressly stated that the court's duty to "inventory and determine shares" is independent of resolving all disputes, and it may determine the shares by taking account of the "possibility of a claim" and later provide compensation through the enforcement mechanism of Article 530 of the Civil Procedure Code. Therefore, based on Unification-of-Precedent Judgment No. 542 dated December 25, 1990, and the opinions of the General Legal Department, including Opinion No. 1080/7/2022, the prevailing practice tends toward "separation and partial division," and mere assertion of ownership without an independent petition is not regarded as preventing a judgment of division concerning the remaining property (Beigi Habibabadi & Beigi Habibabadi, 2024).

4.1. Inconsistency in Practice Regarding Division of the Estate

Division of the estate is one of the most frequent actions, yet it suffers from a lack of clear legal rules. The generality of the law and the legislator's silence on details have caused numerous challenges in courts, to the extent that even within a single province, different branches issue conflicting judgments concerning "a claim by one heir to ownership of part of the estate," "a claim by heirs against the deceased," or "invalidity of agreements made during the lifetime of the deceased." By examining more than fifty judgments issued by first-instance and appellate courts between 2013 and 2023, the authors have extracted three major approaches: first, separation of the disputed item and division of the remainder; second, suspension of proceedings until the dispute is resolved; and third, complete rejection of the division action until a final judgment is issued regarding the ownership claim. This variation exists despite the fact that Article 322 of the Law on Non-Contentious Matters expressly provides that the court must "determine the amount of the estate and the share of each heir and then proceed to division." Therefore, any dispute concerning ownership or claims should not prevent the court from performing its legal duty to determine shares. Nevertheless, existing practice shows that some judges consider the "principle of division"

dependent on the “complete resolution of all financial disputes,” and this view prolongs proceedings and sometimes leaves division without result (Beigi Habibabadi & Beigi Habibabadi, 2024).

4.2. *The Theory of Separating the Disputed Item*

Under this theory, which is more frequently observed in the judgments of Branches 2 and 50 of the Tehran Public Court, the court first inventories the estate pursuant to Article 317 of the Law on Non-Contentious Matters, then, with the assistance of an expert, separates undisputed property from property subject to a claim by a third party or one of the co-owners, and issues a judgment of division or sale concerning the first part. With regard to the second part, it either issues an order of “non-hearing” until substantive review takes place or suspends the proceedings until the ownership action becomes final. The advantage of this approach is that heirs who have no dispute regarding part of the estate obtain their rights sooner and leave the cycle of instability. However, criticisms have also been raised against it: first, sometimes the estate is not physically separable, such as a single agricultural parcel; second, the issuance of multiple successive orders increases costs and prolongs the proceedings. By relying on Judgment No. 9709977132201166 dated December 19, 2018, issued by Branch 2 of Niriz, and Judgment No. 140302390000210702 dated April 19, 2024, issued by Branch 1 of Kahak, the authors show that even in similar cases, one court issued an order of non-hearing while another issued an order of suspension; this instability is the research gap emphasized in the article (Beigi Habibabadi & Beigi Habibabadi, 2024).

4.3. *The Theory of Impossibility of Separation and the Necessity of Reviewing the Dispute*

By contrast, some branches, including Branch 1 of Sarvabad and Branch 2 of Darab, believe that “partial and incomplete division” of the estate is contrary to the rule of “distinguishing the right,” and that no division may be made until the ownership or debt action has been brought and finalized. Accordingly, they either “reject” the division action pursuant to Article 2 of the Civil Procedure Code or suspend the proceedings in their entirety until the aforementioned action is concluded. This view also has a jurisprudential basis, because in

jurisprudence, “division” must concern a “known and undivided property,” and as long as part of the property is disputed, division is not possible. However, by examining the above judgments, the authors have argued that Article 322 of the Law on Non-Contentious Matters “obliges” the court to inventory the estate and determine shares, and this obligation is not contingent upon the complete resolution of all disputes. Rather, the court may determine shares by considering the “possibility of a claim” and, if the claim is later proven, provide compensation through Article 530 of the Civil Procedure Code, concerning restoration to the previous state, or Article 300, concerning the partition minutes. Therefore, the “separation theory” is more consistent with both legal and jurisprudential foundations, and by observing the interests of all co-owners, it prevents prolonged suspension of proceedings (Beigi Habibabadi & Beigi Habibabadi, 2024).

4.4. *Heirs’ Claim against the Deceased and the Court’s Duty to Review It*

Regarding the claim of one or more heirs against the deceased, two completely conflicting theories are observed in judicial practice. The first group of courts, including Branch 51 of the Tehran Court of Appeal in Judgment No. 9309970269400028 dated April 16, 2014, believes that “division of the estate” is dependent on “liquidation of the estate,” and that the court, without receiving a separate petition, is obligated to identify debts and wills, including dower or unpaid wages, and then divide the remainder. This view, relying on Articles 225, 322, 868, and 869 of the Civil Code, regards “review” as a preliminary duty of the court. By contrast, a number of branches, such as Branch 90 of the Tehran First-Instance Court in Judgment No. 1012 dated January 13, 2016, believe that a “claim” is an independent action and that until a petition is submitted, the court cannot enter into it, and a mere oral assertion at the hearing does not suspend division. The General Legal Department of the Judiciary has also expressly stated in Opinions No. 1080/7/2022 and No. 1639/7/2021 that “hearing a debt claim without a petition is contrary to the principle of submitting a petition, and the court must issue an order of non-hearing” (Beigi Habibabadi & Beigi Habibabadi, 2024). By analyzing these two practices, the “first theory” is considered consistent with the spirit of the Law on Non-Contentious Matters, because Article 322

“obliges” the court to determine debts and shares, and this obligation exists independently of the submission of a petition. Therefore, the court must identify debts in an incidental manner and, if a later action exists, review it; until then, it must determine inheritance shares by taking the debts into account (Beigi Habibabadi & Beigi Habibabadi, 2024).

One emerging challenge concerns an agreement concluded by the deceased during lifetime with one or more potential heirs, whereby, in exchange for receiving property or services, the heir “waives” his or her inheritance right. In judicial practice, two completely divergent views exist. According to the first view, relying on Article 959 of the Civil Code and jurisprudential opinions, including General Legal Department Opinion No. 1061/7 dated May 17, 1991, the “right of inheritance” does not exist before the death of the decedent, and any waiver is “invalid” and falls under the rule of “waiver of a non-existent property right” (Beigi Habibabadi & Beigi Habibabadi, 2024). According to the second view, the agreement is treated as a “conditional settlement” or “exchange involving a contingent right,” and, relying on Article 10 of the Civil Code and Article 752 concerning settlement for the purpose of resolving a possible dispute, it is considered valid. Under this view, the “cause of inheritance,” namely kinship, is sufficient, and full realization of the right is not required. By examining the judgment of Branch 17 of the Tehran Court of Appeal, No. 140268390004752674 dated July 1, 2023, which expressly characterized the agreement as a “lawful settlement” and excluded it from the rule of waiver of a non-existent property right, the authors conclude that the “second theory” is more consistent with the principle of freedom of contract under Article 10 and the spirit of the 2024 law, provided that the agreement is not absolute and has a known consideration; otherwise, it must be regarded as invalid (Beigi Habibabadi & Beigi Habibabadi, 2024).

In view of the existing inconsistency in judgments issued by first-instance and appellate courts concerning the manner of reviewing claims raised by heirs regarding the decedent’s property, it is proposed that Article 322 of the Law on Non-Contentious Matters be amended by adding a note requiring the court to separate and immediately divide undisputed property and to suspend review of the disputed part until a final judgment is issued. The implementing regulation of the 2024 Electronic

Registration Law should state that the deed of division must be registered in the relevant system within one year, failing which the court should issue an order of non-hearing. The Supreme Court should, by a new unification-of-precedent judgment, confirm the time of death as the criterion for determining one-third and confirm the cassationability of judgments concerning distribution of one-third. The Judicial Deputy of the Supreme Court should also draft and promulgate a “Unified Directive on Division of Estates” so that the duties of the court regarding inventory, separation, identification of debts, and review of debt claims without a petition are clearly and mandatorily specified (Beigi Habibabadi & Beigi Habibabadi, 2024).

5. Examination and Explanation of Cassation Appeal against Judgments on Distribution of One-Third Issued by Provincial Courts of Appeal [Existing Judgments]

In the three judgments examined, one common legal point is evident: distribution of the testamentary one-third does not require completion of the estate inventory, and exclusive jurisdiction belongs to the civil court; however, after finality on appeal, ordinary cassation is closed. Cases No. 910970220600701 dated September 17, 2012, No. 930970220600030 dated April 13, 2014, and Unification-of-Precedent Judgment No. 542 dated December 25, 1990, represent this practice. In what follows, the reasons for cassation closure, the interpretation of Articles 367 and 368, and the remaining extraordinary remedies are examined.

A) The First Case

The Tehran Provincial Court of Appeal, in Judgment No. 9109970220600701 dated September 17, 2012, relying on paragraph “E” of Article 348 and Article 353 of the Civil Procedure Code, quashed the order of non-hearing issued by Branch 41 of the Tehran Public Civil Court, which had been issued on the ground that “because the estate has not been inventoried and the decedent’s assets have not been identified, determining one-third and distributing it is not possible.” The appellate court stated that distribution of the testamentary one-third from the decedent’s estate, unlike a deed of division or determination of inheritance shares, has its own specific procedure, and none of the provisions of the Law on Non-Contentious Matters or the Civil Code requires that the estate inventory necessarily be completed before review

of the action for distribution of one-third. Rather, the court may, by obtaining an expert opinion or making inquiries from notarial offices and banks, gradually identify the decedent's assets and then calculate and distribute one-third. Therefore, the absence of estate inventory cannot prevent hearing the applicant's action for distribution of one-third, and the order of non-hearing lacked legal justification. Accordingly, the appealed judgment was quashed, and the case was remanded to the same first-instance branch for substantive review and issuance of a judgment ordering distribution of one-third from the estate of the late Gh. B. F.; this judgment is final and non-cassationable by law. Judgment No. 9109970220600701 dated September 17, 2012, Branch 6 of the Tehran Provincial Court of Appeal. This judgment, for the first time in judicial practice, removed the obstacle of "estate inventory" against the action for distribution of one-third. The first-instance court, relying on Article 2 of the Civil Procedure Code and arguing that "calculation of one-third is impossible without complete knowledge of the assets," had issued an order of non-hearing. However, the appellate court, distinguishing between the "asset-identification stage" and the "will-execution stage," held that estate inventory is mandatory only for issuance of a certificate of inheritance and preparation of a deed of division, and that the court may determine the amount of one-third and issue a distribution judgment by obtaining an expert opinion or bank inquiries. Therefore, quashing the first-instance order and remanding the case for substantive review showed that the will beneficiary's right cannot remain suspended because of the lengthy formalities of estate inventory. This practice was later repeated in Judgment No. 9309970220600030. From the perspective of cassation, because this judgment was issued at the appellate stage itself, ordinary cassation is closed, and only extraordinary remedies, including retrial, third-party objection, or violation of Sharia or mandatory law, remain.

B) The Second Case

The petition of Mr. A. B., represented by Mr. M. H., against the heirs of the late Gh. B., sought issuance of a judgment ordering distribution of one-third of the estate so that Official Will No. 54167 dated May 2, 1988, would be executed. The first-instance court, relying on the absence of estate inventory and the necessity of identifying assets and debts before calculation of one-third, issued an order

of non-hearing pursuant to Article 2 of the Civil Procedure Code. Branch 6 of the Tehran Provincial Court of Appeal, on April 13, 2014, in Final Judgment No. 9309970220600030, Civil Group, held that distribution of the testamentary one-third is not dependent on estate inventory and that the reasoning of the first-instance court lacked legal justification. Accordingly, relying on paragraph "E" of Article 348 and Article 353 of the Civil Procedure Code, it quashed the challenged order and remanded the case to the first-instance court for substantive review. This judgment is final. The first-instance court had refused to review the action for distribution of one-third because of the absence of estate inventory; the appellate court quashed the judgment because distribution of the testamentary one-third does not require estate inventory and returned the case for substantive review.

Judgment No. 9309970220600030 dated April 13, 2014, Branch 6 of the Tehran Provincial Court of Appeal. This judgment effectively consolidated the previous practice. The first-instance court again issued an order of non-hearing due to the absence of estate inventory, but the appellate court, with the same previous reasoning, namely paragraph "E" of Article 348 and Article 353 of the Civil Procedure Code, quashed the order and remanded the case for substantive review. The only differences are the "date" and "judgment number," but the legal message is the same: absence of estate inventory is not an "obstacle to hearing" the action; it may only create difficulty at the stage of proving the amount, which can be remedied through provisional tools. Since this judgment was also issued at the appellate stage itself, it is non-cassationable and must be challenged or defended through extraordinary remedies.

C) The Third Case

In this cassation judgment, No. 508 dated November 24, 1992, the Supreme Court, relying on its previous rulings concerning wills and execution of one-third, emphasized that the "executor's possession of one-third of the estate" before his removal on November 22, 1983, had been "possessory as owner and authorized" on the basis of the same official will dated February 21, 1964, and deed of division dated May 14, 1972, and was not usurpatory. It declared that invalidation of the deed of division due to the minority of some heirs concerned only the "division of the two-thirds" inheritance shares and did not affect the "acquisition of one-third" by the executor. Moreover,

since the first-instance court, without reviewing the allegation that the property had been delivered and subsequently transferred again by the heirs to the executor, who was the objector, had relied merely on the expert opinion and previous judgments to order him to pay compensation for use and occupation, the challenged opinion was declared “defective and lacking justification.” The Court stated that “failure to review the aforementioned defenses” constituted a defect in the proceedings and, for that reason, quashed the appellate judgment (Beigi Habibabadi & Beigi Habibabadi, 2024).

D) The Fourth Case

Judgment No. 9109983461301432, dated August 24, 2015, concerned Case Class No. 25/6687/22, in which a group of heirs of the late “P. A.”, as plaintiffs, filed an action for division of the estate against their brother, Mr. “M. N.”, as defendant, before the Arzuiyeh Public Court. They claimed that their mother had died in 2006 and that the defendant had taken possession of the parents’ property without permission from the other heirs, whereas some of them denied signing documents transferring their shares and alleged forgery. After examining witnesses and obtaining an expert opinion, the first-instance court issued a judgment dividing the lands and water among the heirs according to inheritance shares. Branch 25 of the Supreme Court, in the cassation appeal filed by the defendant’s attorney, relying on paragraph 1 of subparagraph “A” of Article 367 of the Civil Procedure Code, held that an action for division of the estate is intrinsically non-financial and that merely stating the value of the claim does not make it financial. Accordingly, the first-instance judgment was not subject to cassation, and the cassation appeal was rejected. This judgment clarifies that division of the estate, irrespective of the monetary value of the property, falls within non-contentious matters and that the path of appeal to higher authorities is closed, except where extraordinary remedies such as retrial are invoked. Therefore, heirs must defend their rights with full precision at the first-instance stage, because the judgment issued in this respect will be final and enforceable, and there will no longer be a possibility of cassation before the Supreme Court.

Judgment No. 9109983461301432, Case Class No. 25/6687/22, by declaring the action for division of the estate to be “non-financial” and rejecting the cassation appeal, effectively confirmed the meaning of Article 367

of the Civil Procedure Code. It states that merely inserting the value of the claim does not transform an action that is intrinsically directed at “determining inheritance shares” and “separating one-third from the entire estate” into a financial action. Therefore, because distribution of one-third and division of the estate under Articles 841 to 845 of the Civil Code and Article 313 of the Law on Non-Contentious Matters are obligatory and non-financial matters, the appellate judgment concerning them is final and lacks ordinary cassationability. It may be challenged only within the framework of extraordinary remedies, including retrial, third-party objection, or petitions by third parties. This interpretation has harmonized the practice and sends the message to heirs and the Supreme Court that complete and flawless defense at the first-instance stage is the only legal opportunity for securing their rights concerning distribution of one-third and inheritance shares, because Article 367 prevents the ordinary movement of such judgments to the Supreme Court unless violation of Sharia or mandatory laws is established.

E) The Unification-of-Precedent Judgment of the General Board of the Supreme Court Concerning the Jurisdiction of Civil Courts in Distribution of One-Third from the Estate

Unification-of-Precedent Judgment No. 542 dated December 25, 1990, issued by the General Board of the Supreme Court, states that “distribution of the testamentary one-third from the estate” is not an action concerning the “principle of one-third,” but rather an operation within the framework of “liquidation and division of the estate.” Therefore, it falls outside paragraph 2 of Article 3 of the Legal Bill on the Special Civil Court, which assigns exclusive jurisdiction over actions “concerning one-third” to the Special Civil Court, and jurisdiction belongs to Civil Courts No. 2 under paragraph 1 of Article 7 of the Law on the Establishment of Civil Courts No. 1 and No. 2 enacted in 1985. Accordingly, in all cases in which a will has been confirmed by the Special Civil Court and execution and distribution of one-third from the decedent’s assets is now requested, the case must be reviewed by a civil branch, not the Special Civil Court. Pursuant to the Single Article of the Law on Judicial Unification of Precedent enacted in 1949, this judgment is binding on all courts and branches of the Supreme Court.

This judgment placed the key to “jurisdiction” in the hands of Civil Court No. 2. By distinguishing between an “action concerning the principle of one-third,” which falls within the exclusive jurisdiction of the Special Civil Court, and the “liquidation operation of distributing one-third,” which is considered part of “liquidation and division of the estate,” it held that paragraph 2 of Article 3 of the Special Civil Court Bill covers only actions concerning the principle of one-third, whereas distribution of one-third falls under paragraph 1 of Article 7 of the Law on the Establishment of Civil Courts. Therefore, in all similar cases, the case must be reviewed by Civil Court No. 2, not the Special Civil Court. This judgment is binding on all courts under the Single Article of the Law on Unification of Precedent, and because it merely determines “jurisdiction,” it does not alter the principle of prohibition of ordinary cassation after an appellate judgment.

A) Formal Aspect: Admissibility and Estate Inventory

All three documents have one decisive common point: “absence of estate inventory” is not only not an obstacle to jurisdiction, but also not an obstacle to “hearing” the action for distribution of one-third. This is because Article 297 of the Civil Procedure Code makes inventory mandatory only for the “certificate of inheritance” and the “deed of division,” and no other article considers it a prerequisite for review of the distribution action. Moreover, the amount of one-third may be established through provisional tools such as expert assessment and bank inquiries, under paragraph “E” of Article 348 and Article 353 of the Civil Procedure Code. If, at a later stage of preparing the deed of division, it becomes clear that the precise amount differs, compensation may be made from the remaining estate or from the heirs’ shares. Therefore, the current practice is that Civil Court No. 2 reviews the action for distribution of one-third substantively immediately after confirmation of the will, which takes place in the Special Civil Court, and whenever a court seeks to reject it merely because the estate has not been inventoried, its order is subject to reversal.

B) Jurisdictional Aspect

Unification-of-Precedent Judgment No. 542, by narrowly interpreting paragraph 2 of Article 3 of the Special Civil Court Bill, declared that “distribution of one-third” is a liquidation act, not an action concerning the principle of one-third. Therefore, it falls under paragraph 1 of Article

7 of the Law on the Establishment of Civil Courts, and exclusive jurisdiction belongs to Civil Court No. 2. This theory is now binding on all courts and prevents transfer of cases between courts and prolongation of proceedings.

C) Cassation Aspect

Since both appellate judgments were issued at the second stage, namely appeal, they are not subject to ordinary cassation under Article 368, and only extraordinary remedies remain: retrial under Articles 424 and 425, third-party objection under Article 427, or allegation of violation of Sharia or mandatory laws under Article 370. Only if the first-instance judgment has not been appealed may cassation be filed within twenty days under Article 367. The unification-of-precedent judgment also merely determines jurisdiction and does not change the principle of prohibition of ordinary cassation.

D) Practical Conclusion

By combining these three documents, the following coherent legal framework emerges:

The will is confirmed in the Special Civil Court.

The action for distribution of one-third may immediately be brought before Civil Court No. 2 without estate inventory.

The court is obligated to conduct substantive review and may not issue an order of non-hearing.

The appellate judgment is final and lacks ordinary cassationability and may be challenged or defended only through extraordinary remedies.

This practice both guarantees the right of the will beneficiary and does not disturb the legal order of estate division.

Cassation appeal in the Iranian legal system is regarded as the final defensive barrier for citizens against judicial errors and as an instrument for unifying precedent. In practice, however, the “rule of non-cassationability after finality of the judgment in the court of appeal” under Article 368 of the Civil Procedure Code has caused many important actions, including distribution of one-third, to become practically closed to ordinary cassation after affirmation on appeal, except within the framework of extraordinary remedies such as retrial, third-party objection, or allegation of violation of Sharia and mandatory laws. The cases examined in this study, namely Final Judgments No. 910970220600701 dated September 17, 2012, and No. 930970220600030 dated

April 13, 2014, issued by Branch 6 of the Tehran Provincial Court of Appeal, are clear examples of this situation. In both actions, the first-instance court, relying on the absence of estate inventory and Article 2 of the Civil Procedure Code, had issued an order of non-hearing. However, the court of appeal, distinguishing between the “asset-identification stage” and the “will-execution stage,” held that estate inventory is mandatory only for issuance of a certificate of inheritance or preparation of a deed of division, and that the court may determine the amount of one-third and issue a distribution judgment by obtaining a provisional expert opinion or bank inquiry. Therefore, quashing the first-instance order and remanding the case for substantive review showed that the will beneficiary’s right cannot remain suspended because of the lengthy formalities of inventory, and this practice is now recognized as a uniform judicial practice. On the other hand, Unification-of-Precedent Judgment No. 542 dated December 25, 1990, issued by the General Board of the Supreme Court, by distinguishing between an “action concerning the principle of one-third,” which falls within the exclusive jurisdiction of the Special Civil Court, and the “liquidation operation of distributing one-third,” which falls within the jurisdiction of Civil Court No. 2, placed jurisdiction in the hands of the civil court. This interpretation has prevented transfer of cases and prolongation of proceedings. However, from the perspective of cassation, because both final judgments were issued at the appellate stage itself, ordinary cassation is closed, and only extraordinary remedies remain.

Consequently, despite the legal and financial importance of distribution of one-third, this action has not been included in the list of exceptions under Article 368. Therefore, after finality on appeal, it practically becomes “cassation-barred,” unless one of the grounds for retrial, such as discovery of new evidence, error in legal reasoning, or violation of Sharia, is proven. This situation creates an evident research gap, because it has never been expressly clarified whether protection of the will beneficiary’s rights requires facilitation of cassation in such judgments. Therefore, clarification of the foundational policies of cassation in non-contentious matters requires express legislative provision or a judicial decree, so that inconsistency in practice is prevented and the rights of interested persons in wills are secured without prolonging the litigation cycle.

Accordingly, in legal practice, whenever a court seeks to reject an action for distribution of one-third because of the absence of estate inventory or to refer it to the Special Civil Court, immediate reversal of the order or judgment and referral to the jurisdiction of Civil Court No. 2 may be requested. If a final judgment is issued, it may be challenged only through retrial, third-party objection, or allegation of violation of Sharia or mandatory laws.

6. Conclusion and Recommendations

Financial rights and personal status in the Iranian judicial system are undergoing a serious test in the face of the phenomenon of “cassation closure” on the one hand and “inconsistency in precedent” on the other. The action for distribution of one-third of the estate is a clear example of this problem: once the judgment becomes final in the provincial court of appeal, the path of ordinary cassation is closed, and the interested party is forced to resort to extraordinary remedies that either have short deadlines or require heavy evidentiary burdens, whereas if a uniform practice existed concerning the temporal criterion of one-third and the nature of the action, there would be no need for so many objections. Examination of four selected first-instance and appellate judgments and Unification-of-Precedent Judgment No. 542 showed that courts of appeal, without considering estate inventory a prerequisite, have accepted the jurisdiction of Civil Court No. 2 and have regarded determination of the amount of one-third as possible through provisional expert tools. This approach has not only rescued the will beneficiary’s right from the long deadlock of formalities, but has also reduced the burden of litigation by distinguishing between the “asset-identification stage” and the “will-execution stage.” Nevertheless, because these judgments are issued at the appellate stage itself, they effectively lack ordinary cassationability and may be challenged only through retrial or third-party objection. This itself is an evident legal gap, because the legislator has never expressly stated whether “distribution of one-third” falls under the exception in Article 368, and this ambiguity has created inconsistency in judgments. On the one hand, Unification-of-Precedent Judgment No. 542, by distinguishing an “action concerning the principle of one-third” from the “liquidation operation of distribution,” assigned jurisdiction to Civil Court No. 2;

on the other hand, some appellate branches, disregarding the Supreme Court's practice, have taken the time of making the will or the lowest amount of assets as the criterion. This conflict has caused the will beneficiary sometimes to receive more than one-third and sometimes less, thereby undermining the testamentary justice that the law has stabilized by adopting the time of death. Therefore, the first practical recommendation is that the Supreme Court, by issuing a new unification-of-precedent judgment, expressly declare that "distribution of one-third" falls under paragraph 2 of Article 367 and is cassationable, so that the legal gap is filled and the path for unifying practice is opened. Second, the Judicial Deputy of the Supreme Court should draft a "Unified Directive on Division of Estates," in which the court's duties regarding inventory, separation, identification of debts, and review of debt claims without a petition are clearly and mandatorily specified, so that prolonged suspensions or unjustified rejection of actions no longer occur. Third, the legislator should, by amending Article 322 of the Law on Non-Contentious Matters, add a note requiring the court to immediately separate and divide undisputed property and to suspend review of the disputed part until issuance of a final judgment. Alongside this, the implementing regulation of the 2024 Electronic Registration Law should provide that the deed of division must be registered in the relevant system within one year; otherwise, the court should issue an order of non-hearing, thereby reducing the pressure of pending cases on the system. Fourth, regarding future recommendations, the experience of countries such as France and Switzerland may be used, where cassation is treated as an "extraordinary remedy" and permitted only in expressly stated cases; however, the difference should be that in non-contentious actions, in addition to the interest of finality, the interest of testamentary justice must also be considered. Thus, within the framework of "specialized cassation for non-contentious matters," a special branch may be established in the Supreme Court to review exclusively actions related to estates, wills, one-third, and interdiction, so that both speed is increased and the quality of precedent is improved. Finally, it must be acknowledged that the limitations of this study are also twofold: first, cassation judgments concerning distribution of one-third are few and scattered, which limits the possibility of statistical

generalization; second, the current statutory texts do not have sufficient capacity for either narrow or broad interpretation, and therefore any reform requires legislative will and cooperation by the Judiciary. Nevertheless, what became clear in this examination is that precise explanation of the boundary of cassationability in judgments concerning distribution of one-third not only reduces inconsistency in practice, but also establishes a stable balance between the decedent's freedom of testamentary disposition and protection of the heirs' rights. In its absence, this very gap will perpetuate the endless cycle of objections and prolongation of proceedings. Therefore, it may be said that the proposed solution, whether in the form of a unification-of-precedent judgment or statutory amendment, has both a protective dimension for the will beneficiary and a supervisory dimension for the Supreme Court, so that alongside finality of judgments, testamentary justice is also guaranteed. This is precisely the balance that the Iranian civil justice system urgently needs with respect to cassation appeals against distribution of one-third.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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