Tribal customary law in the Judean Desert does not acknowledge any limitations of testamentary power either quantitative or personal. According to the sharʿī ultra vires doctrine, a Muslim may not dispose by will of more than one-third of his property, and under Sunnī (but not Shīʿī) law, he may not make a bequest in favor of a legal heir. It seems, however, that the sharʿī doctrine did not leave any impact on the Bedouin of the Judean Desert in the period under review.

In the case discussed below, the testator, a Bedouin of 'Ashirat al-Sharāyi'a al-Taʾāmira, who seems to have had no sons, made a will in favor of his five daughters and two wives. The will is in complete economic units, rather than proportional shares, in each of the parcels of land; in some cases, the units are to be shared by the testator's two daughters or wives. Three daughters (Ḥamda, Fāṭima and Ḥalīma) were married to their paternal first cousins; this implies that their shares in the estate would not be excluded from the family patrimony through their marriages. It is noteworthy that the patrimony bordered on lands belonging to the testator's paternal brothers and their sons. This implies that these agnates had the right of pre-emption by virtue of both neighborhood and blood relationship. Moreover, the testator had already sold part of his portion of Wādī Ḥalwa, the rest of which was bequeathed to two of his daughters, to his paternal brother Ibrāhīm. With respect to the daughter Maryam, who was married to an outsider, the testator stipulated that if she did not receive the equivalent of the land in money—which implies a recommendation that her paternal uncles or first cousins buy her property rights in the estate—she should keep the land as her private property without being challenged by anyone. In any case, this stipulation attests to the daughter's capacity to own and dispose of property. A will in favor of daughters, in the absence of sons, resembles the case of the Daughters of Zelophehad; they were allowed to inherit their father's state after having married their paternal cousins, thus ensuring the integrity of the agnatic patrimony. As to the testator's wives (one of them, Ḥulwa, was his paternal first cousin, and the other, Rahma, a remote agnate), the testator bequeathed to them his portion of Harmala land in equal shares but stipulated that in the event that they predeceased him, the land should revert to him (rather than to their cognatic heirs) and he would allot it to someone at his discretion.

Muḥammad Sālim al-Dhuwayb, one of the witnesses to the will, who luckily kept a copy of this will in his private file, seems to have been fully aware of the sharʿī ultra vires doctrine and hence he entitled the document "non-sharʿī Jāhili testamentary disposition after death."
death,” indicating thereby that absolute freedom of testament was tantamount to bidʿa, a negative innovation inspired by pre-Islamic customary law.

However, in light of the legal terms and formulas used in the preamble to the will, it seems that the testator was inspired, as far as formularies are concerned by the shariʿa testamentary disposition established in the shariʿa courts. No civil wills were acknowledged under the Jordanian law. Civil will has been acknowledged under Israeli Succession Law, 1965,9 and the possibility that the Bedouin of the Judean Desert were exposed to the civil will in the Israeli civil court in East Jerusalem cannot be ruled out.

Text

NON-SHARI JĀHILI TESTAMENTARY DISPOSITION (WAṢIYYAT IRTH) AFTER DEATH7

I, the undersigned, Ḥājj Idrīs Jumʿa Sulaymān al-Dhuwayb, hereby bequeath (ūṣi) while in good health and full possession of my mental faculties (quwwa ʿaqliyya), under no constraint (maqhūr) or compulsion (majbūr), of my own volition (tawʿ) and choice (ikhtiyār), wholeheartedly (ridān), with love, gladness and good intent, in the presence of distinguished persons.10 The latter I call to witness (ushhiduhum) that I bequeath (awsāytu) in favor of each of my five daughters Ḥamda, Fāṭima, Ḥalīma, Tamām and Maryam, by my two wives, ʿUlwa Muḥammad Sulaymān and Rahīma Ahmād al-Dhuwayb; these two are my wives and in my matrimonial care (dhirma) [that is, in lawful marriage].

1. I bequeath (ūṣi) my portion (ḥiṣṣa) of Wādī Ḥalwa—the part which remains of the parcel I sold to my brother Ḥājj Ibrāhīm Jumʿa Sulaymān al-Dhuwayb and which is bounded by al-Wād in the west, …[?], bordering on Abū ʿUlays[?], in the east, the land of [the testator’s brother] Salāma Jumʿa al-Dhuwayb and his children in the east and the land of [the testator’s brother] Ḥājj Ibrāhīm Jumʿa al-Dhuwayb in the west—to my daughters Ḥamda, the wife [and paternal first cousin] of Abū Ibrāhīm Jumʿa al-Dhuwayb, and Fāṭima, the wife [and paternal first cousin] of Ḥājj Ibrāhīm Jumʿa al-Dhuwayb, with equal shares without anyone being permitted to dispute (munāziʿ) this disposition.

2. Also, I bequeath my portion of Wādī ʿUlwa al-Jazala—bordering on Bayt Abū ʿUmar in the east, the land of Salāma Jumʿa al-Dhuwayb [the testator’s paternal brother] and his children in the west, the land of Ḥabāyil[?] Salāma Jumʿa [the testator’s nephew] and his children in the north, and the land of Ḥājj Ibrāhīm Jumʿa al-Dhuwayb [the testator’s paternal brother] in the south—to my unmarried daughter Tamām, in equal shares (biʾl-tasāwī) without anyone being permitted to dispute this disposition.11

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9 The title of the will was added by Muḥammad Sālim al-Dhuwayb, probably because he felt uneasy with the will’s deviation from the shariʿa.
10 Judging by the legal terms and formulas, this will seems to be inspired by testamentary dispositions practiced in the shariʿa court.
11 Ḥamda and Ḥalīma are married to their paternal first cousins. Hence their shares in the estate will remain in the agnatic patrimony (cf. Henninger, “Das Eigentumsrecht,” 32). On the other hand, Tamām is still single, but the testator probably has good reason to believe that in one way or another she will be married to a close agnate.