

## Digital Inheritance from the Perspective of Omani Law and Islamic Jurisprudence

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### ABSTRACT

Rapid changes in commercial and personal technology raise many challenges for traditional approaches to the application of law. One such challenging area relates to the subject of Digital Inheritance, their exclusivity and the disposal to beneficiaries of two genres of digital assets. The first digital asset concerns an individual's private life, which is protected by the legal framework of Islamic Sharia, ensuring individual privacy is safeguarded and not violated. This form of digital asset – in other words the private life of an individual - remains inviolate and cannot be passed on to heirs of an individual's estate, and therefore does not form any part of any inheritance. By contrast one may argue that there is a second type of digital asset which is subject to intellectual property laws – these assets could include photos, videos, lectures, and poems which are not intrinsically linked to the deceased the list is not exhaustive. This second area of asset may also encompass virtual currencies, income-generating channels through advertisements or viewership, and other similar assets. These digital assets may be said to be separate from the individual's person, and represent financial or intellectual rights which are transferable to heirs of an estate. In conclusion, this research found that digital assets with purely financial value, or those with both material and intellectual dimensions, are part of the estate and can be passed to heirs, as they are considered ownership rights similar to traditional financial assets.

**Keywords:** Digital Inheritance, Digital Wills, Financial Digital Assets, Emotional Digital Assets.

### INTRODUCTION

In recent years, the issue of digital inheritance has evolved into a significant legal challenge, particularly as technology has shifted from being merely a tool for utility to one of substantial financial value. One of the significant studies on this topic, conducted by Hizam Fatiha, examined the right to privacy of the deceased in the digital realm (Fatiha 2022). The study provided a comprehensive definition of digital privacy and explored its relationship with digital inheritance. However, while it offered an extensive discussion on the concept of privacy—including digital privacy—it ultimately adopted a conservative stance regarding the rights of heirs to digital assets. Rather than proposing innovative legal or jurisprudential solutions, the study raised more questions, highlighting

the complexities of the issue. Furthermore, its scope was confined to Algerian legislation, without considering the potential contributions of Islamic jurisprudence to this discourse.

Another study conducted by Qassemi which has more progressive perspective, advocating for the recognition of digital inheritance rights for heirs (Qassemi 2023). His research focused on the evolution of the right to privacy in the digital age, transitioning from the mere protection of personal data to the broader concept of digital destiny. This marked a significant advancement in understanding the complexities surrounding digital inheritance. However, despite its progressive stance, the study remained confined to a purely legal analysis and did not explore the jurisprudential dimensions of the issue.

A more recent and notable study by Abdul Nasser Hayajneh (Hayajneh 2016). As he examined the challenges associated with electronic accounts and the evolving concept of digital inheritance. His research primarily analyzed legal frameworks in Western jurisdictions, particularly the United States and Europe. However, given the significant differences between Western legal systems and those that adhere to Islamic law—particularly in matters of personal status—his findings have limited applicability in Islamic legal contexts.

While these studies have made important contributions to understanding the legal aspects of digital inheritance—especially in terms of assessing privacy rights with the rights of heirs—they have largely neglected the Islamic jurisprudential perspective. These studies were undoubtedly important in the field of understanding digital legacy and its consequences, but they remained confined to the legal aspect in part, and in part related to understanding the subject from the Western point of view to a large extent. Which constitutes a weakness in its application to Arab and Islamic countries that adopt Islamic law in the field of personal status

Therefore, this paper seeks to bridge this gap by integrating both legal and Islamic jurisprudential analyses. It examines key issues such as the extent of a user's rights over digital assets, the classification of digital assets, and the legal and regulatory criteria for including such assets within an estate. Additionally, this research aims to determine the position of Omani law on digital inheritance—an aspect that has not been comprehensively addressed in prior studies. By incorporating both legal and Islamic jurisprudential perspectives, this study aspires to provide a more holistic understanding of digital inheritance within the Omani legal framework.

Therefore, and in order to be precise, the research aims to address the following key questions:

1. What are the limits of a user's rights over digital assets?
2. What is the legal and Sharia-based classification of digital assets?
3. What are the conditions under which digital assets can be considered part of a deceased estate?

This research adopts an analytical methodology, analyzing scholarly opinions and legal texts, which collectively provide evidence on which, under the auspices of Omani Law, it is possible to offer an intellectual and legal opinion on the transferability of digital content.

The study is divided into a preliminary part, two main parts, and a conclusion that presents the key findings:

- Preliminary Part: *The concept of digital inheritance and digital wills*
- Part One: *Types of digital assets and the conditions for including them in the estate*
- Part Two: *The classification of the user's and heirs' rights over digital content*
- Conclusion: *Findings and recommendations*

## The Concept of Digital Inheritance and Digital Wills

Since passing a judgment on a matter requires a thorough understanding of its concept, it is useful to begin by defining both digital inheritance and digital wills as follows -

### Definition of Digital Inheritance

Digital Inheritance refers to the transfer of something from one person to another, either due to kinship, family ties, or by way of a will (Ibn Faris. 1980. 6/105). In legal terminology, inheritance is defined as “the transfer of another’s property to another by way of succession” (Al-Haqqani. n.d). As for digital inheritance, it is defined by some scholars as

- a) “the transfer of a person’s digital assets and accounts after death, or
- b) the transfer of digital accounts if a person is incapacitated in a way that prevents them from using their accounts and applications.

These accounts may pass to heirs or designated parties for access, management, or deletion after the owner’s death” (Meteb.S & Al-Shammari.H. 2019: 6).

The authors of this paper believe that the current definition of digital inheritance lacks precision for the following reasons:

1. It equates physical incapacity with that of death. While death is undoubtedly a legitimate cause of inheritance for both traditional and digital assets inheritance, the question of inheritance arising from mental incapacity is problematic. Digital assets cannot be treated as part of an inheritance while the owner is still alive. In

such cases, the management of these assets would temporarily transfer to a guardian or custodian, but the assets remain part of the owner's financial estate, as they are still legally owned by the person affected by incapacity.

2. This view contradicts both Islamic jurisprudence and even positive law. In Islamic jurisprudence and Omani law, two conditions must be met for inheritance to occur: First: death of the testator must be confirmed, either factually by actual death or legally by a court ruling declaring a missing person as deceased. Second: The heir must be alive at the time of the testator's death, either physically or presumptively, such as a fetus in the mother's womb, referred to as the "post-dated pregnancy" (Article 237 of Omani Personal Status Law).

Thus, we propose that digital inheritance be defined as the transfer of a person's digital assets after their death to their heirs or to specific parties designated by the deceased person during their lifetime, which may be referred to as a digital will. This definition is comprehensive, as it covers all possible scenarios for transferring digital assets after the owner's death, whether through inheritance, which is the most common, or through a will.

### **Definition of Digital Wills**

The Omani Personal Status Law defines a will in general terms as "a disposition given as a gift, to take effect after death" (Article 198). Under Islamic law, a will is permissible within a specific limit—up to one-third of the estate. Moreover, under Omani law, a will cannot be made in favor of an heir unless the other heirs give their consent (Article 207 of the Personal Status Law).

In the digital sphere, Google has introduced a feature allowing digital account holders to decide what happens to their accounts after death. The account owner can choose between deleting the account or appointing a custodian to manage it if it remains inactive for a period ranging from three months to one year (Warasma. A. 2020).

Thus, a digital will is an authority that some companies have adopted, whereby the account owner determines who will manage their account after death. Alternatively, the deceased person may have left instructions for the account to be deleted and converted into a memorial, a concept tied to the right to digital oblivion. This mechanism helps protect privacy by providing legal tools that allow individuals to request the deletion of their personal data and prevent its prolonged retention (Al-Mulla, M 2018:119).

The right to digital oblivion ensures that individuals can request the deletion of their digital accounts after death, in addition to having this right during their lifetime. This concept aligns with an individual's right to control their digital assets throughout their life and to dispose of them at any time (Boukhout, A. 2017).

In conclusion, digital inheritance refers to the digital assets left by a person after their death, which may hold financial value, have both financial and social significance, or possess emotional value without any monetary worth. However it may have emotional value such as personal photos and memories. This necessitates dividing digital assets into categories to clarify which assets are inheritable and, accordingly, what rights the heirs may have over them, that is, the parts of these assets that are included in the digital inheritance.

### **Types of Digital Assets and Conditions for Their Inclusion in the Estate**

Digital assets may hold intrinsic financial value, independent of their owner - such as virtual currencies - or may derive emotional value from their connection to the owner. Thus, digital assets can be divided into two categories, with several conditions that must be met for them to be included in the estate. These aspects are detailed in the following three subsections:

#### **Assets with Financial Value**

It is noted that most digital assets today have financial value. For example, domain names used by natural or legal persons carry both financial and intellectual value. This value becomes particularly evident in cases where a company is sold, leased, or liquidated. There is no doubt that the electronic addresses are of significance as clients of these companies will often judge the services provided by the company through the electronic addresses. Clearly this factor affects the company's sales or its access to its clients. Additionally, it is recognized that among the digital assets with monetary value are virtual currencies include Bitcoin, Litecoin, etc. Digital currencies are stored in and transacted through designated software, applications, and networks in digital form. These currencies can have high financial value and enjoy a set of particular characteristics. The most important characteristic rests in the fact that is a digital currency, it does not have a physical identity and is produced by computer software. It is not subject to control of central banks or government authorities. Finally, digital currency is used for online transactions, including buying, selling, or converting to other currencies (Al-Bahouth, A. 2017).

Paid software and applications also fall under financial digital assets. These assets are part of the owner's estate, akin to traditional financial assets such as real estate or movable property. Therefore, digital assets must enjoy the same legal and religious protections as any other form of private property (Abdul Mawla, A. 2021: 2101). This view aligns with Omani law, which provides a broad definition of property, encompassing everything with financial value (Article 50 of the Omani Civil Transactions Law, issued by Royal Decree No. 29/2013).

Finally, social digital assets - those with intellectual or literary value - also fall within the scope of financial assets. These assets, which involve elements of creativity and innovation, possess both artistic and monetary value. The Omani Copyright and Related Rights Law protects all original intellectual, scientific, or artistic works, regardless of their mode of expression, whether through traditional or electronic means, and regardless of their purpose or significance (Article 1, Paragraph 4, of the Copyright and Related Rights Law, issued by Royal Decree No. 65/2008).

Islamic jurisprudence also safeguards such rights. The International Islamic Fiqh Academy (IIFA), in its fifth conference, declared: "Copyrights and intellectual innovations are protected by Islamic law. Their owners have the right to dispose of them, and no one may infringe upon them" (Journal of the International Islamic Fiqh Academy, Fifth Issue, Vol. 3, 1989). Since these rights are deemed valuable and protected under both Islamic law and Civil Code, they may legally and rightfully transfer to the heirs.

### **Assets with Emotional Value**

While many digital assets carry financial value, others hold only emotional value. Examples include photos, comments and posts on social media platforms like X (formerly Twitter) and Facebook. These assets are legally protected for their emotional or moral significance. For instance, any misuse or distortion of these photos is prohibited, and heirs have the right to take the action against such behavior. However, since these assets may not demonstrate innovation or originality, some argue that they do not fall under intellectual property protection (Hayajneh 2016:3).

In our view, social media posts — such as poems or short stories shared on platforms like X or Facebook— can qualify for legal protection as digital financial assets if they display originality. In such cases, the content becomes part of copyrighted works, which cover both financial and moral rights. We argue that emotional digital assets, such as photos and memories, should generally remain outside the scope of the digital estate, as they are closely tied to the person's identity and hold no intrinsic financial value. The only situation where heirs may have a legal financial claim to such assets is if they are subject to misuse, such as defamation, distortion, or incitement. In such cases, the heirs can seek compensation for emotional damages, which would form part of the estate. Both Islamic jurisprudence and Omani law recognize compensation for emotional harm. As noted by Bendari (Bendari, M. 2023). Additionally, the Omani Copyright Law addresses moral rights in Article 5, explicitly stating that such rights can be exercised by the legal successors after the author's death.

In conclusion, the first type of digital asset—those with financial value—can be transferred to heirs under certain conditions. This also applies to social assets with intellectual or moral value. As for the second type of digital asset - those without financial or intellectual value - the heirs have no legal claim to them, as these assets are considered personal and tied to the deceased's identity. They cannot form part of the digital estate. For financial assets like virtual currencies, it is essential to determine whether their value is linked to the owner's identity or purely financial. If the asset holds pure financial value, it can be transferred to the heirs. Therefore, it is necessary to establish clear criteria for determining which digital assets can be included in the estate. This will be addressed in the following section.

### **Conditions for Considering Digital Assets as Part of the Estate**

There are several legal and religious conditions that must be met for digital assets to be considered part of an estate:

1. The digital asset must not be personally tied to the deceased.

The rights that are inherently personal to the deceased cannot be transferred to the heirs, such as the right to hold public office or the right of a guardian to oversee property under guardianship. Similarly, personal digital assets cannot be included in the digital estate due to their connection to the owner. While such rights do not pass to heirs upon the owner's death, violations of these rights entitle the heirs to compensation (Mohammed Ibrahim Bandari, Introduction to the Study of Omani Law, p. 249, Arab Studies Library, Oman, 2023).

2. The digital asset must have financial or intellectual value (intellectual property).

The original principle is that inheritance generally applies to assets with financial value, in accordance with the Prophet Muhammad's (PBUH) saying: "If somebody dies (among the Muslims) leaving some property, the property will go to his heirs; and if he leaves a debt or dependants, we will take care of them." (Sahih al-Bukhari, 1987, No. 6763). Scholars agree that financial assets, whether traditional (real estate or movable assets) or digital (such as virtual currencies or income-generating YouTube channels), are subject to inheritance.

Additionally, intellectual or artistic works such as photos, videos, lectures, and poems - if they have financial or creative value - are also included in the digital estate. These types of content, which often dominate users' social media accounts, fall under intellectual property legal protection if they display a minimum level of creativity and originality.

3. The digital asset must not harm the deceased's reputation or violate their dignity.

Digital content that is religiously prohibited, such as obscene images or songs, cannot be inherited. Such content not only damages the deceased's reputation but also contradicts Islamic teachings, which emphasize moral conduct as a key mission of all prophets. Furthermore, the Omani Civil Code denies financial rights to content that is prohibited by religious or legal standards (Article 51, Omani Civil Transactions Law).

4. The digital asset must not mislead or harm others

Heirs are responsible for informing followers or users of digital content about the owner's death to ensure transparency and prevent any deception. Deception could arise if followers are unaware of the death and continue engaging with the content under false assumptions (Abdul Rahim Mohammed Abdul Rahim, 2021, p. 2099). According to Omani law, deception is established if one party deliberately withholds information that would have influenced the other party's decision-making in follow up or dealing with digital content (Article 103, Omani Civil Transactions Law).

### Legal Classification of the User's and Heirs' Rights over Digital Content

It is essential to determine the nature of the user's rights (the deceased) over digital content and, consequently, the nature of the heirs' rights over it after the user's death. This will be clarified in the following two sections:

#### Legal Classification of the User's Rights over Digital Content

Determining the legal classification of the deceased user's rights over digital assets is essential to understand the legal and religious implications. The classification revolves around whether these rights constitute ownership or merely usufruct (right of use). We will present both opinions to identify the correct characterization.

#### Applicability of Usufruct Rights to Digital Assets

In Islamic jurisprudence, usufruct refers to the right to use and benefit from an asset without owning it. The usufructuary cannot rent or lend it to others without the owner's consent. The benefit is broader than mere use, as it allows both personal and third-party use, such as lending or leasing (Kuwaiti Fiqh Encyclopedia, Vol. 5, p. 182). In legal terminology, usufruct refers to the right to use and benefit from someone else's property (Mohammed Ibrahim Bandari, Introduction to Omani Law, p. 229). This aligns with the definition provided in the Omani Civil Transactions Law (Article 945).

Given the technological advancements, digital assets now possess direct value similar to other tangible assets. For instance, the owner of purchased software has the right to sell it, and upon the owner's death, the heirs inherit those digital assets.

#### Islamic Jurisprudence Perspectives on Digital Usufruct Rights.

**The First Opinion:** According to Hanafi scholars, usufruct rights lack inherent financial value and cannot be transferred to heirs. The usufructuary cannot consume or store the benefit for future use, making it ineligible for inheritance (Al-Sarakhsi, 1993. Vol. 5: 71).

**The Second Opinion:** Maliki, Shafi'i, and Hanbali scholars permit the inheritance of usufruct rights. They argue that all financially relevant rights—even ancillary rights like easements—are inheritable unless they are strictly personal to the deceased (e.g., guardianship). Therefore, digital assets can be passed to heirs (Al-Dhakira, p. 282/8; Asna Al-Matalib, p. 56/3; Sharh Muntaha Al-Iradat (170/2).

#### Our View on Islamic Jurisprudence's Position:

We believe that the opinion of the majority of scholars (Maliki, Shafi'i, and Hanbali) is more appropriate for the following reasons:

1. General Quranic evidence supporting inheritance came general without detail. The Quran states, "**For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share**" (Al-Nisa, 4:7). Digital content constitutes a financial right, and the heirs are entitled to benefit from it, especially if it generates income (e.g., ad revenue from YouTube). Since the default rule in Islamic law is permissibility, these assets should be considered inheritable.

2. This view aligns with societal practices and facilitates the public's transactions. It is also consistent with Omani law, which recognizes usufruct as a financial right subject to inheritance and regulates it in detail (Article 945, Omani Civil Transactions Law).

#### Applicability of Ownership Rights to Digital Assets

The right of ownership is the right that gives its owner the right to use, exploit and dispose of a thing within permissible limits. Whoever owns a certain thing has all the powers over it within the limits of the law, because the law may impose some restrictions on the owner due to the public interest, or due to special considerations that are

more deserving of care and are worthy of restricting the owner's right. Therefore, a jurisprudential opinion concludes that here exists a user's right over digital content, and an inherent right of ownership. Moreover, the users' rights extend to all the powers over its use, exploitation and disposal. This opinion for academic integrity is related to the contents of e-mails. However, we believe that there is no objection to extending this generalization to all digital content. This is due to the unity of its nature, especially in light of the trend of most service providers to provide conditions that stipulate the user's right to choose between disabling his account or appointing a guardian for him (Mandeel, A & Sarhan, A. 2008:141) (Kashaken, K. 1996:162).

### **Our View on the Classification of the User's Rights Over Digital Assets**

We argue that classifying the user's rights over digital assets as ownership is the most accurate perspective under Omani law. The services, applications, and digital data with financial value - whether purchased by the user (like a software program or application for which they paid) or created the content (like a video filmed to explain something) - constitute tangible assets due to their financial value or their relation to the user's intellectual output.

Islamic law does not prohibit the establishment of ownership over such rights because they hold considerable financial value in the view of Islamic jurisprudence. Furthermore, the law protects these rights under the Copyright Law regarding the products of one's intellect or intellectual property rights (Abdul Mawla, A. 2021:2058). This is also stipulated in Article 1, Paragraph 4 of the Copyright Protection Law.

In summary, classification of the deceased user's rights over digital assets as ownership aligns with Islamic jurisprudence, Omani law, and common practices in people's transactions.

### **Classification of Heirs' Rights Over the Digital Content**

The issue of the heirs' rights over the deceased's digital content is governed by two perspectives: the first affirms the heirs' rights over digital content as part of the inheritance, while the second negates this right upon the death of the digital content owner, based on the following details:

#### **First Perspective: Heirs' Rights Over Digital Content**

The first perspective asserts that heirs have rights over their deceased relative's digital content, thus inheriting it as part of the estate. Some countries, such as Qatar, have recognized the issue of heirs' rights to digital inheritance. Article 1003 of the Qatari Civil Code states that if the heirs do not agree on the division of family papers or items that hold sentimental value towards the deceased, a court may order either the sale of these items or their allocation to one of the heirs, with the option of deducting the value from that heir's share of the inheritance. This course of action is subject to customary practices and the personal circumstances surrounding the particular claim. (Qatari Civil Code, 2004).

It is noteworthy that the Qatari legislation has granted the judge discretionary authority regarding items that hold sentimental value. In cases where individuals do not reach an agreement, the judge may decide to sell these items or assign them to one heir, either by deducting their equivalent value from that heir's share, depending on the circumstances of each case. Digital assets indeed belong to the heirs due to their value, whether that value is sentimental or financial in nature. Therefore, the heirs are granted authority over these digital assets within the aforesaid guidelines.

#### **Second Perspective: No Rights for Heirs Over Digital Content**

Followers of this perspective argue that digital assets should be nullified upon the death of their owners, applying the concept of a person's right to be forgotten, particularly in cases where the account holder and digital asset owner wishes to delete that data because it may be inaccurate, exaggerated, or offensive (Hayajneh 2016:8).

It is evident that this view grants the digital asset owner the right to decide whether to retain or delete those digital assets. However, the problem arises when such action is not taken. Will the default be to retain the digital assets and transfer them to the heirs, or will the default be the right to be forgotten?

#### **Preferred Opinion**

It seems to us that the default position is to retain those digital assets, especially the financial ones, within the heirs' rights, considering them part of the estate. This is in accordance with the previously mentioned conditions: that they are not tied to the personality of their owner, that they possess financial value, that they do not infringe upon the dignity of the deceased, and that they do not cause harm to others. This opinion aligns with Islamic jurisprudence and Omani law regarding the transfer of financial elements to heirs, whether in their traditional form or digital form.

## CONCLUSION:

The topic of digital inheritance is a modern issue that has not been explicitly addressed by Omani legislation or Islamic jurisprudence, as it is a contemporary matter. The significant technological advancements that have occurred in various aspects of life, including currencies, have led to the emergence of virtual currencies that have gained popularity recently, along with commercial websites.

Through our study, we have demonstrated that financial digital assets, such as virtual currencies, are a type of money that falls within the scope of digital inheritance, as their financial nature is clear, akin to ordinary currency. Moreover, personal digital assets related to the deceased's personality or social assets that do not contain a degree of innovation do not fall within the scope of digital inheritance; they possess only sentimental value. However, violations against them and offenses toward the deceased may entitle the heirs to compensation.

Digital assets that hold literary or intellectual value and contain a degree of innovation and creativity possess both moral and financial aspects. The law protects these as elements of the estate for the heirs, allowing them to inherit them. In light of Omani law and Islamic jurisprudence, we view the classification of the user's (deceased's) rights over digital content as a right of ownership. Therefore, it transfers to the heirs and does not become void upon the death of the owner, particularly for content that has financial value and is not merely sentimental to the deceased.

## Recommendations:

1. Urging Omani Legislators to regulate the issue of digital inheritance by clearly defining its content and what is included or excluded, thus preventing any potential disputes that may arise around this topic, which has been overlooked by the law due to its novelty. This can be guided by the regulations in the Qatari Civil Code.
2. Legislative intervention on an international level by concluding international agreements regulating this matter, as digital inheritance often spans multiple countries; therefore, international efforts to protect it are crucial.
3. Raising awareness among digital asset owners about the importance of preserving these assets and not wasting them for their heirs by maintaining what can be called a "vault" that contains all information, registration data, and passwords, enabling heirs to access those digital assets after the owners' death.
4. Service providers should establish clear terms that specify the fate of these accounts after the owners' death, ensuring they are not canceled or deactivated, as this would greatly harm the heirs.

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